

**PROJECTED LAW**  
**Measures regarding discrimination. Second Constitutional Procedure**

Bulletin N° 3.815-07

*In view of the fact:*

- 1.- That Christianity, its values and principles are prior to the State of Chile
- 2.- That Bill 19,638 guarantees freedom of worship and legal equality of all religious entities
- 3.- That this projected law claims to penalize arbitrary discrimination, among other things, for reasons of ideology or beliefs.

*Considering:*

- 1.- That the projected law in question will govern manifested conduct in the public as well as the private sphere
- 2.- That evangelical Christianity is preached, practiced and promoted in the public as well as in the private sphere
- 3.- That some of the scriptural principles that are inherent in evangelical doctrine are **contrary** to some customs and conducts that some persons or groups of persons might promote or practice

We propose:

- 1.- To incorporate in the list of reasons for arbitrary discrimination described in Art. 3 **religion**.
- 2.- To eliminate from the list of reasons for arbitrary discrimination described in Art. 3 the terms **gender** and **sexual orientation**, since among other reasons both can be considered contained in the word sex, as occurs in many of the international documents that protect against various types of arbitrary discrimination.

**Proposed text:**

**Article 3.-** *For the effects of this law, it will be understood by act or conduct of arbitrary discrimination all unwarranted forms of distinction, exclusion, restriction or preference committed by agents of the State or particulars, that deprive, disturb or threaten the exercise of the established rights established in the Political Constitution of the Republic, in the laws, as well as in the International Treaties ratified by Chile and which are in force, in particular when these are found based on motives of race, ethnicity, religion, nationality, socioeconomic situation, place of residence, language, ideology or political opinion, syndication or participation in union associations, sex, marital status, age, affiliation, personal appearance, illness or disability.*

- 3.- Modify the second clause of Article 3° of the projected law in two concepts:

a.- In the first clause it says that arbitrary discrimination will be understood as all unwarranted forms specifying that it may be for *distinction, exclusion, restriction or preference*, and the second clause where it intends to exempt religious entities from this point, the current wording considers only the *distinctions*.

b.- Eliminate the reference in this clause to Article 2 of Law 19,638 that says:

*No person may be discriminated against by virtue of his religious beliefs, nor may these be invoked as a motive to suppress, restrict or affect the sacred equality of the Constitution and the Law.*

Inasmuch as the application may be considered by some judges in the contrary sense of what this clause intends, which is precisely to protect the liberty to preach and to teach their religious beliefs, arguing the second part of the art. 2 which specifies that the religious beliefs cannot affect the consecrated equality before the law.

**Proposed text:**

*The distinctions, exclusions, restrictions or preferences that, according to their doctrine, the religious entities carry out in the sphere of activities mentioned in Articles 6 and 7 of Bill N° 19,638, shall not be considered arbitrary discrimination.*

4.- In Article 9, N° 2, eliminate from Article 137 bis which proposes to incorporate into Title III of Book II of the Penal Code the word **hostility**, in as much as the Royal Academy Spanish Dictionary defines hostility as the quality of hostile and hostile signifies **being contrary**, hence to preach or teach a belief contrary to certain habits or customs that certain persons practice may be considered hostile and therefore subject to punishment.

**Proposed text:**

**Art. 137.bis.** *Whoever promotes hatred against a person or a group of persons with regard to his race, sex, religion or nationality, will be subject to a fine of from five to one hundred monthly tax units. In the case of repeated offence, the fine may be raised to two hundred monthly tax units.*

Note: If it is deemed necessary to strengthen this concept more, after *hatred* the words *or violence* may be added.

Presented to the Commission of Constitution, Legislation, Justice and Regulations, in session held Tuesday 16 September 2008, in Room N° 6 of the Senate in the City of Valparaíso.

*Presented to the Commission by Rev. Francisco Javier Rivera Mardones*

*Translation: Joan Meger*