

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

04 JUL -1 P1:22

SENATE

RECEIVED BY: AK

S. No. 1276

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Family Code, Article 26 expressly provides that, except for marriages prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38, marriages solemnized abroad and are valid there as such, are recognized as valid here. As a general rule therefore, the Philippine follows the *lex loci celebrationis* rule.

For this reason, same-sex marriages legally celebrated abroad would be considered valid here since Article 26 does not include the requirement that the parties have to be a man and a woman. This requirement is not one of the exceptions to the general rule.

Article 26 is a special provision. Thus, *inclusion unius est exclusio alterius*. But Article 26, as it is currently worded, conflicts with the general provisions of the Family Code.

Marriage is a union founded on the distinction of sex. That contracting parties must be of different sex is, in fact, a requirement under the provisions on legal capacity.

Accordingly, this bill seeks to amend Article 26 to remove a misleading presumption, until society changes attitude while exhibiting compassion for same-sex relationships.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

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

04 JUL -1 AM 1:30

RECEIVED BY: _____

SENATE
S. B. No. 1276

Introduced by Senator Miriam Defensor Santiago

AN ACT
AMENDING THE FAMILY CODE OF THE PHILIPPINES, ARTICLE 26

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

SECTION 1. The Family Code, Article 26, is hereby amended to read as follows:

“All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized and valid there as such, shall also be valid in this country, except SAME-SEX MARRIAGES AND those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.

When a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.”

SECTION 2. *Separability Clause* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 3. *Repealing Clause* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provision of this Act is hereby repealed, modified or amended accordingly.

SECTION 4. *Effectivity Clause* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.

EC
03 August 1998