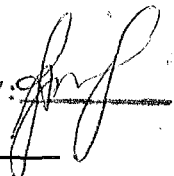


THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 P1:59

SENATE

S.B.NO. 105

RECEIVED BY: 

Introduced by **SENATOR LUISA "LOI" P. EJERCITO ESTRADA**

EXPLANATORY NOTE

The Constitution and the Labor Code direct the State to promote equality of employment opportunities for all, regardless of sex, race or creed. The word "sex" in the pertinent provision of the Labor Code, however, pertains only to the male or female gender and does not include homosexuals, bisexuals or heterosexuals. Consequently, there is no identifiable law or statute that specifically prohibits work discrimination on the basis of homosexuality, bisexuality or heterosexuality. This bill fills the gap by prohibiting employment discrimination on the basis of sexual orientation.

Hence, the speedy approval of this bill is earnestly sought.

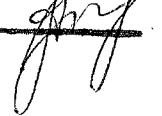


LUISA "LOI" P. EJERCITO ESTRADA
Senator

THIRTEEN CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
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SENATE
S.B.NO. 105

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AN ACT
TO PROHIBIT EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL
ORIENTATION

*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress assembled:*

Section 1. **Short Title.** - This Act may be cited as the "Employment Non-Discrimination Act of 2004."

Sec. 2. **Declaration of Policy.** - It is declared a State policy to ensure equal work opportunities for all regardless of sexual orientation.

Sec. 3. **Definition of Terms.** - As used in this Act:

- (a) The term "cover entity" means an employer, employment agency, labor organization or joint labor management committee.
- (b) The term "employer" means any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and its branches, subdivision and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions or organizations.
- (c) The term "employee" means any individual employed by an employer.
- (d) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees

for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.

- (e) The term "*employment or employment opportunities*" includes job application procedures, hiring, advancement, discharge, compensation, job training or any other term, condition or privilege of employment.
- (f) The term "*labor organization*" means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employment concerning terms and conditions of employment.
- (g) The term "*person*" includes one or more individuals, the Government and all its branches, subdivision and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit institutions or organizations, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees or receivers.
- (h) The term "*religious organization*" means
 - (i) A religious corporation, association or society, or
 - (ii) A college, school, university or other educational institution not otherwise a religious organization, if:
 - (a) it is in whole or substantial part controlled, managed, owned or supported by a religious corporation, association or society, or
 - (b) its curriculum is directed toward the propagation of a particular religion.
- (i) The term "sexual orientation" means homosexuality, bisexuality or heterosexuality, whether such orientation is real or perceived.
- (j) The term "State" means the national government and all its branches, subdivision and instrumentalities and all government-owned or controlled corporations and institutions.

Sec. 4. **Prohibited Practices.** - It shall be an unlawful employment practice:

(a) for an employer -

- (i) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's sexual orientation;
- (ii) to limit, segregate or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual or employment opportunities or otherwise adversely affect his status as an employee, because of such individual's sexual orientation; and
- (iii) to otherwise discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated with.

(b) for an employment agency -

- (i) to fail or refuse to refer for employment any individual because of his sexual orientation; and
- (ii) to otherwise discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated with.

(c) for a labor organization -

- (i) to exclude or to expel from its membership any individual because of his sexual orientation;
- (ii) to limit, segregate or classify its membership, or applicants for membership or to classify or fail or refuse to refer for employment any individual, in any way which would limit such employment opportunities or otherwise adversely affect his status as an

employee or as an applicant for employment, because of such individual's sexual orientation;

- (iii) to cause or attempt to cause an employer to discriminate against an individual in violation of this section; and
- (iv) to otherwise discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated with.

Criminal liability for the willful commission of any unlawful act as provided in this section or any violation of the rules and regulations issued pursuant to Section 9 of this Act shall be penalized as provided in Articles 288 and 289 of the Labor Code:

Provided, That the institution of any criminal action under this section shall not bar the aggrieved employee from filing an entirely separate and distinct action for money claims, which may include claims for damages and other affirmative relief. The actions authorized in this section shall proceed independently of each other.

Sec. 5. Benefits. - This Act does not apply to the provision of employee benefits to an individual for the benefit of his or her partner.

Sec. 6. Religious Exemption. -

- (a) *In General.* - Except as provided in subsection (b), this Act shall not apply to religious organizations.
- (b) *For-Profit Activities.* - this Act shall apply with respect to employment and employment opportunities that relate to any employment position that pertains solely to a religious organization's for-profit activities.

Sec. 7. Non application to members of the Armed Forces.

- (a) For purposes of this Act, the term "employment or employment opportunities" does not apply to members of the Armed Forces.

- (b) As used in paragraph (a), the term "Armed Forces" means Army, Navy, Air Force, Marine Corps, Coast Guard and the Philippine National Police.

Sec. 8. Retaliation and Coercion Prohibited. -

- (a) *Retaliation* - A covered entity shall not discriminate against an individual because such individual opposed any act or practice prohibited by this Act or because such individual made a charge, assisted, testified or participated in any manner in an investigation, proceeding or hearing under this Act.
- (b) *Coercion* - A person shall not coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised, enjoyed, assisted or encouraged the exercise or enjoyment of, any right granted or protected by this Act.

Sec. 9. Enforcement. - The Secretary of Labor and Employment and the Chairman of the Civil Service Commission are hereby authorized to promulgate the necessary guidelines to implement this Act.

Sec. 10. State Immunity. - The State shall not be immune from an action in a court of competent jurisdiction for a violation of this Act. In an action against the State for a violation of this Act, remedies (excluding punitive damages) are available for the violation to the same extent as such remedies are available in an action against a private entity.

Sec 11. Relation to other laws. - This Act shall not invalidate or limit the rights, remedies or procedures available to an individual claiming discrimination prohibited under any other law, rule or regulation.

Sec. 12. Separability Clause. - If any section or sections of this Act shall be declared unconstitutional or invalid, it shall not invalidate the other sections hereof.

Sec. 13. Effectivity. - This Act shall take effect fifteen (15) days after publication in at least two (2) newspapers of general circulation.

Approved,