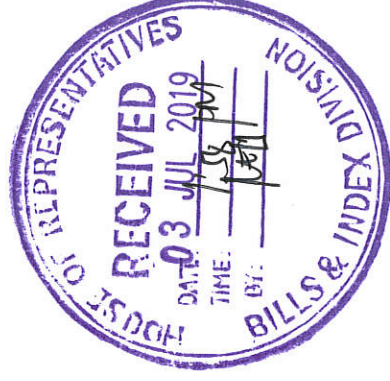




Republic of the Philippines
HOUSE OF THE REPRESENTATIVES
Constitution Hills, Quezon City



EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1359

Introduced by
REPRESENTATIVE BERNADETTE HERRERA-DY

**AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL
ORIENTATION OR GENDER IDENTITY OR EXPRESSION (SOGIE) AND
PROVIDING PENALTIES THEREFOR**

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." (3.M. Tuazon 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

1 has also interpreted Article 2 of the ICESCR to include sexual orientation in the
2 Covenant's non-discrimination provisions.

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

9
10 In schools, workplaces, commercial establishments, public service, police and the
11 military, prejudicial practices and policies based on sexual orientation and gender
12 identity limit the exercise and enjoyment of basic human rights and fundamental
13 freedoms. LGBT students, for instance, are refused admission or expelled from
14 schools due to their sexual orientation or gender identity. Companies block the
15 promotion of LGBT employees due to the deeply embedded notion that anything other
16 than heterosexuality is an indication of weakness. Laws such as the anti-vagrancy
17 law are also abused by law enforcement agencies to harass gay men. There is,
18 therefore, an urgent need to define and penalize practices that unjustly
19 discriminate against LGBTs.

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



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AN ACT
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IDENTITY OR EXPRESSION (SOGIE) AND PROVIDING PENALTIES THEREFOR

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

SECTION 1. Short 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 or expression, 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 the rights and dignity of every individual.

Towards 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 religious convictions. In all matters, the best interest of children shall be paramount.

SEC. 3. Definition of Terms. – As used in this Act:

- 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 on 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;
- Gender Expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, communication or speech pattern, or body characteristics;
- 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, in which case this person is considered transgender;
- Hate Crimes* refer to criminal offenses 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;
- LGBT Community* refers to the collective of persons who are male and female homosexuals (gays and lesbians, respectively), bisexual, and transgender;
- 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;
- Sex refers to male, female, or intersex. Intersex refers to people born with the 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;
- Sexual Orientation* refers to the direction of emotional, sexual attraction, or conduct 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 to the absence of sexual attraction (asexual orientation); and
- Stigma* refers to the dynamic devaluation and dehumanization of an individual in the eyes of 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, including military service, to any person on the basis of sexual orientation or gender identity or expression;
- (b) Including sexual orientation or gender identity or expression, 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, access to 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 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;
- (c) Refusing admission or expelling a person from any educational or training institution on the basis of sexual orientation or 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 the students on the basis of sexual orientation or 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;
- (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 or expression 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 revoking a professional or other similar kind of license, clearance, certification on, or any other similar document, except marriage license, 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 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* this prohibition covers acts of discrimination against juridical persons solely on the basis of the sexual orientation or gender identity or expression of their members or of 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 sexual orientation or gender identity or expression. Among other cases, prohibited acts under this section include arresting or placing under custody, and subjecting a person to extortion, physical, verbal abuse, or sexual abuse, regardless of whether such arrest has legal or factual basis. Harassment, coercion, or threat of juridical persons on the basis of the 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 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 (i) unnecessary, unjustified, illegal, or degrading searches to determine whether an individual is engaged in an activity presumed to be unlawful, immoral, or socially unacceptable; (ii) recording and analyzing a person's psychological and behavioral characteristics to make generalizations 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;

(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 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 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 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 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 or expression is committed, such shall be meted the corresponding maximum penalties.

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 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 mechanisms for SOGIE-related cases

A. Inclusion of SOGIE Concerns in All Police Station Activities and Services. – The Women and Children’s Desks now existing in all police stations shall be renamed as Women, Children and Gender Rights 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 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.

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 without just cause to act on the recommendation of the CHR to revoke the license, remove, suspend, demote, fine, censure, or prosecute an 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 Commission 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 non-discrimination 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.

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 Committees 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 Chairpersons of the Senate Committee on Justice and Human Rights and the House Committee on Human Rights. The Secretariat of the SOGIE Equality Committee shall come from the Secretariat personnel of the Senate and the House of Representatives committees 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 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, Department of Justice (DOJ), Civil Service Commission (CSC), Philippine National Police (PNP), Department of National Defense (DND), National Youth Commission (NYC), Philippine Commission on Women (PCW), Commission on Population (POPCOM), Department of Labor and Employment (DOLE), Department of Education (DepEd), Commission on Higher Education (CHED), Technical Education and Skills Development Authority (TESDA), 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,