

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



FOURTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 956

Introduced by AKBAYAN Representative
Ana Theresia Hontiveros-Baraquel

EXPLANATORY NOTE

The equal protection clause in the Bill of Rights proscribes discrimination on the basis of sexual orientation or any other status in the enjoyment of rights. The equal protection clause, according to an eminent constitutionalist, "is the specific constitutional guarantee of the Equality of the Person." (J. Bernas, S.J., *Constitutional Rights & Social Demands: Notes and Cases*, Vol. II [1991], p. 48) This clause requires that "laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed." (*J.M. Tuason and Co. vs. The Land Tenure Administration*, 31 SCRA 413)

The fundamental law also declares that the State values the dignity of every human person and guarantees full respect for human rights (Section 11, Article II, 1987 Constitution). It also imposes on the State the duty to ensure the fundamental equality before the law of women and men (Sec. 14, *Id.*).


In addition, the Philippines is a signatory to numerous international agreements that seek to ensure respect for the human rights of all persons regardless of sex, sexual orientation or any other condition. These international human rights instruments have consistently been interpreted by international institutions, such as the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights, to include protection against discrimination on the basis of sexual orientation. In *Toonen v. Australia*, the UN Human Rights Committee interpreted Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which obliges States to "guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," to include a protection against discrimination on the basis of sexual orientation. The Committee on Economic, Social and Cultural Rights has also interpreted Article 2 of the ICESCR to include sexual orientation in the Covenant's non-discrimination provisions.

Unfortunately, reality has still to catch up with the noble intentions of these numerous laws and international agreements. Lesbians and gays continue to be oppressed by the iniquitous treatment of society at large, primarily because of misconceptions and ignorance. Sadly for our democracy, gays and lesbians are still considered second class citizens when they try to exercise the rights to which they are rightfully entitled.

In schools, workplaces, commercial establishments, public service, police and the military, prejudicial practices and policies based on sexual orientation and gender identity limit the exercise and enjoyment of basic human rights and fundamental freedoms. Lesbian or gay students, for instance, are refused admission or expelled from schools due to their sexual orientation or gender identity. Companies block the promotion of lesbian and gay employees due to the deeply embedded notion that homosexuality is an indication of weakness. Laws such as the anti-vagrancy law are also abused by law enforcement agencies to harass gay men.

There is, therefore, an urgent need to define and penalize practices that unjustly discriminate against lesbians and gays. It should be emphasized that the list contained herein is not exhaustive as it focuses only on the most blatant instances of discrimination. Similar instances of discrimination should be deemed included among the prohibited practices by analogy.

In view of the foregoing, and of the need to correct the long-standing discrimination against lesbians and gays in Philippine society, the early passage of this bill is earnestly urged.


HON. ANA THERESIA HONTIVEROS-BARAQUEL
Akayan Party-list Representative

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AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION
AND GENDER IDENTITY AND PROVIDING PENALTIES THEREFOR

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

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

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 obligations under human rights instruments acceded to by the Republic of the Philippines, particularly those discriminatory practices based on sex or sexual orientation. Towards this end, discriminatory practices as defined herein shall be proscribed and penalized.

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

- a. 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)
- b. Gender Identity refers to the personal sense of identity as characterized, among others, by manners 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.
- c. Discrimination shall be understood to imply any distinction, exclusion, restriction, or preference which is based on any ground such as sex, sexual orientation, gender identity, whether actual or perceived, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons of an equal footing of all rights and freedoms.

SEC. 4. *Discriminatory practices.* – It shall be unlawful for any person, natural or juridical, to:

- (a) Deny access to public service, including military service, to any person on the basis of sexual orientation and/or gender identity;
- (b) Include sexual orientation and gender identity, as well as the disclosure of sexual orientation, in the criteria for hiring, promotion and dismissal of workers, and in the determination of employee compensation, training, incentives, privileges, benefits or allowances, and other terms and conditions of employment;

This prohibition on the basis of sexual orientation and gender identity shall also include the contracting and engaging of services of juridical persons.

- (c) Refuse admission or expel a person from educational institutions on the basis of sexual orientation and gender identity, without prejudice to the right of educational institutions to determine the academic qualifications of their students;

This prohibition shall include the imposition of (i) disciplinary sanctions solely on the basis of sexual orientation and gender identity; (ii) penalties harsher than customary primarily due to sexual orientation and gender identity; or (iii) similar punishments and prohibitions.

- (d) Refuse 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, solely on the basis of the sexual orientation or gender identity of their members or of their target constituencies;

This prohibition shall also include the prevention of and prohibitions on attempts to organize;

- (e) Deny a person access to medical and other health services open to the general public on the basis of such person's sexual orientation or gender identity;
- (f) Deny an application for or revoke a professional license issued by the government due to the applicant's sexual orientation or gender identity;
- (g) 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 sexual orientation or gender identity; There is a denial when a person is given inferior accommodations or services;

This prohibition includes the discrimination of juridical persons solely on the basis of the sexual orientation or gender identity of their members or of their target constituencies;

- (h) Subject or force any person to any medical or psychological examination to determine and/or alter the person's sexual orientation or gender identity without the expressed approval of the person involved, except in cases where the person involved is a minor under 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 proceeding by the Solicitor General or the latter's authorized representative;
- (i) Harassment by members of institutions involved in the enforcement of law and the protection of rights, such as the Philippine National Police and the Armed Forces of the Philippines, of any person on the basis of his or her sexual orientation or gender identity. Among other cases, harassment occurs when a person is arrested or otherwise placed in the

custody and extortion, physical or verbal abuse takes place, regardless of whether such arrest has legal or factual basis. Harassment of juridical persons on the basis of the sexual orientation or gender identity of their members, stockholders, benefactors, clients, or patrons is likewise covered by this provision.

(j) Other analogous circumstances.

SEC. 5. *Administrative sanctions.* -- 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 such official who shall suffer the appropriate penalty under civil service laws, rules, and regulations.

SEC. 6. *Penalties.* -- (a) Persons found guilty of any of the discriminatory practices enumerated in the preceding Section shall be penalized with a fine of not less than One Hundred Thousand Pesos (P100,000) but not to exceed Five Hundred Thousand Pesos (P500,000) or imprisonment of not less than one (1) year but not more than one (6) years, or both at the discretion of the court. In addition, community service in terms of human rights education to the perpetrator and exposure to the plight of the victims can be imposed at the discretion of the court.

(b) The officials directly involved shall be liable for violations committed by corporations, organizations, or similar entities.

SEC. 7. *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. 8. *Repealing clause.* -- All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 9. *Effectivity.* -- 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.

Approved,