

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



'16 JUL 20 P3:30

SENATE
S.B. No. 683

BY:

Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF ETHNICITY, RACE, RELIGION OR BELIEF, SEX, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, CIVIL STATUS AND HIV STATUS, AND PROVIDING PENALTIES THEREFOR

EXPLANATORY NOTE

The Bill of Rights in the 1987 Constitution guarantees equal protection for every Filipino, and prohibits discrimination of persons based on ethnicity, race, religion or belief, political inclinations, social class, sex, gender, sexual orientation, gender identity, gender expression, civil status, medical condition, or any other status in the enjoyment of rights. 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 ethnicity, race, religion or belief, sex, gender, sexual orientation, gender identity, gender expression, civil status, medical condition, or any other status. These international human rights instruments have consistently been interpreted by international institutions, such as the United Nations Human Rights Committee and the United Nations Committee on Economic, Social and Cultural Rights.

Unfortunately, reality has yet to catch up with the noble intentions of these numerous laws and international agreements. In schools, workplaces, commercial establishments, public service, police and the military, prejudicial practices and policies based on sexual orientation and gender and cultural identity limit the exercise and enjoyment of basic human rights and fundamental freedoms.

We still see, for instance, employment practices that prioritize single over married job applicants; or other cultural practices that suppress an individual's right to practice his or her religion, faith, or cultural belief. Many Filipinos in indigenous communities have yet to be fully integrated into the workforce; ignorance about their cultural practices often leads to stigma and marginalization.

Moreover, the lesbian, gay, bisexual, and transsexual (LGBT) community continues to be oppressed by the iniquitous treatment of society at large, primarily because of misconceptions and ignorance. LGBT students, for instance, are refused admission or expelled from schools due to their sexual orientation or gender identity. Companies block the promotion of LGBT 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.

In a democratic society that claims to give equal access and opportunity to each of its citizens, many Filipinos are still treated as "second-class citizens" when they try to exercise the rights to which they are rightfully entitled.

There is, therefore, an urgent need to define and penalize practices that unjustly discriminate on the basis of ethnicity, race, religion or belief, sex, gender, sexual orientation, gender identity, gender expression, civil status, medical condition, or any other status. In view of the foregoing, and of the need to correct the long-standing discrimination against marginalized communities in Philippine society, the early passage of this bill is earnestly urged.

A handwritten signature in black ink, appearing to read "Bam Aquino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Senator Paolo Benigno "Bam" A. Aquino IV

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

1 **Section 1. Short Title** – This bill shall be known as the "Anti-Discrimination Act."

2 **Section 2. Declaration of Policies.** – It is the policy of the state to work actively for
3 the elimination of all forms of discrimination that offends the equal protection clause of the
4 Bill of Rights and the State obligations under human rights instruments acceded to by the
5 Republic of the Philippines, particularly those discriminatory practices based on sex or
6 sexual orientation. Towards this end, discriminatory practices as defined herein shall be
7 proscribed and penalized.

8 **Section 3. Definition of Terms** – For the purposes of this Act, the following terms
9 shall mean:

10 a. *Discrimination* - any distinction, exclusion, restriction or preference or other
11 differential treatment that is directly or indirectly based on ethnicity, race, religion or belief,
12 sex, gender, sexual orientation, gender identity, gender expression, and HIV status, which
13 has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise,
14 on an equal footing, of political, civil, economic, social, and cultural rights. Discrimination
15 also includes incitement to discriminate and harassment.

16 b. *Education and Training* - all types and levels of education, training, and other
17 avenues for learning and includes access thereto, the standard and quality thereof and the
18 conditions under which the same is given.

19 c. *Ethnic Origin* - race, national origin, or ethno-linguistic origin.

20 d. *Employment* - all terms, conditions, and privileges relating to work in public and
21 private institutions, including recruitment policies, application procedures, training,

1 incentives, compensation, determination of benefits or allowances, promotion,
2 advancement opportunities, transfer, and dismissal.

3 This definition shall apply to regular, probationary, casual, contractual, fixed-term,
4 and seasonal workers. In legitimate contracting arrangements, the contractor/subcontractor
5 shall be deemed the employer of the contractual employee.

6 e. *Gender Identity* - the personal sense of identity or expression as characterized,
7 among others, by manners of clothing, inclinations, and behavior in relation to masculine or
8 feminine conventions. A person may have a male or female identity with the physiological
9 characteristics of the opposite sex.

10 f. *Gender Expression* - the outward manifestations of the cultural traits that enable a
11 person to identify as male or female according to patterns that, at a particular moment in
12 history, a given society defines as gender appropriate.

13 g. *HIV Status* - the presence or absence of the human immunodeficiency virus (HIV)
14 in the body of an individual.

15 h. *Indigenous Peoples* - a group of people or homogenous societies identified by self
16 ascription and ascription by others, who have continuously lived as organized community on
17 communally bounded and defined territory, and who have, under claims of ownership since
18 time immemorial, occupied, possessed and utilized such territories, sharing common bonds
19 of language, customs, traditions and other distinctive cultural traits, or who have, through
20 resistance to political, social and cultural inroads of colonization, nonindigenous religions
21 and cultures, became historically differentiated from the majority of Filipinos.

22 *Indigenous Peoples* shall likewise include peoples who are regarded as indigenous on
23 account of their descent from the populations which inhabited the country, at the time of
24 conquest or colonization, or at the time of inroads of nonindigenous religions and cultures,
25 or the establishment of present state boundaries, who retain some or all of their own social,
26 economic, cultural and political institutions, but who may have been displaced from their
27 traditional domains or who may have resettled outside their ancestral domains;

28 i. *Profiling* - relying on the prohibited grounds of discrimination in subjecting a
29 person or group of persons to investigatory activities, which include unnecessary,
30 unjustified, illegal, and degrading searches, questioning or other investigatory activities, in
31 determining whether an individual is engaged in an activity presumed to be unlawful,
32 immoral, or socially unacceptable.

33 j. *Religious Belief* - the profession or non-profession of religion or belief of one's
34 choice that may be publicly or privately manifested in worship, observance, practice and
35 teaching.

36 k. *Sexual Orientation* - the direction of emotional sexual attraction or conduct. This
37 can be towards people of the same sex (homosexual orientation), towards people of both

1 sexes (bisexual orientation), towards neither, or towards people of the opposite sex
2 (heterosexual orientation) or towards everyone.

3 l. *Stigma* - the dynamic process of devaluation that significantly discredits an
4 individual in the eyes of others. When stigma is acted upon, the result is discrimination.

5 m. *Vulnerable communities* - communities or sectors that encounter stigma and
6 discrimination based on the grounds enumerated in Section 4.

7 **Section 4. Prohibited Grounds for Discrimination.** – For the purposes of this Act,
8 discrimination that is indirectly or directly based on the actual or perceived ethnicity, race,
9 religion or belief, political inclination, social class, sex, gender, sexual orientation, gender
10 identity, gender expression, civil status, disability, HIV status, health, medical, language,
11 physical features or other status is prohibited.

12 **Section 5. Discriminatory Acts.** - The following acts shall be prohibited:

13 a. Inflicting stigma – it shall be unlawful for any person to commit any acts that
14 promote and encourage stigma based on the grounds referred to in Section 4.

15 b. Denial of political, civil, and cultural rights – it shall be unlawful to deny a person
16 enjoyment of political, civil and cultural rights based on the grounds referred to Section 4.

17 c. Denial of right to education – It is unlawful for any person to:

18 1. Refuse admission or expel a person from any educational or training
19 institution on the basis of the grounds defined in Section 4, without prejudice to
20 the right of educational or training institutions to determine the academic
21 qualifications of their students or trainees;

22 2. Impose disciplinary sanctions, penalties harsher than customary, or similar
23 punishments, requirements, restrictions, or prohibitions that infringe on the
24 rights of the students on the basis of the grounds identified in Section 4.

25 This prohibition extends to acts committed against a student or trainee to
26 discriminate his or her parents or legal guardians based on grounds referred to in Section 4.

27 d. Denial of right to work – it is unlawful for any person to:

28 1. Use the grounds in Section 4 or require the disclosure thereof in the selection,
29 promotion, and termination of workers, and in the determination of
30 compensation, training, incentives, privileges, benefits or allowances, as well as
31 other terms and conditions of employment;

32 2. Deny employment in government institutions, including police and military
33 service, based directly or indirectly on the grounds referred to in Section 4;

1 3. Refuse to enter into contract or agreement with persons or group of persons
2 based solely or partly on the grounds provided in Section 4; and

3 4. Deny an application for or revoke a professional license issued by the
4 government directly or indirectly due to the grounds included in Section 4.

5 e. Denial of access to goods and services – it is unlawful for any person to:

6 1. Deny a person, solely or partly on the basis of the grounds in Section 4, of
7 goods and services available to the general public, such as but not limited to
8 private and public insurance, housing and other forms of accommodation,
9 medical and clinical services;

10 2. Refuse entry to or evict a person from any establishment, facilities or utilities
11 that are open to the general public, such as but not limited to restaurants, bars,
12 hotels, shopping malls, solely or partly on the basis of the grounds listed in
13 Section 4; and,

14 3. Cause undue and unjust deferral of services or provision of inferior services to
15 persons due to the grounds in Section 4.

16 There is discrimination if the acts above are committed against organizations or
17 groups of persons based on the grounds identified in Section 4.

18 f. Denial of right to organize – It shall be unlawful to prohibit, prevent, or revoke the
19 accreditation, formal recognition, and/or registration of any organization, group, political
20 party, institution or establishment, in educational institutions, workplaces, communities,
21 and other settings, based partly or solely on the grounds provided for in Section 4.

22 Discrimination is also committed when additional requirements beyond the
23 customary are imposed directly or indirectly due to the grounds stipulated in Section 4.

24 g. Inflicting harm on health and well-being – it shall be unlawful to force any person
25 to any medical or physical examination, psychological treatment, faith-based practices, and
26 other similar procedures based solely or partly on any of the grounds referred to in Section
27 4.

28 h. Engaging in profiling – It shall be illegal for any person, including members of the
29 military and law enforcement agencies, to engage in profiling based solely or partly on the
30 grounds included in Section 4.

31 i. Abuses by state and non-state actors – It shall be unlawful for any government
32 agencies, including local government units, police, military, and immigration, to harass
33 verbally or physically, to curtail freedom of movement, or to extort from a person or a group
34 of persons on the basis of the grounds stipulated in Section 4. This prohibition applies to
35 similar abuses committed by non-state actors.

1 j. Detention and confinement - It shall be unlawful to detain and confine a person or
2 groups of persons based directly or indirectly on the grounds under Section 4.

3
4 k. Other analogous circumstances - Any analogous acts which shall have the effect or
5 purpose of impairing or nullifying the recognition, enjoyment, or exercise of the person's
6 human rights and fundamental freedoms are also prohibited.

7 **Section 6. Exceptions.** - Any action or conduct, otherwise prohibited under Sections
8 4 and 5 of this Act, shall not be unlawful and shall not be considered as discrimination:

9 (1) Where any of the involved protected attributes are bona fide occupational
10 qualifications reasonably necessary to the normal operation of the particular business
11 or where the differentiation is based on reasonable factors (Genuine Occupational
12 Qualifications);

13 (2) Where distinction, exclusion, or preference in respect of a particular job is
14 based on inherent requirement and requirement is a proportionate means of achieving a
15 legitimate aim (Inherent Requirement);

16 (3) Where the acts or practices of a body established for religious purposes
17 conform to the doctrines, tenets or beliefs of the relevant religion or that such acts or
18 practices are necessary to avoid injury to the religious sensitivities of adherents of that
19 religion;

20 (4) Where the act or omission is done in good faith for the purpose of assisting or
21 advancing a person or group of persons who need or may reasonably be supposed to
22 need assistance or advancement in order to achieve an equal place in society with
23 other members of the community (Measures Of Equality Or Affirmative Action Program).

24 **Section 7. Persons Liable.** - Any person, natural or juridical, or their representatives,
25 including government, government-owned and controlled corporations, or any private
26 corporation, institution or company, who knowingly and deliberately commits any of the
27 acts under Section 5, shall be liable under this Act.

28 Any person, natural or juridical, or their representatives, who requests, instructs,
29 induces, encourages, authorizes, tolerates, or assists another to commit any of the acts
30 under Section 5 shall also be principally liable under this Act.

31 **Section 8. Penalties.** - The penalty of not less than one (1) year but not more than six
32 (6) years imprisonment or a fine of not more than Five Hundred Thousand Philippine
33 Pesos (PhP500,000.00), or both, in the discretion of the court, and taking into consideration
34 the circumstances and gravity of the offense.

35 The penalty provided under this section shall be imposed in its maximum period:

- 1 (a) If the offender has been previously convicted under this Act;
- 2 (b) When the offender is an ascendant, parent, guardian, stepparent or collateral
3 relative within the second degree of consanguinity or affinity of the victim;
- 4 (c) When the offender is the manager or owner of an establishment which has no
5 license to operate or whenever such license has expired or has been previously r
6 evoked;
- 7 (d) When the offender is a public official, officer or employee: provided, that the
8 penalty of suspension shall also be imposed: provided, further, that the public
9 official, officer or employee may be asked to undergo gender and development
10 training and community service during the duration of suspension.

11 When the offender is a corporation, partnership or association, the officer or employee
12 thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its
13 maximum period. The corporation shall be jointly liable for any fine imposed.

14 An offender who is a foreigner shall be deported immediately after service of sentence and
15 shall be barred entry into the country.

16 Whenever the courts determine that a fine shall be imposed pursuant to the criminal case
17 filed under this Act, the fine thus collected shall be remitted by the court to the
18 Commission on Human Rights which shall administer the fund for the assistance of
19 victims of discrimination.

20 If any crime penalized under the Revised Penal Code is committed in pursuit of
21 discrimination, the penalty provided under the Revised Penal Code shall be applied and the
22 discrimination committed shall be considered as an aggravating circumstance.

23 **Section 9. Enforcement.** - Criminal complaints brought under this Act shall be filed
24 with the proper court. In addition to the criminal complaint, a person who has been
25 subjected to any acts of discrimination as defined in this Act may file a complaint with the
26 Commission on Human Rights. For this purpose, the Commission on Human Rights may
27 investigate, *motu proprio* or on complaint by any person, acts or omissions in violation of
28 this Act.

29 In all cases under investigation, the Commission may issue legal and preventive
30 measures as well as provisional remedies. These measures or remedies shall include, but are
31 not limited to, general writs of injunction, restraining orders, status quo ante orders, cease
32 and desist orders, protection orders or such other orders to protect the life and security of
33 persons, preserve evidence, protect properties and other considerations to ensure the
34 efficient investigation of the alleged violation of this Act.

35 The Commission shall also direct the officer concerned to take appropriate action
36 against a public officer or employee at fault or who neglected to perform an act or
37 discharge a duty required under this Act, and order revocation of license, removal from

1 office or employment, suspension, demotion, fine, censure, or prosecution, and ensure
2 compliance therewith. Refusal by any officer without just cause to comply with an order of
3 the Commission to revoke the license, remove, suspend, demote, fine, censure, or
4 prosecute an officer or employee who is at fault, or who neglects to perform an act or
5 discharge a duty required under this Act, shall be a ground for disciplinary action against
6 said officer.

7 **Section 10. Administrative Proceedings and Sanctions Against Public Officials and**
8 **Employees.** - Pursuant to Section 8 of this Act, which makes it a duty of the Commission on
9 Human Rights to investigate alleged cases of discrimination, a finding by the Commission on
10 Human Rights that a department, agency or instrumentality of the government, a
11 government-owned and controlled corporation, or a local government unit has violated any
12 provision of this Act and its implementing rules and regulations, shall carry with it a
13 recommendation to the Civil Service Commission and/or the Department of Interior and
14 Local Government for the imposition of sanctions under administrative law, civil
15 service, or other appropriate laws. Such recommendation shall include the names of the
16 person directly responsible for the violation, and a statement that the sanctions be
17 imposed upon the person directly responsible and the head of the agency or the local chief
18 executive.

19 **Section 11. Fines Against Private Persons, Provisional Remedy.** - Upon a prima facie
20 finding that any provision of this Act was violated and upon its issuance of a cease and
21 desist order, the Commission on Human Rights may impose a fine of up to Twenty Thousand
22 Philippine Pesos (PhP20,000.00), for every day that the act of discrimination complained
23 persists.

24 For purposes of this section and the imposition of the provisional remedy of fine,
25 the Commission on Human Rights may ask the assistance of the Department of Trade and
26 Industry, the Commission on Higher Education, Department of Labor and Employment,
27 Department of Education, and the Technical Education and Skills Development
28 Authority.

29 The fine thus collected shall be for the assistance of victims of discrimination.

30 **Section 12. Implementing Rules and Regulations (IRR).** - The Commission on Human
31 Rights, Civil Service Commission, Department of Labor and Employment, Department of
32 Interior and Local Government, the Armed Forces of the Philippines, Department of
33 Education, Commission on Higher Education, Technical Education and Skills
34 Development Authority, Department of Justice, Department of Foreign Affairs,
35 Department of Health, National Commission on Indigenous Peoples, and National
36 Commission on Muslim Filipinos shall promulgate the necessary implementing rules and
37 regulations within sixty (60) days from the effectivity of this Act. Thereafter, this Act shall
38 be fully implemented with or without the IRR.

39 **Section 13. Programs to Promote Non-discrimination and Diversity** – The State shall
40 endeavor to eliminate all forms of discrimination and shall therefore pursue initiatives and
41 programs that seek to enable an environment free of stigma and discrimination. It shall
42 direct the machinery and resources of the State to ensure non-discrimination and promote

1 equality and shall encourage other sectors of the society to engage and participate in these
2 efforts. It shall ensure the establishment of the following programs:

3 a. Social Protection Program – The national government shall implement social
4 protection measures for communities affected by and vulnerable to stigma and
5 discrimination.

6 b. Diversity Programs and policies - All government agencies, government-owned
7 and controlled corporations, private companies, public and private educational institutions,
8 and other entities shall establish diversity programs to ensure that discrimination and abuse
9 are prevented. They shall also create an internal redress mechanism to address cases of
10 discrimination and grant administrative remedies or sanctions for such cases.

11 The Civil Service Commission, Department of Labor and Employment, Department of
12 Interior and Local Government, the Armed Forces of the Philippines, Department of
13 Education, Commission on Higher Education, Technical Education and Skills Development
14 Authority, Department of Justice, Department of Foreign Affairs, and Department of Health
15 shall ensure the implementation of this section.

16 Failure of the above agencies to ensure the implementation of this provision shall be
17 deemed refusal to address discrimination and shall be penalized as an analogous act of
18 discrimination.

19 **Section 14. Appropriations.** – The initial amount necessary to implement the
20 provisions of this Act shall be charged against the current year's appropriation of the
21 agencies tasked to implement the provisions of this Act. Thereafter, such sums as maybe
22 necessary for the continued implementation of this Act shall be included in the Annual
23 General Appropriations Act.

24 **Section 15. Implementing Rules and Regulations.** – The CHR in coordination with
25 the Civil Service Commission, Department of Labor and Employment, Department of Interior
26 and Local Government, the Armed Forces of the Philippines, Department of Education,
27 Commission on Higher Education, Technical Education and Skills Development Authority,
28 Department of Justice, Department of Foreign Affairs, Department of Health, National
29 Commission on Indigenous Peoples, and National Commission on Muslim Filipinos shall
30 promulgate the necessary implementing rules and regulations within sixty (60) days from
31 the effectivity of this Act.

32 **Section 16. Separability Clause.** – Any portion or provision of this Act that may be
33 declared unconstitutional or invalid shall not have the effect of nullifying the other portions
34 and provisions hereof as long as such remaining portion or provision can still subsist and be
35 given effect in their entirety.

36 **Section 17. Repealing Clause.** – All laws, decrees, orders, rules and regulations or
37 parts thereof inconsistent with this Act are hereby repealed, amended, or modified
38 accordingly.

1 **Section 19. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
2 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

3 *Approved,*