

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



'22 JUL 11 P3:50

SENATE
S. No. 245

RECEIVED BY: _____

Introduced by Senator Loren B. Legarda

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

EXPLANATORY NOTE

The 1987 Constitution guarantees the right of every Filipino to equal protection of the laws and full respect of human rights, including the right to life, the right to freedom of expression, the right to be free from torture, and the right to be free from any type of discrimination. However, many reports, studies, and surveys show that discrimination based on sexual orientation and gender identity or expression (SOGIE) persists in our society.

Numerous members of the lesbians, gays, bisexuals, transgenders, intersex, and queers (LGBTIQ) community have related unfortunate incidents of harassment and aggravation by individuals or groups who seemed to lack recognition, appreciation, and understanding of SOGIE. According to a study conducted by the United Nations (UN), thirty (30%) percent of LGBTIQs reported harassment and discrimination cases while at work due to their SOGIE.¹ Moreover, based on the 2018 survey from Rainbow Rights Philippines, six in every ten LGBTIQs have experienced

¹ United Nations Development Programme and International Labour Organization. LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand, 10 (2018).

discrimination, of which most cases happened in schools.² Based on another study conducted by the Philippine LGBT Chamber of Commerce and research firm, Cogencia, out of the 100 companies surveyed, no Philippine-based company was found to implement policies to protect employees from SOGIE-based discrimination.³

Thus, this proposed measure seeks to address this concern and to secure the welfare of not only the LGBTIQ community but also all Filipinos of any class, status, ethnicity, color, and beliefs. This measure intends to help recognize the rights of the LGBTIQ so they can fully enjoy such rights, and to provide them the opportunities to develop their skills and reach their full potential as individuals and as members of the Filipino society.

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



LOREN LEGARDA

² <https://news.abs-cbn.com/spotlight/03/09/19/sogie-equality-bill-might-start-from-scratch-19-years-since-proposal?fbclid=IwAR29-KEEMUaNDW-Gt5WM90qM9rHNgNZDBpG-uluTus1hyTBwLCajDu96D5s>

³ <https://www.cnnphilippines.com/life/culture/2018/11/14/Filipino-companies-not-accepting-LGBTQ.html>

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**AN ACT
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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 of 2022.*"

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 or
11 expression and to promote human dignity as enshrined in the United Nations
12 Universal Declaration on Human Rights, the Convention on the Elimination of All
13 Forms of Discrimination Against Women, particularly the General Recommendation
14 No. 28 on Non-discrimination based on Sexual Orientation and Gender Identity,
15 Convention on the Rights of the Child, International Covenant on Civil and Political
16 Rights, International Covenant on Economic, Social and Cultural Rights and all other

1 relevant and universally accepted human rights instruments and other international
2 conventions to which the Philippines is a signatory of.

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

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

1 arbitrarily defined by others as discreditable or unworthy and which result
2 in discrimination when acted upon.

3 *Sec.4. Communities Vulnerable to Discrimination and Abuse on the Basis of SOGIE.*

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

9 *Sec. 5. Discriminatory Practices.* - It shall be unlawful for any person, natural or
10 juridical, to:

- 11 a. Promote and encourage stigma on the basis of SOGIE in the media, in
12 educational textbooks, and other medium. Inciting violence and sexual
13 abuse against any person or group on the basis of SOGIE is likewise
14 prohibited;
- 15 b. Include SOGIE, as well as the disclosure of sexual orientation, in the criteria
16 for hiring, promotion, transfer, designation, work assignment, re-
17 assignment, dismissal of workers, and other human resource movement
18 and action, performance review and in the determination of employee,
19 compensation, career development opportunities, training, and other
20 learning and development interventions, incentives, privileges, benefits or
21 allowances, and other terms and conditions of employment: *Provided*, That
22 this provision shall apply to employment in both the private sector and
23 public service, including military, police and other similar services; *Provided*
24 *further*, That this prohibition shall likewise apply to the contracting and
25 engaging of the services of associations or organizations with lesbians, gays,
26 bisexuals, transgenders, intersex, or queers (LGBTIQs) members or of
27 associations or organizations advocating LGBTIQs rights;
- 28 c. Refuse admission or expel a person from any educational or training
29 institution on the basis of SOGIE: *Provided*, however, That the right of
30 educational and training institutions to determine the academic
31 qualifications of their students or trainees shall be duly upheld;

- 1 d. Impose disciplinary sanctions, penalties harsher than customary or similar
2 punishments, requirements, restrictions, or prohibitions that infringe on the
3 rights of the students on the basis of SOGIE, including discriminating
4 against a student or trainee due to the SOGIE of the student's parents or
5 legal guardian;
- 6 e. Refuse or revoke the accreditation, formal recognition, registration or plan
7 to organize of any organization, group, political party, institution or
8 establishment, in educational institutions, workplaces, communities, and
9 other settings, solely on the basis of the SOGIE of their members or of their
10 target constituencies;
- 11 f. Deny a person access to public or private medical and other health services
12 open to the general public, as well as access to public and private health
13 insurance, including HMOs, on the basis of SOGIE;
- 14 g. Deny an application for or revoke, on the basis of SOGIE, any government
15 license, authority, clearance, permit, certification, or other similar
16 documents necessary to exercise a profession, business, or any other
17 legitimate calling;
- 18 h. Deny a person, access to or the use of establishments, facilities, utilities or
19 to services, including housing, open to the general public on the basis of
20 SOGIE: *Provided*, That the act of giving inferior accommodations or services
21 shall be considered a denial of access or use of such facility or service;
22 *Provided further*, that this prohibition covers acts of discrimination against
23 juridical persons solely on the basis of the SOGIE of their members or of
24 their target constituencies;
- 25 i. Subject or force any person to undertake any medical or psychological
26 examination to determine or alter the person's SOGIE without the expressed
27 approval of the person involved, except in cases where the person involved
28 is a minor and below the age of discernment in which case prior approval
29 of the appropriate Family Court shall be required. In the latter case, the
30 child shall be represented in the proceedings by the Solicitor General or the
31 latter's authorized representative;

1 j. Subject any person, natural or juridical, to profiling, detention, or verbal or
2 physical harassment on the basis of SOGIE. Profiling, detention, or verbal
3 or physical harassment on the basis of SOGIE by members of law
4 enforcement agencies, including the military, police, immigration, is
5 likewise prohibited. Physical or verbal harassment based on SOGIE of
6 persons in custody or detention of the police, including subjecting them to
7 extortion, is also prohibited; and

8 k. Subject a person to any other analogous acts that shall have the effect or
9 purpose of impairing or nullifying the enjoyment, recognition, and exercise
10 of a person's human rights and fundamental freedoms.

11 *Sec. 6. Administrative Sanctions.* – Willful refusal of a government official whose
12 duty is to investigate, prosecute, or otherwise act on a complaint for a violation of this
13 Act to perform such a duty without a valid ground shall constitute gross negligence
14 on the part of the official and shall be subjected to pertinent administrative sanctions.

15 *Sec. 7. Penalties.* – Any person who commits any discriminatory practice
16 described in Sec 5(a), 5(d), 5(e), 5(g), and 5(h), upon conviction, be penalized by a fine
17 of not less than One Hundred Thousand Pesos (Php 100,000.00), but not more than
18 Two Hundred Fifty Thousand Pesos (Php 250,000.00), or imprisonment of not less
19 than one year, but not more than six (6) years, subject to the discretion of the court.

20 Any person who commits any discriminatory practice described in Sec 5(b), 5(c), 5(f),
21 5(i), and 5(j) shall, upon conviction, be penalized by a fine of not less than Two
22 Hundred Fifty Thousand Pesos (Php 250,000.00) but not more than Five Hundred
23 Thousand Pesos (Php 500,000.00) or imprisonment of not less than six (6) years but
24 not more than twelve (12) years, subject to the discretion of the court.

25 Any person who commits any discriminatory practice described in Sec 5(k)
26 shall upon conviction be penalized with the same penalty as the prohibited act to
27 which it is analogous.

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

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

3 The penalties provided under this Sec shall be without prejudice to the imposition of
4 administrative liability for government officials and employees.

5 *Sec. 8. Discriminatory Practices as Qualifying Aggravating Circumstance.* – If any
6 civil, criminal, or administrative offense, not falling under this Act, is committed and
7 proven to be attended by any discriminatory practice prohibited under Sec 5 of this
8 Act, said offense shall be qualified and the corresponding penalty provided thereto
9 shall be applied in its maximum period.

10 *Sec. 9. Redress Mechanisms for SOGIE-related Cases.* –

11 a. Inclusion of SOGIE Concerns in All Police Stations – The Women and
12 Children’s Desks now existing in all police stations shall also act on and
13 attend to complaints/cases covered by this Act. In this regard, the police
14 handling said desks shall undergo trainings on human rights and SOGIE,
15 gender sensitivity and awareness, and sensitization on the issue of violence
16 and abuse on the basis of SOGIE.

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

19 b. Role of the Civil Service Commission – The Civil Service Commission (CSC)
20 shall mandate the establishment of a grievance mechanism to address
21 discriminatory practices committed by officers or employees of government
22 agencies, instrumentalities, and government owned and controlled
23 corporations (GOCCs) and other offices under its jurisdiction.

24 c. Role of the Department of Labor and Employment – The Department of
25 Labor and Employment (DOLE) shall mandate the establishment of a
26 grievance mechanism to address discriminatory practices committed in the
27 workplace.

28 d. Role of the Commission on Human Rights – The Commission on Human
29 Rights (CHR) shall investigate and recommend the filing of a complaint
30 against any person/s violating this Act. If the Commission has reasonable
31 cause to believe that any person or group of persons is committing acts

1 penalized under Sec 5 of this Act, the Commission shall recommend a legal
2 action in the appropriate prosecutor's office or court.

3 The CHR shall also direct the officer concerned to take appropriate
4 action against a public officer or employee at fault or who neglects to perform
5 an act or discharge a duty required under this Act, and recommend the
6 revocation of license, removal from office or employment, suspension,
7 demotion, fine, censure, or prosecution, and ensure compliance therewith.
8 Refusal by any officer without just cause to comply with an order of the
9 Commission to revoke the license, remove, suspend, demote, fine, censure, or
10 prosecute an officer or employee who is at fault, or who neglects to perform an
11 act or discharge a duty required under this Act, shall be a ground for
12 disciplinary action against said officer.

13 The CHR shall also document cases of discrimination on the basis of
14 SOGIE and shall include these documented cases in its annual human rights
15 report. The Commission shall actively provide recommendations to different
16 branches of government on how to address and eliminate discrimination on
17 the basis of SOGIE.

18 *Sec. 10. Programs to Promote Non-Discrimination and Diversity.* – To eliminate all
19 forms of discrimination, the State shall pursue initiatives and programs that seek to
20 enable an environment free of stigma and discrimination. It shall direct the machinery
21 and resources of the State to promote non-discrimination and shall encourage other
22 sectors of the society to engage and participate in these efforts. It shall ensure the
23 implementation of the following programs:

- 24 a. Social Protection Programs – the national government shall ensure that
25 communities vulnerable to stigma and discrimination on the basis of SOGIE
26 are integrated into government-run social protection programs.
- 27 b. Diversity Programs and Policies – All government agencies, government-
28 owned and controlled corporations, private companies, public and private
29 educational institutions, and other entities shall establish diversity
30 programs to ensure human rights violations and violence on the basis of
31 SOGIE are prevented. They shall also create an internal redress mechanism

1 to address cases of discrimination and develop administrative remedies or
2 sanctions for such cases. Public institutions shall incorporate these
3 programs into existing gender and development programs.

- 4 c. Information and Education Campaign - All government agencies and
5 instrumentalities are mandated to develop and implement SOGIE-specific
6 gender sensitivity education and information dissemination. They shall
7 endeavor to produce and publish information and education campaign
8 materials on gender and human rights.

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

21 The ADOC shall be jointly chaired by the Chairpersons of the Senate
22 Committee on Women, Children, Family Relations and Gender Equality and the
23 House Committee on Women and Gender Equality. The Vice-Chair of the ADOC shall
24 be jointly held by the Chairpersons of the Senate Committee on Justice and Human
25 Rights and the House Committee on Justice. The Secretariat shall come from the
26 existing Secretariat personnel of the Senate and the House of Representatives
27 committees concerned.

28 The ADOC shall monitor the compliance of public institutions to the provisions
29 of this Act. Within three years after the enactment of this Act, the ADOC shall conduct
30 an audit of national and local policies that discriminate on the basis of SOGIE, and

1 shall submit a report to Congress, the Office of the President, and the Supreme Court,
2 on this subject.

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

4 Sec. 12. *Separability Clause.* – If any provision of this Act is declared
5 unconstitutional or otherwise invalid, the validity of the other provisions shall not be
6 affected thereby.

7 Sec. 13. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or
8 parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

9 Sec. 14. *Effectivity.* – This Act shall take effect fifteen (15) days after its
10 publication in the Official Gazette or in a newspaper of general circulation.

Approved,