

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

SEP 26 1922

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SENATE
S. No. 1489

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution and the Labor Code direct the State to promote equality of employment opportunities for all, regardless of sex, race, or creed. The word "sex" in the pertinent provision of the Labor code, however, pertains only to the male and the female gender and does not include homosexuals, bisexuals or heterosexuals. Consequently, there is no identifiable law or statute that specifically prohibits work discrimination on the basis of homosexuality, bisexuality, or heterosexuality. This bill fills the gap by prohibiting employment discrimination on the basis of sexual orientation.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

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SENATE **1489**
S. No. _____

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**AN ACT
TO PROHIBIT EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL
ORIENTATION**

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 "Employment Non-Discrimination Act."

SECTION 2. *Declaration of Policy.* - It is a declared State policy to ensure equal work opportunities regardless of sexual orientation.

SECTION 3. *Definition of Terms.* - As used in this Act:

(1) The term "covered entity" means an employer, employment agency, labor organization, or joint management committee.

(2) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and its branches, subdivisions, and instrumentalities, all government-owned and controlled corporations, as well as non-profit private institutions, or organizations.

(3) The term "employee" includes any individual employed by an employer.

(4) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees as opportunities to work for an employer and includes an agent of such a person.

(5) The term "employment or employment opportunities" includes job application procedures, hiring, advancement, discharge, compensation, job training or of dealing with employment concerning terms and conditions of employment.

(6) The term "person" includes one or more individuals the Government and all its branches, subdivision and instrumentalities, all government-owned and controlled corporations and institutions, as well as non-profit private institutions, or organizations, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, or receivers.

(7) The term "religious organization" means—

- a. a religious corporation, association, or society;
- b. a college, school, university, or other educational institution, not otherwise a religious organization, if (i) it is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association, or society, or (ii) its curriculum is directed toward the propagation of a particular religion.

(8) The term "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived.

(9) The term "state" means the national government and all its branches, subdivisions, and instrumentalities, and all government-owned and controlled corporations and institutions.

SECTION 4. *Prohibited Practices.* It shall be an unlawful employment practice:

i. for an employer—

- (a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileged of employment, because of such individual's sexual orientation;
- (b) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of

employment opportunities or otherwise adversely affect his status as an employee, because of such individual's sexual orientation; and

c. to otherwise discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated with;

2. for an employment agency—

(a) to fail or refuse to refer for employment because of his sexual orientation; and

(b) to otherwise discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated with.

3. for a labor organization—

(a) to exclude or to expel from its membership any individual because of his sexual orientation;

(b) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's sexual orientation;

(c) to cause or attempt to cause an employer to discriminate against an individual in violation of this section; and

(d) to otherwise discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated with.

Criminal liability for the willful commission of any unlawful act as provided in this section or any violation of the rules and regulations issued pursuant to Section 9 of this Act shall be penalized as provided in Articles 288 and 289 of the Labor Code: *Provided*, that the institution of any criminal action under this section shall not bar the aggrieved employee from filing an entirely separate and distinct action for money claims, which

may include claims for damages and other affirmative reliefs. The actions authorized in this section shall proceed independently of each other.

SECTION 5. *Benefits.* - This Act does not apply to the provision of employee benefits to an individual for the benefit of his or her partner.

SECTION 6. *Religious Exemption.* - (a) IN GENERAL—Except as provided in subsection (b), this Act shall not apply to religious organizations.

(b) FOR PROFIT ACTIVITIES —This Act shall apply with respect to employment and employment opportunities that relate to any employment position that pertains solely to a religious organization's for profit activities.

SECTION 7. *Non-Application to Member of the Armed forces.* - (a) For purposes of this Act, the term employment or employment opportunities does not apply to members of the Armed Forces.

(b) As used in paragraph (a), the term Armed Forces means the Army, Navy, Air Force, Marine Corps, Coast Guard, and the Philippine National Police.

SECTION 8. *Retaliation and Coercion Prohibited.* —

(a) Retaliation - A covered entity shall not discriminate against an individual because such individual made a charge, assisted, testified, or participated in any means in an investigation, proceeding, or hearing under this Act.

(b) Coercion - A person shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of any right granted or protected under this Act.

SECTION 9. *Enforcement.* - The Secretary of Labor and employment and the Chairman of the Civil Service Commission are hereby authorized to promulgate the necessary guideline to implement this Act.

SECTION 10. *State Immunity.* - The Secretary shall not be immune from an action in a court of competent jurisdiction for a violation of this Act, remedies (excluding punitive damages) are available for the violation to the same extent as such remedies are available in an action against a private entity.

SECTION 11. *Relationship to other Laws.* This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other law, rule, or regulation.

SECTION 12. *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 13. *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 14. *Effectivity Clause.* - This Act shall take effect fifteen days (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.