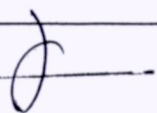


SENATE
S.B. No. 412

'19 JUL 11 P 4:40

Introduced by **SENATOR IMEE R. MARCOS**

RECEIVED BY: 

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

EXPLANATORY NOTE

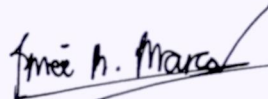
This Bill seeks to define and penalize practices of discrimination on the basis of sexual orientation and gender identity. It also aims to protect the rights of members of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community as citizens and as human beings: gay rights are human rights.

Currently, there is no law that address discrimination against members of the LGBT community. Equality, enshrined as a core democratic value in the Constitution, is neither guaranteed nor operationalized for the members of the LGBT community in any existing law.

As a result, members of the LGBT community are vulnerable to unjust and unequal treatment in the family, school, workplace, social and leisure venues. Worse, members of this community become objects of hate crimes that rob them of their dignity and endanger their lives without any recourse for protection under our laws.

This bill seeks to end discrimination against members of the LGBT community, protect their fundamental rights to equality and human dignity, and allow the fullest measure of participation in society.

In light of the foregoing, the approval of this bill is strongly recommended.


IMEE R. MARCOS
Senator

SENATE
S.B. No. 412

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Introduced by **SENATOR IMEE R. MARCOS**

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

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 as the “*Anti-Discrimination Act of 2019*”.

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

Towards this end, the State shall address all forms of discrimination, marginalization and violence on the basis of sexual orientation, or gender identity or expression, and promote human dignity as enshrined in the 1987 Constitution, 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 human rights instruments and international conventions to which the Philippines is a signatory. In the enforcement of this Act, the fundamental right of parents in the upbringing of their children in accordance with their religious convictions will be given all due respect. In all matters, the best interest of children shall be paramount.

Sec. 3. *Definition of Terms.* — As used in this Act, the following terms shall refer to the following:

- 1 a) *Child* refers to a person below eighteen (18) years of age or older but who is
2 incapable of taking care of one's self, as defined under Republic Act No. 7610,
3 as amended;
- 4 b) *Discrimination* refers to any distinction, exclusion, restriction, or preference
5 which is based on any ground such as sex, sexual orientation, gender identity
6 or expression, among others, and which has the purpose or effect of nullifying
7 or impairing recognition, access to, enjoyment, or exercise by all persons of all
8 rights and freedoms. The birth gender, sexual orientation, or gender identity
9 or expression of the person subjected to discrimination shall not be relevant
10 for the purpose of determining whether an act of discrimination has been
11 committed;
- 12 c) *Gender Expression* refers to the way a person communicates gender identity
13 through behavior, clothing, hairstyles, communication or speech pattern, or
14 body characteristics;
- 15 d) *Gender Identity* refers to the personal sense of identity of an individual as
16 characterized, among others, by the manner of clothing, inclinations, and
17 behavior in relation to masculine or feminine conventions. A person may have
18 a male or female identity with the physiological characteristics of the opposite
19 sex, in which case this person is considered transgender;
- 20 e) *Hate Crimes* refer to criminal offenses committed against a person or a group
21 of persons, or against such targeted person's or group's honor or property,
22 motivated in whole or in part by the offender's biases against gender, sexual
23 orientation, gender identity or expression;
- 24 f) *LGBT Community* refers to the collective of persons who are male and female
25 homosexuals (gays and lesbians, respectively), bisexual, and transgender;
- 26 g) *Marginalization* refers to a condition where a whole category of people is
27 excluded from useful and meaningful participation in political, economic,
28 social, and cultural life;
- 29 h) *Sex* refers to male, female, or intersex. Intersex refers to people born with the
30 sex characteristics (including genitals, gonads and chromosome patterns) that
31 do not fit typical binary notions of male or female bodies, all of which are
32 natural bodily variations along a spectrum;
- 33 i) *Sexual Orientation* refers to the direction of emotional, sexual attraction, or
34 conduct towards people of the same sex (homosexual orientation) or towards
35 people of both sexes (bisexual orientation), or towards people of the opposite

sex (heterosexual orientation) or to the absence of sexual attraction (asexual orientation); and

- j) *Stigma* refers to the devaluation and dehumanization of an individual in the eyes of others based on attributes that are arbitrarily defined by others as discreditable or unworthy, and which result in discrimination when acted upon.

Sec. 4. *Discriminatory Practices.* - It shall be unlawful for any person, natural or juridical, to cause discrimination or to discriminate on the basis of sexual orientation or gender identity or expression as defined in this Act, by:

- a) Denying access to public services, including military service;
- b) Including sexual orientation or gender identity or expression, as well as the disclosure of sexual orientation, in the criteria for hiring, promotion, transfer, designation, work assignment, re-assignment, dismissal, and other human resource movements, performance review, and in the determination of employee compensation, access to career development opportunities, training, and other learning and development interventions, incentives, privileges, benefits or allowances, and other terms and conditions of employment: *Provided*, That this provision shall apply to employment and skills training in both the private sector and public service, including military, police, and other similar services; and *Provided, further* That this prohibition shall likewise apply to the contracting and engaging of the services of juridical persons;
- c) Refusing admission or expelling a person from any educational or training institution including discriminating against a student or trainee due to the sexual orientation or gender identity or expression of the student's parents or guardian: *Provided, however*, That the right of educational and training institutions to determine the academic qualifications of their students or trainees shall be duly upheld;
- d) Refusing or revoking the accreditation, formal recognition, registration or plan to organize of any organization, group, political party, institution, or establishment in educational institutions, workplaces, communities, and other settings; solely on the basis of the sexual orientation or gender identity or expression of their members or of their target constituencies;
- e) Denying a person access to public or private medical and other health services open to the general public;
- f) Denying an application for or revoking a professional or other similar kind of license, clearance, certification on, or any other similar document, except marriage license, issued by the government;

- 1 g) Denying a person access to or the use of establishments, facilities, utilities, or
2 services, including housing, open to the general public: *Provided*, That the act
3 of giving inferior accommodations or services shall be considered a denial of
4 access or use of such facility or service: and *Provided, finally*, That this
5 prohibition covers acts of discrimination against juridical persons solely on the
6 basis of the sexual orientation or gender identity or expression of their
7 members or of their target constituencies;
- 8 h) Subjecting or forcing any person to undertake any medical or psychological
9 examination to determine or alter, or both, the person's sexual orientation or
10 gender identity or expression without the express approval of the person
11 involved, *Provided* that, in cases where the person involved is a minor and
12 below the age of discernment, prior approval of the appropriate Family Court
13 shall be required, and *Provided further* , that in the latter case, the child shall
14 be represented in the proceedings by the Solicitor General or the latter's
15 authorized representative;
- 16 i) Harassment, coercion, or threats committed by members of law enforcement
17 agencies including discriminatory acts committed during the process of
18 arresting or placing a person under custody, or while a person is under arrest
19 or in custody, such as, among others, extortion, and any form of physical,
20 verbal or sexual abuse, as well as similar actions committed by juridical
21 persons on their members, stockholders, clients, or patrons;
- 22 j) Publishing information intended to "out" or reveal the sex, sexual orientation,
23 or gender identity of persons without their consent, when such has not been
24 made known by the person/s concerned, whether or not such act has been
25 done with malicious intent or motivated by a desire for profit;
- 26 k) Engaging in public speech, except religious speech and comments made in the
27 context of a religious service, ceremony or activity, meant to shame, insult,
28 vilify, and incite or normalize the commission of discriminatory practices
29 against LGBTs;
- 30 l) Subjecting persons or groups to harassment generally defined as such
31 unwanted conduct, pattern of conduct, act, or series of acts which tend to
32 insult, bully, demean, threaten, intimidate, or create a hostile environment, or
33 instill fear for their safety, which include physical assault, stalking, or making
34 derogatory comments, or lewd propositions, through any form or medium,
35 including but not limited to, visual representation, broadcast communication,

- 1 correspondence or communication or any telecommunication device, or
2 through the internet or cyberspace;
- 3 m) Subjecting any person or group to gender profiling or to any unlawful
4 investigatory activities, such as (1) illegal searches to discover any activity that
5 may be deemed immoral or socially unacceptable; (2) recording and analyzing,
6 without the consent of the person/s concerned, the psychological and
7 behavioral characteristics of such person/s to make generalizations about their
8 sexuality or to assist in identifying their sexual orientation or gender identity;
9 and
- 10 n) Preventing children under parental authority, custody, or guardianship from
11 exhibiting or expressing their sexual orientation or gender identity; or rejecting
12 their sexual orientation or gender identity or expression by inflicting or
13 threatening to inflict bodily or physical harm on them, or by causing them
14 mental or emotional suffering through intimidation, harassment, public ridicule
15 or humiliation, repeated verbal abuse, or other similar means, or by
16 committing any act or omission prejudicial to the welfare and interest of the
17 children due to their sexual orientation or gender identity.

18 Sec. 5. *Administrative Sanctions.* – Government officials who fail to investigate,
19 prosecute, or act on a complaint for any violation of this Act, or who cause
20 unreasonable delay in the investigation, prosecution or any action on such complaint
21 shall be deemed to have committed gross negligence and shall be imposed the
22 appropriate administrative penalties under existing civil service laws, rules and
23 regulations.

24 Sec. 6. *Penalties.* - A person who commits any discriminatory practice described
25 in Section 4 shall, upon conviction, be penalized by a fine of not less than One
26 hundred thousand pesos (P100,000) but not more than Five hundred thousand pesos
27 (P500,000) or imprisonment of not less than six (6) months but not more than six (6)
28 years, or both.

29 If the discriminatory act is committed by a corporation, partnership, association
30 or other juridical entity, the penalty provided in this section shall be imposed upon the
31 directors and officers thereof, without prejudice to the civil liabilities arising from the
32 offense.

33 Any action arising from the violation of the provisions of this Act shall prescribe
34 in three (3) years.

35 Nothing in this Act shall preclude the victim from instituting a separate and
36 independent action for damages and other affirmative reliefs or such other cases for

1 violation of other applicable penal laws. Further, nothing in this Act shall be construed
2 as giving authority to the State to unduly interfere with the legitimate exercise by the
3 parents or the guardians of their right to discipline a child under their parental
4 authority, custody or guardianship.

5 The penalties provided under this Section shall be meted without prejudice to
6 the imposition of administrative liabilities on erring government officials and employees.

7 *Sec. 7. Special Aggravating Circumstance.* — A person who commits any of the
8 crimes in the Revised Penal Code or any special law and who is proven to have
9 committed the same motivated by bias, prejudice, or hate based on sex, sexual
10 orientation, or gender identity or expression, shall suffer the maximum penalty imposed
11 by the Code or the relevant special law for such crime.

12 *Sec. 8. Redress Mechanism for SOGIE-Related Offenses.* – The Women and
13 Children's Desks now existing in all police stations shall be renamed as Women,
14 Children and LGBTQ++ Protection Desks, to enable them to also act on and attend to
15 complaints/cases covered by this Act. Police officers and personnel handling said desks
16 shall undergo appropriate trainings to include, among others, gender sensitivity and
17 awareness, dynamics of LGBT relationships and hate crime investigations.

18 Complainants who are minors shall be represented by parents, guardians, or a
19 non-government organization of good standing and reputation.

20 *Sec. 9. Government Programs and Policies* — The State shall pursue initiatives
21 and programs that seek to establish and maintain an environment free of
22 discrimination. It shall actively promote non-discrimination and shall encourage other
23 sectors of the society to engage and participate in these efforts. It shall ensure the
24 implementation of the following programs:

25 a) Social Protection Programs. - The national government shall ensure that
26 communities vulnerable to discrimination on the basis of sexual orientation or
27 gender identity or expression are integrated into government-run social protection
28 programs; and

29 b) Diversity Programs and Trainings. - All government agencies, including
30 government-owned and controlled corporations, local government units (LGUs),
31 private companies, public and private education institutions, and other entities shall
32 establish diversity programs and endeavor to provide trainings for their employees,
33 students, trainees, and constituents on gender sensitivity and awareness, and
34 sensitization on the issue of violence and abuse to ensure that human rights
35 violations and violence on the basis of sexual orientation or gender identity or
36 expression are prevented, Provided that, such agencies may incorporate these

activities into their existing gender sensitivity and development training programs, if any, or school curricula, and Provided, further that, the above agencies, companies and institutions shall establish internal redress mechanisms to address cases of discrimination and implement administrative remedies or sanction for such cases.

Sec. 10. *Anti-discrimination Congressional Oversight Committee* - For the effective implementation of this Act, there shall be created a Congressional Oversight Committee, hereinafter referred to as the Anti-Discrimination Oversight Committee, within sixty (60) days after the effectivity of this Act.

The Anti-Discrimination Oversight Committee shall be composed of five (5) members each from the Senate and the House of Representatives, which shall include the Chairpersons of the Senate Committees on Women, Children, Family Relations and Gender Equality, and of Justice and Human Rights, and the Chairpersons of the House of Representatives Committees on Women and Gender Equality, and of Human Rights.

The members from the Senate and the House of Representatives shall be appointed by the Senate President and the Speaker, respectively, with at least one (1) member representing the minority.

The Anti-Discrimination Oversight Committee shall be chaired jointly by the Chairpersons of the Senate Committee on Women, Children, Family Relations and Gender Equality and the House Committee on Women and Gender Equality. The position of Vice-Chairperson of the Anti-Discrimination Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Justice and Human Rights and the House Committee on Human Rights. The Secretariat of the Anti-Discrimination Committee shall come from the Secretariat personnel of the Senate and the House of Representatives committees concerned.

The Anti-Discrimination Oversight Committee shall monitor the compliance of public institutions to the provisions of this Act. Within three (3) years after the enactment of this Act, the Anti-Discrimination Oversight Committee shall conduct an audit of national and local policies that discriminate on the basis of sexual orientation or gender identity and expression, and shall submit a report to Congress, and the Office of the President, on this subject.

Sec. 11. *Implementing Rules and Regulations* — Within sixty (60) days from the effectivity of this Act, the Civil Service Commission (CSC), Department of Justice (DOJ), Philippine National Police (PNP), Department of National Defense (DND), Department of Labor and Employment (DOLE), Department of Education (DepEd), Commission on Higher Education (CHED), Technical Education and Skills Development Authority (TESDA), Department of Health (DOH), and at least three (3) civil society organizations

1 (CSOs) with proven expertise and track record on SOGIE concerns, shall promulgate
2 the necessary implementing rules and regulations for the effective implementation of
3 the provisions of this Act.

4 Sec. 12. *Separability Clause.* - If any provision of this Act is declared
5 unconstitutional or otherwise invalid, the validity of the other provisions shall not be
6 affected thereby.

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

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

11
12 Approved,