

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

OFFICE OF THE SECRETARY

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SENATE
S.B. No. **3334**

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 2, section 18 states: "The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare."

On the other hand, the Constitution, Article 13, section 3, provides: "The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. xxx"

The Labor Code only prohibits discrimination against any woman employee with respect to terms and conditions of employment solely on account of her sex; it does not address the widespread pattern of irrational discrimination on the basis of sexual orientation or gender identity by private sector employers and local and national government employers.¹

Thus, this bill seeks to provide a comprehensive prohibition of employment discrimination on the basis of sexual orientation or gender identity and to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation or gender identity.

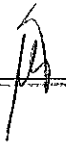

MIRIAM DEFENSOR SANTIAGO

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¹ <http://www.govtrack.us/congress/billtext.xpd?bill=h111-2981>.

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SENATE
S.B. No. 3334

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL
3 ORIENTATION OR GENDER IDENTITY

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

4 SECTION 1. *Short Title.* – This Act shall be known as the “Employment Non-
5 Discrimination Act of 2009”.

6 SECTION 2. *Definitions.* – For purposes of this Act, the term:

7 (1) “Gender Identity” means the gender-related identity, appearance, or
8 mannerisms or other gender-related characteristics of an individual, with or
9 without regard to the individual’s designated sex at birth.

10 (2) “Sexual Orientation” means homosexuality, heterosexuality, or bisexuality.

11 SECTION 3. *Employment Discrimination Prohibited.* –

12 (A) *Employer Practices.* – It shall be an unlawful employment practice for an
13 employer to:

14 (1) fail or refuse to hire or to discharge any individual, or otherwise discriminate
15 against any individual with respect to the compensation, terms, conditions, or
16 privileges of employment of the individual, because of such individual’s
17 actual or perceived sexual orientation or gender identity; or

18 (2) limit, segregate, or classify the employees or applicants for employment of the
19 employer in any way that would deprive or tend to deprive any individual of
20 employment or otherwise adversely affect the status of the individual as an
21 employee, because of such individual’s actual or perceived sexual orientation
22 or gender identity.

1 (B) *Employment Agency Practices.* – It shall be an unlawful employment practice
2 for an employment agency to fail or refuse to refer for employment, or otherwise to
3 discriminate against, any individual because of the actual or perceived sexual orientation
4 or gender identity of the individual or to classify or refer for employment any individual
5 on the basis of the actual or perceived sexual orientation or gender identity of the
6 individual.

7 (C) *Labor Organization Practices.* – It shall be an unlawful employment practice
8 for a labor organization to:

9 (1) exclude or to expel from its membership, or otherwise to discriminate against,
10 any individual because of the actual or perceived sexual orientation or gender
11 identity of the individual;

12 (2) limit, segregate, or classify its membership or applicants for membership, or
13 to classify or fail or refuse to refer for employment any individual, in any way
14 that would deprive or tend to deprive any individual of employment, or would
15 limit such employment or otherwise adversely affect the status of the
16 individual as an employee or as an applicant for employment because of such
17 individual's actual or perceived sexual orientation or gender identity; or

18 (3) cause or attempt to cause an employer to discriminate against an individual in
19 violation of this Act.

20 (D) *Training Programs.* – It shall be an unlawful employment practice for any
21 employer, labor organization, or joint labor-management committee controlling
22 apprenticeship or other training or retraining, including on-the-job training programs, to
23 discriminate against any individual because of the actual or perceived sexual orientation
24 or gender identity of the individual in admission to, or employment in, any program
25 established to provide apprenticeship or other training.

26 (E) *Association.* – An unlawful employment practice described in any of
27 paragraphs (A) through (D) shall be considered to include an action described in that

1 paragraph, taken against an individual based on the actual or perceived sexual orientation
2 or gender identity of a person with whom the individual associates or has associated.

3 (F) *No Preferential Treatment or Quotas.* – Nothing in this Act shall be construed
4 or interpreted to require or permit:

- 5 (1) any covered entity to grant preferential treatment to any individual or to any
6 group because of the actual or perceived sexual orientation or gender identity
7 of such individual or group on account of an imbalance which may exist with
8 respect to the total number or percentage of persons of any actual or perceived
9 sexual orientation or gender identity employed by any employer, referred or
10 classified for employment by any employment agency or labor organization,
11 admitted to membership or classified by any labor organization, or admitted
12 to, or employed in, any apprenticeship or other training program, in
13 comparison with the total number or percentage of persons of such actual or
14 perceived sexual orientation or gender identity in any community, section, or
15 other area, or in the available work force in any community, section, or other
16 area; or
- 17 (2) the adoption or implementation by a covered entity of a quota on the basis of
18 actual or perceived sexual orientation or gender identity.

19 SECTION 4. *Exception.* – The provisions of this Act that apply to an employee or
20 individual shall not apply to a volunteer who receives no compensation.

21 SECTION 5. *Retaliation Prohibited.* – It shall be an unlawful employment
22 practice for a covered entity to discriminate against an individual because such
23 individual:

- 24 (1) opposed any practice made an unlawful employment practice by this Act; or
25 (2) made a charge, testified, assisted, or participated in any manner in an
26 investigation, proceeding, or hearing under this Act.

27 SECTION 6. *Construction.* –

1 (1) *In General.* – Nothing in this Act shall be construed to prohibit a covered
2 entity from enforcing rules and policies that do not intentionally circumvent
3 the purposes of this Act, if the rules or policies are designed for, and
4 uniformly applied to, all individuals regardless of actual or perceived sexual
5 orientation or gender identity.

6 (2) *Sexual Harassment.* – Nothing in this Act shall be construed to limit a covered
7 entity from taking adverse action against an individual because of a charge of
8 sexual harassment against that individual, provided that rules and policies on
9 sexual harassment, including when adverse action is taken, are designed for,
10 and uniformly applied to, all individuals regardless of actual or perceived
11 sexual orientation or gender identity.

12 (3) *Certain Shared Facilities.* – Nothing in this Act shall be construed to establish
13 an unlawful employment practice based on actual or perceived gender identity
14 due to the denial of access to shared shower or dressing facilities in which
15 being seen unclothed is unavoidable, provided that the employer provides
16 reasonable access to adequate facilities that are not inconsistent with the
17 employee's gender identity as established with the employer at the time of
18 employment or upon notification to the employer that the employee has
19 undergone or is undergoing gender transition, whichever is later.

20 (4) *Additional Facilities Not Required.* – Nothing in this Act shall be construed to
21 require the construction of new or additional facilities.

22 (5) *Dress and Grooming Standards.* – Nothing in this Act shall prohibit an
23 employer from requiring an employee, during the employee's hours at work,
24 to adhere to reasonable dress or grooming standards not prohibited by other
25 provisions of any law, provided that the employer permits any employee who
26 has undergone gender transition prior to the time of employment, and any
27 employee who has notified the employer that the employee has undergone or
28 is undergoing gender transition after the time of employment, to adhere to the

1 same dress or grooming standards for the gender to which the employee has
2 transitioned or is transitioning.

3 SECTION 7. *Collection of Statistics Prohibited.* – The Department of Labor and
4 Employment (DOLE) shall not collect statistics on actual or perceived sexual orientation
5 or gender identity from covered entities, or compel the collection of such statistics by
6 covered entities.

7 SECTION 8. *Penalty Clause and Prescription.* – Any person committing any
8 violation of this Act shall be punished with imprisonment of not exceeding 6 years, or a
9 fine not exceeding P200,000.00 or both at the discretion of the court.

10 If the unlawful act is committed by a corporation, trust, firm, employment agency,
11 labor organization, partnership, association or any other entity, the penalty shall be
12 imposed upon the guilty officer or officers of such entity.

13 Offenses penalized under this Act shall prescribe in 3 years.

14 SECTION 9. *Separability Clause.* – If any provision or part hereof, is held invalid
15 or unconstitutional, the remainder of the Act or the provision not otherwise affected shall
16 remain valid and subsisting.

17 SECTION 10. *Repealing Clause.* – Any law, presidential decree or issuance,
18 executive order, letter of instruction, administrative order, rule or regulation contrary to,
19 or inconsistent with the provisions of this Act is hereby repealed, modified or amended
20 accordingly.

21 SECTION 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
22 after its publication in at least two (2) newspapers of general circulation.

Approved,