

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 51



Introduced by REP. KAKA BAG-AO

EXPLANATORY NOTE

The equal protection clause in the Bill of Rights proscribes discrimination on the basis of sexual orientation or any other status in the enjoyment of rights. The equal protection clause, according to an eminent constitutionalist, "is the specific constitutional guarantee of the Equality of the Person." (J. Bernas, S.J., *Constitutional Rights & Social Demands: Notes and Cases*, Vol. II [1991], p. 48) This clause requires that "laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed." (J.M. Tuason and Co. vs. The Land Tenure Administration, 31 SCRA 413).

The fundamental law also declares that the State values the dignity of every human person and guarantees full respect for human rights (Section 11, Article II, 1987 Constitution). It also imposes on the State the duty to ensure the fundamental equality before the law of women and men (Sec. 14, *Id.*).

In addition, the Philippines is a signatory to numerous international agreements that seek to ensure respect for the human rights of all persons regardless of sex, sexual orientation or any other condition. These international human rights instruments have consistently been interpreted by international institutions, such as the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights, to include protection against discrimination on the basis of sexual orientation. In *Toonen v. Australia*, the UN Human Rights Committee interpreted Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which obliges States to "guarantee to 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," to include a protection against discrimination on the basis of sexual orientation. The Committee on Economic, Social and Cultural Rights has also interpreted Article 2 of the ICESCR to include sexual orientation in the Covenant's non-discrimination provisions.

Unfortunately, reality has still to catch up with the noble intentions of these numerous laws and international agreements. Lesbians, gays, bisexuals, and transgenders (LGBTs) continue to be oppressed by the iniquitous treatment of society at large, primarily because of misconceptions and ignorance. Sadly for our democracy, LGBTs are still considered second class citizens when they try to exercise the rights to which they are rightfully entitled.

In schools, workplaces, commercial establishments, public service, police and the military, prejudicial practices and policies based on sexual orientation and gender identity limit the exercise and enjoyment of basic human rights and fundamental freedoms. LGBT students, for instance, are refused admission or expelled from schools due to their sexual orientation or gender identity. Companies block the promotion of LGBT employees due to the deeply embedded notion that anything other than heterosexuality is an indication of weakness. Laws such as the anti-vagrancy law are also abused by law enforcement agencies to harass gay men. There is, therefore, an urgent need to define and penalize practices that unjustly discriminate against LGBTs.

In view of the foregoing, and of the need to correct the long-standing discrimination against lesbians and gays in Philippine society, the early passage of this bill is earnestly sought.



REP. KAKA BAG-AO

Lone District, Dinagat Islands

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AN ACT
PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION OR
GENDER IDENTITY (SOGI) 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 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 of.

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 which is based on any ground such as sex, sexual orientation, gender identity, and which has the purpose or effect of nullifying or impairing the recognition, access to, enjoyment,

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

- b. *Gender Identity* refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with the physiological characteristics of the opposite sex.
- c. *Sexual Orientation* refers to the direction of emotional sexual attraction or conduct. This can be towards people of the same sex (homosexual orientation) or towards people of both sexes (bisexual orientation) or towards people of the opposite sex (heterosexual orientation).

SEC. 4. Discriminatory Practices. – It shall be unlawful for any person, natural or juridical, to:

- a. Include sexual orientation or gender identity, as well as the disclosure of sexual orientation, in the criteria for hiring, promotion, transfer, designation, work assignment, re-assignment, dismissal of workers, and other human resource movement and action, performance review and in the determination of employee compensation, 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 in both the private sector and public service, including military, police and other similar services: *Provided, Further That* this prohibition shall likewise apply to the contracting and engaging of the services of juridical persons;
- b. Refuse admission or expel a person from any educational or training institution on the basis of sexual orientation or gender identity: *Provided, However That* the right of educational and training institutions to determine the academic qualifications of their students or trainees shall be duly upheld;
- c. Impose disciplinary sanctions, penalties harsher than customary or similar punishments, requirements, restrictions, or prohibitions that infringe on the rights of the students on the basis of sexual orientation or gender identity, including discriminating against a student or trainee due to the sexual orientation or gender identity of the student's parents or legal guardian;
- d. Refuse or revoke 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 of their members or of their target constituencies;

- e. Deny a person access to public or private medical and other health services open to the general public on the basis of such person's sexual orientation or gender identity;
- f. Deny an application for or revoke a professional or other similar kind of license, clearance certification or any other similar document issued by the government due to the applicant's sexual orientation or gender identity;
- g. Deny a person access to or the use of establishments, facilities, utilities or services, including housing, open to the general public on the basis of sexual orientation or gender identity: *Provided, That* the act of giving inferior accommodations or services shall be considered a denial of access or use of such facility or service: *Provided, That* this prohibition covers acts of discrimination against juridical persons solely on the basis of the sexual orientation or gender identity of their members or of their target constituencies;
- h. Subject or force any person to undertake any medical or psychological examination to determine and/or alter the person's sexual orientation or gender identity without the expressed approval of the person involved, except in cases where the person involved is a minor and below the age of discernment in which case prior approval of the appropriate Family Court shall be required. In the latter case, the child shall be represented in the proceedings by the Solicitor General or the latter's authorized representative; and
- i. Harassment by members of institutions involved in the enforcement of law and the protection of rights of any person on the basis of sexual orientation or gender identity. Among other cases, harassment occurs when a person is arrested or otherwise placed in the custody and subjected to extortion, physical or verbal abuse, regardless of whether such arrest has legal or factual basis. Harassment of juridical persons on the basis of the sexual orientation or gender identity of their members, stockholders, benefactors, clients, or patrons is likewise covered by this provision.

SEC. 5. Administrative Sanctions. – Willful refusal of a government official whose duty is to investigate, prosecute, or otherwise act on a complaint for a violation of this Act to perform such a duty without a valid ground shall constitute gross negligence on the part of the official.

SEC. 6. Penalties. – Any person who commits any discriminatory practice described in Section 4 shall, upon conviction, be penalized by a fine of not less than One hundred thousand pesos (P100,000) but not more than Five hundred thousand pesos (P500,000) or imprisonment of not less than one (1) year but not more than six (6) years, at the discretion of the court. In addition, the court may impose upon a person found to have committed any of the prohibited acts the rendition of community service in terms of attendance in human rights education's familiarization with and exposure to the plight of the victims.

If a graver offense motivated by bias, prejudice, or hatred against sexual orientation or gender identity is committed, such shall be meted the corresponding maximum penalties depending on the severity of the offenses.

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

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

The penalties provided under this Section shall be without prejudice to administrative liability for government officials and employees.

SEC. 7. *Inclusion of SOGI Concerns in All Police Stations.* – The Women and Children’s Desks now existing in all police stations, shall also act on and attend to complaints/cases covered by this Act. In this regard, police handling said desks shall undergo appropriate trainings with human rights-based approach to include among others gender sensitivity and awareness in proper terminology, dynamics of lesbian, gay, bisexual, and transgender (LGBT) relationships and hate crime investigations.

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

SEC. 8. *Separability Clause.* – If any provision of this Act is declared unconstitutional or otherwise invalid, the validity of the other provisions shall not be affected thereby.

SEC. 9. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

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

Approved,