


SENATE

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S. No. 159

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INTRODUCED BY SENATOR RISA HONTIVEROS

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.


RISA HONTIVEROS

Senator

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

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

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

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

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

- a) *Discrimination* refers to any distinction, exclusion, restriction, or preference based on any ground such as sex, sexual orientation, gender identity or expression, and has the purpose or effect of nullifying or impairing the recognition, access to, enjoyment, or

1 exercise by all persons on an equal footing of all rights and freedoms.
2 For purposes of this provision, the actual sex, sexual orientation or
3 gender identity of the person subjected to discrimination shall not be
4 relevant for the purpose of determining whether an act of
5 discrimination has been committed.

6 b) *Gender Expression* refers to the outward manifestations of the
7 cultural traits that enable a person to identify as male or female
8 according to patterns that, at a particular moment in history, a given
9 society defines as gender appropriate.

10 c) *Gender Identity* refers to the personal sense of identity as
11 characterized, among others, by manner of clothing, inclinations, and
12 behavior in relation to masculine or feminine conventions. A person
13 may have a male or female identity with the physiological
14 characteristics of the opposite sex.

15 d) *Profiling* – refers to subjecting a person or group of persons to
16 investigatory activities, which include unnecessary, unjustified, illegal,
17 and degrading searches, or other investigatory activities, in
18 determining whether and individual is engaged in an activity
19 presumed to be unlawful, immoral or socially unacceptable.

20 e) *Sexual Orientation* refers to the direction of emotional sexual
21 attraction or conduct. This can be towards people of the same sex
22 (homosexual orientation) or towards people of both sexes (bisexual
23 orientation) or towards people of the opposite sex (heterosexual
24 orientation).

25 f) *Stigma* - refers to the dynamic devaluation and dehumanization of an
26 individual in the eyes of others which may be based on attributes that
27 are arbitrarily defined by others as discreditable or unworthy and
28 which result in discrimination when acted upon.

29 Sec. 4. *Communities Vulnerable to Discrimination and Abuse on the Basis of*
30 *SOGIE*. - This Act seeks to protect individuals and communities that experience human
31 rights violations on the basis of SOGIE, including, but not limited to, individuals and
32 communities of diverse sexual orientation or gender identity or 1 expression who are
33 children, young, poor, differently abled, of different ethnic background or cultural
34 background, and of various religious belief

35 Sec. 5. *Discriminatory Practices*. – It shall be unlawful for any person, natural or
36 juridical, to:

- 1 a) Promote and encourage stigma on the basis of SOGIE in the media, in
2 educational textbooks, and other medium. Inciting violence and
3 sexual abuse against any person or group on the basis of SOGIE is
4 likewise prohibited;
- 5 b) Include SOGIE as well as the disclosure of sexual orientation, in the
6 criteria for hiring, promotion, transfer, designation, work assignment,
7 re-assignment, dismissal of workers, and other human resource
8 movement and action, performance review and in the determination
9 of employee compensation, career development opportunities,
10 training, and other learning and development interventions,
11 incentives, privileges, benefits or allowances, and other terms and
12 conditions of employment: *Provided That*, this provision shall apply to
13 employment in both the private sector and public service, including
14 military, police and other similar services: *Provided, Further That* this
15 prohibition shall likewise apply to the contracting and engaging of the
16 services of organizations with lesbians, gays, bisexuals, transgenders,
17 intersex, or queers (LGBTIQs) members or of associations or
18 organizations advocating LGBTIQ rights;
- 19 c) Refuse admission or expel a person from any educational or training
20 institution on the basis of SOGIE: *Provided, However That* the right of
21 educational and training institutions to determine the academic
22 qualifications of their students or trainees shall be duly upheld;
- 23 d) Impose disciplinary sanctions, penalties harsher than customary or
24 similar punishments, requirements, restrictions, or prohibitions that
25 infringe on the rights of the students on the basis of SOGIE, including
26 discriminating against a student or trainee due to the SOGIE of the
27 student's parents or legal guardian;
- 28 e) Refuse or revoke the accreditation, formal recognition, registration or
29 plan to organize of any organization, group, political party, institution
30 or establishment, in educational institutions, workplaces,
31 communities, and other settings, solely on the basis of the SOGIE of
32 their members or of their target constituencies;
- 33 f) Deny a person access to public or private medical and other health
34 services open to the general public, as well as access to public and
35 private health insurance, including HMOs, on the basis of SOGIE;

- 1 g) Deny an application for or revoke, on the basis of SOGIE, any
2 government license, authority, clearance, permit, certification, or
3 other similar documents necessary to exercise a profession, business,
4 or any other legitimate calling;
- 5 h) Deny a person access to or the use of establishments, facilities,
6 utilities or services, including housing, open to the general public on
7 the basis of SOGIE: *Provided, That* the act of giving inferior
8 accommodations or services shall be considered a denial of access or
9 use of such facility or service: *Provided, That* this prohibition covers
10 acts of discrimination against juridical persons solely on the basis of
11 SOGIE of their members or of their target constituencies;
- 12 i) Subject any person, natural or juridical, to profiling, detention, or
13 verbal or physical harassment on the basis of SOGIE. Profiling,
14 detention, or verbal or physical harassment on the basis of SOGIE by
15 members of law enforcement agencies, including the military, police,
16 immigration, is likewise prohibited. Physical or verbal harassment
17 based on SOGIE of persons in custody or detention of the police,
18 including subjecting them to extortion, is also prohibited; and
- 19 j) k. Subject a person to any other analogous acts that shall have the
20 effect or purpose of impairing or nullifying the enjoyment,
21 recognition, and exercise of a person's human rights and fundamental
22 freedoms.
- 23 k) regardless of whether such arrest has legal or factual basis.
24 Harassment of juridical persons on the basis of the sexual orientation
25 or gender identity or expression of their members, stockholders,
26 benefactors, clients, or patrons is likewise covered by this provision.

27 Sec. 6. *Administrative Sanctions.* – Willful refusal of a government official whose
28 duty is to investigate, prosecute, or otherwise act on a complaint for a violation of this
29 Act to perform such a duty without a valid ground shall constitute gross negligence on
30 the part of the official and shall be subjected to pertinent administrative sanctions.

31 Sec. 6. *Penalties.* – Any person who commits any discriminatory practice
32 described in Section 5(a), 5(d), 5(e), 5(g), and 5(h), upon conviction, be penalized by a
33 fine of not less than One hundred thousand pesos (P100,000) but not more than Two
34 Hundred Fifty thousand pesos (P250,000) or imprisonment of not less than one (1) year
35 but not more than six (6) years, subject to the discretion of the court.

36 In addition, the court may impose upon a person found to have committed any of the

1 prohibited acts the rendition of community service in terms of attendance in human
2 rights education's familiarization with and exposure to the plight of the victims.

3 Any person who commits any discriminatory practice described in Section 5(b), 5(c),
4 5(f), 5(i), and 5(j),⁴ shall, upon conviction, be penalized by a fine of not less than Two
5 Hundred Fifty Thousand pesos (P250,000) but not more than Five hundred Thousand
6 pesos (P500,000) or imprisonment of not less than six (6) years but not more than
7 twelve (12) years, subject to the discretion of the court.

8 Any person who commits any discriminatory practice described in Section 5(k) shall
9 upon conviction be penalized with the same penalty as the prohibited act to which it is
10 analogous.

11 In addition, the court may impose upon a person found to have committed any of the
12 prohibited acts the rendition of community service in terms of attendance in human
13 rights education's familiarization with and exposure to the plight of the victims.

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

16 The penalties provided under this Section shall be without prejudice to the imposition of
17 administrative liability for government officials and employees.

18 *Sec. 8. Discriminatory Practices as Qualifying Aggravating Circumstance.* - If any
19 civil, criminal, or administrative offense, not falling under this Act, is committed and
20 proven to be attended by any discriminatory practice prohibited under Section 5 of this
21 Act, said offense shall be qualified and the corresponding penalty provided thereto shall
22 be applied in its maximum period.

23 *Sec. 9. Redress Mechanisms for SOGIE-related Cases –*

24 a) Inclusion of SOGIE Concerns in All Police Stations. - The Women and
25 Children's Desks now existing in all police stations shall also act on and
26 attend to complaints/cases covered by this Act. In this regard, the police
27 handling said desks shall undergo trainings on human rights and SOGIE,
28 gender sensitivity and awareness, and sensitisation on the issue of
29 violence and abuse on the basis of SOGIE.

30 Complainant-minors can be represented by parents, guardians, social
31 workers, or a non-government organization of good standing and
32 reputation.

33 b) Role of the Civil Service Commission - The Civil Service Commission (CSC)
34 shall mandate the establishment of a grievance mechanism to address
35 discriminatory practices committed by officers or employees of
36 government agencies, instrumentalities, and government owned and

1 controlled corporations (GOCCs) and other offices under its jurisdiction.

2 c) Role of the Department of Labor and Employment - The Department of
3 Labor and Employment (DOLE) shall mandate the establishment of a
4 grievance mechanism to address discriminatory practices committed in
5 the workplace.

6 d) d. Role of the Commission on Human Rights. - The Commission on
7 Human Rights (CHR) shall investigate and recommend the filing of a
8 complaint against any person/s violating this Act. If the Commission has
9 reasonable cause to believe that any person or group of persons is
10 committing acts penalized under Section 5 of this Act, the Commission
11 shall recommend a legal action in the appropriate prosecutor's office or
12 court.

13 The CHR shall also direct the officer concerned to take appropriate action
14 against a public officer or employee at fault or who neglects to perform
15 an act or discharge a duty required under this Act, and recommend the
16 revocation of license, removal from office or employment, suspension,
17 demotion, fine, censure, or prosecution, and ensure compliance
18 therewith. Refusal by any officer without just cause to comply with an
19 order of the Commission to revoke the license, remove, suspend, demote,
20 fine, censure, or prosecute an officer or employee who is at fault, or who
21 neglects to perform an act or discharge a duty required under this Act,
22 shall be a ground for disciplinary action against said officer.

23 The CHR shall also document cases of discrimination on the basis of
24 SOGIE and shall include these documented cases in its annual human
25 rights report. The Commission shall actively provide recommendations to
26 different branches of government on how to address and eliminate
27 discrimination on the basis of SOGIE.

28 Sec 10. *Programs to Promote Non-Discrimination and Diversity.* – To eliminate all
29 forms of discrimination, the State shall pursue initiatives and programs that seek to
30 enable an environment free of stigma and discrimination. It shall direct the machinery
31 and resources of the State to promote non-discrimination and shall encourage other
32 sectors of the society to engage and participate in these efforts. It shall ensure the
33 implementation of the following programs:

34 a) Social Protection Programs - the national government shall ensure that
35 communities vulnerable to stigma and discrimination on the basis of
36 SOGIE 6 are integrated into government-run social protection programs.

1 b) Diversity Programs and Policies - All government agencies, government8
2 owned and controlled corporations, private companies, public and private
3 educational institutions, and other entities shall establish diversity
4 programs to ensure human rights violations and violence on the basis of
5 SOGIE are prevented. They shall also create an internal redress
6 mechanism to address cases of discrimination and develop administrative
7 remedies or sanctions for such cases. Public institutions shall incorporate
8 these programs into existing gender and development programs.

9 c) Information and Education Campaign - All government agencies and
10 instrumentalities are mandated to develop and implement SOGIE-specific
11 gender sensitivity education and information dissemination. They shall
12 endeavor to produce and publish information and education campaign
13 materials on gender and human rights.

14 Sec. 11. *Congressional Oversight Committee.* - For the effective implementation
15 of this Act, there shall be created a Congressional Oversight Committee, hereinafter
16 referred to as the Anti-Discrimination Oversight Committee (ADOC), within sixty (60)
17 days after the enactment of this Act. The ADOC shall be composed of ten (10) members
18 from the Senate and the House of Representatives, which shall include the following:
19 the Chairperson and two (2) members of the Senate Committee on Women, Children,
20 Family Relations, and Gender Equality; the Chairperson and one (1) member of the
21 Senate Committee on Justice and Human Rights; the Chairperson and two (2) members
22 of the House Committee on Women and Gender Equality; and the Chairperson and one
23 (1) member of the House Committee on Justice. The members of the ADOC shall be
24 appointed by the Senate President and the Speaker of the House, respectively, with at
25 least one (1) member representing the Minority.

26 The ADOC shall be jointly chaired by the Chairpersons of the Senate Committee on
27 Women, Children, Family Relations and Gender Equality and the House Committee on
28 Women and Gender Equality. The Vice-Chair of the ADOC shall be jointly held by the
29 Chairpersons of the Senate Committee on Justice and Human Rights and the House
30 Committee on Justice. The Secretariat shall come from the existing Secretariat
31 personnel of the Senate and the House of Representatives committees concerned. The
32 ADOC shall monitor the compliance of public institutions to the provisions of this Act.
33 Within three years after the enactment of this Act, the ADOC shall conduct an audit of
34 national and local policies that discriminate on the basis of SOGIE, and shall submit a
35 report to Congress, the Office of the President, and the Supreme Court, on this subject.
36 The ADOC shall cease to exist six years after its organization.

1 Sec. 12. *Separability Clause.* – If any provision of this Act is declared
2 unconstitutional or otherwise invalid, the validity of the other provisions shall not be
3 affected thereby.

4 Sec. 13. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or
5 parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

6 Sec. 14. *Effectivity.* – This Act shall take effect fifteen (15) days after its
7 publication in the Official Gazette or in a newspaper of general circulation.

Approved,