

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

EIGHTEENTH CONGRESS
First Regular Session

6294
HOUSE BILL No. _____



Introduced by
GABRIELA WOMEN'S PARTY Representative ARLENE D. BROSAS,
ACT TEACHERS' PARTYLIST Representative FRANCE L. CASTRO, and
KABATAAN PARTYLIST Representative SARAH JANE I. ELAGO

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

EXPLANATORY NOTE

The State's commitment to upholding the dignity and equality of all persons is enshrined in the 1987 Constitution and in several international covenants it is signatory to, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).

It is declared in the constitution 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 also 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 agreements 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.

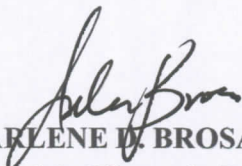
The UNHRC has interpreted Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which obliges States to “guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national 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.

While the protection of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) is promised on such papers, the Philippines is no stranger to notorious cases of hate crimes and abuse against the community. From the murder of transgender woman Jennifer Laude by a US Marine on October 11, 2014 to the illegal detainment of transgender woman Gretchen Diez for entering and supposedly using the women’s restroom on August 13, 2019, it is evident that the current society still is not accepting of the LGBTQ+ community.

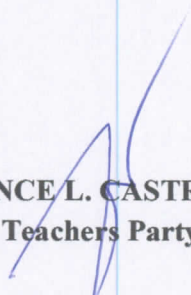
Such cases have catalyzed discussion and action toward advancing the rights of the LGBTQ+. In fact, workplaces and local governments are starting to establish their respective anti-discrimination policies. In the local government scene, Quezon City has enacted a gender-fair ordinance on November 28, 2019. Prohibited acts include discrimination against the LGBTQ+ in the workplace, educational institutions, and in delivery of goods, services, and accommodation.

However, it does not end with just private and local initiatives. The LGBTQ+ community in the Philippines lacks anti-discriminatory legislation and the legal recognition of transgender individuals available in many other countries. The bill aims to ensure that all people, regardless of their sexual orientation, gender identity, and gender expression (SOGIE) are able to exercise their rights to life, education, employment, and expression without fear of reprisal or discrimination. This bill aims that there will no more be members of the LGBTQ+ deprived of basic rights, such as the right to work, the right to education, the right to access to health services, facilities, and establishments, and others, simply because of their SOGIE. Discrimination has been a reality in the lives of the LGBTQ+. While some might not have been discriminated against, or might not have felt stigmatized, it does not negate the lived experiences of others who have. Its usefulness lies in its inclusiveness.

In view of the need to remedy the long-standing discrimination against LGBTQ+ in Philippine society, the early passage of this bill is earnestly sought in the 18th Congress.



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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 “**SOGIE Equality Act.**”

SECTION 2. Declaration of Policy. – The State recognizes the fundamental rights of every person regardless of sex, age, class, status, ethnicity, color, religious and political beliefs, sexual orientation, gender identity, and 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, gender identity, and expression, and to promote human dignity as enshrined in the United Nations Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, particularly the General Recommendation No. 28, 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 conventions to which the Philippines is a signatory.

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

- a. Bisexual* refers to a person who has the capacity to form enduring physical, romantic, and/or emotional attractions to those of the same gender or to those of another gender;
- b. 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. 9344, as amended;
- c. Discrimination* refers to any distinction, exclusion, restriction, or preference which is based on any ground such as sex, sexual orientation, gender identity, and 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, gender identity, and expression of the person subjected to discrimination shall not be relevant for the purpose of determining whether an act of discrimination has been committed;
- d. Gay* refers to a person who identifies himself as a man and whose enduring physical, romantic, and/or emotional attractions are to people who also identifies themselves as men;
- e. Gender Expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, communication or speech pattern, or body characteristics;
- f. 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 which is the same as that of their assigned sex at birth, in which case this person is considered *cisgender*. A person may have a male or female identity which is opposite to that of their assigned sex at birth, in which case this person is considered *transgender*;
- g. 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 sexual orientation, gender identity, and expression;
- h. Lesbian* refers to a person who identifies herself as a woman and whose enduring physical, romantic, and/or emotional attractions are to people who also identify themselves as women;

- i. 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;
- j. 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;
- k. 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
- l. 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.

SECTION 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, gender identity, and expression;
- b) Including sexual orientation, gender identity, and 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, gender identity, and expression, including discriminating against a student or trainee due to the sexual orientation, gender identity, and expression of their 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, gender identity, and expression, including discriminating against a student or trainee due to the sexual orientation, gender identity, and expression of their 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, gender identity, and 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, gender identity, and expression;
- g) Denying an application for or revoking a professional or other similar kind of license, clearance, certification on, or any other similar document issued by the government due to the sexual orientation, gender identity, and 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, gender identity, and 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, gender identity, and 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, gender identity, and expression without the expressed approval of the person involved;
- 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, gender identity, and 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, gender identity, and 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, gender identity, and expression 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 the LGBT, 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 sexual orientation, gender identity, and 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, gender identity, and expression;
- o) Preventing a child under parental authority, custody, or guardianship from exhibiting or expressing one's sexual orientation, gender identity, and expression; or manifesting rejection of such child's sexual orientation, gender identity, and 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, gender identity, and expression 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.

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

SECTION 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.

SECTION 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 (₱100,000) but not more than Five Hundred Thousand Pesos (₱500,000) 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, familiarization with, and exposure to the plight of the victims.

If a graver offense motivated by bias, prejudice, or hatred against sexual orientation, gender identity, and 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.

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

SECTION 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 sexual orientation, gender identity, and expression, shall suffer the maximum penalty imposed by the Code or the relevant special law for such prohibited act.

SECTION 9. 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, gender identity, and 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, gender identity, and 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.

SECTION 10. Empowering portrayal of LGBT persons in Media. – The positive and empowering portrayal of the LGBT by media shall be encouraged to counter existing stereotypes and misconceptions that often lead to discriminatory practices.

SECTION 11. 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, 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.

SECTION 12. Implementing Rules and Regulations. – Within sixty (60) days from the effectivity of this Act, the Commission on Human Rights (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.

SECTION 13. 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 14. Repealing Clause. – All laws, decrees, orders, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

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

Approved,