

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

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. **3701**



Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay – Villar**

EXPLANATORY NOTE

Sex, sexual orientation and gender identity are characteristics of human beings that are frequently the cause of discriminatory practices, even when such characteristics are inherently private and do not impinge upon the rights of any other people. The role of the State in this instance is not to police morality or cultural norms -- instead, the role of the State, particularly in a democratic republic, is to protect its citizens, all of its citizens, particularly those who are most vulnerable to abuse, and guarantee to all equal access to their rights under the law.

While the mandate of many of those in government comes from the voice of the majority, it is imperative that the government pay particular attention to those who are the minorities, those who are different, because to be different is often to be vulnerable, to be forced to deal with situations and circumstances that refuse to take those differences into account. The Philippine government must be a government that safeguards the interests and well-being of all of its citizens, not just the majority, not just the mainstream, in a manner that acknowledges and advances our common humanity and dignity. Equality and non-discrimination before the law is essential if the laws of a State are to have any worth at all, if these exercises of power are to be tools of good, rather than arbitrary and oppressive. This proposed bill, based on the consolidated Anti- SOGI Discrimination Act (House Bill No. 5687) of the 16th Congress, intends to help guarantee such equality, by codifying and strengthening the stand of the State against any discrimination against its citizens based on sex, sexual orientation or gender identity.

Emmeline Y. Aglipay

EMMELINE Y. AGLIPAY – VILLAR
Representative, DIWA Party-list

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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 House of Representatives of the Republic of the Philippines in Congress assembled:

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

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 rights and dignity of every individual.

Toward this end, the State shall exert efforts to address all forms of discrimination and violence on the basis of sexual orientation or gender identity 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 other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

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

(a) "*Discrimination*" refers to any distinction, exclusion, restriction, or preference which is based on any ground such as sex, sexual orientation, gender identity, and which has the purpose or effect of nullifying or impairing the recognition, access to, enjoyment, or exercise by all persons of 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 whether an act of discrimination has been committed.

(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) "*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) or can refer to the absence of sexual attraction (asexual orientation).

(d) "*Sex*" may be male or female or intersex. Intersex refers to people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies, all of which are natural bodily variations along a spectrum.

SEC. 4. Discriminatory practices. - It shall be unlawful for any person, natural or juridical, to engage in discrimination as defined in this Act, which shall include but not be limited to the following:

(a) Include sexual orientation or gender identity, 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 or 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 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 juridical persons.

(b) Refuse admission or expel a person from any educational or training institution on the basis of sexual orientation, gender identity, or being intersexed; *Provided, However That* the right of educational and training institutions to determine the academic qualifications of their students or trainees shall be duly upheld;

(c) Impose disciplinary sanctions, penalties harsher than customary or similar punishments, requirements, restrictions, or prohibitions that infringe on the rights of students on the basis of sexual orientation or gender identity, including discriminating against a student or trainee due to the sexual orientation or gender identity of the student's parents or legal guardian;

- (d) 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 sexual orientation or gender identity of their members or of their target constituencies;
- (e) Deny a person access to public or private 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 or other similar kind of license, clearance, certification, or any other similar document 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 sex, sexual orientation or gender identity; *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 That* this prohibition covers acts of discrimination against juridical persons solely on the basis of sexual orientation or gender identity of their members or their target constituencies;
- (h) Subject or force any person to undertake 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;
- (i) Harassment by members of institutions involved in the enforcement of law and the protection of rights of any person on the basis of his or her sex, sexual orientation or gender identity. Among other cases, harassment occurs when a person is arrested or otherwise placed in the custody and subjected to 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 sex, sexual orientation or gender identity of their members, stockholders, benefactors, clients, or patrons is likewise covered by this provision;
- (j) The publication of information intended to "out" or reveal the sex, sexual orientation or gender identity of persons without their consent, when such has not been made known by the person/s concerned, and has been made with malicious intent or is primarily motivated by a desire for commercial profit;
- (k) Engage in public speech meant to shame, or which tends to incite or normalize the commission of discriminatory practices, or which otherwise tends to create an environment that is unwelcoming to those of particular sexual orientations or gender identities.

SEC. 5. 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.

SEC. 6. Penalties. - Any persons found guilty of any discriminatory practice described in the Section 4 shall, upon conviction, 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 six(6) years, or both at the discretion of the court. 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 of human rights education, to become familiar with and be exposed to the plight of the victims.

If a graver offense, motivated by bias, prejudice, or hatred against the sexual orientation or gender identity of the victim/s is committed, such shall be meted the corresponding maximum penalties depending on the severity of the offenses.

Amy action arising from the violation of the provision of this Act shall prescribe in three (3) years.

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 Section shall be without prejudice to administrative liability for government officials and employees.

SEC. 7. Inclusion of SOGI Concerns in All Police Stations. - The Women and Children's Desk now existing in all police stations, shall also act on and attend to complaints/cases covered by this Act. In this regard, police handling said desks shall undergo appropriate training sessions with a human rights-based approach to include, among others: gender sensitivity and awareness of proper terminology, dynamics of lesbian, gay, bisexual, and transgender (LGBT) relationships, and hate crime investigation procedures.

SEC. 8. 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. 9. Repealing clause. - All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 10. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,