

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

First Regular Session
EIGHTEENTH CONGRESS

House Bill No. 5356



Introduced by the Honorable Precious Hipolito Castelo

EXPLANATORY NOTE

First off, this bill serves as a counterpart of Senate Bill No. 137 authored by Senator Sonny Angara believing as this humble author does in the timeliness and urgency of a measure of this nature. This Act shall be known as the "Comprehensive Anti-Discrimination Act of 2019".

Under established jurisprudential doctrines, the Supreme Court has consistently held that for classification or discrimination to be valid, it must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.

Certainly, people are exposed to different cultures, different upbringings, and different experiences. However, these differences certainly do not justify dehumanization of certain sectors of our society. As Filipino people, we should be able to adapt to changing times by learning to embrace the reality that social and societal norms evolve.

The State values the dignity of every human person and guarantees full respect for human rights. Our fundamental law, under the Bill of Rights, also recognizes the equal protection of laws. These laws provide the rationale for enactment of various laws that promote equality.

For instance, Republic Act No. 6825 prohibits discrimination against women with respect to terms and conditions of employment. Another example is Republic Act No. 7277, as amended, or the "Magna Carta for Disabled Persons", which affords persons with disabilities (PWDs) the same rights as other people. In 2016, Republic Act No. 10911 or the "Anti-Age Discrimination in Employment Act" was enacted purposively to curtail "ageism" or age discrimination in employment. In addition, our country is also a signatory to various international covenants that promote equal protection of laws, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

Despite the intention of these good laws to afford equality to everyone, it cannot be denied that various sectors of our society are still marginalized. Indubitably, to curb all forms of discrimination, the enactment of a general and comprehensive anti-discrimination bill is vital.

In view of the foregoing, immediate consideration and passage of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read "PRECIOUS HIPOLITO CASTELO", is placed over a printed nameplate. The nameplate is partially visible and includes the word "firs".

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AN ACT

PROHIBITING DISCRIMINATION ON THE BASIS OF AGE, RACIAL OR ETHNIC ORIGIN, RELIGIOUS BELIEF OR ACTIVITY, POLITICAL INCLINATION OR CONVICTION, SOCIAL CLASS, SEX, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSIONS, MARITAL OR RELATIONSHIP STATUS, DISABILITY, HIV STATUS, HEALTH STATUS OR MEDICAL HISTORY, LANGUAGE, PHYSICAL FEATURES, AND OTHER STATUS, 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 “Comprehensive Anti-Discrimination Act of 2019”.

SEC. 2. Declaration of Policy. – It is the policy of the State to work actively for the elimination of all forms of discrimination that offends the equal protection clause of the Bill of Rights, and the State’s obligations under human rights instruments acceded to by the Republic of the Philippines, particularly those discriminatory practices based on age, racial or ethnic origin, religious belief or activity, political inclination or conviction, social class, sex, gender, sexual orientation, gender identity and expressions, marital or relationship status, disability, HIV status, health status or medical history, physical features or other status.

Towards this end, discriminatory practices as defined herein shall be proscribed and penalized.

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

- a) *Disability* – refers to 1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of that individual; 2) a record of such an impairment; or 3) being regarded as having such an impairment.
- b) *Discrimination* – constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on age, racial or ethnic origin, religious belief or activity, political inclination or conviction, social class, sex, gender, sexual orientation, gender identity and expressions, marital or relationship status, disability, HIV status, health status or medical history, language, physical features, or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of the political, civil, economic, social and cultural rights. Discrimination also includes incitement to discriminate and harassment.

Direct discrimination occurs where a person is treated less favorably than another person in the same or comparable circumstances on the ground of their protected attribute (i.e. age, racial or ethnic origin, religious belief or activity, political inclination or conviction, social class, sex, gender, sexual orientation, gender identity and expressions, marital or relationship status, disability, HIV status, health status or medical history, language, physical features, or other status).

- c) *Education and Training* – refers to all types and levels of education, training, and other avenues for learning, and includes access thereto, the standard and quality thereof and the conditions under which the same is given.
- d) *Ethnic Origin* – includes race, national origin, and ethno-linguistic origin.
- e) *Employment* – refers to all terms, conditions, and privileges relating to work in public and private institutions, including recruitment policies, application procedures, training, incentives, compensation, determination of benefits or allowances, promotion, advancement opportunities, transfer, and dismissal.

This definition shall apply to regular, probationary, casual, contractual, fixed-term, and seasonal workers. In legitimate contracting arrangements, the contractor/subcontractor shall be deemed the employer of the contractual employer.

For the purpose of this Act, the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

- f) *Gender Identity* – refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth (e.g. the sex listed on the birth certificate) including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms.
- g) *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.
- h) *HIV Status* - refers to the presence or absence of the human immunodeficiency virus (HIV) in the body of an individual.
- i) *Indigenous Cultural Communities/ Indigenous Peoples (ICC/IPs)* – shall as provided under Section 3 (h), Chapter II of Republic Act No. 8371 or the Indigenous People's Rights Act (IPRA) of 1997, refer to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social, and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICC/IPs shall likewise include people who are regarded as indigenous on account of their descent from the populations which inhabited the

country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.

- j) *Bangsamoro People* – are those who, at the advent of the Spanish colonization, were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands, whether of mixed or full blood, shall have the right to identify themselves, their spouses and descendants, as Bangsamoro.
- k) *Linguistic Discrimination* – refers to the unfair treatment of an individual based solely on the use of language. This use of language may include the individual's native language or other characteristics of the persons' speech, such as an accent, the size of vocabulary (whether the person uses complex and varied words), and syntax.
- l) *Muslims* – refer to those who are followers of Islamic faith, whether from birth or by conversion.
- m) *Marital or Relationship Status* – refers to the personal status of each individual in relation to the marriage laws or customs of the country. The categories of marital status to be identified are the following: (a) single; (b) married; (c) separated; (d) widowed; or (e) de facto spouse of another person. A de facto spouse of another person is defined to mean a person who cohabits or lives with another person in a relationship similar to marriage but is not legally married to that person.
- n) *Physical Features* – refer to a person's height, size, weight, or other bodily characteristics. It shall also include features that a person chooses to acquire, such as tattoos and piercings.
- o) *Political Inclination* – refers to a person's preference with regard to membership or belief in a particular political party, organization, or ideology.
- p) *Profiling* – means relying on the prohibited grounds of discrimination in subjecting a person or group of persons to investigatory activities, which include unnecessary, unjustified, illegal, and degrading searches, questioning or other investigatory activities, in determining whether an individual is engaged in an activity presumed to be unlawful, immoral, or socially unacceptable.
- q) *Religious Belief* – covers the profession or non-profession of religion or belief of one's choice that may be publicly or privately manifested in worship, observance, practice and teaching.
- r) *Sexual Orientation* – refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender.

It encompasses the broad concept of a person's sexual attraction to, and sexual activity with, people of a particular gender. This can be towards people of the same sex (homosexual orientation); towards people of both sexes (bisexual orientation), towards neither, or towards people of the opposite sex (heterosexual orientation). A person's sexual orientation is distinct from a person's gender identity and expression.

- s) *Social Class* – refers to groupings of individuals usually based on wealth, educational attainment, occupation, income, and membership in a subculture or social network.
- t) *Stigma* – refers to the dynamic process of devaluation that significantly discredits an individual in the eyes of others. When stigma is acted upon, the result is discrimination.
- u) *Other Status* – refers to other forms of differential treatment on grounds of discrimination which either undermines human dignity, causes or perpetuates systemic disadvantage, or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to the protected attributes enumerated in Section 4 of this Act. These grounds include, but are not limited to the following: pregnancy or maternity/paternity status, family responsibilities, health status or medical condition, criminal record.

SEC. 4. Prohibited Grounds for Discrimination/Protected Attributes. – Discrimination that is directly or indirectly based on the following personal characteristics such as age, racial or ethnic origin, religious belief or activity, political inclination or conviction, social class, sex, gender, sexual orientation, gender identity and expressions, marital or relationship status, disability, HIV status, health status or medical history, language, physical features, or other status, is prohibited. For purposes of this Act, these personal characteristics shall be collectively termed as Protected Attributes.

SEC. 5. Acts of Discrimination, Unlawful. – Subject to Section 7 of this Act, the acts of discrimination include, but are not limited to, the following:

(a) **Inflicting stigma.**

It shall be unlawful for any person to commit any acts that promote and encourage stigma based on the grounds referred to in Section 4. Content in the media, in educational textbooks, or in other medium that aims to inflict stigma is likewise prohibited.

(b) **Denial of political, civil and cultural rights.**

It shall be unlawful to deny a person enjoyment of political, civil, and cultural rights based on the grounds referred to in Section 4.

(c) **Denial of right to education.**

It is unlawful for any person to:

- (1) Refuse admission or expel a person from any educational or training institution on the basis of the grounds defined in Section 4, without prejudice to the right of educational or training institutions to determine the academic qualifications of their students or trainees;
- (2) Grant or refuse to grant honors, scholarship/s, or other forms of assistance on the basis of the grounds defined in Section 4; and
- (3) 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 the grounds identified in Section 4.

The prohibition to deny the right to education on the basis of the grounds in Section 4 extends to acts committed against a student or trainee to discriminate his or her parents or legal guardians.

(d) Denial of right to work.

It is unlawful for any person to:

- (1) Use the grounds in Section 4 or require the disclosure thereof in the selection, promotion, and termination of workers, and in the determination of compensation, training, incentives, privileges, benefits or allowances, as well as other terms and conditions of employment;
- (2) Deny employment in government institutions, including police and military service, based directly or indirectly on the grounds referred to in Section 4;
- (3) Refuse to enter into contract or agreement with persons or group of persons based solely or partly on the grounds provided in Section 4; and
- (4) Deny an application for or revoke a professional license issued by the government directly or indirectly due to the grounds included in Section 4.

(e) Denial of access to goods and services.

It is unlawful for any person to:

- (1) Deny a person, solely or partly on the basis of the grounds in Section 4, of goods and services available to the general public, such as but not limited to private and public insurance, housing and other forms of accommodation, medical and clinical services;
- (2) Refuse entry to or evict a person from any establishment, facility or utility that is open to the general public, such as but not limited to, restaurants, bars, hotels, shopping malls, solely or partly on the basis of the grounds listed in Section 4; and
- (3) Cause undue and unjust deferral of services or provision of inferior services to persons due to the grounds in Section 4.

There is discrimination if the acts above are committed against organizations or groups or persons based on the grounds identified in Section 4.

(f) Denial of right to organize.

It shall be unlawful to prohibit, prevent, or revoke the accreditation, formal recognition, and/or registration of any organization, group, political party, institution or establishment, in educational institutions, workplaces, communities, and other settings, based partly or solely on the grounds provided for in Section 4.

Discrimination is also committed when additional requirements beyond the customary are imposed directly or indirectly due to the grounds stipulated in Section 4.

(g) Inflicting harm on health and well-being.

It shall be unlawful to subject any person, without consent, to any unnecessary medical or physical examination, psychological treatment, faith-based practices, and other similar procedures based solely or partly on any of the grounds referred to in Section 4 that aim to change identity or physical attributes or impose behavior or expressions.

(h) Engaging in profiling.

It shall be illegal for any person, including members of the military and law enforcement agencies, to engage in profiling based solely or partly on the grounds included in Section 4.

(i) Abuses by state and non-state actors.

It shall be unlawful for any government agency, including local government units, police, military, and immigration agencies, to harass verbally or physically, to curtail freedom of movement, or to extort from a person or a group of persons on the basis of the grounds stipulated in Section 4.

This prohibition applies to similar abuses committed by non-state actors.

(j) Detention and confinement.

It shall be unlawful to detain and confine a person or groups of persons based directly or indirectly on the grounds under Section 4.

(k) Inciting hatred or violence.

It shall be unlawful to incite hatred or violence based on any of the grounds included in Section 4, by use of words or behavior or display of written material, publishing or distributing written material; the public performance of a play; distributing, showing or playing a recording; broadcasting or including a program in a program service, and possession of inflammatory material. The words, behaviour, written material, or recordings, or program must be threatening and not just abusive or insulting.

(l) Denial of right to expression.

It shall be unlawful to deny a person of his freedom of opinion and expression based on the grounds included in Section 4. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or other means, as well as the freedom to seek, receive, and impart information and ideas of all kinds through any medium.

(m) Other analogous circumstances.

Any analogous act, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise of the person's human rights and fundamental freedoms, are also prohibited.

SEC. 6. Persons Liable. – Any person, natural or juridical, or their representatives, including government instrumentalities and agencies, or government-owned or controlled corporations, or any private corporation, institution, or company who commits discrimination through any of the acts described in Section 5 shall be liable under this Act.

Any person, natural or juridical, or their representatives, who requests, instructs, induces, encourages, authorizes, or assists another to commit acts of discrimination under Section 5 shall also be liable under this Act.

Any person who is duty-bound to act on complaints of discrimination under this Act but fails or refuses to do so shall be deemed *prima facie* to have sanctioned the discriminatory act, and shall be held equally liable for discrimination.

All government officers and workers are obliged to promote non-discrimination in the discharge of their duties and responsibilities.

SEC. 7. Exceptions. – Any action or conduct, otherwise prohibited under Sections 4 and 5 of this Act shall not be unlawful and shall not be considered discrimination:

- 1) Where any of the protected attributes are bona fide occupational qualifications reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors (Genuine Occupational Qualifications);
- 2) Where distinction, exclusion, or preference in respect of a particular job is based on inherent requirement and requirement is a proportionate means of achieving a legitimate aim (Inherent Requirement)
- 3) Where the acts or practices of a body established for religious purposes conform to the doctrines, tenets, or beliefs of the relevant religion or that such acts or practices are necessary to avoid injury to the religious sensitivities of adherents of that religion;
- 4) Where the act or omission is done in good faith for the purpose of assisting or advancing a person or group of persons who need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place in society with other members of the community (Measures of Equality or Affirmative Action Program).

SEC. 8. Penalties. – The penalty of not less than one (1) year but not more than six (6) years imprisonment or a fine of not more than Five Hundred Thousand Pesos (PhP500,000.00), or both, shall be imposed, at the discretion of the court, taking into consideration the circumstances and gravity of the offense.

The penalty provided under this Section shall be imposed in its maximum period:

- (a) If the offender has been previously convicted under this Act;
- (b) When the offender is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity of the victim;
- (c) When the offender if the manager or owner of an establishment which has no license to operate or whenever such license has expired or has been previously revoked;
- (d) When the offender is a public official, officer or employee: *Provided*, That the penalty of suspension shall also be imposed; *Provided, further*, That the public official officer or employee may be asked to undergo gender and development training and community service during the duration of suspension.

When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period. The corporation shall be jointly liable for any fine imposed.

An offender who is a foreigner shall be deported immediately after service of sentence and shall be barred entry into the country.

Whenever the courts determined that a fine shall be imposed pursuant to the criminal case filed under this Act, the fine thus collected shall be remitted by the court to the Commission on Human Rights which shall administer the fund for the assistance of victims of discrimination.

SEC. 9. Programs to Promote Non-Discrimination and Diversity. – The State shall endeavour to eliminate all forms of discrimination and shall therefore 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 ensure non-discrimination and promote equality and shall encourage other sectors of the society to engage and participate in these efforts. It shall ensure the establishment of the following programs:

- (a) Social Protection Program – The national government shall implement social protection measures for communities affected by and vulnerable to stigma and discrimination.
- (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 that discrimination and abuse are prevented. They shall also create an internal redress mechanism to address cases of discrimination and grant administrative remedies or sanctions for such cases.

The Civil Service Commission (CSC), Department of Labor and Employment (DOLE), Department of Interior and Local Government (DILG), Department of Trade and Industry (DTI), the Armed Forces of the Philippines (AFP), Department of Education (DepEd), Commission on Higher Education (CHED), Technical Education and Skills Development Authority (TESDA), Department of Justice (DOJ), Department of Foreign Affairs (DFA), and Department of Health (DOH) shall ensure the implementation of this Section.

Failure of the above agencies, without justifiable cause, to ensure the implementation of this provision shall be deemed refusal to address discrimination and shall be penalized as an analogous act of discrimination.

SEC. 10. Enforcement. – Criminal complaints brought under this Act shall be filed with the proper court. In addition to the criminal complaint, a person who has been subjected to any acts of discrimination as defined in this Act may file a complaint with the Commission on Human Rights (CHR). For this purpose, the CHR may investigate, *motu proprio*, or on complaint by any person, acts or omissions in violation of this Act.

In all cases under investigation, the Commission may issue legal and preventive measures as well as provisional remedies. These measures or remedies shall include, but are not limited to, general writs of injunction, restraining orders, status quo ante orders, cease and desist orders, protection orders or such other orders to protect the life and security of persons, preserve evidence, protect properties and other considerations to ensure the efficient investigation of the alleged violation of this Act.

The Commission shall also direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglected to perform an act or discharge a duty required under this Act, and order 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.

SEC. 11. Administrative Proceedings and Sanctions against Public Officials and Employees. – Pursuant to Section 8 of this Act, which makes it a duty of the CHR to investigate alleged cases of discrimination, a finding by the CHR that a department, agency, or instrumentality of the government, a government-owned and controlled corporation, or a local government unit has violated any provision of this Act and its implementing rules and

regulations, shall carry with it a recommendation to the CSC and/or the DILG for the imposition of sanctions under administrative law, civil service, or other appropriate laws. Such recommendation shall include the names of the person directly responsible for the violation, and a statement that the sanctions be imposed upon the person directly responsible and the head of the agency or the local chief executive.

SEC. 12. *Fines against Private Persons, Provisional Remedy.* – Upon a *prima facie* finding that any provision of this Act was violated and upon its issuance of a cease and desist order, the CHR may impose a fine of Twenty Thousand Pesos (PhP20,000.00), for every day that the act of discrimination complained of has not ceased.

For purposes of this section and the imposition of the provisional remedy of fine, the CHR may ask the assistance of DTI, CHED, DOLE, DepEd, and TESDA.

The fine thus collected shall be for the assistance of victims of discrimination.

SEC. 13. *Implementing Rules and Regulations.* – The CHR, CSC, DOLE, DILG, AFP, DepEd, CHED, TESDA, DOJ, DFA, DOH, National Commission on Indigenous Peoples, National Commission on Muslim Filipinos shall promulgate the necessary implementing rules and regulations within sixty (60) days from the effectivity of this Act. Thereafter, this Act shall be fully implemented with or without the IRR.

SEC. 14. *Separability Clause.* – If, for any reason, any part, section or provision of this Act is held invalid or unconstitutional, the remaining provisions not affected thereby shall continue to be in force and effect.

SEC. 15. *Repealing Clause.* – All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or part or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 16. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved,