

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES
House Bill No. 3418

Introduced by Hon. Antonio B. Legarda Jr.

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

EXPLANATORY NOTE

The 1987 Constitution guarantees every Filipino equal protection of the laws and full protection of human rights. Corollary thereto, the Philippines is a signatory to core human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Yet despite all this, widespread and systematic human rights violations on the basis of sexual orientation, gender identity, or expression persist in the Philippines.

According to a United Nations Study, thirty percent of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people in the Philippines reported being harassed, bullied or discriminated against by others while at work because of their sexual orientation, gender identity, expression.¹ A report from the organization Human Rights Watch shows that many LGBTIQ students suffer from physical bullying, verbal harassment, sexual assault, and cyber-bullying in schools.² On the other hand, data from the Philippine LGBT Hate Crime Watch shows that 156 LGBTIQ have been murdered since 1996 and 17 of those are from 2012 alone.³ All this data reflects just how bad the situation is for members of the LGBTIQ community.

Thus, it is high time that the Philippines adopt an Anti-Discrimination Bill that will fully protect the rights of LGBTIQ members of our society. To date, several countries have national laws prohibiting discrimination based on sexual orientation which includes: Canada, Denmark, Finland, France, Iceland, Ireland, Israel, The Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, Thailand, Nepal, Sweden. In the US, several states also passed

¹ <https://www.undp.org/asia-pacific/press-releases/report-details-workplace-discrimination-faced-lgbti-people-china-philippines-and-thailand>

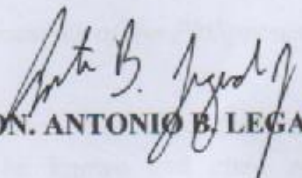
² <https://www.hrw.org/news/2017/06/21/philippines-lgbt-students-face-bullying-abuse>

³ <http://thephilippinelgbthatecrimewatch.blogspot.com/>

civil rights laws that include sexual orientation.⁴ In addition, Anti-Discrimination Ordinances that prohibit discrimination based on sexual orientation and gender identity have been enacted in nineteen localities in the country, namely: Barangays Bagbag, Lagro and Pansol in Quezon City, Angeles City in Pampanga, Antipolo City, Bacolod City in Negros Occidental, Batangas City in Batangas, Candon City in Ilocos Sur, Cebu City, Dagupan City in Pangasinan, Davao City, Mandaue City, Puerto Princesa, Quezon City, Vigan City in Ilocos Sur, Municipality of San Julian in Eastern Samar, Province of Agusan del Norte, Province of Batangas and Province of Cavite.⁵

Thus, this bill seeks to protect the welfare and well being of members of the LGBTIQ community by: (1) Criminalizing discriminatory practices committed against members of the LGBTIQ community; (2) Providing that Women and Children's desks in police stations cater to SOGIE concerns; (3) Gender sensitivity training for law enforcement personnel; and (4) Promote non-discrimination by enhancing social protection and diversity programs, as well as conducting information and educational campaigns.

In line with the policy adopted by its original proponent Senator Loren Legarda, this bill therefore likewise serves as a counter-part House Bill. It is for the reasons stated above that the passage of this measure is earnestly sought.


HON. ANTONIO B. LEGARDA JR.

⁴ <https://pcw.gov.ph/enacting-an-anti-discrimination-based-on-sexual-orientation-and-gender-identity-law/>

⁵ *ibid.*

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

Section 1. *Short Title.* – This Act shall be known and cited as the "*Anti-Discrimination Act of 2022.*"

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 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 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 of.

Sec. 3. *Definition of Terms.* – As used in this Act, the following terms shall be defined as follows:

- a. *Discrimination* – refers to any distinction, exclusion, restriction, or preference based on the ground sex, sexual orientation, gender identity or expression, hereinafter referred to as “SOGIE”, and 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. For purposes of this provision, the actual sex, sexual orientation, or gender identity of the person subjected to discrimination shall not be relevant for the purpose of determining to whether an act of discrimination has been committed.
- b. *Gender Expression* – refers to the outward manifestations of the cultural traits that enable a person to identify as male or female according to patterns that, at a particular moment in history, a given society defines as gender appropriate.
- c. *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.
- d. *Profiling* – refers to subjecting a person or group of persons to investigatory activities, which include unnecessary, unjustified, illegal, and degrading searches, or other investigatory activities, in determining whether an individual is engaged in an activity presumed to be unlawful, immoral or socially unacceptable.
- e. *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).
- f. *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. *Communities Vulnerable to Discrimination and Abuse on the Basis of SOGIE.*

– This Act seeks to protect individuals and communities that experience human rights violations on the basis of SOGIE, including, but not limited to, individuals and communities of diverse sexual orientation or gender identity or expression who are children, young, poor,

differently abled, of different ethnic background or cultural background, and of various religious beliefs.

Sec. 5. *Discriminatory Practices.* – It shall be unlawful for any person, natural or juridical, to:

- a. Promote and encourage stigma on the basis of SOGIE in the media, in educational textbooks, and other medium. Inciting violence and sexual abuse against any person or group on the basis of SOGIE is likewise prohibited;
- b. Include SOGIE, 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, 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 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 associations or organizations with lesbians, gays, bisexuals, transgenders, intersex, or queers (LGBTIQs) members or of associations or organizations advocating LGBTIQs rights;
- c. Refuse admission or expel a person from any educational or training institution on the basis of SOGIE: *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. Impose 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 SOGIE, including discriminating against a student or trainee due to the SOGIE of the student's parents or legal guardian;
- e. Refuse or revoke 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 SOGIE of their members or of their target constituencies;

- f. Deny a person access to public or private medical and other health services open to the general public, as well as access to public and private health insurance, including HMOs, on the basis of SOGIE;
- g. Deny an application for or revoke, on the basis of SOGIE, any government license, authority, clearance, permit, certification, or other similar documents necessary to exercise a profession, business, or any other legitimate calling;
- h. Deny a person, access to or the use of establishments, facilities, utilities or to services, including housing, open to the general public on the basis of SOGIE: *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 SOGIE of their members or of their target constituencies;
- i. Subject or force any person to undertake any medical or psychological examination to determine or alter the person's SOGIE 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. Subject any person, natural or juridical, to profiling, detention, or verbal or physical harassment on the basis of SOGIE. Profiling, detention, or verbal or physical harassment on the basis of SOGIE by members of law enforcement agencies, including the military, police, immigration, is likewise prohibited. Physical or verbal harassment based on SOGIE of persons in custody or detention of the police, including subjecting them to extortion, is also prohibited; and
- k. Subject a person to any other analogous acts that shall have the effect or purpose of impairing or nullifying the enjoyment, recognition, and exercise of a person's human rights and fundamental freedoms.

Sec. 6. *Administrative Sanctions.* – Willful refusal of a government official whose duty is to investigate, prosecute, or otherwise act on a complaint for a violation of this Act to perform such a duty without a valid ground shall constitute gross negligence on the part of the official and shall be subjected to pertinent administrative sanctions.

Sec. 7. Penalties. – Any person who commits any discriminatory practice described in Sec 5(a), 5(d), 5(e), 5(g), and 5(h), upon conviction, be penalized by a fine of not less than One Hundred Thousand Pesos (Php 100,000.00), but not more than Two Hundred Fifty Thousand Pesos (Php 250,000.00), or imprisonment of not less than one year, but not more than six (6) years, subject to the discretion of the court.

Any person who commits any discriminatory practice described in Sec 5(b), 5(c), 5(f), 5(i), and 5(j) shall, upon conviction, be penalized by a fine of not less than Two Hundred Fifty Thousand Pesos (Php 250,000.00) but not more than Five Hundred Thousand Pesos (Php 500,000.00) or imprisonment of not less than six (6) years but not more than twelve (12) years, subject to the discretion of the court.

Any person who commits any discriminatory practice described in Sec 5(k) shall upon conviction be penalized with the same penalty as the prohibited act to which it is analogous.

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.

Nothing in this Act shall preclude the victim from instituting a separate and independent action for damages and other affirmative reliefs.

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

Sec. 8. Discriminatory Practices as Qualifying Aggravating Circumstance. – If any civil, criminal, or administrative offense, not falling under this Act, is committed and proven to be attended by any discriminatory practice prohibited under Sec 5 of this Act, said offense shall be qualified and the corresponding penalty provided thereto shall be applied in its maximum period.

Sec. 9. Redress Mechanisms for SOGIE-related Cases. –

- a. Inclusion of SOGIE Concerns in All Police Stations – The Women and Children's Desks now existing in all police stations shall also act on and attend to complaints/cases covered by this Act. In this regard, the police handling said desks shall undergo trainings on human rights and SOGIE, gender sensitivity and awareness, and sensitization on the issue of violence and abuse on the basis of SOGIE.

Complainant-minors can be represented by parents, guardians, social workers, or a non-government organization of good standing and reputation.

- b. Role of the Civil Service Commission – The Civil Service Commission (CSC) shall mandate the establishment of a grievance mechanism to address discriminatory practices committed by officers or employees of government agencies, instrumentalities, and government owned and controlled corporations (GOCCs) and other offices under its jurisdiction.
- c. Role of the Department of Labor and Employment – The Department of Labor and Employment (DOLE) shall mandate the establishment of a grievance mechanism to address discriminatory practices committed in the workplace.
- d. Role of the Commission on Human Rights – The Commission on Human Rights (CHR) shall investigate and recommend the filing of a complaint against any person/s violating this Act. If the Commission has reasonable cause to believe that any person or group of persons is committing acts penalized under Sec 5 of this Act, the Commission 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 comply with an order of the Commission 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 SOGIE 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 SOGIE.

Sec. 10. *Programs to Promote Non-Discrimination and Diversity.* – To eliminate all forms of discrimination, the State shall pursue initiatives and programs that seek to enable 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 SOGIE are integrated into government-run social protection programs.
- b. Diversity Programs and Policies – All government agencies, government- owned and controlled corporations, private companies, public and private educational institutions, and other entities shall establish diversity programs to ensure human rights violations and violence on the basis of SOGIE are prevented. They shall also create an internal redress mechanism to address cases of discrimination and develop administrative remedies or sanctions for such cases. Public institutions shall incorporate these programs into existing gender and development programs.
- c. Information and Education Campaign – All government agencies and instrumentalities are mandated to develop and implement SOGIE-specific gender sensitivity education and information dissemination. They shall endeavor to produce and publish information and education campaign materials on gender and human rights.

Sec. 11. *Congressional Oversight Committee.* – For the effective implementation of this Act, there shall be created a Congressional Oversight Committee, hereinafter referred to as the Anti-Discrimination Oversight Committee (ADOC), within sixty (60) days after the enactment of this Act. The ADOC shall be composed of ten (10) members from the Senate and the House of Representatives, which shall include the following: the Chairperson and two (2) members of the Senate Committee on Women, Children, Family Relations, and Gender Equality; the Chairperson and one (1) member of the Senate Committee on Justice and Human Rights; the Chairperson and two (2) members of the House Committee on Women and Gender Equality; and the Chairperson and one (1) member of the House Committee on Justice. The members of the ADOC shall be appointed by the Senate President and the Speaker of the House, respectively, with at least one (1) member representing the Minority.

The ADOC shall be jointly chaired 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 Vice-Chair of the ADOC shall be jointly held by the Chairpersons of the Senate Committee on Justice and Human Rights and the House

Committee on Justice. The Secretariat shall come from the existing Secretariat personnel of the Senate and the House of Representatives committees concerned.

The ADOC shall monitor the compliance of public institutions to the provisions of this Act. Within three years after the enactment of this Act, the ADOC shall conduct an audit of national and local policies that discriminate on the basis of SOGIE, and shall submit a report to Congress, the Office of the President, and the Supreme Court, on this subject.

The ADOC shall cease to exist six years after its organization.

Sec. 12. *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. 13. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 14. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,