

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 78

Short Title: HB2 Repeal/Equality for All. (Public)

Sponsors: Representative Brockman.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

February 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT ALL NORTH CAROLINIANS AGAINST DISCRIMINATION IN
3 ALL WALKS OF LIFE AND TO INCREASE THE PUNISHMENT FOR CERTAIN
4 CRIMES THAT INVOLVE SEXUAL ASSAULTS.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. HB2 REPEAL**

8 **SECTION 1.1.** S.L. 2016-99 and S.L. 2016-3 are repealed.

9
10 **PART II. HOUSING**

11 **SECTION 2.1.** G.S. 41A-3 reads as rewritten:

12 **"§ 41A-3. Definitions.**

13 For the purposes of this Chapter, the following definitions apply:

14 ...

15 (5a) "Protected status" means a person's race, color, national origin, religion, age,
16 disability, sex, marital status, familial status, sexual orientation, gender identity,
17 military or veteran status, or genetic information.

18"

19 **SECTION 2.2.** G.S. 41A-4 reads as rewritten:

20 **"§ 41A-4. Unlawful discriminatory housing practices.**

21 (a) It is an unlawful discriminatory housing practice for any person in a real estate
22 transaction, because of ~~race, color, religion, sex, national origin, handicapping condition, or~~
23 ~~familial status~~ the protected status of another person to:

- 24 (1) Refuse to engage in a real estate transaction;
- 25 (2) Discriminate against a person in the terms, conditions, or privileges of a real
26 estate transaction or in the furnishing of facilities or services in connection
27 therewith;
- 28 (2a), (2c) Repealed by Session Laws 2009-388, s. 1, effective October 1, 2009.
- 29 (3) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate
30 transaction;
- 31 (4) Refuse to negotiate for a real estate transaction;
- 32 (5) Represent to a person that real property is not available for inspection, sale,
33 rental, or lease when in fact it is so available, or fail to bring a property listing
34 to his attention, or refuse to permit him to inspect real property;



- 1 (6) Make, print, circulate, post, or mail or cause to be so published a statement,
- 2 advertisement, or sign, or use a form or application for a real estate transaction,
- 3 or make a record or inquiry in connection with a prospective real estate
- 4 transaction, which indicates directly or indirectly, an intent to make a
- 5 limitation, specification, or discrimination with respect thereto;
- 6 (7) Offer, solicit, accept, use, or retain a listing of real property with the
- 7 understanding that any person may be discriminated against in a real estate
- 8 transaction or in the furnishing of facilities or services in connection therewith;
- 9 or
- 10 (8) Otherwise make unavailable or deny housing.

11 ...
 12 (b1) It is an unlawful discriminatory housing practice for any person or other entity whose
 13 business includes engaging in residential real estate related transactions to discriminate against any
 14 person in making available such a transaction, or in the terms and conditions of such a transaction,
 15 because of ~~race, color, religion, sex, national origin, handicapping condition, or familial~~ that
 16 person's protected status. As used in this subsection, "residential real estate related transaction"
 17 means:

- 18 (1) The making or purchasing of loans or providing financial assistance (i) for
- 19 purchasing, constructing, improving, repairing, or maintaining a dwelling, or
- 20 (ii) where the security is residential real estate; or
- 21 (2) The selling, brokering, or appraising of residential real estate.

22 The provisions of this subsection shall not prohibit any financial institution from using a loan
 23 application which inquires into a person's financial and dependent obligations or from basing its
 24 actions on the income or financial abilities of any person.

25 (c) It is an unlawful discriminatory housing practice for a person to induce or attempt to
 26 induce another to enter into a real estate transaction from which such person may profit:

- 27 (1) By representing that a change has occurred, or may or will occur in the
- 28 composition of the residents of the block, neighborhood, or area in which the
- 29 real property is located with respect to ~~race, color, religion, sex, national origin,~~
 30 ~~handicapping condition, or familial~~ the protected status of the owners or
- 31 occupants; or
- 32 (2) By representing that a change has resulted, or may or will result in the lowering
- 33 of property values, an increase in criminal or antisocial behavior, or a decline in
- 34 the quality of schools in the block, neighborhood, or area in which the real
- 35 property is located.

36 (d) It is an unlawful discriminatory housing practice to deny any person who is otherwise
 37 qualified by State law access to or membership or participation in any real estate brokers'
 38 organization, multiple listing service, or other service, organization, or facility relating to the
 39 business of engaging in real estate transactions, or to discriminate in the terms or conditions of
 40 such access, membership, or participation because of ~~race, color, religion, sex, national origin,~~
 41 ~~handicapping condition, or familial~~ that person's protected status.

42 ...
 43 (g) It is an unlawful discriminatory housing practice to discriminate in land-use decisions
 44 or in the permitting of development based on ~~race, color, religion, sex, national origin,~~
 45 ~~handicapping condition, familial~~ a person's protected status, or, except as otherwise provided by
 46 law, the fact that a development or proposed development contains affordable housing units for
 47 families or individuals with incomes below eighty percent (80%) of area median income. It is not
 48 a violation of this Chapter if land-use decisions or permitting of development is based on
 49 considerations of limiting high concentrations of affordable housing."

50 **SECTION 2.3.** G.S. 41A-5(a) reads as rewritten:

51 "**§ 41A-5. Proof of violation.**

(a) It is a violation of this Chapter if:

(1) A person by his act or failure to act intends to discriminate against a person. A person intends to discriminate if, in committing an unlawful discriminatory housing practice described in G.S. 41A-4 he was motivated in full, or in any part at all, by ~~race, color, religion, sex, national origin, handicapping condition, or familial~~ a person's protected status. An intent to discriminate may be established by direct or circumstantial evidence.

(2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in G.S. 41A-4, against a person ~~of a particular race, color, religion, sex, national origin, handicapping condition, or familial~~ of a protected status. However, it is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that his action or inaction was motivated and justified by business necessity.

...."

SECTION 2.4. G.S. 41A-6(a) reads as rewritten:

"§ 41A-6. Exemptions.

(a) The provisions of G.S. 41A-4, except for subdivision (a)(6), do not apply to the following:

...

(3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by ~~race, color, sex, national origin, handicapping condition, or familial status;~~ a protected status, other than religion;

...."

PART III. EMPLOYMENT

SECTION 3.1. G.S. 143-422.2, as amended by this act, reads as rewritten:

"§ 143-422.2. Legislative declaration.

It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, ~~sex or handicap~~ sex, sexual orientation, gender identity, disability, marital status, familial status, military or veteran status, or genetic information by employers which regularly employ ~~45~~ one or more employees. It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general."

SECTION 3.2. G.S. 126-16 reads as rewritten:

"§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

All State agencies, departments, and institutions and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, marital status, familial status, military or veteran status, age, disability, or genetic information to all persons otherwise qualified."

SECTION 3.3. G.S. 126-34.02(b) reads as rewritten:

"(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

- 1 (1) Discrimination or harassment. – An applicant for State employment, a State
2 employee, or former State employee may allege discrimination or harassment
3 based on race, religion, color, national origin, sex, sexual orientation, gender
4 identity, marital status, familial status, military or veteran status, age, disability,
5 genetic information, or political affiliation if the employee believes that he or
6 she has been discriminated against in his or her application for employment or
7 in the terms and conditions of the employee's employment, or in the termination
8 of his or her employment.
- 9 (2) Retaliation. – An applicant for State employment, a State employee, or former
10 State employee may allege retaliation for protesting discrimination based on
11 race, religion, color, national origin, sex, sexual orientation, gender identity,
12 marital status, familial status, military or veteran status, age, disability, political
13 affiliation, or genetic information if the employee believes that he or she has
14 been retaliated against in his or her application for employment or in the terms
15 and conditions of the employee's employment, or in the termination of the
16 employee's employment.
- 17 (3) Just cause for dismissal, demotion, or suspension. – A career State employee
18 may allege that he or she was dismissed, demoted, or suspended for disciplinary
19 reasons without just cause. A dismissal, demotion, or suspension which is not
20 imposed for disciplinary reasons shall not be considered a disciplinary action
21 within the meaning of this section. However, in contested cases conducted
22 pursuant to this section, an employee may appeal an involuntary
23 nondisciplinary separation due to an employee's unavailability in the same
24 fashion as if it were a disciplinary action, but the agency shall only have the
25 burden to prove that the employee was unavailable. In cases of such
26 disciplinary action the employee shall, before the action is taken, be furnished
27 with a statement in writing setting forth the specific acts or omissions that are
28 the reasons for the disciplinary action and the employee's appeal rights. The
29 employee shall be permitted 15 days from the date the statement is delivered to
30 appeal under the agency grievance procedure. However, an employee may be
31 suspended without warning pending the giving of written reasons in order to
32 avoid undue disruption of work, to protect the safety of persons or property, or
33 for other serious reasons.
- 34 (4) Veteran's preference. – An applicant for State employment or a State employee
35 may allege that he or she was denied veteran's preference in violation of the
36 law.
- 37 (5) Failure to post or give priority consideration. – An applicant for State
38 employment or a State employee may allege that he or she was denied hiring or
39 promotion because a position was not posted in accordance with this Chapter;
40 or a career State employee may allege that he or she was denied a promotion as
41 a result of a failure to give priority consideration for promotion as required by
42 G.S. 126-7.1; or a career State employee may allege that he or she was denied
43 hiring as a result of the failure to give him or her a reduction-in-force priority.
- 44 (6) Whistleblower. – A whistleblower grievance as provided for in this Chapter."
45

46 PART IV. PUBLIC ACCOMMODATIONS

47 SECTION 4.1. Chapter 143 of the General Statutes is amended by adding a new
48 Article to read:

49 "Article 49B.

50 "Access to Public Accommodations.

51 "§ 143-422.10. Short title.

1 This Article shall be known and may be cited as the "Equal Access to Public Accommodations
2 Act."

3 **"§ 143-422.11. Legislative declaration.**

4 (a) It is the public policy of this State to protect and safeguard the right and opportunity of
5 all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges,
6 advantages, and accommodations of places of public accommodation free of discrimination
7 because of race, religion, color, national origin, sex, sexual orientation, gender identity, disability,
8 marital status, familial status, military or veteran status, or genetic information. It shall not be
9 deemed to constitute discrimination on the basis of sexual orientation or gender identity for a
10 public accommodation to provide separate bathrooms or changing facilities based on gender, but a
11 place of public accommodation shall provide access to such facilities based on a person's gender
12 identity.

13 **"§ 143-422.12. Places of public accommodation defined.**

14 For purposes of this Article, places of public accommodation has the same meaning as defined
15 in G.S. 168A-3(8) but shall exclude any private club or other establishment not, in fact, open to
16 the public.

17 **"§ 143-422.13. Investigations; conciliations.**

18 (a) The Human Relations Commission in the Department of Administration shall have the
19 authority to receive, investigate, and conciliate complaints of discrimination in public
20 accommodations. Throughout this process, the Human Relations Commission shall use its good
21 offices to effect an amicable resolution of the complaints of discrimination.

22 (b) If the Commission is unable to effect an amicable resolution of the charges of
23 discrimination, the complainant and the Commission may proceed with an enforcement action
24 using the procedures provided in G.S. 41A-7."

25
26 **PART V. CREDIT**

27 **SECTION 5.1.** Article 1 of Chapter 75 of the General Statutes is amended by adding
28 a new section to read:

29 **"§ 75-43. Discrimination by lenders prohibited.**

30 (a) Discrimination Prohibited. – No person engaged in any form of lending money in this
31 State, or to residents of this State, shall discriminate in the extension of credit on the basis of race,
32 color, national origin, religion, age, disability, sex, marital status, familial status, sexual
33 orientation, gender identity, military or veteran status, or genetic information.

34 (b) Filing of Complaint With Human Relations Commission. – Any person who claims to
35 have been injured by a violation of subsection (a) of this section or who reasonably believes that
36 he or she will be irrevocably injured by a violation of that subsection may file a complaint with the
37 North Carolina Human Relations Commission established under G.S. 143B-391. Upon receipt of a
38 complaint, the Commission shall work with the relevant parties to develop an amicable resolution
39 to the charge of discrimination. If the Commission is unable to effect an amicable resolution of the
40 charges of discrimination, the complainant and the Commission may proceed with an enforcement
41 action using the procedures provided in G.S. 41A-7. Filing of a complaint pursuant to this
42 subsection shall not preclude the filing of an action pursuant to subsection (c) of this section.

43 (c) Violation an Unfair and Deceptive Trade Practice. – A violation of subsection (a) of
44 this section shall constitute an unfair trade practice in violation of G.S. 75-1.1."

45
46 **PART VI. INSURANCE**

47 **SECTION 6.1.** G.S. 58-3-25 reads as rewritten:

48 **"§ 58-3-25. Discriminatory practices prohibited.**

49 ...

50 (c) No insurer shall refuse to insure or refuse to continue to insure an individual; limit the
51 amount, extent, or kind of coverage available to an individual; or charge an individual a different

1 rate for the same coverage, because of the race, color, ~~or~~ national or ethnic ~~origin~~ origin, religion,
2 sex, marital status, familial status, sexual orientation, gender identity, disability, military or
3 veteran status, or genetic information of that individual. This subsection supplements the
4 provisions of G.S. 58-3-120, 58-33-80, 58-58-35, and 58-63-15(7)."
5

6 PART VII. EDUCATION

7 **SECTION 7.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

8 "(64) To Adopt a Policy on Nondiscrimination in Schools. – Each local board of
9 education shall adopt a policy to establish that the local board of education and
10 school personnel employed by the local board shall not discriminate on the
11 basis of race, color, national origin, religion, age, disability, sex, marital status,
12 familial status, sexual orientation, gender identity, military or veteran status, or
13 genetic information. The policy shall include that any person who claims to
14 have been injured by an unlawful discriminatory practice or who reasonably
15 believes that he or she will be irrevocably injured by an unlawful
16 discriminatory practice may file a complaint with the North Carolina Human
17 Relations Commission established under G.S. 143B-391. Upon receipt of a
18 complaint, the Commission shall work with the relevant parties to develop an
19 amicable resolution to the charge of discrimination. If the Commission is
20 unable to effect an amicable resolution of the charges of discrimination, the
21 complainant and the Commission may proceed with an enforcement action
22 using the procedures provided in G.S. 41A-7."

23 **SECTION 7.2.(a)** G.S. 115C-218.45(e) reads as rewritten:

24 "(e) Except as otherwise provided by law or the mission of the school as set out in the
25 charter, the school shall not limit admission to students on the basis of intellectual ability,
26 measures of achievement or aptitude, athletic ability, or disability. A charter school shall not limit
27 admission to students on the basis of race, ~~ereed,~~ color, national origin, religion, ~~or ancestry,~~ age,
28 sex, marital status, familial status, sexual orientation, gender identity, military or veteran status, or
29 genetic information. A charter school whose mission is single-sex education may limit admission
30 on the basis of sex. A charter school that serves only certain grade levels may limit admission
31 based on age. Within one year after the charter school begins operation, the charter school shall
32 make efforts for the population of the school to reasonably reflect the racial and ethnic
33 composition of the general population residing within the local school administrative unit in which
34 the school is located or the racial and ethnic composition of the special population that the school
35 seeks to serve residing within the local school administrative unit in which the school is located.
36 The school shall be subject to any court-ordered desegregation plan in effect for the local school
37 administrative unit."

38 **SECTION 7.2.(b)** G.S. 115C-218.55 reads as rewritten:

39 **"§ 115C-218.55. Nondiscrimination in charter schools.**

40 A charter school shall not discriminate ~~against any student~~ on the basis of ~~ethnicity,~~ national
41 origin, ~~gender,~~ race, color, religion, age, sex, marital status, familial status, sexual orientation,
42 gender identity, military or veteran status, genetic information, or disability. Any person who
43 claims to have been injured by an unlawful discriminatory practice or who reasonably believes
44 that he or she will be irrevocably injured by an unlawful discriminatory practice may file a
45 complaint with the North Carolina Human Relations Commission established under
46 G.S. 143B-391. Upon receipt of a complaint, the Commission shall work with the relevant parties
47 to develop an amicable resolution to the charge of discrimination. If the Commission is unable to
48 effect an amicable resolution of the charges of discrimination, the complainant and the
49 Commission may proceed with an enforcement action using the procedures provided in
50 G.S. 41A-7."

51 **SECTION 7.3.** G.S. 115C-521.2 is repealed.

1 **SECTION 7.4.** G.S. 115C-562.5(c1) reads as rewritten:

2 "(c1) A nonpublic school shall not discriminate ~~with respect to the categories listed in 42~~
3 ~~U.S.C. § 2000d, as that statute read on January 1, 2014,~~ on the basis of race, color, national origin,
4 religion, age, disability, sex, marital status, familial status, sexual orientation, gender identity,
5 military or veteran status, or genetic information. Any person who claims to have been injured by
6 an unlawful discriminatory practice or who reasonably believes that he or she will be irrevocably
7 injured by an unlawful discriminatory practice may file a complaint with the North Carolina
8 Human Relations Commission established under G.S. 143B-391. Upon receipt of a complaint, the
9 Commission shall work with the relevant parties to develop an amicable resolution to the charge
10 of discrimination. If the Commission is unable to effect an amicable resolution of the charges of
11 discrimination, the complainant and the Commission may proceed with an enforcement action
12 using the procedures provided in G.S. 41A-7."

13 **SECTION 7.5.** G.S. 115D-77 reads as rewritten:

14 "**§ 115D-77. Nondiscrimination policy.**

15 It is the policy of the State Board of Community Colleges and of local boards of trustees of the
16 State of North Carolina not to discriminate ~~among students~~ on the basis of race, gender, color,
17 national origin, religion, age, sex, marital status, familial status, sexual orientation, gender
18 identity, military or veteran status, genetic information, or disability.

19 The State Board and each board of trustees shall give equal opportunity for employment and
20 compensation of personnel at community colleges, without regard to race, religion, color, creed,
21 national origin, sex, age, marital status, familial status, sexual orientation, gender identity, military
22 or veteran status, genetic information, or disability, except where specific age, sex or physical or
23 mental requirements constitute bona fide occupational qualifications.

24 Any person who claims to have been injured by an unlawful discriminatory practice or who
25 reasonably believes that he or she will be irrevocably injured by an unlawful discriminatory
26 practice may file a complaint with the North Carolina Human Relations Commission established
27 under G.S. 143B-391. Upon receipt of a complaint, the Commission shall work with the relevant
28 parties to develop an amicable resolution to the charge of discrimination. If the Commission is
29 unable to effect an amicable resolution of the charges of discrimination, the complainant and the
30 Commission may proceed with an enforcement action using the procedures provided in
31 G.S. 41A-7."

32 **SECTION 7.6.** G.S. 116-11 is amended by adding a new subdivision to read:

33 "(2a) The Board of Governors shall adopt a policy to provide that The University of
34 North Carolina and its affiliates and personnel employed by The University of
35 North Carolina and its affiliates shall not discriminate on the basis of race,
36 color, national origin, religion, age, disability, sex, marital status, familial
37 status, sexual orientation, gender identity, military or veteran status, or genetic
38 information. The policy shall include that any person who claims to have been
39 injured by an unlawful discriminatory practice or who reasonably believes that
40 he or she will be irrevocably injured by an unlawful discriminatory practice
41 may file a complaint with the North Carolina Human Relations Commission
42 established under G.S. 143B-391. Upon receipt of a complaint, the Commission
43 shall work with the relevant parties to develop an amicable resolution to the
44 charge of discrimination. If the Commission is unable to effect an amicable
45 resolution of the charges of discrimination, the complainant and the
46 Commission may proceed with an enforcement action using the procedures
47 provided in G.S. 41A-7."

48
49 **PART VIII. HUMAN RELATIONS COMMISSION**

50 **SECTION 8.1.** G.S. 143B-391 reads as rewritten:

51 "**§ 143B-391. North Carolina Human Relations Commission – Creation; powers and duties.**

1 There is hereby created the North Carolina Human Relations Commission of the Department
2 of Administration. The North Carolina Human Relations Commission shall have the following
3 functions and duties:

- 4 (1) To study problems concerning human relations;
- 5 (2) To promote equality of opportunity for all citizens;
- 6 (3) To promote understanding, respect, and goodwill among all citizens;
- 7 (4) To provide channels of communication among the races;
- 8 (5) To encourage the employment of qualified people without regard to race;
- 9 (6) To encourage youths to become better trained and qualified for employment;
- 10 (7) To receive on behalf of the Department of Administration and to recommend
11 expenditure of gifts and grants from public and private donors;
- 12 (8) To enlist the cooperation and assistance of all State and local government
13 officials in the attainment of the objectives of the Commission;
- 14 (9) To assist local good neighborhood councils and biracial human relations
15 committees in promoting activities related to the functions of the Commission
16 enumerated above;
- 17 (10) To advise the Secretary of Administration upon any matter the Secretary may
18 refer to it;
- 19 (11) To administer the provisions of the State Fair Housing Act as outlined in
20 Chapter 41A of the General Statutes;
- 21 (12) To administer the provisions of Chapter 99D of the General Statutes.
- 22 (13) To administer the provisions of the Equal Access to Public Accommodations
23 Act as outlined in Article 49B of Chapter 143 of the General Statutes.
- 24 (14) To administer the provisions of G.S. 143-422.3.
- 25 (15) To administer the provisions of G.S. 143-422.13.
- 26 (16) To administer the provisions of G.S. 75-43.
- 27 (17) To administer the provisions of G.S. 115C-47(64).
- 28 (18) To administer the provisions of G.S. 115C-218.55.
- 29 (19) To administer the provisions of G.S. 115C-562.5.
- 30 (20) To administer the provisions of G.S. 115D-77.
- 31 (21) To administer the provisions of G.S. 116-11."

32 **PART IX. APPROPRIATION**

33 **SECTION 9.1.** There is appropriated from the General Fund to the Department of
34 Administration, Human Relations Commission, the sum of seven hundred eighty-eight thousand
35 Administration, Human Relations Commission, the sum of seven hundred eighty-eight thousand
36 seventy-six dollars (\$788,076) in recurring funds for the 2017-2018 fiscal year. Of the funds
37 appropriated by this section, the sum of five hundred forty-five thousand four hundred seven
38 dollars (\$545,407) shall be used for operating expenses, and the sum of two hundred forty-two
39 thousand six hundred sixty-nine dollars (\$242,669) shall be used to fund the following new
40 positions:

- 41 (1) Program Assistant IV.
- 42 (2) Human Relations Specialist I.
- 43 (3) Human Relations Specialist I.
- 44 (4) Administrative Assistant.

45 **PART X. INCREASE PUNISHMENT FOR CERTAIN CRIMES THAT INVOLVE** 46 **SEXUAL ASSAULTS**

47 **SECTION 10.1.** Article 81B of Chapter 15A of the General Statutes is amended by
48 adding a new section to read:

49 **"§ 15A-1340.16E. Enhanced sentence if defendant committed certain offenses in a changing**
50 **facility.**
51

1 (a) For purposes of this section, the term "changing facility" means a facility designed or
2 designated to be used by a person in various states of undress and that is open to the public or
3 located in a place of public accommodation as defined in G.S. 168A-3(8). The term includes, but
4 is not limited to, a restroom, locker room, changing room, or shower room.

5 (b) If a person is convicted of any of the felonies set out in subdivisions (1) through (3) of
6 this subsection and it is found as provided in this section that the felony was committed in a
7 changing facility that is designated for the opposite sex, then the person shall have the minimum
8 term of imprisonment to which the person is sentenced for that felony increased as follows:

9 (1) If the felony is a violation of G.S. 14-27.21 (first degree forcible rape) or a
10 violation of G.S. 14-27.26 (first degree forcible sexual offense), the minimum
11 term of imprisonment to which the person is sentenced for that felony shall be
12 increased by 84 months. The maximum term of imprisonment shall be the
13 maximum term that corresponds to the minimum term after it is increased by 84
14 months, as specified in G.S. 15A-1340.17(f).

15 (2) If the felony is a violation of G.S. 14-27.22 (Second degree forcible rape) or a
16 violation of G.S. 14-27.27 (Second degree forcible sexual offense), the
17 minimum term of imprisonment to which the person is sentenced for that felony
18 shall be increased by 60 months. The maximum term of imprisonment shall be
19 the maximum term that corresponds to the minimum term after it is increased
20 by 60 months, as specified in G.S. 15A-1340.17(f).

21 (3) If the felony is a violation of G.S. 14-202.1 (Taking indecent liberties with
22 children) or G.S. 14-202.4 (Taking indecent liberties with a student), the
23 minimum term of imprisonment to which the person is sentenced for that felony
24 shall be increased by 36 months. The maximum term of imprisonment shall be
25 the maximum term that corresponds to the minimum term after it is increased
26 by 36 months, as specified in G.S. 15A-1340.17(d).

27 (c) An indictment or information for the felony shall allege in that indictment or
28 information or in a separate indictment or information the facts set out in subsection (b) of this
29 section. The pleading is sufficient if it alleges that the defendant committed the felony in a
30 changing facility. One pleading is sufficient for all felonies that are tried at a single trial.

31 (d) The State shall prove the issue set out in subsection (b) of this section beyond a
32 reasonable doubt during the same trial in which the defendant is tried for the felony unless the
33 defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to
34 the felony but pleads not guilty to the issue set out in subsection (b) of this section, then a jury
35 shall be impaneled to determine that issue."

36 **SECTION 10.2.** G.S. 14-27.33 reads as rewritten:

37 "**§ 14-27.33. Sexual battery.**

38 (a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal,
39 sexual gratification, or sexual abuse, engages in sexual contact with another person:

40 (1) By force and against the will of the other person; or

41 (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and
42 the person performing the act knows or should reasonably know that the other
43 person is mentally disabled, mentally incapacitated, or physically helpless.

44 (b) ~~Any~~ Except as provided in subsection (c) of this section, a person who commits the
45 offense defined in this section is guilty of a Class A1 misdemeanor.

46 (c) Any person who commits the offense defined in this section while in a changing
47 facility as defined in G.S. 15A-1340.16E(a) that is designated for the opposite sex is guilty of a
48 Class I felony."

49
50 **PART XI. EFFECTIVE DATES**

1 **SECTION 11.1.** Section 9.1 of this act becomes effective July 1, 2017. Section 10.1
2 and Section 10.2 of this act become effective December 1, 2017. The remainder of this act is
3 effective when it becomes law and applies to causes of action arising on or after that date.