

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **1230**



Introduced by **HONORABLE LANI MERCADO-REVILLA**

EXPLANATORY NOTE

The Constitution, Article II, Section 11 states:

“Section 11. The State values the dignity of every human person and guarantees full respect for human rights.”

Further, Article II, Section 14 mandates:

“Section 14. Section 1. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”

The State guarantees full respect for human rights and every person has the right to equal protection of the laws, but sexual orientation and gender identity are not explicitly mentioned. The Philippines still lacks an anti-discrimination Law.

Lesbian Gay Bisexual and Transgender (LGBT) persons are targeted with physical and verbal assaults that affect their economic, cultural, social, health, and other wellbeing. There are no coordinated and comprehensive state or even non-state mechanisms that monitor the instances of discrimination, bias, prejudice, and violence that LGBT Filipinos face due to homophobia, transphobia, and machismo. Circumstantial records show that attackers are sex workers, strangers, groups of hostile neighbors, family members, and intimate partners, and very few have been positively identified, and even fewer are arrested and made to face the law. Murders and attempted murders were accomplished by such acts as stabbing, arson, mutilation, strangling, shooting, and battery.

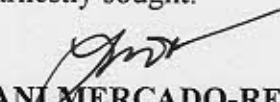
Everyone is entitled to basic healthcare and services according to the Constitution, but this is not really the case with LGBTs. Medical personnel occasionally exhibit judgmental and erroneous behaviors during diagnosis and treatment of LGBTs, which discourage beneficial health-seeking practices among LGBTs. In 2008, a hospital operating team operated on a gay patient to remove a foreign object from the rectum, and the footage of health workers making fun of the patient was uploaded on a video-sharing site. In addition, police personnel use punitive measures such as planting condoms as evidence during bar raids to make it appear that sexual behaviors and the use of condoms are criminalized.

The Labor Code of the Philippines has no prohibition of both direct and indirect discrimination except as to gender discrimination against women, and neither sexual orientation nor gender identity is mentioned. The Commission on Civil Service has rules that include sexual orientation as a status that can be factored in sexual harassment cases. The Bureau of Jail Management and Penology has a standing policy barring its lesbian and gay employees from

making body searches of jail visitors of the same genital sex. (The Status Of Lesbian, Gay, Bisexual And Transgender Rights In The Philippines. http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS1_UPR_PHL_S13_2012_JointSubmission1_E.pdf)

The Philippine Constitution, Article XIII, Section 1, mandates Congress to give the highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic and political inequalities and remove cultural inequalities.

In view of the foregoing, the passage of this bill is earnestly sought.


REP. LANI MERCADO-REVILLA
2nd District, Cavite

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AN ACT
DEFINING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION
AND GENDER IDENTITY AND PROVIDING PENALTIES THEREFOR

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

SECTION 1. Title. This Act shall be known as the “Anti-Discrimination Act of 2013.”

SECTION 2. Declaration of Policy. – It is the policy of the State to work actively for the elimination of all forms of discrimination that offends the equal protection clause of the Bill of Rights and the State obligations under human rights instruments acceded to by the Republic of the Philippines, particularly those discriminatory practices based on sex and sexual orientation. Towards this end, discriminatory practices as defined herein shall be proscribed and penalized.

SECTION 3. Definition of Terms – For purposes of this Act, the following terms shall mean:

- a. **“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).

Sexual Orientation is not equivalent to sexual behaviour since this refers to feelings and self-concept. Persons may or may not express their sexual orientation in their behaviours.

- b. **“Gender Identity”** – refers the personal sense of identity as characterized, among others, by manners of clothing, inclinations, and behaviour 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. **“Discrimination”** – shall be understood to imply any distinction, exclusion, restriction, or preference which is based on any ground such as sex, sexual orientation, gender identity, whether actual or perceived and which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons of an equal footing of all rights and freedoms.

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

- a. Deny access to public service, including military service, to any person on the basis of sexual orientation and/or gender identity.
- b. Include sexual orientation and gender identity, as well as the disclosure of sexual orientation, in the criteria for hiring, promotion and dismissal of workers, and in the determination of employee compensation, training, incentives, privileges, benefits or allowances, and other terms and conditions of employment.
- c. Refuse admission or expel a person from educational institutions on the basis of sexual orientation and gender identity, without prejudice to the right of educational institutions to determine the academic qualifications of their students.

This prohibition shall include the imposition of (i) disciplinary sanctions solely on the basis of sexual orientation and gender identity; (ii) penalties harsher than customary primarily due to sexual orientation and gender identity; or (iii) similar punishments and prohibitions.

- d. Prohibit or prevent the efforts to organize, refuse or revoke the accreditation, formal recognition, and registration 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 constituents;
- e. Deny a person access to 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 license issued by government due to the applicant's sexual orientation or gender identity.
- g. Deny a person on the basis of sexual orientation or gender identity access to or the use of establishments, facilities, utilities or services, including housing, that are open to the general public. There is a denial when a person is given inferior accommodations or services based on sexual orientation or gender identity.

This prohibition includes the discrimination of juridical persons solely on the basis of the sexual orientation or gender identity of their members or of their target constituents.

- h. Subject any person to 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 under the age of discernment in which case prior approval of the appropriate Family Court shall be required. The latter case, the child shall be represented in the proceeding by the Solicitor General or the latter's authorized representative.
- i. Harassment by members of institutions involved in the enforcement of law and the protection of rights, such as the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP), of any person on the basis of his or her sexual orientation or gender identity. Among other cases, harassment occurs when person is arrested or otherwise placed in the custody of the government institution and extortion, physical or verbal abuse takes place, 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.

- j. Other analogous circumstances.

SECTION 5. Administrative sanctions. – 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 such official who shall suffer the appropriate penalty under civil service laws, rules and regulations.

SECTION 6. Penalties. – (a) Persons found guilty of any of the discriminatory practices enumerated in the preceding section shall be penalized with a fine of not less than Two Hundred Fifty Thousand Pesos (P250,000.00) but not to exceed Five Hundred Thousand Pesos (P500,000.00) or imprisonment of not less than one (1) year but not more than six (6) years, or both at the discretion of the court.

b. The officials directly involved shall be liable for violations committed by corporations, organizations or similar entities.

- d. Community service time in terms of human rights education to the perpetrator and exposure to the plight of the victims shall be additionally imposed at the discretion of the court.

SECTION 7. 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.

SECTION 8. Repealing clause. – All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 9. Effectivity. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,