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SENATE

Senate Bill No. 1271
(In substitution of Senate Bill No. 935)

Prepared and submitted by the Committee on Women, Children, Family Relations and Gender Equality with Senator Risa Hontiveros as author thereof

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

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

1 **SECTION 1.** *Short Title.* - This Act shall be known and cited as the "Anti-
2 Discrimination Act."

3 **SEC. 2.** *Declaration of Policy.* - The State recognizes the fundamental right of
4 every person, regardless of sex, age, class, status, ethnicity, color, disability, religious
5 and political beliefs, sexual orientation or gender identity, to be free from any form of
6 discrimination. It shall therefore intensify its efforts to fulfill its duties under
7 international and domestic laws to respect, protect and fulfill the rights and dignity of
8 every individual.

9 Towards this end, the State shall exert efforts to address all forms of
10 discrimination and violence on the basis of sexual orientation or gender identity and
11 to promote human dignity as enshrined in the United Nations Universal Declaration
12 on Human Rights, the Convention on the Elimination of All Forms of Discrimination
13 Against Women, particularly the General Recommendation No. 28 on Non-
14 discrimination Based on Sexual Orientation and Gender Identity, Convention on the
15 Rights of the Child, International Covenant on Civil and Political Rights, International
16 Covenant on Economic, Social and Cultural Rights and all other relevant and
17 universally accepted human rights instruments and other international conventions to
18 which the Philippines is a signatory.

1 **SEC. 3.** *Definition of Terms.* - As used in this Act, the following terms
2 shall be defined as follows:

- 3 a. *Discrimination* - refers to any distinction, exclusion, restriction, or preference
4 based on the grounds of sex, sexual orientation, gender identity or
5 expression, hereinafter referred to as "SOGIE", and has the purpose or effect
6 of nullifying or impairing the recognition, access to, enjoyment, or exercise by
7 all persons on an equal footing of all rights and freedoms. For purposes of this
8 provision, the actual sex, sexual orientation or gender identity of the person
9 subjected to discrimination shall not be relevant for the purpose of determining
10 whether an act of discrimination has been committed.
- 11 b. *Gender Expression* - refers to the outward manifestations of the cultural traits
12 that enable a person to identify as male or female according to patterns that,
13 at a particular moment in history, a given society defines as gender
14 appropriate.
- 15 c. *Gender Identity* - refers to the personal sense of identity as characterized,
16 among others, by manner of clothing, inclinations, and behavior in relation to
17 masculine or feminine conventions. A person may have a male or female
18 identity with the physiological characteristics of the opposite sex.
- 19 d. *Profiling* - refers to subjecting a person or group of persons to investigatory
20 activities, which include unnecessary, unjustified, illegal, and degrading
21 searches, or other investigatory activities, in determining whether an individual
22 is engaged in an activity presumed to be unlawful, immoral or socially
23 unacceptable.
- 24 e. *Sexual Orientation* - refers to the direction of emotional sexual attraction or
25 conduct. This can be towards people of the same sex (homosexual
26 orientation) or towards people of both sexes (bisexual orientation) or towards
27 people of the opposite sex (heterosexual orientation).
- 28 f. *Stigma* - refers to the dynamic devaluation and dehumanization of an
29 individual in the eyes of others which may be based on attributes that are
30 arbitrarily defined by others as discreditable or unworthy and which result in
31 discrimination when acted upon.

32 **SEC. 4.** *Communities Vulnerable to Discrimination and Abuse on the*
33 *Basis of SOGIE.* - This Act seeks to protect individuals and communities that
34 experience human rights violations on the basis of SOGIE, including, but not limited
35 to, individuals and communities of diverse sexual orientation or gender identity or

1 expression who are children, young, poor, differently abled, of different ethnic
2 background or cultural background, and of various religious belief.

3 **SEC. 5. *Discriminatory Practices.*** - It shall be unlawful for any person,
4 natural or juridical, to:

- 5 a. Promote and encourage stigma on the basis of SOGIE in the media, in
6 educational textbooks, and other medium. Inciting violence and sexual
7 abuse against any person or group on the basis of SOGIE is likewise
8 prohibited;
- 9 b. Include SOGIE, as well as the disclosure of sexual orientation, in the
10 criteria for hiring, promotion, transfer, designation, work assignment, re-
11 assignment, dismissal of workers, and other human resource movement
12 and action, performance review and in the determination of employee
13 compensation, career development opportunities, training, and other
14 learning and development interventions, incentives, privileges, benefits or
15 allowances, and other terms and conditions of employment: *Provided*, That
16 this provision shall apply to employment in both the private sector and
17 public service, including military, police and other similar services;
18 *Provided, further*, That this prohibition shall likewise apply to the
19 contracting and engaging of the services of associations or organizations
20 with lesbians, gays, bisexuals, transgenders, intersex, or queers
21 (LGBTIQs) members or of associations or organizations advocating
22 LGBTIQs rights;
- 23 c. Refuse admission or expel a person from any educational or training
24 institution on the basis of SOGIE: *Provided, however*, That the right of
25 educational and training institutions to determine the academic
26 qualifications of their students or trainees shall be duly upheld;
- 27 d. Impose disciplinary sanctions, penalties harsher than customary or similar
28 punishments, requirements, restrictions, or prohibitions that infringe on the
29 rights of the students on the basis of SOGIE, including discriminating
30 against a student or trainee due to the SOGIE of the student's parents or
31 legal guardian;
- 32 e. Refuse or revoke the accreditation, formal recognition, registration or plan
33 to organize of any organization, group, political party, institution or
34 establishment, in educational institutions, workplaces, communities, and
35 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 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

1 gross negligence on the part of the official and shall be subjected to pertinent
2 administrative sanctions.

3 **SEC. 7. *Penalties.*** - Any person who commits any discriminatory practice
4 described in Section 5(a), 5(d), 5(e), 5(g), and 5(h), upon conviction, be penalized by
5 a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than
6 Two Hundred Fifty Thousand Pesos (P250,000) or imprisonment of not less than one
7 (1) year but not more than six (6) years, subject to the discretion of the court.

8 Any person who commits any discriminatory practice described in Section
9 5(b), 5(c), 5(f), 5(i), and 5(j) shall, upon conviction, be penalized by a fine of not less
10 than Two Hundred Fifty Thousand Pesos (P250,000) but not more than Five
11 Hundred Thousand Pesos (P500,000) or imprisonment of not less than six (6) years
12 but not more than twelve (12) years, subject to the discretion of the court.

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

16 In addition, the court may impose upon a person found to have committed any
17 of the prohibited acts the rendition of community service in terms of attendance in
18 human rights education's familiarization with and exposure to the plight of the
19 victims.

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

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

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

29 **SEC. 9. *Redress Mechanisms for SOGIE-related Cases.***

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

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

3 b. *Role of the Civil Service Commission* – The Civil Service Commission
4 (CSC) shall mandate the establishment of a grievance mechanism to address
5 discriminatory practices committed by officers or employees of government
6 agencies, instrumentalities, and government owned and controlled
7 corporations (GOCCs) and other offices under its jurisdiction.

8 c. *Role of the Department of Labor and Employment* – The Department of
9 Labor and Employment (DOLE) shall mandate the establishment of a
10 grievance mechanism to address discriminatory practices committed in the
11 work place.

12 d. *Role of the Commission on Human Rights*. - The Commission on Human
13 Rights (CHR) shall investigate and recommend the filing of a complaint
14 against any person/s violating this Act. If the Commission has reasonable
15 cause to believe that any person or group of persons is committing acts
16 penalized under Section 5 of this Act, the Commission shall recommend a
17 legal action in the appropriate prosecutor's office or court.

18 The CHR shall also direct the officer concerned to take appropriate
19 action against a public officer or employee at fault or who neglects to perform
20 an act or discharge a duty required under this Act, and recommend the
21 revocation of license, removal from office or employment, suspension,
22 demotion, fine, censure, or prosecution, and ensure compliance therewith.
23 Refusal by any officer without just cause to comply with an order of the
24 Commission to revoke the licence, remove, suspend, demote, fine, censure,
25 or prosecute an officer or employee who is at fault, or who neglects to perform
26 an act or discharge a duty required under this Act, shall be a ground for
27 disciplinary action against said officer.

28 The CHR shall also document cases of discrimination on the basis of
29 SOGIE and shall include these documented cases in its annual human rights
30 report. The Commission shall actively provide recommendations to different
31 branches of government on how to address and eliminate discrimination on
32 the basis of SOGIE.

33 **SEC. 10. Programs to Promote Non-Discrimination and Diversity.** - To
34 eliminate all forms of discrimination, the State shall pursue initiatives and programs
35 that seek to enable an environment free of stigma and discrimination. It shall direct

1 the machinery and resources of the State to promote non-discrimination and shall
2 encourage other sectors of the society to engage and participate in these efforts. It
3 shall ensure the implementation of the following programs:

- 4 a. *Social Protection Programs* - the national government shall ensure that
5 communities vulnerable to stigma and discrimination on the basis of SOGIE
6 are integrated into government-run social protection programs.
- 7 b. *Diversity Programs and Policies* - All government agencies, government-
8 owned and controlled corporations, private companies, public and private
9 educational institutions, and other entities shall establish diversity programs to
10 ensure human rights violations and violence on the basis of SOGIE are
11 prevented. They shall also create an internal redress mechanism to address
12 cases of discrimination and develop administrative remedies or sanctions for
13 such cases. Public institutions shall incorporate these programs into existing
14 gender and development programs.
- 15 c. *Information and Education Campaign* – All government agencies and
16 instrumentalities are mandated to develop and implement SOGIE-specific
17 gender sensitivity education and information dissemination. They shall
18 endeavour to produce and publish information and education campaign
19 materials on gender and human rights.

20

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

34 The ADOC shall be jointly chaired by the Chairpersons of the Senate

1 Committee on Women, Children, Family Relations and Gender Equality and the
2 House Committee on Women and Gender Equality. The Vice-Chair of the ADOC
3 shall be jointly held by the Chairpersons of the Senate Committee on Justice and
4 Human Rights and the House Committee on Justice. The Secretariat shall come
5 from the existing Secretariat personnel of the Senate and the House of
6 Representatives committees concerned.

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

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

13 **SEC. 12.** *Separability Clause.* - If any provision of this Act is declared
14 unconstitutional or otherwise invalid, the validity of the other provisions shall not be
15 affected thereby.

16 **SEC. 13.** *Repealing Clause.* - All laws, decrees, orders, rules and
17 regulations or parts thereof inconsistent with this Act are hereby repealed or modified
18 accordingly.

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

21 Approved.