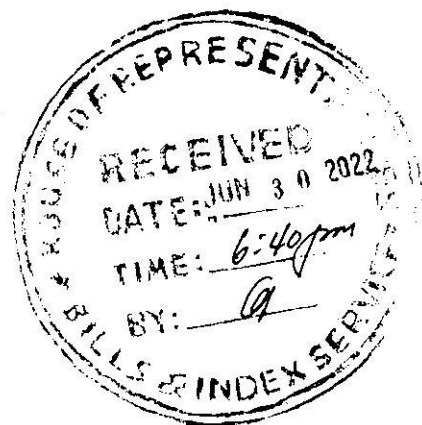




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

House Bill No. 532



Introduced by Representative **GERALDINE B. ROMAN**

EXPLANATORY NOTE

Art. II, Sec. 18 of the 1987 Philippine Constitution provides that: "The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare."

Indeed, the State is not remiss in its mandate to comply with this duty. The catena of labor laws existing in this country evinces the commitment of the government to safeguard the rights of the common worker. However, even with all the current laws in place, there persists a problem in the labor sector which the employees are often left with no recourse – discrimination.

It is a given that employees are never on equal footing with their employers. Complemented by the labor surplus in the country and lack of legislation, the employees are often subjected to discrimination in the guise of "sound business judgment." Employees are engaged taking into account the criteria of race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin when none of said criteria are scientifically proven nor even logically related to the job applied for. Other forms of discrimination include use of this set of criteria to fix rates of pay or even for purposes of promotion.

This representation sees such practice as inhumane, abhorrent and appalling. It undermines human dignity which this State has vowed to uphold.

As such, this bill will aim to curb these practices by the establishment of an Equal Employment Opportunity Commission which shall be tasked to resolve cases of unlawful employment practices or discrimination. The Commission shall be the arm of the State which protects the oppressed and strikes the oppressor.

In view of the foregoing and with the end view of attaining social justice in mind, passage of this bill is earnestly sought.



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AN ACT
CREATING AN EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
DEFINING ITS POWERS AND COMPOSITION, AND APPROPRIATING FUNDS
THEREFORE

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

ARTICLE I
GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “Equal Employment Opportunity Act of 2018.”

Sec. 2. *Declaration of Policy* – It is hereby declared the policy of the State to afford protection to labor from all kinds of discriminatory and unlawful employment practices. The State values human dignity of every worker, regardless of his race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin. However, in reality, our workers suffer discrimination, alienation or humiliation from employers

Towards this end, the State shall endeavor to champion the rights of its workers thru the creation of the Equal Employment Opportunity Commission which shall be an independent quasi-judicial body tasked to resolve issues of unlawful employment practices.

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

- a) **Commission** refers to the Equal Employment Opportunity Commission or any of its divisions, as the case maybe;

- b) **Department** refers to the Department of Labor and Employment;
- c) **Respondent** refers to the employer, job contractor, labor organization or an employer with apprenticeship or learnership program who is charged of an unlawful employment practice.

ARTICLE II UNLAWFUL EMPLOYMENT PRACTICES

Sec. 4. *Employer Practices.* – It shall be unlawful for an employer:

- (a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin; or
- (b) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin.

Sec. 5. *Job Contractor Practices.* – It shall be unlawful for a Job Contractor to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin.

It shall likewise be unlawful to classify or refer for employment any individual on the basis of his race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin.

Sec. 6. *Labor Organization Practices.* – It shall be unlawful for a labor organization:

- (a) To exclude or expel from membership, or otherwise to discriminate against, any individual on the basis of his race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin;
- (b) To limit, segregate or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise

adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin; or

- (c) To cause or attempt to cause an employer to discriminate against an individual in violation of this Section.

Sec. 7. *Training Programs.* – It shall be unlawful employment practice for any employer, labor organization or those organizations with apprenticeship or learnership programs, including on-the-job training programs to discriminate against any individual because of race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin.

Sec. 8. *Exceptions.* – Notwithstanding any other provision of this Article, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to bona fide seniority or merit system, or system which measures earnings by quantity or quality of production or to employees who work in different locations; Provided, such differences are not the result of an intention to discriminate because of race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin.

Further, it shall not be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designated, intended or used to discriminate because of race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin.

Sec. 9. *Burden of Proof.* – The burden of proof shall lie with the complaining party to demonstrate that the respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, disability, sex, sexual orientation, gender identity or expression, or national origin and that the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.

Sec. 10. *Penalties for Violations.* – Any person or persons or employers, job contractors, labor organizations or employers with apprenticeship or learnership program responsible for committing the unlawful employment practice shall suffer:

- a) Imprisonment of not less than three (3) months but not more than six (6) months or a fine of not less than Two Hundred Thousand Pesos (Php200,000.00) but not more than Four Hundred Thousand Pesos (Php400,000.00), or both, for first time offenders;
- b) Imprisonment of not less than six (6) months but not more than one (1) year or a fine of not less than Four Hundred Thousand Pesos (Php400,000.00) but not more than Six Hundred Thousand Pesos (Php600,000.00), or both, for second time offenders; or
- c) Imprisonment of not less than one (1) year but not more than three (3) years or a fine of not less than Six Hundred Thousand Pesos (Php600,000.00) but not more than One Million Pesos (Php1,000,000.00), or both, for third time offenders with penalty of closure in all instances;

ARTICLE III

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec. 11. *Equal Employment Opportunity Commission.* – There shall be an Equal Employment Opportunity Commission which shall be attached to the Department of Labor and Employment solely for program and policy coordination, composed of a Chairman and fourteen (14) members. The Commission shall have an official seal which shall be judicially noticed.

Five (5) members each shall be chosen only from among the nominees of the workers and employers organizations, respectively. The Chairman and the four (4) remaining members shall come from the public sector.

Upon assumption into office, the members nominated by the workers and employers organization shall divest themselves of any affiliation with or interest in the federation or association which they belong.

The Commission may sit *en banc* or in five (5) divisions, each composed of three (3) members. The Commission shall sit *en banc* only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches and formulating policies affecting its administration and operations. The Commission shall exercise its adjudicatory and all other powers, functions and duties through its divisions. Of the five (5) divisions, the first, second, and third division shall handle cases coming from the National Capital Region and other parts of Luzon; and the fourth and fifth division shall handle cases from the Visayas and Mindanao, respectively: Provided, That the Commission sitting *en banc* may, on temporary or emergency basis,

allow cases within the jurisdiction of any division to be heard and decided by any other division whose docket allows the additional workload and such transfer will not expose litigants to unnecessary additional expenses. The divisions of the Commission shall have exclusive appellate jurisdiction over cases within their respective territorial jurisdiction.

The concurrence of two (2) Commissioners of a division shall be necessary for the pronouncement of a judgment or resolution. Whenever the required number of membership in a decision is not complete and the concurrence of two (2) Commissioners to arrive at a judgment or resolution cannot be obtained, the Chairman shall designate such number of additional Commissioners from the other divisions as may be necessary.

The conclusion of a division on any case submitted to it for decision shall be reached in consultation before the case is assigned to a member for the writing of the opinion. It shall be mandatory for the division to meet for purposes of the consultation ordained therein. A certification to this effect signed by the Presiding Commissioner shall be issued, and a copy thereof attached to the record of the case and served upon the parties.

The Chairman shall be the Presiding Commissioner of the first division, and the four (4) other members from the public sector shall be the Presiding Commissioners of the second, third, fourth and fifth divisions, respectively. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the second division shall be the Acting Chairman.

The Chairman, aided by the Executive Clerk of the Commission, shall have administrative supervision over the Commission and its regional branches and all its personnel.

The Commission, when sitting *en banc*, shall be assisted by the same Executive Clerk, and, when acting thru its Divisions, by said Executive Clerk for its first division and four (4) other Deputy Executive Clerks for the second, third, fourth and fifth divisions, respectively, in the performance of such similar or equivalent functions and duties as are discharged by the Clerk of Court and Deputy Clerk of Courts of the Court of Appeals.

The Commission and its divisions shall be assisted by Commission Attorneys in its appellate and adjudicatory functions whose term shall be coterminous with the Commissioners with whom they are assigned. The Commission Attorneys shall be members of the Philippine Bar with at least one (1) year experience or exposure in the field of labor-management relations. They shall receive annual salaries and shall be entitled to the same allowances and benefits as those falling under Salary Grade twenty-six (SG 26). There shall be as many Commission Attorneys as may be necessary for the effective and efficient

operations of the Commission but in no case more than three (3) assigned to the Office of the Chairman and each Commissioner.

Sec. 12. Headquarters, Branches and Provincial Extension Units. – The Commission and its first, second and third divisions shall have their main offices in Metropolitan Manila, and the fourth and fifth divisions in the cities of Cebu and Cagayan de Oro, respectively. The Commission shall establish as many regional branches as there are regional offices of the Department of Labor and Employment.

Sec. 13. Appointment and Qualifications. – The Chairman and other Commissioners shall be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least fifteen (15) years, with at least five (5) years experience or exposure in the field of labor-management relations and with known advocacy on equality.

The Chairman and other Commissioners shall hold office during good behavior until they reach the age of sixty-five (65), unless sooner removed for cause as provided by law or become incapacitated to discharge the duties of their public office; Provided, however, That the President of the Republic of the Philippines may extend the services of the Commissioners up to the maximum age of seventy (70) years upon the recommendation of the Commission *en banc*.

The Chairman, the Division Presiding Commissioners and other Commissioners shall all be appointed by the President. Appointment to any vacancy in a specific division shall only come from the nominees of the sector which nominated the predecessor.

The Chairman and the Commission shall appoint the staff and employees of the Commission, and its regional branches as the needs of the service may require, subject to Civil Service Law, rules and regulations, and upgrade their current salaries, benefits and other emoluments in accordance with law.

ARTICLE IV POWERS OF THE COMMISSION

Sec. 14. Power of the Commission to Prevent Unlawful Employment Practices. – The Commission is empowered to prevent any person from engaging in any unlawful employment practice as defined in Article II of this Act.

Sec. 15. Functions of the Commission. – The Commission shall exercise the following functions:

- a) To promulgate rules and regulations governing the hearing and disposition of cases before it and its regional branches, as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Code;

- b) To administer oath, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statements of account, agreements, company policies and others as may be material to a just determination of the matter under investigation;
- c) To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or private, adjourn its hearings to any time and place, direct parties to be joined or excluded from proceedings, correct, amend or waive any error, defect or irregularity whether in substance or form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable;
- d) To hold any person in contempt, directly or indirectly, and impose appropriate penalties in accordance with law;
- e) To enjoin or restrain any actual or threatened commission of any or all unlawful employment practice or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision rendered in favor of such party: Provided, that no temporary or permanent injunction shall be issued except after hearing the testimony of the witnesses, with opportunity for cross-examination, in support of the allegations made in the complaint under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:
 - a) That unlawful employment practices have been threatened and will be committed and will be continued unless restrained , but no injunction or temporary restraining order shall be issued on account of any threat of or unlawful employment practice, except against the person or persons, employer, association or organization making the threat or committing the unlawful employment practice;
 - b) That substantial and irreparable injury to the complainant will follow;

- c) That as to each item to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon the defendants by the granting of relief; and
- d) That complainant has no adequate remedy in law.

Sec. 16. *Issuance of notice; Complaint.* – Whenever a complaint is filed by or on behalf of a person claiming to be aggrieved, alleging that an employer, job contractor, labor organization or an employer with apprenticeship or learnership program, including on-the-job training, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge containing the date, place and circumstances of the alleged unlawful employment practice to the respondent and ordering the same to file an Answer within ten (10) days from receipt of the notice.

A complaint for unlawful employment practice shall be in writing, under oath or affirmation, and shall contain such information alleging with particularity the act or acts committed against the person of the complaining party. Evidence supporting the claims of the complainant, if any, shall be attached therein and made a part of the complaint.

Sec. 17. *Answer; Reply.* – The Answer, to be filed by the respondent, must contain all defenses available to him. A defense not raised in the Answer shall be tantamount to a waiver of raising said defense.

The Commission may require the complaining party to submit a Reply to the respondent's answer within ten (10) days from receipt of such order.

Sec. 18. *Judgment.* – Within sixty (60) days from receipt of Reply, the Commission shall render judgment which may either find the respondent guilty or not guilty of the unlawful employment practice act complained. The judgment must state its basis for the findings including the relevant laws and evidence considered. A Motion for Reconsideration may be filed by the aggrieved party within ten (10) days from receipt of judgment.

Sec. 19. *Injunctions and Other Reliefs.* – If the Commission finds that the respondent has intentionally engaged or is intentionally engaging in an unlawful employment practice as charged in the complaint, the Commission may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to:

- a) Hiring of employees;
- b) Reinstatement of employees, with back pay;
- c) Nullification of respondent's discriminatory policy;
- d) Award of damages and/or attorney's fees; or
- e) Any other equitable relief as the Commission may deem appropriate under the circumstances.

Sec. 20. Confidentiality of Proceedings. – It shall be unlawful for any person to make public any record of the proceeding, unless a judgment has already been rendered by the Commission.

Any person violating this provision may be made liable for contempt by the Commission and may be fined, imprisoned or both, in accordance with the internal rules of the Commission.

ARTICLE V FINAL PROVISIONS

Sec. 21. Appropriations. – The amount necessary for the initial implementation of this Act shall be charged against the current appropriation for the Department. Thereafter, the required budget for continued implementation of this Act shall be submitted to the Department of Budget and Management for inclusion in the General Appropriations Act.

Sec. 22. Repealing Clause. – All laws, presidential decrees or issuances, executive orders, letters of instruction, administrative orders, rules or regulation inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 23. Separability Clause. – If any provision of this Act is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in full force and effect.

Sec. 24. Effectivity. – This Act shall take effect fifteen (15) days after the publication in the Official Gazette or in a newspaper of general circulation.

Approved,