EXPLANATORY NOTE

The Philippines 1987 Constitution is rooted on equality – one of the main principles the Filipino people value most. We can see how equality is reflected in Philippines statutes up to the various international treaties the country adheres to. It is evident that equality is a value shared amongst the Filipino people – rare but essential to our way of life.

Despite the importance given to the principle of equality, many Filipinos, especially members of the LGBTQ++ community, still suffer from discrimination be it in school, at the workplace, or even at home where security and being oneself should be a norm, not a privilege. Various studies and reports also show how many Filipinos experience discrimination due to their sexual orientation, gender identity, or expression (SOGIE). This is further supported by reports from UNDP, USAID, and Human Rights Watch which documents how the Philippines has one of the worst records of violence against the LGBTQ++ community.

At this day and age where more and more Filipino LGBTQ++ members are finally mustering up the courage to come out in the open with the support of either their families, friends, or even strangers much like them BUT where their safety, security, and inherent right to be free to be whoever they want to be are also at stake – a law that penalizes acts of discrimination, provides a complaint mechanism, orders government to promote equality, and empowers LGBTQ++ in media is one that is direly needed.

Under this bill, to publish “information intended to ‘out’ or reveal the sex, sexual orientation, or gender identity of a person without their consent, when such has not been made known by the person concerned, and has been made with malicious intent or is primarily motivated by a desire for commercial profit” will be made illegal. This is just one of the many stipulations that will be included in the bill.

It is important we are reminded how any form of discrimination in the Philippines did not exist before the coming of our colonizers. It had no place here then, it should definitely have no place in the present, and it is our duty to make sure that it shall have no place in the future.
This proposal passed the House of Representatives on Third Reading in the 17th Congress. Unfortunately, it did not pass in the Senate.

With enough support, this bill will be passed and signed this 18th Congress.

MARIA LOURDES O. ACOSTA-ALBA
First District, Bukidnon
Republic of the Philippines

HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 95

Introduced by Representative Maria Lourdes O. Acosta-Alba

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

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

SECTION 1. Short Title. - This Act shall be known as the “SOGIE Equality 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 or expression, to be free from any form of discrimination. It shall therefore intensify its efforts to fulfill its duties under the Equal Protection Clause and the Bill of Rights provisions of the Philippine Constitution, and international and domestic laws to respect, protect, and fulfill the rights and dignity of every individual.

Towards this end, the State shall exert efforts to address all forms of discrimination, marginalization and violence on the basis of sexual orientation, or gender identity or expression, 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 all other relevant and universally-accepted human rights
instruments and other international conventions to which the Philippines is
a signatory. In the enforcement of this Act, all due respect shall be accorded
to the fundamental right of parents in the upbringing of their children in
accordance with their religious convictions. In all matters, the best interest
of children shall be paramount.

SEC. 3. Definition of Terms. – As used in this Act:

a. Child refers to a person below eighteen (18) years of age or older
   but who is incapable of taking care of oneself as defined under Republic Act
   No. 7610, as amended;

b. Discrimination refers to any distinction, exclusion, restriction, or
   preference which is based on any ground such as sex, sexual orientation,
   gender identity or expression, and which has the purpose or effect of
   nullifying or impairing the recognition, access to, enjoyment, or exercise by
   all persons on an equal footing of all rights and freedoms. The actual sex,
   sexual orientation, or gender identity or expression of the person subjected
   to discrimination shall not be relevant for the purpose of determining
   whether an act of discrimination has been committed;

c. Gender Expression refers to the way a person communicates
   gender identity to others through behavior, clothing, hairstyles,
   communication or speech pattern, or body characteristics;

d. Gender Identity refers to the personal sense of identity as
   characterized, among others, by manner 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, in which case this person is considered transgender;

e. Hate Crimes refer to criminal offenses committed against a
   person or a group of persons, or against such targeted person’s or group’s
   honor or property, motivated in whole or in part by the offender’s bias
   against gender, sexual orientation, gender identity or expression;
f. LGBT Community refers to the collective of persons who are male and female homosexuals (gays and lesbians, respectively), bisexual, and transgender;

g. Marginalization refers to a condition where a whole category of people is excluded from useful and meaningful participation in political, economic, social, and cultural life;

h. Sex refers to male, female, or intersex. Intersex refers to people born with the 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;

i. Sexual Orientation refers to the direction of emotional, sexual attraction, or conduct 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 to the absence of sexual attraction (asexual orientation); and

j. Stigma refers to the dynamic devaluation and dehumanization of an individual in the eyes of others which may be based on attributes that are arbitrarily defined by others as discreditable or unworthy, and which result in discrimination when acted upon.

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:

(a) Denying access to public services, including military service, to any person on the basis of sexual orientation or gender identity or expression;

(b) Including sexual orientation or gender identity or expression, 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 and action, performance review, and in the determination of employee compensation, access to 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 and skills training in both
the private sector 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;
(c) Refusing admission or expelling a person from any educational
or training institution on the basis of sexual orientation or gender identity
or expression, including discriminating against a student or trainee due
to the sexual orientation or gender identity or expression of the student’s
parents or guardian: Provided, However, That the right of educational and
training institutions to determine the academic qualifications of their
students or trainees shall be duly upheld;
(d) Imposing disciplinary sanctions, penalties harsher than
customary or similar punishments, requirements, restrictions or
prohibitions that infringe on the rights of the students on the basis of
sexual orientation or gender identity or expression, including
discriminating against a student or trainee due to the sexual orientation
or gender identity or expression of the student’s parents or guardian;
(e) Refusing or revoking 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 or expression of their members or of their
target constituencies;
(f) Denying 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 or expression;
(g) Denying an application for or revoking a professional or other
similar kind of license, clearance, certification on, or any other similar
document, except marriage license, issued by the government due to the
applicant’s sexual orientation or gender identity or expression;
(h) Denying a person access to or the use of establishments,
facilities, utilities, or services, including housing, open to the general
public on the basis of sexual orientation or gender identity or expression:
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 further, That this prohibition covers acts of discrimination against juridical persons solely on the basis of the sexual orientation or gender identity or expression of their members or of their target constituencies;

(i) Subjecting or forcing any person to undertake any medical or psychological examination to determine or alter, or both, the person's sexual orientation or gender identity or expression without the expressed approval of the person involved, except in cases where the person involved is a minor and below 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 proceedings by the Solicitor General or the latter's authorized representative;

(j) Harassment, coercion, or threats committed by members of institutions involved in the enforcement of law and the protection of rights of any person on the basis of sexual orientation or gender identity or expression. Among other cases, prohibited acts under this section include arresting or placing under custody, and subjecting a person to extortion, physical, verbal abuse, or sexual abuse, regardless of whether such arrest has legal or factual basis. Harassment, coercion, or threat of juridical persons on the basis of the sexual orientation or gender identity or expression of their members, stockholders, benefactors, clients, or patrons is likewise covered by this provision;

(k) Publishing 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;

(l) Engaging in public speech meant to shame, insult, vilify, or which tends to incite or normalize the commission of discriminatory practices against LGBTs, and which acts or practices in turn, intimidate them or result in the loss of their self-esteem;
(m) Subjecting persons or groups of persons to harassment generally defined as such unwanted conduct, pattern of conduct, act, or series of acts which tend to annoy, insult, bully, demean, offend, threaten, intimidate, alarm, or create a hostile or emotionally distressing environment, or put them in fear of their safety; and which behavior is motivated in whole or in part by the offender's bias, belief, or perception regarding the offended party's gender, sexual orientation, gender identity or expression, regardless of whether the belief or perception is correct. Such prohibited act may include physical assault, stalking, or making derogatory comments, slurs or lewd propositions, and may be conducted through any form of medium, including but not limited to, visual representation, broadcast communication, correspondence or communication through mail or any telecommunication device, or through the internet or cyberspace;

(n) Subjecting any person to gender profiling or to any investigatory activities, which include (i) unnecessary, unjustified, illegal, or degrading searches to determine whether an individual is engaged in an activity presumed to be unlawful, immoral, or socially unacceptable; (ii) recording and analyzing a person's psychological and behavioral characteristics to make generalizations about a person's sexuality or to assist in identifying a particular subgroup of people's sexual orientation or gender identity;

(o) Preventing a child under parental authority, custody, or guardianship from exhibiting or expressing one's sexual orientation or gender identity; or manifesting rejection of such child's sexual orientation or gender identity or expression by inflicting or threatening to inflict bodily or physical harm against the child or by causing mental or emotional suffering of the child through intimidation, harassment, public ridicule or humiliation, repeated verbal abuse, or other similar means, or in general, commit any act or omission prejudicial to the welfare and interest of the child as a result of the bias against the sexual orientation or gender identity of the child;
Subjecting a person to any other analogous acts that shall have
the effect or purpose of impairing or nullifying the enjoyment, recognition,
or exercise of a person’s rights and freedoms.

SEC. 5. Privacy Rights. - No person shall be burdened, prejudiced, or
prosecuted by reason of the exercise of the right to personal privacy.

SEC. 6. 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 or causing unreasonable delay to perform such a duty
without a valid ground shall constitute gross negligence on the part of the
official who shall suffer the appropriate penalty under civil service laws,
rules and regulations.

SEC. 7. Penalties. - A person who commits any discriminatory
practice described in Section 4 shall, upon conviction, be penalized by a fine
of not less than One hundred thousand pesos (P100,000) but not more than
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 in human rights education’s familiarization with and
exposure to the plight of the victims.

If a graver offense motivated by bias, prejudice, or hatred against
sexual orientation or gender identity or expression is committed, such shall
be meted the corresponding maximum penalties.

Any action arising from the violation of the provisions 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 or
such other cases for violation of other applicable penal laws. Further,
nothing in this Act shall be construed as giving authority to the State to
unduly interfere with the legitimate exercise by the parents or the guardians
of their right to discipline a child under their parental authority, custody or
guardianship.
The penalties provided under this Section shall be meted without prejudice to the imposition of administrative liability for government officials and employees.

SEC. 8. *Special Aggravating Circumstance.* – A person who commits any of the crimes in the Revised Penal Code or any special law and who is proven to have committed the same motivated by bias, prejudice, or hate based on sex, sexual orientation, or gender identity or expression, shall suffer the maximum penalty imposed by the Code or the relevant special law for such prohibited act.

SEC. 9. *Redress mechanisms for SOGIE-related cases*

A. Inclusion of SOGIE Concerns in All Police Station Activities and Services. – The Women and Children’s Desks now existing in all police stations shall be renamed as Women, Children and Gender Rights Protection Desk, which shall also act on and attend to complaints/cases covered by this Act. In this regard, police handling said desks shall undergo appropriate trainings with human rights-based approach to include among others gender sensitivity and awareness in proper terminology, dynamics of lesbian, gay, bisexual, and transgender (LGBT) relationships and hate crime investigations.

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

B. Role of the Commission on Human Rights (CHR) – The CHR shall investigate and recommend the filing of a complaint against any person violating this Act. If the CHR has reasonable cause to believe that any person or group of persons is committing acts penalized in Section 4 of this Act, the CHR shall recommend a legal action in the appropriate prosecutor’s office or court.

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

The CHR shall also document cases of discrimination on the basis of
sexual orientation or gender identity or expression and shall include these
documented cases in its annual human rights report. The Commission shall
actively provide recommendations to different branches of government on
how to address and eliminate discrimination on the basis of sexual
orientation or gender identity or expression.

SEC. 10. Government Programs and Policies – The State shall pursue
initiatives and programs that seek to establish and maintain an
environment free of stigma and discrimination. It shall direct the machinery
and resources of the State to promote non-discrimination and shall
encourage other sectors of the society to engage and participate in these
efforts. It shall ensure the implementation of the following programs:

A. Social Protection Programs - The national government shall ensure
that communities vulnerable to stigma and discrimination on the
basis of sexual orientation or gender identity or expression are
integrated into government-run social protection programs.

B. Diversity Programs and Trainings - All government agencies,
including government-owned and controlled corporations, local
government units (LGUs), private companies, public and private
education institutions, and other entities shall establish diversity
programs and shall endeavor to provide or conduct trainings for
their staff, employees, students and trainees, and constituents on
human rights, gender sensitivity and awareness, and sensitization
on the issue of violence and abuse to ensure that human rights
violations and violence on the basis of sexual orientation or gender
identity or expression are prevented. Such institutions may
incorporate these activities into existing gender sensitivity and
development training programs or school curricula. Finally, the
above-listed agencies, companies and institutions shall create an
internal redress mechanism to address cases of discrimination and develop administrative remedies or sanction for such cases.

SEC. 11. Empowering portrayal of LGBT persons in Media – The positive and empowering portrayal of LGBT by media shall be encouraged to counter existing stereotypes and misconceptions that often lead to discriminatory practices. Towards this end, incentives and awards shall be provided to programs that defend the human rights of LGBT and contribute to the empowerment of the LGBT community and its members.

SEC. 12. SOGIE Equality Oversight Committee - For the effective implementation of this Act, there shall be created a Congressional Oversight Committee, hereinafter referred to as the SOGIE Equality Oversight Committee, within sixty (60) days after the enactment of this Act. The SOGIE Equality Oversight Committee shall be composed of five (5) members each from the Senate and the House of Representatives, which shall include the Chairpersons of the Senate Committees on Women, Children, Family Relations and Gender Equality, and of Justice and Human Rights, and the Chairpersons of the House of Representatives Committees on Women and Gender Equality, and of Human Rights. The members from the Senate and the House of Representatives shall be appointed by the Senate President and the Speaker, respectively, with at least one (1) member representing the minority.

The SOGIE Equality Oversight Committee shall be chaired jointly by the Chairpersons of the Senate Committee on Women, Children, Family Relations and Gender Equality and the House Committee on Women and Gender Equality. The position of Vice-Chairperson of the SOGIE Equality Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Justice and Human Rights and the House Committee on Human Rights. The Secretariat of the SOGIE Equality Committee shall come from the Secretariat personnel of the Senate and the House of Representatives committees concerned.

The SOGIE Equality Oversight Committee shall monitor the compliance of public institutions to the provisions of this Act. Within three (3) years after the enactment of this Act, the SOGIE Equality Oversight
Committee shall conduct an audit of national and local policies that
discriminate on the basis of sexual orientation or gender identity and
expression, and shall submit a report to Congress, the Office of the
President, and the Supreme Court, on this subject.

The SOGIE Equality Oversight Committee shall cease to exist six (6)
years after its organization.

SEC. 13. Implementing Rules and Regulations – Within sixty (60) days
from the effectivity of this Act, the CHR, Department of Justice (DOJ), Civil
Service Commission (CSC), Philippine National Police (PNP), Department of
National Defense (DND), National Youth Commission (NYC), Philippine
Commission on Women (PCW), Commission on Population (POPCOM),
Department of Labor and Employment (DOLE), Department of Education
(DepEd), Commission on Higher Education (CHED), Technical Education
and Skills Development Authority (TESDA), Department of Health (DOH),
and at least three (3) civil society organizations (CSOs) with proven expertise
and track record on SOGIE concerns, shall promulgate the necessary rules
and regulations for the effective implementation of the provisions of this Act.

SEC. 14. 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. 15. Repealing Clause. - All laws, decrees, orders, rules and
regulations, or parts thereof inconsistent with this Act are hereby repealed
or modified accordingly.

SEC. 16. Effectivity. - This Act shall take effect fifteen (15) days after
its publication in the Official Gazette or in a newspaper of general
circulation.

Approved,