

A Survey of North Carolina's Public Accommodation Ordinances and a Proposal for a Statewide Public Accommodation Law*

In 2017, following public outrage over the North Carolina General Assembly's adoption of the "bathroom bill," a retaliatory law that preempted a Charlotte antidiscrimination ordinance allowing patrons of public establishments to use bathrooms of their choice by mandating that public agencies and public schools require patrons use bathrooms based on their biological sex, the General Assembly passed a law forbidding local governments from enacting or amending ordinances regulating places of public accommodations until December 1, 2020. Since December 2020, twenty-four municipalities in North Carolina have adopted ordinances prohibiting discrimination in public accommodations. And these local protections are crucial: North Carolina is one of just five states that does not have state laws regulating discrimination in places of public accommodation. This Recent Development proposes one for North Carolina.

This Recent Development begins by describing the scope of existing federal public accommodation laws and discusses their crucial, but limited, functions. It then identifies how more comprehensive state laws compensate for some of the federal laws' shortcomings. Next, this Recent Development turns to North Carolina's local laws. It surveys the laws' definitions of "protected classes" and places of "public accommodation," as well as the penalties and remedies each law affords. Drawing on this survey, this Recent Development proposes a comprehensive statewide law that retains protections for all classes protected under existing local laws, broadly defines what constitutes a public accommodation, and offers equitable remedies and the potential for damages. This Recent Development then addresses potential challenges to the suggested language, including concerns about the odds of enactment and, in light of the U.S. Supreme Court's decision in 303 Creative LLC v. Elenis, the proposal's constitutionality. Despite these challenges, this Recent Development concludes that the proposed law is still worth introducing.

INTRODUCTION

In *Borne v. Haverhill Golf & Country Club, Inc.*,¹ nine women sued a golf club for gender discrimination under Massachusetts's public accommodations law alleging that the club designed its membership categories to limit women's access to full membership, offered dramatically fewer tee times for women than

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1. 791 N.E.2d 903 (Mass. App. Ct. 2003).

men, and advised women not to use the “men’s grill” for dinner parties.² Finding that the club had been “cavalier and callously indifferent about failing to treat women golfers as equals,” the plaintiffs were awarded \$424,000 in compensatory damages for emotional distress and \$1.4 million in punitive damages.³ In *Cervelli v. Aloha Bed & Breakfast*,⁴ a lesbian couple filed an action under Hawaii’s public accommodation law after they were refused lodging at a bed and breakfast because of their sexual orientation; a Hawaii court found for the couple and enjoined the behavior, prohibiting the bed and breakfast from engaging in future discriminatory practices against same-sex customers.⁵ And in *Dalbeck v. Bi-Mart Corp.*,⁶ the Oregon Court of Appeals found that a retail store’s policy not to sell guns to customers under the age of twenty-one, and its subsequent refusal to sell a gun to eighteen-year-old customer, constituted unlawful age discrimination under the state’s public accommodation law.⁷

In each of these cases, state laws prohibiting discrimination in places of public accommodation empowered individuals to sue private establishments for discrimination based on gender, sexual orientation, and age. But had these plaintiffs been in North Carolina, they would not have been able to sue: existing federal protections do not bar discrimination based on gender, sexual orientation, or age,⁸ and North Carolina is one of just five states that does not have a state public accommodation law.⁹

While North Carolina does not currently have a statewide public accommodation statute, it once—very briefly—did. In 2016, the General Assembly passed House Bill 2 (“HB2”), which was enacted in response to a

2. *Id.* at 907–09.

3. *Id.* at 914–17.

4. 415 P.3d 919 (Haw. Ct. App. 2018).

5. *Id.* at 923.

6. 500 P.3d 711 (Or. Ct. App. 2021).

7. *Id.* at 713–17.

8. *See infra* Section I.A.

9. *See State Public Accommodation Laws*, NAT’L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx> [<https://perma.cc/QH7X-LLYH>] (last updated June 25, 2021). Interestingly, in *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), North Carolina Attorney General Josh Stein joined an amicus brief with twenty-two other state attorneys general even though North Carolina does not have a state public accommodation law. *See generally* Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *303 Creative*, 143 S. Ct. 2298 (No. 21-476) (encouraging the Court not to exempt 303 Creative from Colorado’s public accommodation law). *303 Creative* involved a challenge to the application of Colorado’s public accommodation law which, the plaintiff alleged, would have prohibited a website designer from refusing to design wedding websites for same-sex couples. *303 Creative*, 143 S. Ct. at 2307. While the Court held that compelling 303 Creative to create a wedding website for a same-sex wedding would violate the plaintiff’s First Amendment right against compelled speech, *id.* at 2321, Attorney General Stein’s brief urged the Court not to exempt 303 Creative from Colorado’s public accommodation laws, Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *supra*, at 4–5. Somewhat ironically, then, North Carolina informed the Supreme Court on the value of a law it does not have.

Charlotte City Council ordinance that expanded the city’s nondiscrimination protections to include LGBT+ individuals.¹⁰ The impetus for the General Assembly’s retaliatory legislation was a specific provision in Charlotte’s ordinance that ensured transgender people could use the bathroom of their choice.¹¹ HB2 explicitly reversed Charlotte’s policy.¹² The bill mandated that public schools and public agencies require patrons to use multiple-occupancy bathrooms and changing rooms associated with their assigned sex, and it amended the state’s statute governing employment discrimination to clarify that the statute only protected individuals on the basis of biological sex.¹³

While HB2 made headlines as North Carolina’s “bathroom bill,”¹⁴ the bill’s public accommodation provisions were less noticed—but not less

10. See Act of Mar. 23, 2016, ch. 3, 2016 N.C. Sess. Laws 2nd Extra Sess. 12 (repealed 2017); Sarah Delia, *City Council Approves Changes to Non-Discrimination Ordinance*, WFAE 90.7 (Feb. 23, 2016, 6:42 AM), <https://www.wfae.org/politics/2016-02-23/city-council-approves-changes-to-non-discrimination-ordinance> [<https://perma.cc/U3Q9-CJDV>]. Charlotte’s ordinance prohibited businesses from refusing to serve customers based on marital status, family status, sexual orientation, gender identity, and gender expression. Delia, *supra*.

11. Delia, *supra* note 10.

12. Act of Mar. 23, 2016, §§ 1.2, 1.3 (“Local boards of education shall require every multiple occupancy bathroom or changing facility that is designated for student use to be designated for and used only by students based on their biological sex.”) (“Public agencies shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.”).

13. *Id.* §§ 1.3, 3.1. HB2 had real economic consequences for the state, but its impact was most harmful for trans North Carolinians. See Elizabeth Thompson, *In HB2’s Shadow, Advocates Fear the Consequences of Anti-Trans Bills in NC*, NC HEALTH NEWS (Sept. 15, 2021), <https://www.northcarolinahealthnews.org/2021/09/15/in-hb2s-shadow-advocates-fear-the-consequences-of-anti-trans-bills-in-nc/> [<https://perma.cc/PUG7-ZZ7Y>]. Following HB2’s enactment, 31% of trans and gender non-conforming North Carolinians experienced discrimination, 14% delayed getting needed health care, and 5% experienced increased violence. See N.C. COAL. AGAINST DOMESTIC VIOLENCE, HEALTH IMPACT ASSESSMENT OF HOUSE BILL 2 AND HOUSE BILL 142 ON LGBTQ+ NORTH CAROLINIANS 1 (2019), https://nccadv.coalitionmanager.org/resourcemanager/resourcefile/details/691?&page_y=416.046875 [<https://perma.cc/37TK-NS24>]. 85% of transgender and gender non-conforming residents experienced anxiety, 77% experienced sadness, and nearly 50% reported experiencing depression. *Id.* at 3. And from 2015 to 2016, the murder rate per 100,000 trans-identified residents in North Carolina more than doubled, from 2.2 to 4.5. *Id.* These impacts are not surprising: “Legislation influences behavior, it influences cultural sentiment, it influences the atmosphere in larger cities across the state.” Thompson, *supra*. HB2 and similar bills “validate transphobic and homophobic sentiment in communities” and add a “governmental legal stamp of approval on discrimination and harassment and violence.” *Id.* For a discussion of recent anti-trans legislation introduced in North Carolina, see *infra* note 19.

14. Lucille Sherman & Katie Peralta, *North Carolina Republicans Have Moved On from HB2’s Fallout*, AXIOS: RALEIGH (Apr. 28, 2023), <https://www.axios.com/local/raleigh/2023/04/28/north-carolina-anti-trans-legislation-bathroom-bill-hb2> [<https://perma.cc/25D2-JBP2> (staff-uploaded archive)] (“HB2, [was] popularly known as the ‘bathroom bill’ because it banned transgender people from using bathrooms that align with their gender identity.”).

discriminatory.¹⁵ The bill prevented discrimination in places of public accommodation on the basis of “race, religion, color, national origin, or *biological sex*”¹⁶ and explicitly stated that designating multiple-occupancy or single-occupancy bathrooms or changing facilities “according to biological sex . . . shall not be deemed to constitute discrimination.”¹⁷

In 2017, following local, national, and international outrage about HB2’s discriminatory policy,¹⁸ the North Carolina General Assembly repealed most of HB2—including its public accommodations provisions—and replaced it with the only slightly less egregious House Bill 142 (“HB142”).¹⁹ HB142 included a

15. Act of Mar. 23, 2016, § 3.3. The “Equal Access to Public Accommodations Act” declared that it is the “public policy of [North Carolina] to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation free of discrimination.” *Id.*

16. *Id.* (emphasis added).

17. *Id.*

18. In response to the bill, businesses cancelled expansion plans in the state, California announced it would ban state-funded travel to North Carolina, and Britain issued travel warnings for citizens visiting North Carolina. See Rick Rothacker, Ely Portillo & Katherine Peralta, *PayPal Withdraws Plans for Charlotte Expansion over HB2*, NEWS & OBSERVER, <https://www.newsobserver.com/news/politics-government/state-politics/article70001912.html> [<https://perma.cc/F8KL-3RWL> (staff-uploaded, dark archive)] (last updated Apr. 5, 2016, 7:32 PM); *Deutsche Bank Halts North Carolina Hiring over LGBT Rights*, REUTERS, <https://www.reuters.com/article/deutschebank-northcarolina-hiring/deutsche-bank-halts-north-carolina-hiring-over-lgbt-rights-idUSL5N17F3JH> [<https://perma.cc/DJ9Z-JDE4>] (last updated Apr. 12, 2016, 9:36 AM); Soumya Karlamangla, *Why California Bans State-Funded Travel to Nearly Half of States*, N.Y. TIMES (July 19, 2022), <https://www.nytimes.com/2022/07/19/us/california-state-funded-travel-bans.html> [<https://perma.cc/285B-WMDG> (staff-uploaded, dark archive)]; Peter Holley, *Britain Issues Warning for LGBT Travelers Visiting North Carolina and Mississippi*, WASH. POST (Apr. 20, 2016, 7:29 PM), <https://www.washingtonpost.com/news/worldviews/wp/2016/04/20/britain-issues-warning-for-lgbt-travelers-visiting-north-carolina-and-mississippi/> [<https://perma.cc/8BBS-UUYD> (dark archive)]. In total, HB2 cost North Carolina an estimated \$3.76 billion in economic activity. *HB2 Is Officially Dead and Gone in NC. Here’s Why That Matters.*, EQUAL N.C. (Dec. 3, 2020), https://equalitync.org/news/hb2_is_officially_dead_and_gone_in_nc_heres_why_that_matters/ [<https://perma.cc/3PVB-BGWU>].

19. An Act to Reset S.L. 2016-3, ch. 4, §§ 1, 2, 2017 N.C. Sess. Laws 81, 81 (codified at N.C. GEN. STAT. § 143-761 (2023)); Matthew Burns & Laura Leslie, *HB2 Repealed, but Many Unhappy with “Reset,”* WRAL NEWS, <https://www.wral.com/hb2-repealed-but-many-unhappy-with-reset-/16615133/> [<https://perma.cc/DWW6-EFXX>] (last updated July 13, 2018, 1:45 PM). Like its predecessor, HB142 still regulated bathroom access, declaring that public agencies would be preempted by acts of the General Assembly in regulating access to multiple-occupancy restrooms, showers, or changing facilities. An Act to Reset S.L. 2016-3 § 2. In the years following HB2’s controversy, North Carolina remains hostile to its trans citizens; in 2023 alone, legislators introduced at least ten anti-trans bills, affecting access to healthcare, participation in sports, and drag performances. See H.R. 43, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (restricting minors’ access to gender-affirming care); H.R. 786, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (same); H.R. 808, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (same); S. 560, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (same); S. 639, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (same); S. 631, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (prohibiting use of public healthcare facilities and state funds for gender transition proceedings on minors); H.R. 574, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (requiring middle and high school athletes to participate on athletic teams associated with their sex assigned at birth); S. 636, 2023 Gen. Assemb., Reg. Sess.

provision preventing all “local governments from enacting or amending ordinances regulating private employment practices or public accommodations until December 1, 2020.”²⁰

Since the provision forbidding local municipalities from regulating discrimination in public accommodations expired in 2020, twenty-four municipalities have passed nondiscrimination ordinances banning discrimination in public accommodations.²¹ But North Carolina has yet to pass another public accommodation statute that creates statewide antidiscrimination protections.²²

This Recent Development argues that North Carolina must adopt a comprehensive statute that regulates discrimination in places of public accommodation. The argument proceeds in three parts. Part I defines public accommodations and describes the history, purpose, and limited (but crucial) application of federal public accommodation statutes. Part I also identifies how more comprehensive state laws compensate for some of the federal statutes’ limitations. Part II surveys the antidiscrimination ordinances enacted in North Carolina following the expiration of HB142’s moratorium. Drawing on findings from this survey, Part III proposes a public accommodation law for North

(N.C. 2023) (increasing oversight of high school athletics and directing State Board of Education to adopt biological participation requirement guidelines); H.R. 673, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (criminalizing drag performances on public property or in the presence of a minor); S. 49, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (establishing a “Parents’ Bill of Rights” and requiring parental authorization for minors’ health care treatments). Three bills—one governing parents’ rights, one limiting gender-affirming care for minors, and one requiring athletes to participate on a team associated with their sex assigned at birth—passed; while all three were vetoed by Democratic governor Roy Cooper, those vetoes were later overridden by the North Carolina General Assembly and have become law. *See* Act of Aug. 16, 2023, ch. 106, 2023 N.C. Sess. Laws (codified in scattered sections of N.C. GEN. STAT. §§ 90, 114A, 115C, 116 (2023)); An Act To Prohibit Gender Transition Procedures for Minors, ch. 111, 2023 N.C. Sess. Laws (codified at N.C. GEN. STAT. §§ 90-21.150 to -21.154, 143C-6-5.6); An Act To Protect Opportunities for Women and Girls in Athletics, ch. 109, 2023 N.C. Sess. Laws (codified in scattered sections of N.C. GEN. STAT. §§ 115C, 115D, 116).

20. Burns & Leslie, *supra* note 19.

21. *See infra* Part I.

22. In 2023, state legislators in the North Carolina House and Senate introduced an antidiscrimination bill that would have created statewide antidiscrimination protections in places of public accommodation. *See* H.R. 518, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023); S. 398, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023). The identical bills incorporated the definition of public accommodation from North Carolina’s Persons With Disabilities Protection Act, which defined places of public accommodation to “include[], but [] not [be] limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.” Persons With Disabilities Protection Act, ch. 160, § 1, 1999 N.C. Sess. Laws 301, 303 (codified as amended at N.C. GEN. STAT. § 168A-3(8)). The bill also included an expansive list of protected classes that would be shielded from discrimination under the law, defining protected class to include protections based on “race, religion, color, national origin, sex, sexual orientation or gender identity, disability, marital status, familial status, military or veteran status, or genetic information.” N.C. H.R. 518; N.C. S. 398. Neither bill has passed.

Carolina and addresses anticipated challenges to the suggested language and scope.

I. EXISTING FEDERAL AND STATE PUBLIC ACCOMMODATION LAWS

Public accommodations are “private and public facilities that are held out to and used by the public.”²³ Public accommodation statutes codify and expand common law doctrine that historically required public accommodations to serve all customers.²⁴ At common law, professionals who made a living from serving the public²⁵ were prohibited, absent “good reason,” from refusing service to a customer.²⁶ Establishments’ duties to “entertain all persons” developed from the understanding that when a store opens itself up for business, it implicitly offers its services to all customers.²⁷ Using this principle, courts held that a range of businesses had a duty to provide services to everyone.²⁸

After the Civil War, and just before the ratification of the Fourteenth Amendment, this existing common law doctrine was recognized as inadequate in protecting Black Americans’ access to goods and services.²⁹ As a result, municipalities,³⁰ states,³¹ and the federal government “opted to ‘counter discrimination by enacting detailed statutory schemes.’”³² Such laws shifted the focus away from an owner’s right to exclude and towards the protection of the public’s right to access.³³

23. Shaun Ossei-Owusu, *Velvet Rope Discrimination*, 107 VA. L. REV. 683, 683 (2021).

24. Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *supra* note 9, at 5; *see also* Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 261 (1964) (stating that public accommodation statutes “codify the common-law innkeeper rule”).

25. For example, inn keepers and smiths made a living serving the public. Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *supra* note 9, at 5.

26. Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., 515 U.S. 557, 571 (1995).

27. Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *supra* note 9, at 7.

28. *Id.*

29. *Id.* at 8.

30. By 1963, at least eight municipalities had a public accommodations ordinance. CHARLES S. RHYNE & BRICE W. RHYNE, NAT’L INST. MUN. L. OFFICERS, REP. NO. 148, CIVIL RIGHTS ORDINANCES 71–90 (1963). These included Miami Beach, Florida; Louisville, Kentucky; Montgomery County, Maryland; Kansas City, Missouri; Albuquerque, New Mexico; Cleveland, Ohio; Philadelphia, Pennsylvania; and El Paso, Texas. *Id.*

31. Over a dozen states and the District of Columbia enacted public accommodation statutes during the Reconstruction Era, including Massachusetts; Rhode Island; Connecticut; New York; New Jersey; Pennsylvania; Ohio; Michigan; Indiana; Illinois; Iowa; Minnesota; Nebraska; Kansas; and Colorado. Anna Harvey & Emily A. West, *Discrimination in Public Accommodations*, 8 POL. SCI. RSCH. & METHODS 597, 600 (2020).

32. Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *supra* note 9, at 8 (citation omitted); *see* RHYNE & RHYNE, *supra* note 30, at 71–90 (reprinting the eight public accommodations ordinances in effect in 1963).

33. Lisa Gabrielle Lerman & Annette K. Sanderson, Comment, *Discrimination in Access to Public Places: A Survey of State and Federal Public Accommodations Laws*, 7 N.Y.U. REV. L. & SOC. CHANGE 215, 218 (1978).

A. *Federal Public Accommodation Statutes*

Two federal statutes prohibit discrimination in places of public accommodation: Title II of the Civil Rights Act of 1964 and Sections 1982 and 1983 of the Civil Rights Act of 1866. This section provides a brief overview of each statute's purpose, scope, and shortcomings.

1. Title II of the Civil Rights Act of 1964

Congress enacted Title II to prohibit acts of discrimination in privately owned businesses.³⁴ Title II provides that all persons “shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.”³⁵ It specifically prohibits discrimination in places of public accommodation on the basis of “race, color, religion or national origin.”³⁶

Accommodations covered under Title II as places of public accommodation fall into five categories: (1) lodging; (2) facilities where food is sold and consumed on the premises; (3) gas stations; (4) places of exhibition or entertainment; and (5) “captive establishments,” specifically those that house or are located on the premises of a covered establishment or that hold themselves out as serving patrons of a covered establishment.³⁷ Title II's express

34. *Id.* In passing Title II, Congress was constrained by the Supreme Court's invalidation of the Civil Rights Act of 1875, which sought to regulate discrimination in places of public accommodation under the Fourteenth Amendment. *Id.* In the *Civil Rights Cases*, 109 U.S. 3 (1883), the Court held that the Fourteenth Amendment applied only to state action, not private action, thus finding the Civil Rights Act of 1875 unconstitutional. *Id.* at 3. To avoid a similar challenge, the Civil Rights Act of 1964 was passed under Congress's power to regulate interstate commerce. Lerman & Sanderson, *supra* note 33, at 219–20. It was drafted to draw upon Congress's Fourteenth Amendment and Commerce Clause authority, regulating establishments whose operations were supported by state-action or state-affected interstate commerce. *Id.*

35. 42 U.S.C. § 2000a(a).

36. *Id.* § 2000a-1.

37. Lerman & Sanderson, *supra* note 33, at 221.

Each of the following establishments which serves the public is a place of public accommodation within the meaning of this [title:] . . . (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence; (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station; (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and (4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

§ 2000a(b).

enumeration of businesses that fall within the statute's scope has led to disagreement over its application. Some courts have interpreted the list of enumerated establishments to be illustrative,³⁸ while others have held that it is exhaustive.³⁹ In addition, the statute exempts certain private establishments, including "private clubs or other establishment[s] not in fact open to the public" from its scope of protections.⁴⁰ Because Title II does not clearly define what a private club is,⁴¹ what qualifies as a "private establishment" is not always obvious.⁴²

Title II was a monumental step towards ending racial discrimination in places of public accommodation, but its remedy is limited. It provides only for equitable relief, such as a court order prohibiting the defendant from engaging in discriminatory conduct.⁴³ Litigants cannot recover money damages.⁴⁴ This

38. *See, e.g.*, *United States v. Baird*, 85 F.3d 450, 453–55 (9th Cir. 1966) (finding that a 7-11 convenience store with several video games constituted a place of entertainment and was therefore a public accommodation under Title II); *Rousseve v. Shape Spa for Health & Beauty, Inc.*, 516 F.2d 64, 68 (10th Cir. 1975) (finding that health and exercise studios are places of entertainment under Title II and are therefore protected places of public accommodation); *see also* *Sellers v. Philip's Barber Shop*, 217 A.2d 121, 123 (N.J. 1966) (interpreting a state public accommodations statute providing that public accommodations "shall include" a long list of establishments to cover a barber shop to be a general illustration of the type of enterprises intended to be within the boundaries of the law rather than a limitation).

39. *See, e.g.*, *Denny v. Elizabeth Arden Salons, Inc.*, 456 F.3d 427, 431–34 (4th Cir. 2006) (declining to find that a beauty salon is a "place of exhibition or entertainment" as defined in Title II but finding coverage under the Civil Rights Act of 1866); *Cuevas v. Sdrales*, 344 F.2d 1019, 1020–21 (10th Cir. 1965) (declining to apply Title II's protections to a tavern that sold beer because it was not a "restaurant, cafeteria, lunch room, lunch counter, or soda fountain" nor was it an "other facility principally engaged in selling food for consumption on the premises").

40. § 2000a(e).

41. Graham F. Whittington, Comment, *Ultimate Discrimination?: Sunday Play, Sports Schedules, and Evaluating the Effectiveness of Anti-Discrimination Laws*, 97 N.C. L. REV. 933, 960 (2019) (citing *United States v. Lansdowne Swim Club*, 713 F. Supp. 785, 796 (E.D. Pa. 1989)).

42. *See* *Tillman v. Wheaton-Haven Recreation Ass'n*, 410 U.S. 431, 438 (1973) (holding that a swimming and recreation club was not private because it was open to all white people in the area, and its membership cap and requirement that new members be approved by existing members served no exclusivity purpose other than racism); *cf.* *Equal Emp. Opportunity Comm'n v. Chi. Club*, 86 F.3d 1423, 1423 (7th Cir. 1996) (holding that Chicago business club was a private club because it was owned and controlled by its members, was not open to the public, was relatively small, had significant limitations on the use of the facilities by non-members, and was selective in its membership practices).

43. *See* § 2000a-3(a); Anne-Marie G. Harris, *A Survey of Federal and State Public Accommodation Statutes: Evaluating Their Effectiveness in Cases of Retail Discrimination*, 13 VA. J. SOC. POL'Y & L. 331, 339 (2006).

44. *See* § 2000a-3(a); Harris, *supra* note 43, at 339.

limits Title II's capacity to make plaintiffs whole⁴⁵ and may discourage plaintiffs from seeking redress.⁴⁶

2. Sections 1981 and 1982 of the Civil Rights Act of 1866

Sections 1981 and 1982 of the Civil Rights Act of 1866 supplement the antidiscrimination protections in Title II. Although these provisions were enacted before Title II, the Civil Rights Act of 1866 was interpreted for a century as applying only to government actions, not those of private actors.⁴⁷ It was not until 1968, four years after Title II became law, that the Supreme Court declared in *Jones v. Alfred H. Mayer Co.*⁴⁸ that protections in the Civil Rights Act of 1866 apply to both public and private establishments.⁴⁹ Since *Jones*, Sections 1981 and 1982 have been used to litigate discrimination in private establishments open to the public.⁵⁰

Section 1981, known as the Contracts Clause, regulates contractual relationships.⁵¹ Section 1981 requires that “all persons . . . shall have the same right . . . to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens.”⁵² It defines making and enforcing contracts as the “making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.”⁵³

45. In a piece discussing private plaintiffs' litigation incentives under the Americans with Disabilities Act, Samuel R. Bagenstos argues that limitations on civil rights remedies, including bars on damages in public accommodations provisions, reduces the number of cases that are brought. Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of “Abusive” ADA Litigation*, 54 UCLA L. REV. 1, 3 (2006).

46. Harris, *supra* note 43, at 339 (stating that being unable to recover monetary damages under Title II “undoubtedly discourages people of color and their lawyers from seeking redress under Title II”); *see also* Bagenstos, *supra* note 45, at 10 (arguing that statutory provisions limiting private plaintiffs to injunctive relief reduce private attorneys' incentives to bring suits).

47. *See Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 412–13, 437 n.73 (1968).

48. 392 U.S. 409 (1968).

49. *Id.* at 413 (“We hold that § 1982 bars *all* racial discrimination, private as well as public, in the sale or rental of property . . .” (emphasis added)).

50. *See, e.g., Slocumb v. Waffle House, Inc.*, 365 F. Supp. 2d 1332, 1337–42 (N.D. Ga. 2005) (denying defendant Waffle House's motion for summary judgment on a § 1981 claim brought by plaintiffs, a Black family, denied service for nearly an hour while multiple white families were seated); *Olzman v. Lake Hills Swim Club, Inc.* 495 F.2d 1333, 1339 (2d Cir. 1974) (finding a cause of action under § 1982 in a suit brought by a group of Black children refused entry at Lake Hills Swim Club) (“While the condition of being a guest is not normally considered a ‘property’ right one can ‘hold,’ there is authority and justification for considering it such under § 1982. . . . [O]ne of the ‘great fundamental rights’ sought to be preserved by the Civil Rights Act of 1866 was ‘the right to go and come at pleasure . . .’ It is reasonable to characterize the freedom of [B]lacks to go and come as guests of a swim club member as sufficiently pertaining to a condition of property to be a right capable of being held under § 1982.” (quoting *Jones*, 392 U.S. at 432)).

51. *See* 42 U.S.C. § 1981.

52. *Id.* § 1981(a).

53. *Id.* § 1981(b).

Section 1982 bars racial discrimination in the sale of real and personal property by public and private individuals.⁵⁴ Like Section 1981, Section 1982 “may guarantee access to accommodations not covered by Title II,” including the purchase of real property or the use of private recreational facilities that have residency requirements.⁵⁵

Some scholars argue that, “operating in tandem, Sections of 1981 and 1982 may embrace the access to any accommodation open to the public, thereby eclipsing Title II.”⁵⁶ And the Civil Rights Act of 1886 does create a private right of action that allows plaintiffs to sue for damages, including compensatory and punitive damages.⁵⁷ This benefits plaintiffs who would not be made whole by injunctive relief, or for whom seeking injunctive relief would be impractical. But Sections 1981 and 1982 have been interpreted to apply only to racial and ethnic discrimination, which is an even narrower subset of classes than those protected under Title II.⁵⁸

B. *State Public Accommodation Statutes*

State public accommodation laws have long been a “centerpiece of efforts” to prevent discrimination in places of public accommodation.⁵⁹ In 1865, Massachusetts passed the first state statute banning discrimination in public accommodations, declaring that “[n]o distinction, discrimination or restriction on account of race or color shall be lawful in any licensed inn, in any place of public amusement, public conveyance or public meeting.”⁶⁰ Other states and the District of Columbia soon followed Massachusetts’s lead and enacted laws governing private discrimination in places of accommodation.⁶¹

Today, state public accommodation laws remain a crucial supplement to federal protections, providing a more “diverse tapestry” of protected classes.⁶² For example, many states’ statutes include more groups as protected classes than

54. *Id.* § 1982 (“All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by the white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”).

55. Lerman & Sanderson, *supra* note 33, at 227; *see also Olzman*, 495 F.2d at 1339.

56. Lerman & Sanderson, *supra* note 33, at 228; *see, e.g., Denny v. Elizabeth Arden Salons, Inc.*, 456 F.3d 427, 427 (4th Cir. 2006) (finding that hair salon was not a public accommodation under Title II but noting that intent to discriminate, a requirement for § 1981 claims, would be established if proven that the salon refused service because it did not “do [B]lack people’s hair”).

57. Lerman & Sanderson, *supra* note 33, at 228.

58. *Id.*

59. Brief of Massachusetts et al. as Amici Curiae Supporting Respondents, *supra* note 9, at 5.

60. Act Forbidding Unjust Discrimination on Account of Color or Race, ch. 277, § 1, 1865 Mass. Acts 650, 650 (codified as amended at MASS. GEN. LAWS ch. 272, § 98 (2023)).

61. These include the District of Columbia and the states of Massachusetts; Rhode Island; Connecticut; New York; New Jersey; Pennsylvania; Ohio; Michigan; Indiana; Illinois; Iowa; Minnesota; Nebraska; Kansas; and Colorado. Harvey & West, *supra* note 31, at 600.

62. Aseem Chipalkatti, Comment, *A Backdoor Bivens Remedy: State Civil Rights Torts and the Federal Torts Claims Act*, 23 U. PA. J. CON. L. 1118, 1121 (2021).

the federal public accommodation statutes, often prohibiting discrimination based on gender, sexual orientation or gender identity, age, and marital status.⁶³

State laws not only protect more classes than federal law, but they also define public accommodation to “embrace a wide[r] range of business activity” than federal law.⁶⁴ In doing so, state laws generally define “public accommodation” in one of three forms.⁶⁵ Some states, like Maryland, provide a “long specific list” of covered accommodations without indicating whether the list is exhaustive or non-exhaustive.⁶⁶ Other states employ a “long specific list” that expressly states the law’s scope is not limited to the enumerated establishments.⁶⁷ For example, New Jersey’s public accommodation law defines

63. James M. Gottry, Note, *Just Shoot Me: Public Accommodation Anti-Discrimination Laws Take Aim at First Amendment Freedom of Speech*, 64 VAND. L. REV. 961, 965 (2011). Eighteen jurisdictions prohibit discrimination in places of public accommodation on marital status, twenty-five prohibit discrimination based on sexual orientation, twenty-four prohibit discrimination based on gender identity, twenty prohibit discrimination based on age, three prohibit discrimination based on veteran status, six prohibit discrimination based on military status, and five prohibit discrimination based on pregnancy/childbirth status in places of public accommodation. NAT’L CONF. STATE LEGISLATURES, *supra* note 9.

64. Gottry, *supra* note 63, at 967.

65. Lerman & Sanderson, *supra* note 33, at 241.

66. *See id.*; *see, e.g.*, MD. CODE. ANN., STATE GOV’T § 20-301 (LEXIS through legislation from the 2023 Reg. Sess. of the Gen. Assemb.). Maryland’s public accommodation statute defines “place of public accommodation” as

(1) an inn, hotel, motel, or other establishment that provides lodging to transient guests; (2) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food or alcoholic beverages for consumption on or off the premises, including a facility located on the premises of a retail establishment or gasoline station; (3) a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment; (4) a retail establishment that: (i) is operated by a public or private entity; and (ii) offers goods, services, entertainment, recreation, or transportation; or (5) an establishment: (i) 1. that is physically located within the premises of any other establishment covered by this subtitle; or 2. within the premises of which any other establishment covered by this subtitle is physically located; and (ii) that holds itself out as serving patrons of the covered establishment.

§ 20-301 (LEXIS).

67. *See* Lerman & Sanderson, *supra* note 33, at 241; N.J. STAT. ANN. § 10:5-5(l) (Westlaw through L.2023, chapter 64 and J. Res. No. 10). New Jersey law defines a place of public accommodation to include, but not to be limited to:

any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation, or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water or in the air or any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting

“public accommodation” to include more than fifty types of establishments but clarifies that public accommodations are not “limited to” those listed in the statute’s definition.⁶⁸ And some states use a “general characterization” of what constitutes a public place.⁶⁹ For instance, California extends its antidiscrimination protection to “all business establishments of every kind whatsoever.”⁷⁰

State public accommodation laws also have strong remedial systems. Most states with public accommodation laws have human or civil rights commissions that are statutorily authorized to adjudicate complaints.⁷¹ These commissions are often delegated regulatory or quasi-judicial authority to receive complaints, investigate, facilitate conciliation,⁷² and conduct hearings.⁷³ While the standard agency remedy is to issue an “order to cease and desist the discriminatory practice and to admit the complainant to the accommodation,”⁷⁴ agencies often have power to award monetary damages.⁷⁵ Several states expressly authorize agencies to award compensatory damages for humiliation and embarrassment⁷⁶ or punitive damages.⁷⁷

place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic, or hospital; any public library; and any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey.

§ 10:5-5(l) (Westlaw).

68. § 10:5-5(l) (Westlaw).

69. Lerman & Sanderson, *supra* note 33, at 241.

70. CAL. CIV. CODE § 51(b) (Westlaw through chapter 1 of 2023–24 First Extraordinary Sess.).

71. Lerman & Sanderson, *supra* note 33, at 272; *see also* Daniel Koontz, Comment, *Hostile Public Accommodations Laws and the First Amendment*, 3 N.Y.U. J.L. & LIBERTY 197, 207 (2008).

72. *See* Lerman & Sanderson, *supra* note 33, at 274. Conciliation is an “attempt by an investigator to negotiate with the respondent for an adjustment of a grievance.” *Id.* at 276. Conciliation is a “swifter, simpler approach to resolving differences” than a hearing or litigation. *Id.* at 278.

73. *Id.* at 274. Hearings are an “unpopular mode” of resolution for public accommodations. *Id.* at 279. Hearings are time and cost intensive, and, in cases alleging discrimination in places of public accommodation, establishing actual discrimination is difficult, “especially for a lone complainant facing a corporate respondent represented by counsel.” *Id.* Complaints that could be favorably settled at conciliation may be dismissed at a hearing. *Id.*

74. *Id.* at 280.

75. *Id.*

76. *Id.* at 280–81; *see, e.g.*, KY. REV. STAT. ANN. § 344.230(3)(h) (Westlaw through the 2023 Reg. Sess. and the Nov. 8, 2022 election) (“Payment to the complainant of damages for injury caused by an unlawful practice including compensation for humiliation and embarrassment.”).

77. Lerman & Sanderson, *supra* note 33, at 280–81; *see, e.g.*, MINN. STAT. §§ 363A.11, 363A.29 (2022).

II. LOCAL PUBLIC ACCOMMODATIONS PROTECTIONS IN NORTH CAROLINA

State laws are not the only important supplement to federal antidiscrimination laws: before Title II was passed, at least eight municipalities enacted a public accommodation ordinance.⁷⁸ As of January 1, 2023, at least 374 municipalities across the country had local antidiscrimination laws.⁷⁹ Two dozen of these are in North Carolina.

Since the December 2021 termination of North Carolina’s moratorium on local nondiscrimination ordinances, twenty-four municipalities⁸⁰ and counties⁸¹ have adopted local public accommodation laws⁸²: Apex,⁸³ Asheville,⁸⁴ Boone,⁸⁵ Buncombe County,⁸⁶ Carrboro,⁸⁷ Cary,⁸⁸ Chapel Hill,⁸⁹ Charlotte,⁹⁰ Chatham

78. RHYNE & RHYNE, *supra* note 30, at 71–90. These included Miami Beach, Florida; Louisville, Kentucky; Montgomery County, Maryland; Kansas City, Missouri; Albuquerque, New Mexico; Cleveland, Ohio; Philadelphia, Pennsylvania; and El Paso, Texas. *Id.*

79. *Local Nondiscrimination Ordinances*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/non_discrimination_ordinances [https://perma.cc/Y7QJ-76T4] (last updated Sept. 18, 2023). Municipalities across the country have responded to state legislatures that are hostile to LGBT+ rights by enacting antidiscrimination ordinances. See Miles Bryan, ‘Patchwork of Protection’ in Rural Areas for LGBT Community Has Limits, NPR (Nov. 2, 2015, 4:33 PM), <https://www.npr.org/2015/11/02/453954078/patchwork-of-protection-in-rural-areas-for-lgbt-community-has-limits> [https://perma.cc/BQ3V-PEPV]. These include places like Pocatello, Idaho, and Laramie, Wyoming—places few people would consider to be leading the charge against LGBT+ discrimination—but where important protections now exist that would not be possible at the state level. *Id.*

80. In North Carolina, there is no legal distinction between cities, towns, and villages. David M. Lawrence, *An Overview of Local Government*, in COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA 3, 5 (Frayda S. Bluestein ed., 2d ed. 2014). All are considered “municipalities.” *Id.*

81. In North Carolina, municipal laws apply only to the territorial jurisdiction of the municipality that adopted the ordinance, and county ordinances are (generally) applicable only to the *unincorporated* territory within a county. See N.C. GEN. STAT. § 153A-122(a) (LEXIS through Sess. Laws 2023-122 of the 2023 Reg. Sess. Of the Gen. Assemb.). North Carolina law allows municipalities to adopt a county ordinance through an “interlocal agreement,” making the county’s law enforceable within the municipality’s corporate limits. *Id.* § 153A-122(b) (LEXIS).

82. This total includes municipalities that have adopted a county-wide ordinance.

83. APEX, N.C., CODE ch. 3, § 3-4 (2021).

84. ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(f) (2023).

85. BOONE, N.C., CODE tit. III, ch. 38, § 38.04 (2023).

86. BUNCOMBE COUNTY, N.C., CODE ch. 42, art. I, § 42-4 (2023).

87. CARRBORO, N.C., CODE ch. 8, art. VII, § 8-82 (2022).

88. TOWN OF CARY, TOWN COUNCIL, POLICY STATEMENT No. 184 (N.C. 2022) (“By Resolution dated June 23, 2022, Wake County’s Ordinance Prohibiting Discrimination in Public Accommodations and Employment . . . applies within the corporate limits of Cary located within Wake County, and will be enforced by Wake County.”).

89. CHAPEL HILL, N.C., CODE ch. 10, art. IX, § 10-244 (2023).

90. CHARLOTTE, N.C., CODE ch. 12, art. III, § 12-58 (2023).

County,⁹¹ Davidson,⁹² Durham,⁹³ Durham County,⁹⁴ Garner,⁹⁵ Greensboro,⁹⁶ Hillsborough,⁹⁷ Knightdale,⁹⁸ Morrisville,⁹⁹ Orange County,¹⁰⁰ Raleigh,¹⁰¹ Rolesville,¹⁰² Wake County,¹⁰³ Wendell,¹⁰⁴ Winston-Salem,¹⁰⁵ and Wilmington.¹⁰⁶ All of the ordinances are more expansive than the federal antidiscrimination statutes, protecting more classes, defining what is considered a place of public accommodation more broadly, and, in some cases, offering more remedial measures.

A. *Protected Classes*

Public accommodation ordinances in North Carolina define “protected class” to include nineteen classes: age, citizenship status, color, creed, disability or handicap, ethnicity, gender identity and/or expression, genetic information, income source, marital and/or familial status, national guard and/or veteran and/or military status, national origin/ancestry, natural hair/hairstyle, political affiliation, pregnancy, race, religion and/or religious belief/nonbelief, sex, and sexual orientation.¹⁰⁷ No municipality defines protected class to include all of these classes, but every municipality includes color, gender identity/expression, national origin, race, religion, sex, and sexual orientation.¹⁰⁸ These classifications are more comprehensive than Title II’s antidiscrimination

91. CHATHAM COUNTY, N.C., CODE tit. XI, ch. 114, § 114.02 (2022).

92. DAVIDSON, N.C., CODE ch. 46, art. II, div. 1, § 46-31 (2023) (prohibiting discrimination in public accommodations and transportation).

93. DURHAM, N.C., CODE ch. 34, art. III, div. 1, § 34-92 (2022).

94. DURHAM COUNTY, N.C., CODE ch. 15, art. II, § 15-25 (2023).

95. Town of Garner, N.C., Res. No. 2496 (July 5, 2022).

96. GREENSBORO, N.C., CODE ch. 12, art. IV, div. 3, § 12-97(a) (2023).

97. HILLSBOROUGH, N.C., CODE ch. 5, art. II, § 5-11.a.(b) (2023).

98. KNIGHTDALE TOWN COUNCIL, MINUTES 8 (N.C. Feb. 16, 2022) (unanimously adopting Wake County’s Ordinance Prohibiting Discrimination in Public Accommodations and Employment “to be applicable within the corporate limits of the Town of Knightdale”).

99. Town of Morrisville, N.C., Ordinance 2023-6-0 (Mar. 14, 2023) (to be codified in TOWN OF MORRISVILLE, N.C., CODE ch. 3, § 3-3).

100. ORANGE COUNTY, N.C., CODE ch. 12, art. I, § 12-13 (2023).

101. City of Raleigh, N.C., Res. 2021-306 (Oct. 19, 2021).

102. ROLESVILLE BD. OF COMM’RS, WORK SESSION MINUTES 1 (N.C. Aug. 16, 2022).

103. WAKE COUNTY, N.C., CODE ch. 34, § 34.02 (2021). Through interlocal agreements, seven municipalities within Wake County adopted the county’s ordinance: Cary, Garner, Knightdale, Morrisville, Raleigh, Rolesville, and Wendell. ROLESVILLE BD. OF COMM’RS, WORK SESSION MINUTES 1 (N.C. Aug. 16, 2022). Other municipalities in Wake County declined to adopt the ordinance; Fuquay-Varina and Zebulon will not adopt the ordinance in its current form, and Holly Springs and Wake Forest will not adopt at all. *Id.*

104. Town of Wendell, N.C., Res. No. R-10-2022 (Apr. 25, 2022).

105. WINSTON-SALEM, N.C., CODE ch. 38, art. V, § 38-119.3 (2023).

106. WILMINGTON, N.C., CODE ch. 4, art. I, § 4-4(b) (2023).

107. See *infra* App. A, Tbl. 1 for a breakdown of the protected classes under each ordinance.

108. See *infra* App. A, Tbl. 1.

protections based on race, color, religion, or national origin and Sections 1981 and 1982's protections based on race and ethnicity.

B. *Places of Public Accommodation*

Public accommodation ordinances in North Carolina also define what constitutes a public accommodation more broadly than federal law. The ordinances do so in three ways, largely mirroring how other states define public accommodations in their statutes. Six municipalities¹⁰⁹ classify places of public accommodation using a “long specific list” that expressly states the law’s coverage is not limited to the named public places. For example, Apex’s ordinance defines a place of public accommodation as

any establishment within the town that is open to the public and offers any product, service, or facility, or solicits the patronage or trade of the general public. The term “place of public accommodation” shall include, but not necessarily be limited to, stores, taverns, hotels, motels, restaurants, or any place where food or beverages are sold, retail and wholesale establishments, hospitals theaters, public entertainment venues and all public conveyances, including the stations or terminals thereof.¹¹⁰

Sixteen municipalities use a “general characterization” definition of what constitutes a public accommodation.¹¹¹ These definitions do not identify specific cover establishments and instead describe the *type* of businesses that fall within the ordinances’ scope. For example, Asheville defines public accommodation as “any place, facility, store, or other establishment which supplies

109. Apex, Carrboro, Chapel Hill, Chatham County, Hillsborough, and Orange County. *See* APEX, N.C., CODE ch. 3, § 3-3 (2021); CARRBORO, N.C., CODE ch. 8, art. VII, § 8-81(5) (2022); CHAPEL HILL, N.C., CODE ch. 10, art. IX, § 10-243(4) (2023); CHATHAM COUNTY, N.C., CODE tit. XI, ch. 114, § 114.01 (2022); HILLSBOROUGH, N.C., CODE ch. 5, art. II, § 5-11.a.(a)(5) (2023); ORANGE COUNTY, N.C., CODE ch. 12, art. I, § 12-12 (2023).

110. APEX, N.C., CODE ch. 3, § 3-3.

111. Asheville, Boone, Buncombe County, Cary, Charlotte, Davidson, Durham, Durham County, Greensboro, Knightdale, Morrisville, Raleigh, Rolesville, Wake County, Wendell, and Winston-Salem. *See infra* App. A, Tbl. 2; *see also* ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(a)(5) (2023); BOONE, N.C., CODE tit. III, ch. 38, § 38.02 (2023); BUNCOMBE COUNTY, N.C., CODE ch. 42, art. I, § 42-1 (2023); TOWN OF CARY, TOWN COUNCIL, POLICY STATEMENT No. 184 (N.C. 2022); CHARLOTTE, N.C., CODE ch. 12, art. III, § 12-57 (2023); DAVIDSON, N.C., CODE ch. 46, art. II, div. 1, § 46-31 (2023); DURHAM, N.C., CODE ch. 34, art. I, § 34-3 (2022); DURHAM COUNTY, N.C., CODE ch. 15, art. I, § 15-5 (2023); GREENSBORO, N.C., CODE ch. 12, art. IV, div. 3, § 12-96 (2023); KNIGHTDALE TOWN COUNCIL, MINUTES 8 (N.C. Feb. 16, 2022); Town of Morrisville, N.C., Ordinance 2023-6-0 (Mar. 14, 2023) (to be codified in TOWN OF MORRISVILLE, N.C., CODE ch. 3, § 3-2(8)); City of Raleigh, N.C., Res. 2021-306 (Oct. 19, 2021); ROLESVILLE BD. OF COMM’RS, WORK SESSION MINUTES 1 (N.C. Aug. 16, 2022); WAKE COUNTY, N.C., CODE. Tit. III, ch. 34, § 34.01 (2021); Town of Wendell, N.C., Res. No. R-10-2022 (Apr. 25, 2022); WINSTON-SALEM, N.C., CODE ch. 38, art. V, § 38-119.2 (2023).

accommodations, goods, or services to the public or which solicits or accepts the patronage or trade of the public.”¹¹²

Wilmington is the only municipality that provides a “long specific list” of the types of covered accommodations but does not indicate whether the ordinance’s scope is limited to those specifically named or whether its scope includes other, similar establishments.¹¹³

C. Remedies and Penalties

Each of North Carolina’s public accommodation ordinances specifies penalties and/or remedies for violations of its provisions.¹¹⁴ Much like state

112. ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(a)(5).

113. WILMINGTON, N.C., CODE ch. 4, art. I, § 4-4(a) (2023).

(a) Public accommodations are defined, for the purpose of this section, to include the following establishments: (1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five (5) rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence; (2) Any restaurant, cafeteria, lunchroom, lunch counter, food hall, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment or any gasoline station; (3) Any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment; and (4) Any establishment meeting one (1) of the following criteria and holding itself out as serving patrons of such covered establishment: a. Which is physically located within the premises of any establishment otherwise covered by this section; or b. Which is within the premises of which is physically located any such covered establishment.

Id.

114. All but three of the ordinances include general language empowering the municipality or county to bring an enforcement action for an equitable remedy, such as injunctive relief. *See* APEX, N.C., CODE ch. 3, § 3-7(a); ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(1)(2); BOONE, N.C., CODE tit. III, ch. 38, § 38.08; BUNCOMBE COUNTY, N.C., CODE ch. 42, art. I, § 42-10(2); CARRBORO, N.C., CODE ch. 8, art. VII, § 8-84; CHAPEL HILL, N.C., CODE ch. 10, art. IX, § 10-246; CHATHAM COUNTY N.C., CODE tit. XI, ch. 114, § 114.04 (2022); DURHAM, N.C., CODE ch. 34, art. III, div. 3, § 34-97(a); DURHAM COUNTY, N.C., CODE ch. 15, art. V, § 15-85(b); GREENSBORO, N.C., CODE ch. 12, art. IV, div. 2, § 12-84(b); HILLSBOROUGH, N.C., CODE ch. 5, art. II, § 5-11.a(d)(2); WAKE COUNTY, N.C., CODE ch. 34, § 34.99(B) (2023); WINSTON-SALEM, N.C., CODE ch. 38, art. V, § 38-119.15(a); WILMINGTON, N.C., CODE ch. 4, art. I, § 4-1(g); *see also* TOWN OF CARY, TOWN COUNCIL, POLICY STATEMENT No. 184 (N.C. 2022) (adopting Wake County Ordinance); Town of Garner, N.C., Res. No. 2496 (July 5, 2022) (same); KNIGHTDALE TOWN COUNCIL, MINUTES 8 (N.C. Feb. 16, 2022) (same); Town of Morrisville, N.C., Ordinance 2023-6-0 (Mar. 14, 2023) (to be codified in TOWN OF MORRISVILLE, N.C., CODE ch. 3, § 3-6(2)) (same); ROLESVILLE BD. OF COMM’RS, WORK SESSION MINUTES 1 (N.C. Aug. 16, 2022) (same); Town of Wendell, N.C., Res. No. R-10-2022 (Apr. 25, 2022) (same). Charlotte, Orange County, and Davidson’s ordinances do not include such language. Charlotte’s law does not expressly authorize specific remedies, CHARLOTTE, N.C., CODE ch. 12, art. III, § 12-58, and Davidson and Orange County provide for injunctive relief generally, though not explicitly through an enforcement action brought by the city, *see* DAVIDSON, N.C., CODE ch. 46, art. II, div. 1, § 46-31; ORANGE COUNTY, N.C., CODE ch. 12, art. I, § 12-19(a).

public accommodation laws, eighteen ordinances¹¹⁵ authorize a local entity—sometimes the town manager,¹¹⁶ an office of equity and inclusion,¹¹⁷ or a local commission or committee¹¹⁸—to receive, investigate, and conciliate claims. Three of these municipalities—Greensboro,¹¹⁹ Orange County,¹²⁰ and Winston-Salem¹²¹—expressly grant authority to issue damage awards for violations of the ordinance. All three authorize compensatory damages, and Orange County additionally authorizes punitive damages.¹²² If administrative remedies are exhausted and a conciliation agreement is not reached, Greensboro¹²³ and Orange County¹²⁴ authorize a complainant to file a civil action in superior court.

115. APEX, N.C., CODE ch. 3, § 3-6(a) to -6(c) (authorizing town manager's office to receive, investigate, and facilitate conciliation); ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(h) (authorizing the City of Asheville's Office of Equity and Inclusion to receive, investigate, and resolve complaints); BOONE, N.C., CODE tit. III, ch. 38, § 38.07 (authorizing the Town of Boone's Human Resources Commission to "accept, investigate, and seek conciliation of complaints"); BUNCOMBE COUNTY, N.C., CODE ch. 42, art. I, §§ 42-7 to -8 (authorizing an "equity officer" or a designee of the county manager to receive, investigate, and conciliate complaints); CHARLOTTE, N.C., CODE ch. 12, art. II, §§ 12-26, -28, -30 (authorizing the Charlotte-Mecklenburg Community Relations Committee to receive, investigate, and conciliate complaints); DAVIDSON, N.C., CODE ch. 46, art. II, div. 1, § 46-61 (granting established community relations committee the power to receive, investigate, conciliate, and hold hearings on complaints); DURHAM COUNTY, N.C., CODE ch. 15, art. V, § 15-85 (authorizing "general manager for health and well being for all" to receive complaints, investigate, and offer voluntary conciliation); GREENSBORO, N.C., CODE ch. 12, art. IV, div. 2, §§ 12-76 to -83 (authorizing human rights department to receive, investigate, conduct evidentiary hearings, and facilitate conciliation); ORANGE COUNTY, N.C., CODE ch. 12, art. I, §§ 12-16 to -17 (authorizing Orange County Human Relations Commission to receive complaints, investigate, conciliate, and conduct hearings); WINSTON-SALEM, N.C., CODE ch. 38, art. V, § 38-119.5 (authorizing human relations department to receive complaints, investigate, and facilitate conciliation). Complaints filed in unincorporated Wake County and within Cary, Garner, Knightdale, Morrisville, Rolesville, Raleigh, and Wendell's municipal boundaries may be filed with the County Manger's Office who, with the help of the County Attorney, shall investigate and offer voluntary conciliation to resolve the dispute. WAKE COUNTY, N.C., CODE tit. III, ch. 34, § 34.99 (2023).

116. *See, e.g.*, APEX, N.C., CODE ch. 3, § 3-6.

117. *See, e.g.*, ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(h).

118. *See, e.g.*, BOONE, N.C., CODE tit. III, ch. 38, § 38.07; ORANGE COUNTY, N.C., CODE ch. 12, art. I, §§ 12-16 to -17.

119. GREENSBORO, N.C., CODE ch. 12, art. IV, div. 2, § 12-85.

120. ORANGE COUNTY, N.C., CODE ch. 12, art. I, § 12-19.

121. WINSTON-SALEM, N.C., CODE ch. 38, art. V, § 38-119.15 (2023).

122. ORANGE COUNTY, N.C., CODE ch. 12, art. I, § 12-19(a)(3).

123. GREENSBORO, N.C., CODE ch. 12, art. IV, div. 2, § 12-81 ("In the event the complaint is still unresolved after the culmination of the administrative review procedures . . . the human rights director shall notify the complainant and respondent in writing advising of alternative remedies available which may include . . . (2) [t]he right of the complainant to initiate a private right of civil action through application to the superior court division of the general court of justice.").

124. ORANGE COUNTY, N.C., CODE ch. 12, art. I, § 12-17(i) (If "conciliation efforts have failed, the Commission staff shall, upon written request of the Complainant, issue a right-to-sue letter to the Complainant.").

Five municipalities establish a small civil penalty or forfeiture for violations: Asheville,¹²⁵ Buncombe County,¹²⁶ Davidson,¹²⁷ Greensboro,¹²⁸ Hillsborough,¹²⁹ and Wilmington.¹³⁰ Wilmington's penalty is the weakest: for a first violation, no monetary civil penalty is assessed; instead, the "violator will be issued a written warning and given a copy of the ordinance and an opportunity to speak with city staff."¹³¹ A second violation results in a \$250 penalty, with fines increasing for each violation.¹³² Only after the fifth violation is the city authorized to issue an injunction.¹³³ Penalties in other jurisdictions are slightly more substantial: Asheville and Buncombe County authorize penalties up to \$100 per violation,¹³⁴ and Greensboro¹³⁵ and Hillsborough¹³⁶ both authorize penalties of up to \$500 per violation.

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The collection of local antidiscrimination protections is a terrific achievement, but the need for a statewide law remains pressing: over half of North Carolinians—particularly rural residents—live in areas without antidiscrimination protection in public accommodations beyond the federal floor.¹³⁷ And as long as municipalities continue to refuse to adopt antidiscrimination ordinances,¹³⁸ statewide protections remain crucial.¹³⁹

125. ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(l) (2023).

126. BUNCOMBE COUNTY, N.C., CODE ch. 42, art. I, § 42-10 (2023).

127. Davidson, N.C., Ordinance 2021-08(B)(3) to B(4) (Nov. 23, 2021).

128. GREENSBORO, N.C., CODE ch. 12, art. IV, div. 2, § 12-84(a).

129. HILLSBOROUGH, N.C., CODE ch. 5, art. II, § 5-11.a.(d) (2023).

130. WILMINGTON, N.C., CODE ch. 4, art. I, § 4-1(d) (2023).

131. *Id.* § 4-1(d)(1).

132. *Id.* § 4-1(d)(2).

133. *Id.* § 4-1(d)(5).

134. ASHEVILLE, N.C., CODE ch. 10, art. I, § 10-2(l) (2023); BUNCOMBE COUNTY, N.C., CODE ch. 42, art. I, § 42-10 (2023).

135. GREENSBORO, N.C., CODE ch. 12, art. IV, div. 2, § 12-84. This penalty is assessed only if a conciliation agreement cannot be reached within 30 days. *Id.*

136. HILLSBOROUGH, N.C., CODE ch. 5, art. II, § 5-11.a.(d)(1) (2023).

137. *See North Carolina's Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality_maps/profile_state/NC [<https://perma.cc/U29G-AAK8>] (noting that only 23% of North Carolinians are protected by local ordinances from discrimination based on sexual orientation and gender identity).

138. *See, e.g.*, Josh Chapin, *Holly Springs Town Council Opts Not To Sign on to Wake County Non-Discrimination Ordinance*, ABC NEWS (June 14, 2022), <https://abc11.com/non-discrimination-ordinance-holly-springs-wake-county-town-council/11960202/> [<https://perma.cc/Q687-D3QV>].

139. Of course, even when counties and municipalities adopt local public accommodation protections, state preemption looms in the background. *See supra* notes 10–20 and accompanying text. Failing to supplement local ordinances with statewide protections leaves the ordinances vulnerable to similar preemption challenges in the future. *See supra* note 19 and accompanying text. North Carolina is not the only state to preempt local antidiscrimination ordinances. *See, e.g.*, ARK. CODE ANN. §§ 14-1-401 to -403 (2015) (LEXIS through all legislation of the 2023 Reg. Sess.) (prohibiting counties,

III. A PROPOSAL FOR A STATEWIDE NONDISCRIMINATION LAW FOR NORTH CAROLINA

Drawing on the survey of North Carolina’s ordinances, the strengths and weaknesses of the federal protections, and language included in antidiscrimination bill introduced in the North Carolina General Assembly during the 2023–2024 session, this section discusses how best to define “public accommodation” and “protected classes” in a statewide law and proposes a remediation process. The precise language proposed is included in Appendix B. This section concludes by briefly addressing potential counterarguments and challenges to the proposed language.

A. *Proposed Statewide Protections*

To ensure that North Carolina’s statute protects against discrimination in places of public accommodation as widely as possible, the state should define “public accommodation” using a “long and specific” but non-exhaustive list. Using a non-exhaustive list that identifies specific establishments, but clarifies that the list is not comprehensive, provides two clear benefits. First, naming specific establishments ensures that the public, including business owners and patrons, are on notice that the antidiscrimination law applies at specific establishments. A list also provides guidance to courts in determining whether facilities open to the public, but not specifically named, should fall within the statute’s purview.¹⁴⁰ Second, a definition of this type ensures that facilities open to the public, but not specifically named, *can* be interpreted to fall within the statute’s purview. While this leaves some discretion to courts that a comprehensive (but exhaustive) list may not, its application is flexible: as new facilities open to the public, courts can decide—using the list of named establishments as guidance—whether they should fall within the scope of the statute.

The nineteen classes protected under North Carolina’s ordinances must retain protections under a statewide law. Because the local laws’ classifications are more comprehensive than those under federal law, a statewide statute must ensure that all persons currently protected under local laws remain protected. Standardizing existing protections across the state will also eliminate the inconsistent antidiscrimination protections that persist across municipal and county lines. In addition, state-level protections based on sexual orientation and gender identity are particularly important following HB2. A statewide law must

municipalities, or other political subdivisions of the state from adopting or enforcing an ordinance, resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law).

140. *See supra* notes 38–39 and accompanying text (describing how courts have struggled to interpret Title II’s place of accommodation language).

expressly reverse the legislature's 2016 policy and express that forbidding someone from using a bathroom or changing facility consistent with their gender identity constitutes discrimination.

Finally, to ensure that its protections are realized and complainants made whole, North Carolina's public accommodation law must include comprehensive remedial measures, including equitable remedies, assessment of civil penalties, and the potential for damages.¹⁴¹ North Carolina's law should—consistent with most state laws and many local laws that empower human or civil rights commissions—authorize the existing North Carolina Human Relations Commission (“Commission”)¹⁴² within the Department of Administration to receive, investigate, and conciliate complaints of unlawful discrimination.¹⁴³ Authorizing the Commission to oversee the complaint process offers a clear, standardized method for complainants to file alleged violations. Pursuant to existing statutory authority, if the Commission finds reasonable cause to believe discrimination occurred, it will try to eliminate or correct the practice by informal conference, conciliation, or persuasion; if these measures fail, complainants may make a written request to the Commission for a right-to-sue letter to adjudicate their claims in superior court, or the Commission may apply for a hearing in front of an administrative law judge.¹⁴⁴ Under either remediation method, complainants are entitled to equitable relief.¹⁴⁵ If the complainant's claims are adjudicated in superior court, complainants may also be entitled to recover punitive damages;¹⁴⁶ if the claims are at an administrative hearing, civil penalties may be imposed.¹⁴⁷

In addition to the damage remedies currently afforded under the Commission's authority, North Carolina's statewide law should expressly

141. See Harris, *supra* note 43, at 383–84 (“A more effective strategy for addressing consumer discrimination would enable individuals to win large monetary awards when they can prove that the defendant violated the law . . . State public accommodation laws should be amended to allow victims to recover compensatory damages where they are not currently permitted to do so and to seek higher amounts in states where compensatory damages are capped. Just as corporations transformed their sexual harassment policies following the enactment of legislation allowing successful plaintiffs to recover compensatory damages, some companies may need an ‘incentive’ to review and revamp their policies on consumer discrimination.”).

142. The North Carolina Human Relations Commission currently receives, investigates, and conciliates housing discrimination complaints. N.C. GEN. STAT. § 41A-7 (LEXIS through Sess. Laws 2023-120 of the 2023 Reg. Sess. of the Gen. Assemb.).

143. This proposal is consistent with bills introduced in North Carolina's House and Senate, which direct the Human Relations Commission to receive complaints. See *supra* note 22 and accompanying text.

144. See N.C. GEN. STAT. § 41A-7(g) to -7(l) (LEXIS).

145. See *id.* § 41A-7(j) to -7(k), -7(l)(3) (LEXIS).

146. *Id.* § 41A-7(j) to -7(k) (LEXIS).

147. *Id.* § 41A-7(l)(3) (LEXIS).

permit complainants to collect damages for humiliation and embarrassment.¹⁴⁸ Being refused service in a public place warrants damage remedies that recognize the unique harm suffered and specifically rectify the indignity.¹⁴⁹

B. *Challenges to Adoption and Anticipated Critiques*

Introducing and passing a bill that includes the proposed provisions will be challenging—if not impossible.¹⁵⁰ But it is still worth trying. Even if the legislative text proposed in this Recent Development never becomes law, introducing a protective public accommodation bill is a crucial way to demonstrate commitment to antidiscrimination.¹⁵¹ Messaging bills can signal support with communities alienated by the majority and remind voters not only of a legislator’s platform, but of their commitment to their constituents. Just as the *introduction* of laws hostile to LGBTQ+ rights “validate transphobic and homophobic sentiment in communities” and add a “governmental legal stamp of approval on discrimination and harassment and violence,”¹⁵² introducing a comprehensive bill that includes the protections enacted at the local level demonstrates the State’s commitment to antidiscrimination, its responsiveness to local demands for stronger antidiscrimination protections, and its continued support for North Carolina’s LGBTQ+ citizens as anti-LGBT+ legislation floods the General Assembly.¹⁵³

It may also be questioned whether, following the Supreme Court’s decision in *303 Creative LLC v. Elenis*,¹⁵⁴ which held that application of Colorado’s public accommodation law requiring a website designer to make a wedding website for a same-sex wedding would violate the designer’s First Amendment rights,¹⁵⁵ it is worth drafting, introducing, and trying to pass a comprehensive state public accommodation law. To be sure, *303 Creative* is a departure from the Supreme Court’s antidiscrimination jurisprudence: it is the

148. See KY. REV. STAT. ANN. § 344.230(3)(h) (Westlaw through the 2023 Reg. Sess. and the Nov. 8, 2022, election).

149. See generally Caitlin Rooney & Laura Durso, *The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities*, CTR. FOR AM. PROGRESS (Nov. 29, 2017), <https://www.americanprogress.org/article/harms-refusing-service-lgbtq-people-marginalized-communities/> [<https://perma.cc/JYY9-FELE>] (explaining the long-term effects on mental and physical health following the denial of services from places of public accommodation).

150. The HB2 controversy and stalled statewide antidiscrimination bills indicate that the General Assembly is not likely to adopt a sweeping antidiscrimination law. See *supra* note 22 and accompanying text.

151. See Rachel Looker, *A ‘Puppet Show’: Why Congress Votes on Bills Lawmakers Know Have Little Chance of Passing*, USA TODAY, <https://www.usatoday.com/story/news/politics/2023/02/14/long-shot-legislation-focus-republicans-118th-congress/11156048002/> [<https://perma.cc/C2D7-NBVX> (staff-uploaded, dark archive)] (last updated Feb. 14, 2023, 1:36 PM).

152. Thompson, *supra* note 13.

153. See *supra* note 19 and accompanying text.

154. 143 S. Ct. 2298 (2023).

155. *Id.* at 2321–22.

“first time in its history, [the Supreme Court] grants a business open to the public a constitutional right to refuse to serve members of a protected class.”¹⁵⁶ But it declares unconstitutional only those public accommodation provisions involving a narrow set of “expressive” conduct.¹⁵⁷ The law remains today that a place of public accommodation may not refuse service based on a customer’s identity or protected characteristic standing alone.¹⁵⁸ Expansive public accommodation statutes may now have slightly less reach, but they are far from moot.

CONCLUSION

Public accommodations statutes are not perfect: legal scholars rightfully highlight how they fail to eradicate many forms of discrimination that persist today,¹⁵⁹ yet they remain important tools for fighting discrimination in private facilities that are held out to the public.¹⁶⁰ North Carolina’s antidiscrimination ordinances are a strong start to fighting this discrimination, but they are not enough: the General Assembly must take a cue from the twenty-four local jurisdictions that have passed public accommodations law and pass one of its own.

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156. *Id.* at 2322 (Sotomayor, J., dissenting).

157. *See* Off. of N.J. Att’y Gen., N.J. Div. on C.R., Guidance on the New Jersey Law Against Discrimination Following the U.S. Supreme Court’s Decision in *303 Creative LLC v. Elenis* (noting that businesses seeking exemption from the state’s public accommodations statute must establish that “(1) its creative services are ‘original’ and ‘customized and tailored’ for each customer; (2) the creation is ‘expressive’ and expresses the creator’s own First Amendment-protected speech; and (3) the public accommodation’s refusal to provide the creative service to a customer is based on the message it conveys, not the customer’s identity or protected characteristic standing alone”).

158. *Id.*

159. *See, e.g.,* Harris, *supra* note 43, at 380–81 (“Both state and federal laws must be amended to motivate victims of consumer discrimination to vindicate their rights.”).

160. *See, e.g.,* Harvey & West, *supra* note 31, at 611–12 (finding that public accommodation laws can redress harm from discrimination in public accommodations).

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APPENDIX A. SURVEY OF PROTECTED CLASSES, DEFINITION OF PUBLIC ACCOMMODATIONS, AND REMEDIES AND PENALTIES IN NORTH CAROLINA'S PUBLIC ACCOMMODATION ORDINANCES.

Table 1. Protected Classes in North Carolina Public Accommodation Ordinances

	Age	Citizenship Status	Color	Creed	Disability or Handicap	Ethnicity	Gender Identity or Expression	Genetic information	Income Source	Marital and/or Familial Status
Apex	X		X	X	X	X	X	X		X
Asheville	X		X	X	X	X	X			X
Boone			X	X	X	X	X			X
Buncombe County	X		X	X	X	X	X			X
Carrboro	X		X	X	X	X	X			X
Cary	X		X	X	X	X	X			X
Chapel Hill	X		X	X	X	X	X			X
Charlotte	X		X		X	X	X			X
Chatham County	X		X	X	X	X	X			X
Davidson		X	X	X	X	X	X			X
Durham			X		X		X			X
Durham County	X		X	X	X	X	X			X
Garner	X		X	X	X	X	X			X
Greensboro			X				X			
Hillsborough	X		X	X	X		X			X

	Age	Citizenship Status	Color	Creed	Disability or Handicap	Ethnicity	Gender Identity or Expression	Genetic information	Income Source	Marital and/or Familial Status
Knightdale	X		X	X	X	X	X			X
Morrisville	X		X	X	X	X	X			X
Orange County	X		X	X		X	X	X		X
Raleigh	X		X	X	X	X	X			X
Rolesville	X		X	X	X	X	X			X
Wake County	X		X	X	X	X	X			X
Wendell	X		X	X	X	X	X			X
Wilmington			X				X			
Winston-Salem	X		X	X	X	X	X			X

	National Guard and/or Veteran and/or Military Status	National Origin / Ancestry	Natural Hair and/or Hairstyle	Political Affiliation	Pregnancy	Race	Religion and/or Religious Belief and/or Nonbelief	Sex	Sexual Orientation
Apex	X	X	X		X	X	X	X	X
Asheville	X	X	X		X	X	X	X	X
Boone	X	X	X		X	X	X	X	X
Buncombe County	X	X	X		X	X	X	X	X
Carrboro	X	X	X		X	X	X	X	X
Cary	X		X		X	X	X	X	X
Chapel Hill	X	X			X	X	X	X	X
Charlotte	X	X	X		X	X	X	X	X
Chatham County	X	X	X		X	X	X	X	X
Davidson	X	X	X		X	X	X	X	X
Durham	X	X	X			X	X	X	X
Durham County	X	X			X	X	X	X	X
Garner	X		X		X	X	X	X	X
Greensboro		X	X			X	X	X	X
Hillsborough	X	X			X	X	X	X	X
Knightdale	X		X		X	X	X	X	X
Morrisville	X		X		X	X	X	X	X

Table 2. How Places of Public Accommodation are Defined in North Carolina Public Accommodation Ordinances

	Long and Specific Non-Exhaustive List	Long and Specific but Not-Expressly-Exhaustive List	General Characterization
Apex	X		
Asheville			X
Boone			X
Buncombe County			X
Carrboro	X		
Cary			X
Chapel Hill	X		
Charlotte			X
Chatham County	X		
Davidson			X
Durham			X
Durham County			X
Garner			
Greensboro			X
Hillsborough	X		
Knightdale			X
Morrisville			X
Orange County	X		
Raleigh			X
Rolesville			X

	Long and Specific Non-Exhaustive List	Long and Specific but Not-Expressly-Exhaustive List	General Characterization
Wake County			X
Wendell			X
Wilmington		X	
Winston-Salem			X

Table 3. Remedies & Penalties

	Establish Complaint Reporting Process and Authorize Local Entity to Receive Report, Investigate, and Conciliate or Adjudicate Complaints	Ordinance Authorizes Equitable Remedies	Ordinance Authorizes Damages (compensatory and/or punitive)	Ordinance Authorizes Civil Penalty/Forfeiture	Right to Sue (after exhausting administrative remedies)
Apex	X	X			
Asheville	X	X		X	
Boone	X	X			
Buncombe County	X	X		X	
Carrboro		X			
Cary	X	X			
Chapel Hill		X			
Charlotte	X	X			
Chatham County		X			
Davidson	X	X		X	
Durham		X			
Durham County	X				
Garner	X	X			

	Establish Complaint Reporting Process and Authorize Local Entity to Receive Report, Investigate, and Conciliate or Adjudicate Complaints	Ordinance Authorizes Equitable Remedies	Ordinance Authorizes Damages (compensatory and/or punitive)	Ordinance Authorizes Civil Penalty/Forfeiture	Right to Sue (after exhausting administrative remedies)
Greensboro	X	X	X	X	X
Hillsborough		X		X	
Knightdale	X	X			
Morrisville	X	X			
Orange County	X	X	X		X
Raleigh	X	X			
Rolesville	X	X			
Wake County	X	X			
Wendell	X	X			
Wilmington				X	
Winston-Salem	X	X	X		

APPENDIX B. PROPOSED LANGUAGE FOR NORTH CAROLINA'S STATEWIDE PUBLIC ACCOMMODATIONS STATUTE.

Short Title. This Article shall be known and cited as the "Equal Access to Public Accommodations Act."

Legislative Declaration. It is the public policy of this State to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation as defined below.

Definitions.

(a) *Discrimination* means any disadvantage, difference, or distinction in treatment based on a protected class status.

(b) *Protected Class* means a person's age, race, religion or religious belief or non-belief, ethnicity, color, national origin or ancestry, creed, sex, sexual orientation, gender identity/ expression, marital or familial status, income source, political affiliation, natural hair and/or hairstyle, genetic information, pregnancy, disability, or veteran and/or military status.

(c) *Public accommodation* means any establishment within the State that is open to the public and offers any product, service or facility, or solicits patronage or trade of the general public. The term 'place of public accommodation' includes, but is not limited to, stores, taverns, hotels, motels, restaurants, or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, public entertainment venues, and all public conveyances.

Prohibited Acts.

(a) It shall be unlawful to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of a protected class.

(b) It shall constitute unlawful discrimination under this Act to forbid a person from using a bathroom or changing facility consistent with their gender identity.

Remedies and Penalties.

(a) The Human Relations Commission in the Department of Administration shall receive, investigate, and conciliate complaints of discrimination in public accommodations.

(b) If the Commission is unable to achieve an amicable resolution, the complainant and Commission may proceed with an enforcement action under N.C.G.S. § 41A-7.

(c) In addition to the relief authorized under § 41A-7, this provision authorizes payment to the complainant of damages as compensation for humiliation, embarrassment, or similar harms suffered as a result of the unlawful discrimination.

