

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 4414



Introduced by BAYAN MUNA Rep. CARLOS ISAGANI T. ZARATE

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

EXPLANATORY NOTE

The 1987 Constitution declares that "the State values the dignity of every human person and guarantees full respect for human rights" (Article 2, Section 11, 1987 Constitution). It also imposes on the State the duty to ensure the fundamental equality before the law of women and men (Article 2, Section 14).

The equal protection clause in the Bill of Rights logically requires that laws are implemented and applied 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.

The Philippines is also a signatory to international agreements on the respect for human rights of all persons regardless of any condition, including sex or sexual orientation. These international instruments have consistently been interpreted by international institutions, such as the United Nations Human Rights Committee (UNHRC) and the UN Committee on Economic, Social and Cultural Rights, to include protection against discrimination on the basis of sexual orientation.

The UNHRC has 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 International Covenant on Economic, Social and Cultural Rights (ICESCR) to include sexual orientation in the Covenant's non-discrimination provisions.

The present and future realities existing in the country should not be left behind by law. The noble intentions of numerous national laws and international agreements are still wanting with respect to our compatriot lesbians, gays, bisexuals and transgenders (LGBTs). They continue to be discriminated by society at large, primarily because of misconceptions and systemic State ignorance. LGBTs often find it difficult to exercise their rights as persons, laborers, professionals, and ordinary citizens.

Prejudicial practices and policies – mostly unstated and unwritten – based on sexual orientation and gender identity severely limit the exercise and enjoyment of the basic rights and fundamental freedoms in schools, workplaces, commercial establishments, the civil service, even the security services.

LGBT students are denied admission or expelled from schools due to their sexual orientation or gender identity. Companies block the promotion and stymie the career advancement of gay or lesbian employees due to the deeply embedded notion that homosexuality denotes weakness. Laws such as the current anti-vagrancy law are also abused by the law enforcement agencies to harass gay men.

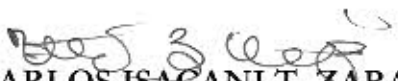
It is therefore imperative to define and penalize practices that discriminate against LGBTs. It should be noted that the list herein is not exhaustive as it focuses only on the most blatant instances of discrimination. Instances of discrimination of similar nature should be deemed included among the prohibited practices by reasonable analogy.

LGBTs do not want nor claim additional “special” or “additional rights.” This bill aims to forward the observance of the same rights as those of heterosexual persons that are denied - either by current laws or practices - basic civil, political, social and economic rights.

This bill was first filed in 2010 during the 15th Congress by Bayan Muna Partylist Reps. Teodoro Casiño and Neri Colmenares. It was refiled in the 16th Congress by Bayan Muna Partylist Reps. Neri Colmenares and Carlos Isagani Zarate.

In view of the need to remedy the long-standing discrimination against LGBTs in Philippine society, the early passage of this bill is earnestly sought in the 17th Congress.

Approved,


Rep. CARLOS ISAGANI T. ZARATE
Bayan Muna Party-list

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

SECTION 1. Title. – This Act shall be known as the “**Anti-Discrimination Act of 2016.**”

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 pertaining to discriminatory practices based on sex or sexual orientation, such as the United Nations Universal Declaration on Human Rights, the Convention on the Elimination of all forms of Discrimination Against Women, particularly General Recommendation No. 28 on non-discrimination based on sexual orientation and gender identity, the 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.

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 be defined as follows:

a. Sexual Orientation denotes 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 behavior since this refers to feelings and self-concept. Persons may or may not express their sexual orientation in their behaviors.

b. Gender Identity denotes the personal sense of identity as characterized, among others, by manners 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. 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;

This prohibition on the basis of sexual orientation and gender identity shall also include the contracting and engaging of services of juridical persons.

(c) Refuse admission or expel a person from educational institutions solely on the basis of sexual orientation and gender identity;

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 constituencies;

(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, or other similar 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. *Provided*, That the act 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 constituencies;

(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. In 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 a 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) but not to exceed Five Hundred Thousand Pesos (P500,000) 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.

(c) 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 two (2) newspapers of general circulation.

Approved,