

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



SENATE

'17 NOV 22 A9:50

Senate Bill No. 1619

RECEIVED

INTRODUCED BY SENATOR JOSEPH VICTOR G. EJERCITO

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 1987 Philippine Constitution under Article III, Section 1, 2, 4, 8, 12 states that every person has the right to life, security of person and privacy, right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, and the right to organize associations. Furthermore, under Section 11, the State values the dignity of every person and guarantees full respect for human rights.

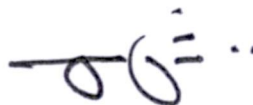
Likewise, the Philippines is a signatory to numerous international agreements that protects the same rights. As provided in Articles 3 and 5 of the Universal Declaration of Human Rights, everyone has the right to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, and association. Similarly, the International Convention on Civil and Political Rights (ICCPR) in Article 6 affirms that the inherent right to life of every person shall be protected by law and that no person should be arbitrarily deprived of life.

To borrow the words of Nelson Mandela that to deny people their human rights is to challenge their very humanity. Truly, no one should suffer discrimination on the basis of ethnicity, gender, sex, age, sexual orientation, gender identity, gender expression, civil status and HIV status or other status as established by human rights standards.

This bill addresses the long standing problem of the lack of definition and penalty for unjustly discrimination 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.

Thus, the early passage of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read 'JOE EJERCITO', with a horizontal line extending to the left of the first 'O'.

JOSEPH VICTOR G. EJERCITO



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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-
2 **Discrimination Act of 2017."**

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

10 **Section 3. Definition of Terms-** For the purposes of this Act, the following
11 terms shall mean:

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

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

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

2 d. **Employment**- all terms, conditions, privileges relating to work in
3 public and private institutions, including recruitment policies, application
4 procedures, training, incentives, compensation, determination of benefits or
5 allowances, promotion, advancement opportunities, transfer, and dismissal.

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

10 e. **Gender Identity**- the personal sense of identity or expression as
11 characterized, among others, by manners of clothing, inclinations, and
12 behaviour in relation to masculine or feminine conventions. As person may
13 have a male or female identity with the physiological characteristics of the
14 opposite sex.

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

18 g. **HIV Status**- the presence or absence of the Human
19 Immunodeficiency Virus (HIV) in the body of an individual.

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

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

36 i. **Profiling**- relying on the prohibited grounds of discrimination in
37 subjecting a person or group of persons to investigatory activities, which
38 include unnecessary, unjustified, illegal, and degrading searches, questioning
39 or other investigatory activities, in determining whether an individual is

1 engaged in an activity presumed to be unlawful, immoral, or socially
2 unacceptable.

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

6 k. **Sexual Orientation**- the direction of emotional sexual attraction or
7 conduct. This can be towards people of the same sex (homosexual
8 orientation), towards people of both sexes (bisexual orientation), towards
9 neither, or towards people of the opposite sex (heterosexual orientation) or
10 towards everyone.

11 l. **Stigma**- the dynamic process of devaluation that significantly
12 discredits an individual In the eyes of others. When stigma is acted upon, the
13 result is discrimination.

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

16 **Section 4. Prohibited Grounds for Discrimination**- For the purposes of this
17 Act, discrimination that is indirectly based on the actual or perceived
18 ethnicity, race, religion or belief, political inclination, social class, sex, gender,
19 sexual orientation, gender identity, gender expression, civil status, disability,
20 HIV status, health, medical, language, physical features or other status in
21 prohibited.

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

- 23 a. **Inflicting stigma**- it shall be unlawful for any person to commit
24 any acts that promote and encourage stigma based on the
25 grounds referred to in Section 4.
- 26 b. **Denial of political, civil, and cultural rights**- it shall be unlawful
27 to deny a person enjoyment of political, civil and cultural rights
28 based on the grounds referred to Section 4.
- 29 c. **Denial of right to education**- it is unlawful for any person to:
- 30 1. Refuse admission or expel a person from any educational or
31 training institutions on the basis of the grounds defined in
32 Section 4, without prejudice to the right of educational or
33 training institutions to determine the academic qualifications
34 of their students or trainees;
- 35 2. Impose disciplinary sanctions, penalties harsher than
36 customary or similar punishments, requirements,
37 restrictions, or prohibitions that infringe on the rights of the
38 students on the basis of the grounds identified in Section 4.

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

4 d. Denial of right to work- it is unlawful for any person to:

- 5 1. Use the grounds in Section 4 or require the disclosure thereof
6 in the selection, promotion, and termination of workers, and
7 in the determination of compensation, training, incentives,
8 privileges, benefits or allowances, as well as other terms and
9 conditions of employment;
- 10 2. Deny employment in government institutions, including
11 police and military service, based directly or indirectly on
12 the grounds referred to in Section 4;
- 13 3. Refuse to enter into contractor or agreement with persons or
14 group of persons based solely or partly on the grounds
15 provided in Section 4; and
- 16 4. Deny an application for or revoke a professional license
17 issued by the government directly due to the grounds
18 included in Section 4.

19 e. Denial of access to goods and services- it is unlawful for any
20 person to:

- 21 1. Deny a person, solely or partly on the basis of the grounds in
22 Section 4, of goods and services available to the general
23 public, such as but not limited to private and public
24 insurance, housing and other forms of accommodation,
25 medical and clinical services;
- 26 2. Refuse entry to or evict a person from any establishment,
27 facilities or utilities that are open to the general public, such
28 as but not limited to restaurants, bars, hotels, shopping
29 malls, solely or partly on the basis of the grounds listed in
30 Section 4; and,
- 31 3. Cause undue and unjust deferral of services or provision of
32 inferior services to persons due to the grounds in Section 4.

33 There is discrimination if the acts above are committed against
34 organizations or groups of persons based on the grounds identified in Section
35 4.

36 f. Denial of right to organize- it shall be unlawful to prohibit,
37 prevent, or revoke the accreditation, formal recognition, and/or
38 registration of any organization, group, political party, institution
39 or establishment, in educational institutions, workplaces,
40 communities, and other settings, based partly or solely on the
41 grounds provided for in Section 4.

- 1 g. Discrimination is also committed when additional requirements
2 beyond the customary are imposed directly or indirectly due to
3 the grounds stipulated in Section 4.
- 4 h. Inflicting harm on health and well-being- it shall be unlawful to
5 force any person to any medical or physical examination,
6 psychological treatment, faith-based practices, and other similar
7 procedures based solely or partly on any of the grounds referred
8 to in Section 4.
- 9 i. Engaging in profiling- it shall be illegal for any person, including
10 members of the military and law and enforcement agencies, to
11 engage in profiling based solely or partly on the grounds
12 included in Section 4.
- 13 j. Abuses by state and non-state actors- it shall be unlawful for any
14 government agencies, including local government units, police,
15 military, and immigration, to harass verbally or physically, to
16 curtail freedom of movement, or to extort from a person or a
17 group of persons on the basis of the grounds stipulated in Section
18 4. This prohibition applies to similar abuses committed by non-
19 state actors.
- 20 k. Detention and confinement- it shall be unlawful to detain and
21 confine a person or groups of persons based directly or indirectly
22 on the grounds under Section 4.
- 23 l. Other analogous circumstances- Any analogous acts which shall
24 have the effect or purpose of impairing or nullifying the
25 recognition, enjoyment, or exercise of the person's human rights
26 and fundamental freedoms are also prohibited.

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

- 30 a. Where any of the involved protected attributes are bona fide
31 occupational qualifications reasonably necessary to the normal
32 operation of the particular business or where the differentiation is
33 based on reasonable factors (Genuine Occupational
34 Qualifications);
- 35 b. Where distinction, exclusion, or preference in respect of a
36 particular job is based on inherent requirement and requirement
37 is a proportionate means of achieving a legitimate aim (Inherent
38 Requirement);
- 39 c. Where the acts of practices of a body established for religious
40 purposes conform to the doctrines, tenets or beliefs of the
41 relevant religion or that such acts or practices are necessary to
42 avoid injury to the religious sensitivities of adherents of that
43 religion;

1 d. Where the act or omission is done in good faith for the purpose of
2 assisting or advancing a person or group of persons who need or
3 may reasonably be supposed to need assistance or advancement
4 in order to achieve an equal place in society with other members
5 of the community (Measures of Equality or Affirmative Action
6 Program).

7 **Section 7. *Persons Liable*** - Any person, natural or juridical, or their
8 representatives, including government, government-owned and controlled
9 corporations, or any private corporation, institutions or company, who
10 knowingly and deliberately commits any of the acts under Section 5, shall be
11 liable under this Act.

12 Any person, natural or juridical, or their representatives, who requests,
13 instructs, induces, encourages, authorizes, tolerates, or assists another to
14 commits any of the acts under Section 5 shall also be principally liable under
15 this Act.

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

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

- 23 a. If the offender has been previously convicted under this Act;
24 b. (b) When the offender is an ascendant, parent, guardian,
25 stepparent or collateral relative within the second degree of
26 consanguinity or affinity of the victim;
27 c. When the offender is the manager or owner of an establishment
28 which has no license to operate or whenever such license has
29 expired or has been previously revoked;
30 d. When the offender is a public official, officer or employee:
31 provided, that the penalty of suspension shall also be imposed:
32 provided, further, that the public official, officer or employee may
33 be asked to undergo gender and development training and
34 community service during the duration of suspension.

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

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

1 Whenever the courts determine that a fine shall be imposed pursuant to
2 the criminal case filed under this Act, the fine thus collected shall be remitted
3 by the court to the Commission on Human Rights which shall administer the
4 fund for the assistance of victims of discriminations.

5 If any crime penalized under the Revised Penal Code is committed in
6 pursuit of discrimination, the penalty provided under the Revised Penal Code
7 shall be applied and the discrimination committed shall be considered as an
8 aggravating circumstances.

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

15 In all cases under investigation, the Commission may issue legal and
16 preventive measures as well as provisional remedies. These measures or
17 remedies shall include, but are not limited to, general writs of injunction,
18 restraining orders, status quo ante orders, cease and desist orders, protection
19 orders or such other orders to protect the life and security of persons, preserve
20 evidence, protect properties and other consideration to ensure the efficient
21 investigation of the alleged violation of this Act.

22 The Commission shall also direct the officer concerned to take
23 appropriate action against a public officer or employee at fault or who
24 neglected to perform an act or discharge a duty required under this Act, and
25 order revocation of license, removal from office or employment, suspension,
26 demotion, fine, censure, or prosecution, and ensure compliance therewith.
27 Refusal by any officer without just cause to comply with an order of the
28 Commission to revoke the license, remove, suspend, demote, fine, censure, or
29 prosecute an officer or employee who is at fault or who neglects to perform an
30 act or discharge a duty required under this Act, shall be a ground for
31 disciplinary action against said officer.

32 **Section 10. Administrative Proceedings and Sanctions Against Public**
33 *Officials and Employees* - Pursuant to Section 8 of this Act, which makes it a
34 duty of the Commission on Human Rights to investigate alleged cases of
35 discrimination, a finding by the Commission on Human Rights that a
36 department, agency or instrumentality of the government, a government-
37 owned and controlled corporation, or a local government unit has violated
38 any provision of this Act and its implementing rules and regulations, shall
39 carry with it a recommendation to the Civil Service Commission and/or the
40 Department of Interior and Local Government for the imposition of sanctions
41 under administrative law, civil service, or other appropriate laws. Such

1 recommendation shall include the names of the person directly responsible for
2 the violation, and a statement that the sanctions be imposed upon the person
3 directly responsible and the head of the agency or the local chief executive.

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

9 For purposes of this section and the imposition of the provisional
10 remedy of fine, the Commission on Human Rights may ask the assistance of
11 the Department of Trade and Industry, the Commission on Higher Education,
12 Department of Labor and Employment, Department of Education, and the
13 Technical Education and Skills Development Authority.

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

16 **Section 12.** *Implementing Rules and Regulations (IRR)* - The Commission
17 on Human Right, Civil Service Commission, Department of Labor and
18 Employment, Department of Interior and Local Government, the Armed
19 Forces of the Philippines, Department of Education, Commission on Higher
20 Education, Technical Education and Skills Development Authority,
21 Department of Justice, Department of Foreign Affairs, Department of Health,
22 National Commission on Indigenous Peoples and National Commission on
23 Muslim Filipinos shall promulgate the necessary implementing rules and
24 regulations within sixty (60) days from the effectivity of this Act. Thereafter,
25 this Act shall be fully implemented with or without the IRR.

26 **Section 13.** *Programs to Promote Non-discrimination and Diversity* - The
27 State shall endeavor to eliminate all forms of discrimination and shall
28 therefore pursue initiatives and programs that seek to enable an environment
29 free of stigma and discrimination. It shall direct the machinery and resources
30 of the State to ensure non-discrimination and promote equality and shall
31 encourage other sectors of the society to engage and participate in these
32 efforts. It shall ensure the establishments of the following programs:

- 33 a. Social Protection Program- The national government shall
34 implement social protection measures for communities affected
35 by and vulnerable to stigma and discrimination.
- 36 b. Diversity Programs and policies- All governments agencies,
37 government-owned and controlled corporations, private
38 companies, public and private educational institutions, and other
39 entities shall establish diversity programs to ensure that
40 discrimination and abuse are prevented. They shall also create an

1 internal redress mechanism to address cases of discrimination
2 and grant administrative remedies or sanctions for such cases.

3 The Civil Service Commission, Department of Labor and Employment,
4 Department of Interior and Local Government, the Armed Forces of the
5 Philippines, Department of Education, Commission on Higher Education,
6 Technical Education and Skills Development Authority, Department of
7 Justice, Department of Foreign Affairs, and Department of Health shall ensure
8 the implementation of this section.

9 Failure of the above agencies to ensure the implementation of this
10 provision shall be deemed refusal to address discrimination and shall be
11 penalized as an analogous act of discrimination.

12 **Section 14. Appropriations** - The initial amount necessary to implement
13 the provisions of this Act shall be charged against the current year's
14 appropriation of the agencies tasked to implement the provisions of this Act.
15 Thereafter, such sums as maybe necessary for the continued implementation
16 of this Act shall be included in the Annual General Appropriations Act.

17 **Section 15. Implementing Rules and Regulations** - The CHR in
18 coordination with the Civil Service Commission, Department of Labor and
19 Employment, Department of Interior and Local Government, the Armed
20 Forces of the Philippines, Department of Education, Commission on Higher
21 Education, Technical Education and Skills Development Authority,
22 Department of Justice, Department of Foreign Affairs, Department of Health,
23 National Commission on Indigenous Peoples, and National Commission on
24 Muslim Filipinos shall promulgate the necessary rules and regulations within
25 sixty (60) days the effectivity of this Act.

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

30 **Section 17. Repealing Clause** - All laws, decrees, orders, rules and
31 regulations or parts thereof inconsistent with this Act are hereby repealed,
32 amended, or modified accordingly.

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

36 *Approved,*