

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

7 JUL 18 2018

SENATE
S. B. No. 1282

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Family Code, Article 26, expressly provides that, except for marriages prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38, marriages solemnized abroad and are valid there as such, are recognized as valid here. As a general rule therefore, the Philippine follows the *lex loci celebrationis* rule.

For this reason, same-sex marriages legally celebrated abroad would be considered valid since Article 26 does not include the requirement that the parties have to be a man and a woman. This requirement is not one of the exceptions to the general rule.

Article 26 is a special provision. Thus, *inclusion unius est exclusio alterius*. But Article 26, as it is currently worded, conflict with the general provisions of the Family Code.

Marriage is a union founded on the distinction of sex. That contracting parties must be of different sex is, in fact, a requirement under the provisions on legal capacity.

Accordingly, this bill seeks to amend Article 26 to remove a misleading presumption, until society changes attitude while exhibiting compassion for same-sex relationships.*


MIRIAM DEFENSOR SANTIAGO
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* This bill was originally filed during the Thirteenth Congress, First Regular Sesson.

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1 AN ACT
2 AMENDING THE FAMILY CODE, ARTICLE 26 ON THE VALIDITY OF SAME-SEX
3 MARRIAGES SOLEMNIZED OUTSIDE THE PHILIPPINES

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

6 SECTION 1. The Family Code, Article 26, is hereby amended to read as follows:

7 "All marriages solemnized outside the Philippines in accordance with the
8 laws enforced in the country where they were solemnized and valid there as such,
9 shall also be valid in this country, except SAME-SEX MARRIAGES AND those
10 prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.

11 When a marriage between a Filipino citizen and a foreigner is validly
12 celebrated and a divorce is validly obtained abroad by the alien spouse
13 capacitating him or her to remarry, the Filipino spouse shall likewise have
14 capacity to remarry under the Philippine law."

15 SECTION 2. *Separability Clause.* – If any provision or part hereof is held invalid or
16 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
17 valid and subsisting.

18 SECTION 3. *Repealing Clause.* – Any law, presidential decree or issuance, executive
19 order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent
20 with, the provision of this Act is hereby repealed, modified or amended accordingly.

1 SECTION 4. *Effectivity Clause.* – This Act shall take effect fifteen days (15) days after
2 its publication in at least two (2) newspapers of general circulation.

3 Approved,