


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

'04 AUG 23 P3:21

SENATE

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Senate Bill No. 1738

Introduced by Senator Revilla, Jr.

EXPLANATORY NOTE

Discrimination in any form is reprehensive and repugnant to the basic law of our land as well as prevailing international conventions and agreements. In this modern age, every sovereign State and its citizenry must see to it that respect for the human rights of all persons regardless of sex, status, race, religion or creed must always be upheld.

On one hand, the 1987 Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights (Article II, Section 11). Moreover, the Constitution imposes on the State the duty to ensure the fundamental equality before law of women and men (Article II, Section 14).

On the other hand, the right to freedom from discrimination is affirmed by the Universal Declaration of Human Rights (UDHR) in its Articles 2 and 7, and by the International Covenant on Civil and Political Rights (ICCPR) in its Articles 2 and 26.

The United Nations Human Rights Committee, in the 1994 case of *Toonen vs. Australia*, held that ICCPR protections against discrimination should be interpreted to bar discrimination based on sexual orientation.

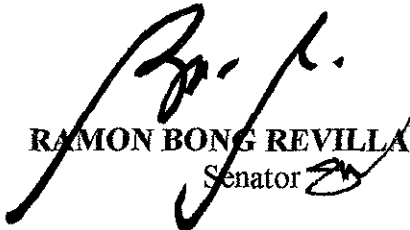
The Philippines ratified the ICCPR in 1986. The UDHR is considered part of customary international law and is binding on all member states of the United Nations. As a responsible member of the U.N. and pursuant to the dictates of our Constitution, Congress must provide a strong mechanism to safeguard against discrimination on the basis of sexual orientation in the Philippines.

Everyone must be deeply concerned about ending discrimination toward lesbians, gays, bisexuals, and transgenders throughout Filipino society. It is now time to heed the call for the passage of a law that provides comprehensive protections against discrimination on the basis of sexual orientation and gender identity in employment, education, as well as medical and public facilities, among other realms.

The goal of human and civil rights measures is to protect all persons equally, without distinction or discrimination. This bill, in enshrining protections against abuse and discrimination on the basis of sexual orientation and gender identity, advances the promise of the universality of rights. These are not claims to "new rights" or to "special rights", but rather extend protections for human dignity to include the most vulnerable groups in society, and to publicize and prevent the least visible and most easily concealed violations.

By making this bill into law, the Philippines would join the rapidly growing ranks of countries around the world – including South Africa, Fiji, Brazil, Ecuador, the Netherlands, Israel, and Costa Rica – that recognize the importance of national-level anti-discrimination legislation in the fulfillment of international human rights standards. Indeed, within an atmosphere of stigma, discrimination, and lack of social acceptance toward any social group, enshrining protection in law is essential not only as a deterrent to discrimination and statement of values, but also educational in itself.

A law criminalizing discrimination will ensure job security, equal opportunities for employment and equal access to education, public utilities and government services for *all* Filipinos. Hence, immediate passage of this bill is earnestly urged.




RAMON BONG REVILLA, JR.
Senator

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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 Congress assembled:

SECTION 1. *Title.* – This Act shall be known and cited as the “Anti-Gender 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 and/ or 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 any person of 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 by 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 rights 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 one's sexual orientation or gender identity; (ii) penalties harsher than what is customary primarily due to one's 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, institution or establishment, in educational institutions, workplaces, communities, and similar settings, solely on the basis of the sexual orientation or gender identity of their members and leaders or of their target constituencies.

This prohibition shall also include the prevention of and prohibition 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 establishment, facilities, utilities or service, 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 service that what is normal.

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

- (h) Deny an application for a license, clearance, certification or any other document issued by government authorities or other entities, on the basis of the applicant's sexual orientation or gender identity, as provided by existing laws.
- (i) 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.

- (j) Harassment by members of institutions involved in the enforcement of law and the protection of rights, such as the Philippine National Police, 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 custody and extortion, physical or verbal abuse takes place, regardless of whether such arrest has legal or factual basis. Harassment by juridical persons on the basis of sexual orientation or gender identity of their members, officers, stockholders, benefactors, clients, or patrons is likewise covered by this provision.
- (k) Other similar and 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 penalties, as provided for by civil service laws, rules and regulations.

SEC. 6. *Penalties.* – (a) Persons found guilty of any of the discriminatory practices enumerated in the preceding provisions shall be penalized with a fine of not less than One Hundred Thousand Pesos (₱100,000.00) but shall not exceed Five Hundred Thousand Pesos (₱500,000.00) or imprisonment of not less than four (4) years but not more than six (6) years, or both, at the discretion of the court.

(b) The officials directly involved in any act of discrimination as enumerated in the preceding provisions shall be liable for violations committed by corporations, organizations, or similar juridical 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.