

Understanding HB2: North Carolina's newest law solidifies state's role in defining discrimination
Action by Charlotte City Council prompted legislature to convene
Effects of new law are broader than strictly reversing Charlotte's action
Legal challenges by LGBT advocates are expected

From Georgia to Missouri, many U.S. states are considering or have passed laws that, when enacted, restrict rights to LGBT individuals. Natalie Fertig McClatchy

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In a one-day specially convened session

Wednesday, North Carolina's legislature passed a sweeping law that reverses a Charlotte ordinance that had extended some rights to people who are gay or transgender.

The law passed by the General Assembly and signed that same night by Gov. Pat McCrory goes further than a narrow elimination of Charlotte's ordinance, which had generated the most controversy by a change that protected transgender people who use public restrooms based on their gender identity. The new law also nullified local ordinances around the state that would have expanded protections for the LGBT community.

The state has long had laws regulating workplace discrimination, use of public accommodations, minimum wage standards and other business issues. The new law – known as HB2, the Charlotte bathroom bill or, more officially, as the Public Facilities Privacy and Security Act – makes it illegal for cities to expand upon those state laws, as more than a dozen cities had done including Charlotte, Raleigh, Chapel Hill and Durham.

North Carolina's new law sets a statewide definition of classes of people who are protected against discrimination: race, religion, color, national origin, age, handicap or biological sex as designated on a person's birth certificate. Sexual orientation – people who are gay – was never explicitly protected under state law and is not now, despite recent court decisions that legalized same-sex marriage.

Transgender people who have not taken surgical and legal steps to change the gender noted on their birth certificates have no legal right under state law to use public restrooms of the gender with which they identify. Cities and counties no longer can establish a different standard. Critics of the Charlotte ordinance cite privacy concerns and say it was "social engineering" to allow people born as biological males to enter women's restrooms. McCrory's office says businesses aren't limited by the bill, and that private companies and private universities can adopt new or keep existing nondiscrimination policies. Private businesses can establish their own practices concerning LGBT employees and customers; the new law does not allow so-called "public policy common law" complaints in state courts to challenge those practices.

Here are additional questions and answers about the new law:

Does HB2 affect rights of people who aren't gay or transgender?

Yes. The law limits how people pursue claims of discrimination because of race, religion, color, national origin, biological sex or handicap in state courts. The law also means a city or county cannot set a minimum wage standard for private employers.

Are other states taking the same approach?

Yes, some states also are considering new laws aimed at blocking specific LGBT rights. The national headquarters of the ACLU describes North

Carolina's HB2 as the "most extreme anti-LGBT measure in the country." Some legal experts say the N.C. bill combines elements of laws in other states that make it more comprehensive. South Dakota's legislature passed a bill focused specifically on public schools; that bill was vetoed by the governor, the ACLU said. States that recently have proposed similar measures include Georgia, Indiana, Kentucky and West Virginia, experts say. How soon will HB2 be challenged in court?

Advocacy groups, including the ACLU and Equality North Carolina, say they will soon take legal action. State ACLU legal director Chris Brook said Friday that a federal lawsuit by his group and others will be filed within days, not weeks. How quickly those expected lawsuits will be resolved is not yet known. Challenges to Amendment 1, the state's constitutional amendment banning same-sex marriage, were filed shortly after it was passed in 2012, and were resolved in 2014. A lawsuit by a group of Charlotte lawyers is pending against North Carolina's law passed in 2015 that allows magistrates and register of deeds employees to decline to handle same-sex marriages based on conflict with their spiritual beliefs.

What federal protections exist for workplace discrimination for LGBT employees?

There is no federal law that specifically prohibits discrimination against LGBT citizens in their jobs. The Employment Nondiscrimination Act that would do so has been proposed for many years, but has not passed.

Can someone be fired in North Carolina for being gay or transgender?

Yes. North Carolina is an "at will" employment state and offers limited protection for all workers. State law has never included protections for workers who are LGBT. The language in HB2 makes it more clear that the state does not intend to create a new class of protections based on sexual orientation or identity, and also will not allow cities and counties to create such a protected class.

How does HB2 affect schools?

North Carolina now requires students to use public school restrooms and locker rooms based on the gender on their birth certificates. It is not yet clear how that reconciles with the federal Title IX law that prohibits discrimination in all school programs. The federal government includes sexual identity and orientation under the broader category of sex discrimination, says Charlotte attorney John Wester. That sets up a potential collision involving hundreds of millions of federal education dollars that flow into the state's school systems, colleges and universities.

Where is public opinion in North Carolina on LGBT rights?

In 2012, a constitutional ban on same-sex marriage passed with more than 60 percent of the vote. A June 2015 poll from the Democrat-leading Public Policy Polling of Raleigh showed that 44 percent of state residents supported same-sex marriage, with 46 percent opposed. Last April, an Elon University poll found that 63 percent of the state's registered voters disagreed with the state's magistrate law.

The same poll showed that 51 percent of Republicans supported a business' right to deny service to customers based on religious objections. What are some of the political factors driving this? Conservative religious groups within North Carolina are taking some credit for getting HB2 passed into law, and pro-LGBT rights advocates note there is financial support from national groups with similar interests. Many also believe gay and transgender issues are being used by politicians to motivate voters in a presidential election year. In North Carolina, both Republicans and Democrats are using HB2 as a rallying point for supporters. Southern Evangelical Seminary president Richard Land says the situation may also indicate a growing anger in the country on both the left and right. "I don't like the form the revolution is taking," he said. "Donald Trump is coarse and crude and frankly, dangerous, but I understand what is behind

it. ...The establishment in Washington shows signs of existing more for its own benefit than for the people they were elected to serve.”

How did Democrats vote on HB2?

The vote in the N.C. House was 84-25 after three hours of debate, with all Republicans voting for it and 11 Democrats breaking ranks with their party to support the bill. In the Senate, the vote was 32-0 after the Democrats walked out in protest, saying they had not been allowed to participate in the process. Gov. Pat McCrory, a Republican, then signed it into law.

Is the NBA All-Star game the only sports event reacting negatively to the bill?

No. Both the NCAA, which has men’s basketball tournament games planned in North Carolina in 2017 and 2018, and the CIAA, which has hosted its annual basketball tournament in Charlotte since 2006, say they’re “monitoring the situation.” And cable network ESPN, which has been considering Charlotte as a contender for its summer X Games, said it embraces “diversity and inclusion and will evaluate all of our options” as it seeks the next site for the extreme-sports event.

Could this hurt economic development in North Carolina?

It’s too soon to tell. Major employers in North Carolina – American Airlines, Lowe’s, Apple, Facebook, Google, Microsoft, to name a few – all have said they’re disappointed with the measure, though they haven’t threatened to pull out from the state. Some business leaders say the new law could feed a perception that North Carolina isn’t inclusive, which could jeopardize employee recruitment and economic development.

If boycotts happen, do they work?

South Carolina was the subject of many boycotts for flying the Confederate flag at the state capitol. The NAACP announced a national boycott of the state in 2000. Tourism officials estimated the state lost \$7 million in the first month as groups from the NCAA to the American Bar Association joined the

protest. The loss of sporting events alone cost Columbia, Charleston and Greenville-Spartanburg millions of dollars every year, reports say. The flag was removed last year not because of boycotts, but after the shocking mass killings at a Charleston church that appear to have been racially motivated.

Haven’t cities other than Charlotte expanded nondiscrimination ordinances?

Charlotte’s ordinance was the first of its kind in North Carolina. Three South Carolina cities have similar ordinances: Columbia, Charleston and Myrtle Beach. They’re written differently, but “conceptually are identical” to what Charlotte did, city attorney Bob Hagemann has said. Those South Carolina cities and more than 200 other cities around the nation where similar ordinances exist have not reported problems with transgender bathroom use.

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