

SENATE

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S. B. No. 935

RECEIVED BY: 

INTRODUCED BY SENATOR ANA THERESIA "RISA" HONTIVEROS
BARAQUEL

**AN ACT
PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL
ORIENTATION AND GENDER IDENTITY OR EXPRESSION (SOGIE)
AND PROVIDING PENALTIES THEREFOR**

EXPLANATORY NOTE

Philippine submissions to the United Nations Human Rights Council narrate a bleak story of the continuing neglect of the human rights issues Filipino lesbians, gays, bisexuals, transgenders, intersex, and queers (LGBTIQs) face. Cases of discrimination and inequality have remained invisible to our national policies and reduced to insignificance by homophobia and stigma. The reports document experiences of transwomen who were being denied the right to express their gender identity in schools and in the workplace; of gay men who could not donate blood because of a government memorandum prohibiting homosexuals from doing so. There were transwomen who were forced by authorities to appear masculine before their passports could be renewed. There were also law enforcers threatening LGBTIQs of prosecution for Grave Scandal under Article 200 of the Revised Penal Code as a scheme to harass and to extort from them. There were cases of gender non-conforming students who were being bullied in schools affecting their performance and ultimately their access to education. There were people living with HIV AIDS who were made more vulnerable by the prevailing stigma against men who have sex with men and transgenders, putting in peril their fundamental right to quality and effective healthcare. These stories reflect the historical prejudice against LGBTIQs denying them full access to basic human rights and excluding them from fundamental equality before the law. The lack of protective laws and supportive policies is an unfortunate reality. This neglect is affording impunity from committing discrimination and tolerating human rights abuse.

Aside from addressing a major human rights gap, this proposed legislation will be the compliance of the Philippine government with the obligation imposed upon states by the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic Social and Cultural Rights (ICESCR) for all states to guarantee all persons "equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status". The prevailing interpretation of this state obligation includes protection against discrimination on the basis of sexual orientation and gender identity.

When passed, this bill will give life to and uphold our very own equal protection clause in the 1987 Constitution. The principle of non-discrimination is one of the underlying thrusts of a human rights regime. Thus, protecting LGBTIQs from differential treatment should be a basic state guarantee. Measures that value the dignity of every human person must without reservations become part of national policy. This Anti-Discrimination Act will be our commitment to the fundamental equality of ALL persons before the law, a beacon of our long overdue promise—*human rights for all*.

The passage of this bill is earnestly sought.

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ANA THERESIA "RISA" HONTIVEROS BARAQUEL
Senator

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

1 **SECTION 1. Short Title.** – This Act shall be known and cited as the "*Anti-Discrimination*
2 *Act.*"

3
4 **SEC. 2. Declaration of Policy.** – The State recognizes the fundamental right of every
5 person, regardless of sex, age, class, status, ethnicity, color, disability, religious and political
6 beliefs, sexual orientation or gender identity, to be free from any form of discrimination. It
7 shall therefore intensify its efforts to fulfill its duties under international and domestic laws
8 to respect, protect and fulfill the rights and dignity of every individual.

9
10 Towards this end, the State shall exert efforts to address all forms of discrimination and
11 violence on the basis of sexual orientation or gender identity and to promote human dignity
12 as enshrined in the United Nations Universal Declaration on Human Rights, the Convention
13 on the Elimination of All Forms of Discrimination Against Women, particularly the
14 General Recommendation No. 28 on Non-discrimination Based on Sexual Orientation and
15 Gender Identity, Convention on the Rights of the Child, International Covenant on Civil
16 and Political Rights, International Covenant on Economic, Social and Cultural Rights and all
17 other relevant and universally accepted human rights instruments and other international
18 conventions to which the Philippines is a signatory of.

19
20 **SEC. 3. Definition of Terms.** – As used in this Act, the following terms shall be defined as
21 follows:

- 22
23 a. *Discrimination* refers to any distinction, exclusion, restriction, or preference which
24 is based on any ground such as sex, sexual orientation, gender identity, and which
25 has the purpose or effect of nullifying or impairing the recognition, access to,
26 enjoyment, or exercise by all persons on an equal footing of all rights and
27 freedoms. For purposes of this provision, the actual sex, sexual orientation or
28 gender identity of the person subjected to discrimination shall not be relevant for
29 the purpose of determining whether an act of discrimination has been
30 committed.
- 31
32 b. *Gender Identity* refers to the personal sense of identity as characterized, among
33 others, by manner of clothing, inclinations, and behavior in relation to masculine

1 or feminine conventions. A person may have a male or female identity with the
2 physiological characteristics of the opposite sex.
3

4 c. *Sexual Orientation* refers to the direction of emotional sexual attraction or conduct.
5 This can be towards people of the same sex (homosexual orientation) or towards
6 people of both sexes (bisexual orientation) or towards people of the opposite sex
7 (heterosexual orientation).
8

9 d. *Gender Expression* refers to the outward manifestations of the cultural traits that
10 enable a person to identify as male or female according to patterns that, at a
11 particular moment in history, a given society defines as gender appropriate.
12

13
14 **SEC. 4. *Discriminatory Practices.*** – It shall be unlawful for any person, natural or
15 juridical, to:
16

17 a. Include sexual orientation or gender identity or expression, as well as the
18 disclosure of sexual orientation, in the criteria for hiring, promotion, transfer,
19 designation, work assignment, re-assignment, dismissal of workers, and other
20 human resource movement and action, performance review and in the
21 determination of employee compensation, career development opportunities,
22 training, and other learning and development interventions, incentives, privileges,
23 benefits or allowances, and other terms and conditions of employment: *Provided*
24 *That*, this provision shall apply to employment in both the private sector and
25 public service, including military, police and other similar services: *Provided, Further*
26 *That* this prohibition shall likewise apply to the contracting and engaging of the
27 services of juridical persons;
28

29 b. Refuse admission or expel a person from any educational or training institution
30 on the basis of sexual orientation or gender identity or expression: *Provided,*
31 *However That* the right of educational and training institutions to determine the
32 academic qualifications of their students or trainees shall be duly upheld;
33

34 c. Impose disciplinary sanctions, penalties harsher than customary or similar
35 punishments, requirements, restrictions, or prohibitions that infringe on the rights
36 of the students on the basis of sexual orientation or gender identity or
37 expression, including discriminating against a student or trainee due to the sexual
38 orientation or gender identity or expression of the student's parents or legal
39 guardian;
40

41 d. Refuse or revoke the accreditation, formal recognition, registration or plan to
42 organize of any organization, group, political party, institution or establishment,
43 in educational institutions, workplaces, communities, and other settings, solely on
44 the basis of the sexual orientation or gender identity or expression of their
45 members or of their target constituencies;
46

47 e. Deny a person access to public or private medical and other health services open
48 to the general public on the basis of such person's sexual orientation or gender
49 identity or expression;
50

51 f. Deny an application for or revoke a professional or other similar kind of license,
52 clearance certification or any other similar document issued by the government
53 due to the applicant's sexual orientation or gender identity or expression;

- 1
2 g. Deny a person access to or the use of establishments, facilities, utilities or
3 services, including housing, open to the general public on the basis of sexual
4 orientation or gender identity or expression: *Provided, That* the act of giving
5 inferior accommodations or services shall be considered a denial of access or use
6 of such facility or service: *Provided, That* this prohibition covers acts of
7 discrimination against juridical persons solely on the basis of the sexual
8 orientation or gender identity or expression of their members or of their target
9 constituencies;
10
11 h. Subject or force any person to undertake any medical or psychological
12 examination to determine and/or alter the person's sexual orientation or gender
13 identity or expression without the expressed approval of the person involved,
14 except in cases where the person involved is a minor and below the age of
15 discernment in which case prior approval of the appropriate Family Court shall
16 be required. In the latter case, the child shall be represented in the proceedings by
17 the Solicitor General or the latter's authorized representative; and
18
19 i. Harassment by members of institutions involved in the enforcement of law and
20 the protection of rights of any person on the basis of sexual orientation or
21 gender identity or expression. Among other cases, harassment occurs when a
22 person is arrested or otherwise placed in the custody and subjected to extortion,
23 physical or verbal abuse, regardless of whether such arrest has legal or factual
24 basis. Harassment of juridical persons on the basis of the sexual orientation or
25 gender identity or expression of their members, stockholders, benefactors, clients,
26 or patrons is likewise covered by this provision.
27

28 **SEC. 5. Administrative Sanctions.** – Willful refusal of a government official whose duty is
29 to investigate, prosecute, or otherwise act on a complaint for a violation of this Act to
30 perform such a duty without a valid ground shall constitute gross negligence on the part of
31 the official.
32

33 **SEC. 6. Penalties.** – Any person who commits any discriminatory practice described in
34 Section 4 shall, upon conviction, be penalized by a fine of not less than One hundred
35 thousand pesos (P100,000) but not more than Five hundred thousand pesos (P500,000) or
36 imprisonment of not less than one (1) year but not more than six (6) years, at the discretion
37 of the court. In addition, the court may impose upon a person found to have committed any
38 of the prohibited acts the rendition of community service in terms of attendance in human
39 rights education's familiarization with and exposure to the plight of the victims.
40

41 If a graver offense motivated by bias, prejudice, or hatred against sexual orientation or
42 gender identity or expression is committed, such shall be meted the corresponding
43 maximum penalties depending on the severity of the offenses.
44

45 Any action arising from the violation of the provisions of this Act shall prescribe in three
46 (3) years.
47

48 Nothing in this Act shall preclude the victim from instituting a separate and independent
49 action for damages and other affirmative reliefs.
50

51 The penalties provided under this Section shall be without prejudice to administrative
52 liability for government officials and employees.

1 **SEC. 7. *Inclusion of SOGI Concerns in All Police Stations.*** – The Women and
2 Children’s Desks now existing in all police stations shall also act on and attend to complaints
3 or cases covered by this Act. In this regard, police handling said desks shall undergo
4 appropriate trainings with human rights-based approach to include among others gender
5 sensitivity and awareness in proper terminology, dynamics of LGBTIQs relationships and
6 hate crime investigations.

7
8 Complainant-minors can be represented by parents, guardians or a non-government
9 organization of good standing and reputation.

10
11 **SEC. 8. *Separability Clause.*** – If any provision of this Act is declared unconstitutional or
12 otherwise invalid, the validity of the other provisions shall not be affected thereby.

13
14 **SEC. 9. *Repealing Clause.*** – All laws, decrees, orders, rules and regulations or parts
15 thereof inconsistent with this Act are hereby repealed or modified accordingly.

16
17 **SEC. 10. *Effectivity.*** – This Act shall take effect fifteen (15) days after its publication in the
18 Official Gazette or in a newspaper of general circulation.

19
20 Approved