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HB 2 Harms North Carolinians with Disabilities

Disability Rights NC finds HB 2, The Public Facilities Privacy and Security Act, to be harmful to people with disabilities in North Carolina. HB 2 contains three major provisions, all of which negatively impact people with disabilities. It is harmful both because people with disabilities are adversely affected based on other facets of their identity and because it specifically limits disability-related protections. Our clients, all of whom are people with disabilities, are also women and men and gender nonconforming people and people of color and people of diverse religions and national origins. Many people with disabilities are part of the LGBT community. Disability Rights NC's clients are not people with disabilities one day, people of varying races and religions another day, and people of varying gender identities on yet another day. They are all those things every single day. For all the ways this legislation limits our clients' lives we condemn it.

There are also specific disability-related consequences of HB 2. It narrows our State law protections against discrimination in the use of public restroom facilities in public agencies and public schools. It eliminates a state law right to take employers to State court for employment discrimination and takes away the authority of local governments to pass laws that contain greater protections against discrimination or create better working conditions. Though the bill strips North Carolinians of important state rights, other state and federal protections against discrimination based on disability and other protected classes remain.

Public Restroom provisions:

What does it do?

- HB 2 narrows our State law protections against discrimination in the use of public restroom facilities in public agencies and public schools.
- It requires that, in public agencies and schools, single-sex multi-occupant restrooms are open only to those people whose sex as designated on their birth certificate matches the sex assigned to the restroom.
- It provides some exceptions, most important for people with disabilities are exceptions:
 - To render medical assistance.
 - To accompany a person needing assistance.
 - For a minor under the age of seven accompanying a person caring for that minor.
 - To receive assistance in using the facility (only schools)
 - To accompany a person other than a student needing assistance. (only schools)

What doesn't it do?

- There is no exception that allows a person with a disability to enter a restroom in a public agency that is assigned to the sex of his or her caregiver. Example: A twelve year old boy with a disability who needs assistance to use the restroom and whose caregiver

is his mother will need to use the men's room at the NC Museum of Natural Sciences, though his mother may enter to provide him assistance.

- The law makes no changes to the requirements of private businesses. Private businesses, even those that are public accommodations, such as restaurants and retail stores, are not affected by the restroom provisions of HB 2. Many such businesses are, however, governed by local building codes and other requirements that may shape their choices with respect to providing public restrooms.
- Single-user or family restrooms are not affected by HB 2.
- It is important to note that the Americans with Disabilities Act, a law that has dramatically affected restroom infrastructure in public accommodations in the last three decades, does not require single-sex restrooms or address the definition of sex or gender for purposes of restrooms.

Employment provisions:

What does it do?

- It gives the legislature the exclusive authority to set rules regarding minimum wages, working hours, benefits, leave, and other elements of employee compensation. If there was a local rule that affected employee compensation, such as a rule setting a higher minimum wage, it is no longer in force.
 - Employers may voluntarily choose to pay better wages and benefits than are required by state laws.
 - Employers who provide goods and services under certain federal contracts are required to pay employees a \$10.10/hour minimum wage. Some employees with disabilities are paid a subminimum wage. Employees with disabilities who work under a covered federal contract and earn a subminimum wage for their work are entitled to have their wage set based on the \$10.10/hour rate.
- It gives the NC General Assembly the exclusive authority to determine which groups of people are protected under state law against discrimination at work. It defines sex, for state nondiscrimination purposes, as the sex on a person's birth certificate.
 - Transgender people may have rights under federal employment laws, such the right to be free from discrimination based on their sex under Title VII.
- It eliminates employees' right to take their employer to court for violating Article 49A of the NC General Statutes, the Equal Employment Practices Act, prohibiting employment discrimination based on race, religion, color, national origin, age, or disability.

What doesn't it do?

- It does not eliminate all employment and other nondiscrimination provisions protecting people with disabilities. Employees still have nondiscrimination rights under other state and federal laws including Chapter 168A of the North Carolina General Statutes, the Persons With Disabilities Protection Act; the Americans with Disabilities Act; and the Rehabilitation Act, among others. In particular, the Persons With Disabilities Protections Act explicitly authorizes people with disabilities to bring a civil action in NC Superior

Court to enforce their rights under that law. HB 2 does not affect the Persons With Disabilities Protections Act.

Contracting provisions:

What does it do?

- It gives the NC General Assembly the exclusive authority to set rules about the goods, services, and accommodations private businesses must provide to members of the public. Cities and counties are prohibited from regulating the employment practices of private businesses or requiring contractors to do business with specific members of the public in order to obtain a goods and services contract.
 - Private contractors must abide by existing state or federal laws governing the public contracting process, such as affirmative hiring rules that require federal contractors to increase the number of people with disabilities in their workforce.
 - People with disabilities still have rights to equal access to public accommodations under Chapter 168A of the North Carolina General Statutes, the Persons With Disabilities Protection Act; the Americans with Disabilities Act; the Rehabilitation Act; and other laws.
- It eliminates the ability of local governments to create opportunities in contracting for people with disabilities.