



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

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 865

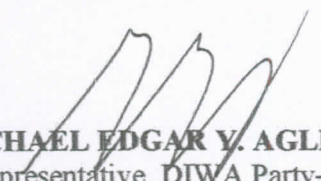


Introduced by **DIWA Party-list Representative Hon. Michael Edgar Y. Aglipay**

EXPLANATORY NOTE

Sex, sexual orientation and gender identity are characteristics of human beings that are frequently the cause of discriminatory practices, even when such characteristics are inherently private and do not impinge upon the rights of any other people. The role of the State in this instance is not to police morality or cultural norms -- instead, the role of the State, particularly in a democratic republic, is to protect its citizens, all of its citizens, particularly those who are most vulnerable to abuse, and guarantee to all equal access to their rights under the law.

While the mandate of many of those in government comes from the voice of the majority, it is imperative that the government pay particular attention to those who are the minorities, those who are different, because to be different is often to be vulnerable, to be forced to deal with situations and circumstances that refuse to take those differences into account. The Philippine government must be a government that safeguards the interests and well-being of all of its citizens, not just the majority, not just the mainstream, in a manner that acknowledges and advances our common humanity and dignity. Equality and non-discrimination before the law is essential if the laws of a State are to have any worth at all, if these exercises of power are to be tools of good, rather than arbitrary and oppressive. This proposed bill, based on the consolidated SOGIE Equality Act (House Bill No. 4982) of the 17th Congress, intends to help guarantee such equality, by codifying and strengthening the stand of the State against any discrimination against its citizens based on sex, sexual orientation or gender identity.


MICHAEL EDGAR Y. AGLIPAY
Representative, DIWA Party-list



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AN ACT
PROHIBITING 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 Republic of the Philippines in Congress assembled:

SECTION 1. Title. - This Act shall be known as the "SOGIE Equality 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 the Equal Protection Clause and the Bill of Rights provisions of the Philippine Constitution, and international and domestic laws to respect, protect, and fulfill rights and dignity of every individual.

Toward this end, the State shall exert efforts to address all forms of discrimination, marginalization and violence on the basis of sexual orientation or gender identity or expression, 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. In the enforcement of this Act, all due respect shall be accorded to the fundamental right of parents in the upbringing of their children in accordance with their convictions. In all matters, the best interest of children shall be paramount.

SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall be defined as follows:

(a) *Child* refers to a person below eighteen (18) years of age or older but who is incapable of taking care of oneself as defined under Republic Act No. 7610, as amended;

(b) *Discrimination* refers to any distinction, exclusion, restriction, or preference which is based on any ground such as sex, sexual orientation, gender identity or expression, and which has the purpose or effect of nullifying or impairing the recognition, access to, enjoyment, or exercise by all persons of an equal footing of all rights and freedoms. The actual sex, sexual orientation, or gender identity or expression of the person subjected to discrimination shall not be relevant for the purpose of determining whether an act of discrimination has been committed;

(c) *Gender expression* refers to the way a person communicates gender identity to other through behavior, clothing, hairstyles, communication or speech pattern, or body characteristics;

(d) *Gender Identity*" refers to 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, in which case this person is considered transgender;

(e) *Hate Crimes* refer to criminal offense committed against a person or a group of persons, or against such targeted person's or group's honor or property, motivated in whole or in part by the offender's bias against gender, sexual orientation, gender identity or expression;

(f) *LGBT Community* refers to the collective of persons who are male and female homosexuals (gays and lesbians, respectively), bisexual, and transgender;

(g) *Marginalization* refers to a condition where a whole category of people is excluded from useful and meaningful participation in political, economic, social, and cultural life;

(h) *Sex* refers to male or female or intersex. Intersex refers to people born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies, all of which are natural bodily variations along a spectrum;

(i) *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) or can refer to the absence of sexual attraction (asexual orientation); and

(j) *Stigma* refers to the dynamic devaluation and dehumanization of an individual in the eyes of the others, which may be based on attributes that are arbitrarily defined by others as discreditable or unworthy, and which result in discrimination when acted upon.

SEC. 4. Discriminatory Practices. - It shall be unlawful for any person, natural or juridical, to engage in discrimination as defined in this Act, which shall include:

(a) Denying access to public services to any person on the basis of sexual orientation or gender identity or expression;

(b) 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 or 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 and skills training in both the private 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;

(c) Refusing admission or expelling a person from any educational or training institution on the basis of sexual orientation, gender identity or expression, including discriminating against a student or trainee due to the sexual orientation or gender identity or expression of the student's parents or guardian; *Provided, However* That the right of educational and training institutions to determine the academic qualifications of their students or trainees shall be duly upheld;

(d) Imposing disciplinary sanctions, penalties harsher than customary or similar punishments, requirements, restrictions, or prohibitions that infringe on the rights of 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 guardian;

(e) Refusing or revoking 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;

(f) Denying 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 or expression;

(g) Denying an application for or revoke a professional license 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 or expression;

(h) Denying a person access to or the use of establishments, facilities, utilities or services, including housing, open to the general public on the basis of sex, sexual orientation or gender identity or expression; *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 further*, That establishments will make available the existing toilets with facilities designated for persons with disabilities also as gender neutral toilets: *Provided finally*, That this prohibition covers acts of discrimination against juridical persons solely on the basis of sexual orientation or gender identity or expression of their members or their target constituencies;

(i) Subjecting or forcing any person to undertake any medical or psychological examination to determine or alter, or both, the person's sexual orientation or gender identity or expression 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;

(j) Harassment, coercion, or threats committed by members of institutions involved in the enforcement of law and the protection of rights of any person on the basis of his or her sex, sexual orientation or gender identity or expression. Among other cases, harassment occurs when a person is arrested or otherwise placed in the custody and subjected to 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 sex, sexual orientation or gender identity or expression of their members, stockholders, benefactors, clients, or patrons is likewise covered by this provision;

(k) Publishing information intended to "out" or reveal the sex, sexual orientation or gender identity of persons without their consent, when such has not been made known by the person/s concerned, and has been made with malicious intent or is primarily motivated by a desire for commercial profit;

(l) Engaging in public speech, except religious speech meant to shame, insult, vilify, or which tends to incite or normalize the commission of discriminatory practices against LGBTs, and which acts or practices in turn, intimidate them or result in the loss of their self-esteem;

(m) Subjecting persons or groups of persons to harassment generally defined as such unwanted conduct, pattern of conduct, act, or series of acts which tend to annoy, insult, bully, demean, offend, threaten, intimidate, alarm, or create a hostile or emotionally distressing environment, or put them in fear of their safety; and which behavior is motivated in whole or in part by the offender's bias, belief, or perception regarding the offended party's gender, sexual orientation, gender identity or expression, regardless of whether the belief or perception is

correct. Such prohibited act may include physical assault, stalking, or making derogatory comments, slurs or lewd propositions, and may be conducted through any form of medium including, but not limited to, visual representation, broadcast communication, correspondence or communication through mail or any telecommunication device, or through the internet or cyberspace.

(n) Subjecting any person to gender profiling or to any investigatory activities, which include unnecessary, unjustified, illegal, or degrading searches to determine whether an individual is engaged in an activity presumed to be unlawful, immoral, or socially unacceptable; and (2) recording and analyzing a person's psychological and behavioral characteristics to make generalization about a person's sexuality or to assist in identifying a particular subgroup of people's sexual orientation or gender identity;

(o) Preventing a child under parental authority, custody, or guardianship from exhibiting or expressing one's sexual orientation or gender identity; or manifesting rejection of such child's sexual orientation or gender identity or expression by inflicting or threatening to inflict bodily or physical harm against the child or by causing mental or emotional suffering of the child through intimidation, harassment, public ridicule or humiliation, repeated verbal abuse, or other similar means or, in general commit any act or omission prejudicial to the welfare and interest of the child as a result of the bias against the sexual orientation or gender identity of the child; and

(p) Subjecting a person to any other analogous acts that shall have the effect or purpose of impairing or nullifying the enjoyment, recognition, or exercise of a person's rights and freedoms.

SEC. 5. Privacy Rights. – No person shall be burdened, prejudiced, or prosecuted by reason of the exercise of the right to personal privacy.

SEC 6. 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 or causing unreasonable delay to perform to perform such a duty without a valid ground shall constitute gross negligence on the part of the official who shall suffer the appropriate penalty under civil service laws, rules and regulations.

SEC. 7. Penalties. - A person who commits any discriminatory practice described in the Section 4 of this Act shall, upon conviction, be penalized with a fine of not less than One Hundred Thousand Pesos (Php100,000.00) but not more than Five Hundred Thousand Pesos (Php500,000.00) or imprisonment of not less than one (1) year but not more than six (6) years, or both, at the discretion of the court. 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 of human rights education, to become familiar with and be exposed to the plight of the victims.

If the violation of offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this section shall be imposed upon the

directors, officers, employees or other officials or persons therein responsible for the offense without prejudice to the civil liabilities arising from the criminal offense.

If a grave offense motivated by bias, prejudice, or hatred against the sexual orientation or gender identity or expression is committed, such shall be meted the corresponding maximum penalties.

Any action arising from the violation of the provision 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 or such other cases for violation of other applicable penal laws. Further, nothing in this Act shall be construed as giving authority to the state to unduly interfere with the legitimate exercise by the parents or the guardians of their right to discipline a child under their parental authority, custody or guardianship.

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

SEC. 8. Special Aggravating Circumstance. - A person who commits any of the crimes in the Revised Penal Code or any special law and who is proven to have committed the same motivated by bias, prejudice, or hate based on sex, sexual orientation, or gender identity or expression, shall suffer the maximum penalty imposed by the Code or the relevant special law for such prohibited act.

SEC. 9. Redress Mechanism for SOGIE-related Cases. -

(a) Inclusion of SOGIE Concerns in All Police Station Activities and Services. - The Women and Children's Desk now existing in all police stations, shall be renamed as Women, Children and LGBTQ++ Protection Desk, which 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 of 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.

(b) Role of the Commission on Human Rights (CHR) - The CHR shall investigate and recommend the filing of a complaint against any person violating this Act. If the CHR has reasonable cause to believe that any person or group of persons is committing acts penalized in Section 4 of this Act, the CHR shall recommend a legal action in the appropriate prosecutor's office or court.

The CHR shall also direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required under this Act, and recommend the revocation of license, removal from office or

employment, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith. Refusal by any officer or employee who is at fault, or who neglects to perform an act or discharge a duty required under this Act shall be a ground for disciplinary action against said officer.

The CHR shall also document cases of discrimination on the basis of sexual orientation or gender identity or expression and shall include these documented cases in its annual human rights report. The CHR shall actively provide recommendations to different branches of government on how to address and eliminate discrimination on the basis of sexual orientation or gender identity or expression.

SEC. 10. Government Programs and Policies. – The State shall pursue initiatives and programs that seek to establish and maintain an environment free of stigma and discrimination. It shall direct the machinery and resources of the State to promote nondiscrimination and shall encourage other sectors of the society to engage and participate in these efforts. It shall ensure the implementation of the following programs:

(a) **Social Protection Programs** – The national government shall ensure that communities vulnerable to stigma and discrimination on the basis of sexual orientation or gender identity or expression are integrated into government-run social protection programs; and

(b) **Diversity Programs and Trainings** – All government agencies, including government-owned and –controlled corporations, local government units (LGUs), private companies, public and private education institutions, and other entities shall establish diversity programs and shall endeavor to provide or conduct trainings for their staff, employees, students and trainees and constituents on human rights, gender sensitivity and awareness, and sensitization on the issue of violence and abuse to ensure that human rights violations and violence on the basis of sexual orientation or gender identity or expression are prevented. Such institutions may incorporate these activities into existing gender sensitivity and development training programs or school curricula. Finally, the above-listed agencies, companies and institutions shall create an internal redress mechanism to address cases of discrimination and develop administrative remedies or sanction for such cases.

SEC. 11. Empowering Portrayal of LGBT Persons in Media. – The positive and empowering portrayal of LGBT by media shall be encouraged to counter existing stereotypes and misconceptions that often lead to discriminatory practices. Towards this end, incentives and awards shall be provided to programs that defend the human rights of LGBT and contribute to the empowerment of the LGBT community and its members.

SEC. 12. SOGIE Equality Oversight Committee. – For the effective implementation of this Act, there shall be created a Congressional Oversight Committee, hereinafter referred to as the SOGIE Equality Oversight Committee, within sixty (60) days after the enactment of this Act. The SOGIE Equality Oversight Committee shall be composed of five (5) members each from the Senate and the House of Representatives, which shall include the Chairpersons of the Senate Committees on Women, Children, Family Relations and Gender Equality, and of

Justice and Human Rights, and the Chairpersons of the House of Representatives Committee on Women and Gender Equality, and of Human Rights. The members from the Senate and the House of Representatives shall be appointed by the Senate President and the Speaker, respectively, with at least one (1) member representing the minority.

The SOGIE Equality Oversight Committee shall be chaired jointly by the chairpersons of the Senate Committee on Women, Children, Family Relations and Gender Equality and the House Committee on Women and Gender Equality. The position of Vice Chairperson of the SOGIE Equality Oversight Committee shall be jointly held by the Senate Committee on Justice and Human Rights and the House Committee on Human Rights. The Secretariat of the SOGIE Equality Oversight Committee shall come from the Secretariat personnel of the Senate and the House of Representatives committee concerned.

The SOGIE Equality Oversight Committee shall monitor the compliance of public institutions to the provisions of this Act. Within three (3) years after the enactment of this Act, the SOGIE Equality Oversight Committee shall conduct an audit of national and local policies that discriminate on the basis of sexual orientation or gender identity and expression, and shall submit a report to the Congress, the Office of the President and the Supreme Court on this subject.

The SOGIE Equality Oversight Committee shall cease to exist six (6) years after its organization.

SEC. 13. Implementing Rules and Regulations. – Within sixty (60) days from the effectivity of this Act, the CHR, the Department of Justice (DOJ), the Civil Service Commission (CSC), the Philippine National Police (PNP), the Department of National Defense (DND), the National Youth Commission (NYC), the Philippine Commission on Women (PCW), the Commission on Population (POPCOM), the Department of Labor and Employment (DOLE), the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), the Department of Health (DOH), and at least three (3) civil society organizations (CSOs) with proven expertise and track record on SOGIE concerns, shall promulgate the necessary rules and regulations for the effective implementation of the provisions of this Act.

SEC. 14. 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. 15. Repealing clause. - All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 16. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,