

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

S E N A T E

Senate Bill No. 689

Open to public

19 JUL 22 P 3:37

Introduced by Senator FRANCIS N. PANGILINAN

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

EXPLANATORY NOTE

According to the survey “The Global Divide on Homosexuality” by the Pew Research Center, 73% of adult Filipinos agree that homosexuality should be accepted by society. The Philippines placed second as the most gay-friendly country in the whole Asia-Pacific, after Australia. Just recently, some 70,000 people joined the Metro Manila Pride March – the largest and oldest Pride demonstration in Southeast Asia.

Despite these overwhelming numbers, the Philippines is only more tolerant than accepting of the LGBT community. According to a United Nations (UN) study, 30% of LGBT in the country reported being harassed, bullied, or discriminated against by others while at work because of their sexual orientation and gender identity or expression (SOGIE). The same study also said 21% of Filipino respondents believed that they were denied a job because of their SOGIE. The country ranked 95th in the SPARTACUS Gay Travel Index 2019, which scored countries based on measures like trans gender rights, marriage equality, and the existence of anti-discrimination legislation.

Countries such as Canada, Portugal, and Sweden, among others, have already enacted their own anti-discrimination laws. Five countries in the world – Bolivia, Ecuador, Fiji, Malta and the United Kingdom – have constitutions that explicitly guarantee equality on the basis of sexual orientation and gender identity.

In the Philippines, some local governments already have ordinances to protect the welfare of the LGBT community. In addition, the Department of Education issued the Gender-Responsive Basic Education Policy which primarily “commits to integrate the principles of gender equality, gender equity, gender sensitivity, non-discrimination and human rights in the provision and governance of basic education.”

It is high time for the Philippines to join the long list of countries with a national anti-discrimination law. With the hopes of giving the LGBT community full acceptance, and not just tolerance, this proposed legislation aims to finally eliminate the hate and discrimination against them. This bill also seeks to create an environment that is safe, equal, and reasonable for everyone regardless of their sexual orientation and gender identity or expression.

The immediate passage of this bill is earnestly sought.



FRANCIS N. PANGILINAN

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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 as the “Anti-Discrimination Act.”

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

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

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

- 3 a. *Discrimination* - refers to any distinction, exclusion, restriction, or preference
4 based on the grounds of sex, sexual orientation and gender identity or
5 expression, hereinafter referred to as “SOGIE,” and has the purpose or effect of
6 nullifying or impairing the recognition, access to, enjoyment, or exercise by all
7 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 that
12 enable a person to identify as male or female according to patterns that, at a
13 particular moment in history, a given society defines as gender appropriate.
- 14 c. *Gender Identity* - refers to the personal sense of identity as characterized, among
15 others, by manner of clothing, inclinations, and behavior in relation to masculine
16 or feminine conventions. A person may have a male or female identity with the
17 physiological characteristics of the opposite sex.
- 18 d. *Profiling* - refers to subjecting a person or group of persons to investigatory
19 activities, which include unnecessary, unjustified, illegal, and degrading
20 searches, or other investigatory activities, in determining whether an individual
21 is engaged in an activity presumed to be unlawful, immoral or socially
22 unacceptable.
- 23 e. *Sexual Orientation* - refers to the direction of emotional sexual attraction or
24 conduct. This can be towards people of the same sex (homosexual orientation),
25 towards people of both sexes (bisexual orientation), or towards people of the
26 opposite sex (heterosexual orientation).

1 f. *Stigma* - refers to the dynamic devaluation and dehumanization of an individual
2 in the eyes of others which may be based on attributes that are arbitrarily defined
3 by others as discreditable or unworthy and which result in discrimination when
4 acted upon.

5 **SEC. 4. Communities Vulnerable to Discrimination and Abuse on the Basis of**
6 **SOGIE.** - This Act seeks to protect individuals and communities that experience human
7 rights violations on the basis of SOGIE, including, but not limited to, individuals and
8 communities of diverse sexual orientation or gender identity or expression who are
9 children, young, poor, differently abled, of different ethnic background or cultural
10 background, and of various religious belief.

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

- 13 a. Promote and encourage stigma on the basis of SOGIE in the media, in
14 educational textbooks, and other medium. Inciting violence and sexual abuse
15 against any person or group on the basis of SOGIE is likewise prohibited;
- 16 b. Include SOGIE, as well as the disclosure of sexual orientation, in the criteria for
17 hiring, promotion, transfer, designation, work assignment, reassignment,
18 dismissal of workers, and other human resource movement and action,
19 performance review and in the determination of employee compensation, career
20 development opportunities, training, and other learning and development
21 interventions, incentives, privileges, benefits or allowances, and other terms and
22 conditions of employment: *Provided*, That this provision shall apply to
23 employment in both the private sector and public service, including military,
24 police, and other similar services; *Provided, further*, That this prohibition shall
25 likewise apply to the contracting and engaging of the services of associations or
26 organizations with lesbians, gays, bisexuals, transgenderers, intersex, or queers

- 1 (LGBTIQs) members or of associations or organizations advocating LGBTIQs
2 rights;
- 3 c. Refuse admission or expel a person from any educational or training institution
4 on the basis of SOGIE: *Provided, however,* That the right of educational and
5 training institutions to determine the academic qualifications of their students
6 or trainees shall be duly upheld;
- 7 d. Impose disciplinary sanctions, penalties harsher than customary or similar
8 punishments, requirements, restrictions, or prohibitions that infringe on the
9 rights of students on the basis of SOGIE, including discriminating against a
10 student or trainee due to the SOGIE of the student's parents or legal guardian;
- 11 e. Refuse or revoke the accreditation, formal recognition, registration or plan to
12 organize of any organization, group, political party, institution or establishment,
13 in educational institutions, workplaces, communities, and other settings, solely
14 on the basis of the SOGIE of their members or of their target constituencies;
- 15 f. Deny a person access to public or private medical and other health services open
16 to the general public, as well as access to public and private health insurance,
17 including HMOs, on the basis of SOGIE;
- 18 g. Deny an application for or revoke, on the basis of SOGIE, any government
19 license, authority, clearance, permit, certification, or other similar documents
20 necessary to exercise a profession, business, or any other legitimate calling;
- 21 h. Deny a person, access to or the use of establishments, facilities, utilities or
22 services, including housing, open to the general public on the basis of SOGIE:
23 *Provided,* That the act of giving inferior accommodations or services shall be
24 considered a denial of access or use of such facility or service: *Provided, further,*
25 That this prohibition covers acts of discrimination against juridical persons
26 solely on the basis of the SOGIE of their members or of their target
27 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, and 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 Section 5(a), 5(d), 5(e), 5(g), and 5(h), shall, upon conviction, be penalized by a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Two Hundred Fifty Thousand Pesos (P250,000.00) or imprisonment of not less than one (1) year but not more than six (6) years, subject to the discretion of the court.

1 Any person who commits any discriminatory practice described in Section 5(b), 5(c),
2 5(f), 5(i), and 5(j) shall, upon conviction, be penalized by a fine of not less than Two
3 Hundred Fifty Thousand Pesos (P250,000.00) but not more than Five Hundred Thousand
4 Pesos (P500,000.00) or imprisonment of not less than six (6) years but not more than
5 twelve (12) years, subject to the discretion of the court.

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

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

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

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

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

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

22 a. *Inclusion of SOGIE Concerns in All Police Stations.* - The Women and Children's
23 Desks now existing in all police stations shall also act on and attend to
24 complaints/cases covered by this Act. In this regard, the police handling said
25 desks shall undergo trainings on human rights and SOGIE, gender sensitivity
26 and awareness, and sensitization on the issue of violence and abuse on the basis
27 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 (CSC) shall
4 mandate the establishment of a grievance mechanism to address discriminatory
5 practices committed by officers or employees of government agencies,
6 instrumentalities, government owned and controlled corporations (GOCCs),
7 and other offices under its jurisdiction.

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

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

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

1 The CHR shall also document cases of discrimination on the basis of SOGIE
2 and shall include these documented cases in its annual human rights report. The
3 Commission shall actively provide recommendations to different branches of
4 government on how to address and eliminate discrimination on the basis of
5 SOGIE.

6 **SEC. 10. *Programs to Promote Nondiscrimination and Diversity.*** – To eliminate all

7 forms of discrimination, the State shall pursue initiatives and programs that seek to
8 enable an environment free of stigma and discrimination. It shall direct the machinery
9 and resources of the State to promote non-discrimination and shall encourage other
10 sectors of the society to engage and participate in these efforts. It shall ensure the
11 implementation of the following programs:

12 a. *Social Protection Programs* – the national government shall ensure that
13 communities vulnerable to stigma and discrimination on the basis of SOGIE are
14 integrated into government-run social protection programs.

15 b. *Diversity Programs and Policies* – All government agencies, government-owned
16 and controlled corporations, private companies, public and private educational
17 institutions, and other entities shall establish diversity programs to ensure
18 human rights violations and violence on the basis of SOGIE are prevented. They
19 shall also create an internal redress mechanism to address cases of
20 discrimination and develop administrative remedies or sanctions for such cases.
21 Public institutions shall incorporate these programs into existing gender and
22 development programs.

23 c. *Information and Education Campaign* - All government agencies and
24 instrumentalities are mandated to develop and implement SOGIE-specific
25 gender sensitivity education and information dissemination. They shall
26 endeavor to produce and publish information and education campaign
27 materials on gender and human rights.

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

13 The ADOC shall be jointly chaired by the Chairpersons of the Senate Committee on
14 Women, Children, Family Relations and Gender Equality and the House Committee on
15 Women and Gender Equality. The Vice-Chair of the ADOC shall be jointly held by the
16 Chairpersons of the Senate Committee on Justice and Human Rights and the House
17 Committee on Justice. The Secretariat shall come from the existing Secretariat personnel
18 of the Senate and the House of Representatives committees concerned.

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

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

25 **SEC. 12. Separability Clause.** – If any provision of this Act is declared invalid or
26 unconstitutional, the other provisions not affected by such declaration shall remain in full
27 force and effect.

1 **SEC. 13. Repealing Clause.** – All laws, executive orders, administrative orders, and
2 rules and regulations inconsistent with this Act are hereby repealed or amended
3 accordingly.

4 **SEC. 14. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its
5 complete publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,