

NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session



Senate
Office of the Secretary

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'22 JUL 18 P5:03

SENATE

S. B. NO. 741

RECEIVED BY: _____

Introduced by **SENATOR JOEL VILLANUEVA**

**AN ACT RATIONALIZING GOVERNMENT INTERVENTIONS IN
LABOR DISPUTES BY ADOPTING THE ESSENTIAL SERVICES
CRITERIA IN THE EXERCISE OF THE ASSUMPTION OR
CERTIFICATION POWER OF THE SECRETARY OF LABOR AND
EMPLOYMENT, AND DECRIMINALIZING VIOLATIONS THEREOF,
AMENDING FOR THE PURPOSE ARTICLES 278[263], 279[264] and
287[272] OF PRESIDENTIAL DECREE 442, OTHERWISE KNOWN AS
THE LABOR CODE OF THE PHILIPPINES, AS AMENDED AND FOR
OTHER PURPOSES**

EXPLANATORY NOTE

Over the years, Articles 278[263], 279[264] and 287[272] of the 1974 Labor Code of the Philippines, as amended, have been rendered inconsistent with the country's democratic principles and governance, and increasing use of "labor rights' clauses" in trade agreements, multilateral or otherwise.

The country has long departed from strong-arm rule and from fiercely adversarial industrial relations. Article XIII of the 1987 Philippine Constitution promotes the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and enforces mutual compliance to foster industrial peace. The Constitution also guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law, and regulates the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Past experiences have shown us of violence in the picket lines due to forcible restraint on workers' right to strike; cases of harassments, abductions and disappearances of unionists; "criminalization" of labor disputes; company closures; mass termination of workers; and high level of distrust in government and in the

process under the law. This is largely due to the perception of corruption and bias in labor justice administration because decisions by the Secretary of Labor and Employment to assume jurisdiction over a labor dispute have been seen as largely favoring employers, who at the same time, are the very first ones to ignore or resist return-to-work orders by filing numerous motions for reconsideration and appeals to higher courts.

State interventions in labor disputes under paragraph (g) of Article 278[263] of the Labor Code have been largely viewed as intrusive and an arbitrary exercise of police power. The Secretary is provided with very wide latitude of discretion to prevent an impending strike or lockout or to stop an ongoing strike or lockout by assuming jurisdiction over a labor dispute, which according to his/her own opinion, involve an "industry indispensable to national interest." This overbroad discretion has seen labor disputes in an undergarment factory, match sticks manufacturing, hotdog, chicha-corn and fish sauce factory being assumed by the Secretary after his/her determination that these industries are indispensable to the national interest.

Under paragraph (g) of Article 278[263], the State restrains the exercise of the right to strike or lockout and direct workers to return to work and the management to accept the striking workers under the same terms and conditions. Defiance of a return-to-work order or non-compliance with the procedural requirement for the conduct of a strike/lockout is a prohibited act under paragraph (a) of Article 279[264] that may result in loss of employment for union officers who knowingly participate in an illegal strike, including any worker who knowingly participate in the commission of illegal acts. Additionally, paragraph (a) of Article 287[272] imposes a fine of not less than Php1,000 nor more than Php10,000 and/or imprisonment of not less than three months nor more than three years, or both fine and imprisonment, at the discretion of the Court, for violation of any of the provisions of Article 264.

In this regard, both the ILO and the US Trade Representatives have observed that the penalties of loss of employment, fine and imprisonment for administrative non-compliance is disproportionate to the procedures laid down for notices of strike and on cooling-off periods, the absence of which would make the strike illegal.

Thus, the proposed bill seeks to amend Article 278[263], 279[264] and 287[272] of the Labor Code to rationalize government interventions in labor disputes by: (a) adopting the essential services criteria, i.e., functions or services which if interrupted would endanger the life, personal safety or health of whole or part of the population, in the exercise of the assumption or certification power of the Secretary of Labor and Employment, (b) providing clear conditions in its exercise, (c) requiring minimum service or operation in case an assumption order will issue, (d) decriminalizing non-compliance with the procedural requirements in the exercise of the right to strike, (e) providing fines for violation by employer, labor organization, or corporation, and (f) providing a procedure for prosecution of criminal acts committed during a strike or lockout.

In view of the foregoing, the passage of this bill is earnestly sought.


SENATOR JOEL VILLANUEVA

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THE LABOR CODE OF THE PHILIPPINES, AS AMENDED
AND FOR OTHER PURPOSES**

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

1 **SECTION 1.** Article 278 [263] of the Labor Code is hereby amended to read as
2 follows:

3
4 **Article 278 [263]. Strikes, picketing and lockouts. –**

- 5
6 a) It is the policy of the State to encourage free trade unionism and free
7 collective bargaining.
8
9 b) Workers shall have the right to engage in concerted activities for purposes
10 of collective bargaining or for their mutual benefit and protection. The right
11 of legitimate labor organizations to strike and picket and of employers to
12 lockout [, consistent with the national interest,] shall continue to be
13 recognized and respected. However, no labor union may strike and no
14 employer may declare a lockout on grounds involving inter-union and
15 intra-union disputes.
16
17 c) In case of bargaining deadlocks, the duly certified or recognized
18 bargaining agent may file a notice of strike or the employer may file a
19 notice of lockout with the [Ministry] DEPARTMENT OF LABOR AND

1 EMPLOYMENT (DOLE) at least 30 days before the intended date thereof.
2 In cases of unfair labor practice, the period of notice shall be fifteen (15)
3 days and in the absence of a duly certified or recognized bargaining
4 agent, the notice of strike may be filed by any legitimate labor organization
5 in behalf of its members. However, in case of dismissal from employment
6 of union officers duly elected in accordance with the union constitution
7 and by-laws, which may constitute union busting where the existence of
8 the union is threatened, the fifteen (15) day cooling-off period shall not
9 apply and the union may take action immediately.

- 10
- 11 d) The notice must be in accordance with such implementing rules and
12 regulations as the [Minister] SECRETARY of Labor and Employment may
13 promulgate.
- 14
- 15 e) During the cooling-off period, it shall be the duty of the [Ministry] DOLE to
16 exert all efforts at the mediation and conciliation to effect a voluntary
17 settlement. Should the dispute remain unsettled until the lapse of the
18 requisite number of days from the mandatory filing of notice, the labor
19 union may strike or the employer may declare a lockout.
- 20
- 21 f) A decision to declare a strike must be approved by a majority of the total
22 union membership in the bargaining unit concerned, obtained by secret
23 ballot in meetings or referenda called for that purpose. A decision to
24 declare a lockout must be approved by a majority of the board of directors
25 of the corporation or association or of the partners in a partnership
26 obtained by secret ballot in a meeting called for that purpose. The
27 decision shall be valid for the duration of the dispute based on
28 substantially the same grounds considered when the strike or lockout vote
29 was taken. The [Ministry] DOLE may on its own initiative or upon the
30 request of any affected party, supervise the conduct of the secret
31 balloting. In every case, the union or the employer shall furnish the
32 [Ministry] DOLE the results of the voting at least seven days before the
33 intended strike or lockout, subject to the cooling-off period herein
34 provided.
- 35
- 36 g) When [in his opinion] there exists a labor dispute causing or likely to cause
37 a strike or lockout in an industry [indispensable to the national interest,]
38 ENGAGED IN ESSENTIAL SERVICES, the Secretary of Labor and
39 Employment may assume jurisdiction over the dispute: *PROVIDED*,
40 THAT ANY OF THE FOLLOWING CONDITIONS IS PRESENT:
- 41
- 42 1. BOTH PARTIES HAVE REQUESTED THE SECRETARY OF LABOR
43 AND EMPLOYMENT TO ASSUME JURISDICTION OVER THE
44 LABOR DISPUTE; OR
- 45
- 46 2. UPON REQUEST OR PETITION BY EITHER PARTY, OR *MOTU*
47 *PROPRIO* ON THE PART OF THE SECRETARY OF LABOR AND
48 EMPLOYMENT: *PROVIDED*, THAT A CONFERENCE CALLED BY
49 THE OFFICE OF THE SECRETARY ON THE PROPRIETY OF ITS
50 ISSUANCE HAS BEEN CONDUCTED.

1
2 IN SUCH CASE, THE SECRETARY OF LABOR AND EMPLOYMENT
3 MAY DECIDE OR CERTIFY THE LABOR DISPUTE TO THE
4 NATIONAL LABOR RELATIONS COMMISSION (NLRC) FOR
5 COMPULSORY ARBITRATION, OR TO A VOLUNTARY
6 ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS.
7

8 SAID ASSUMPTION SHALL HAVE THE EFFECT OF
9 AUTOMATICALLY ENJOINING AN IMPENDING STRIKE OR
10 LOCKOUT. IF A STRIKE/LOCKOUT HAS ALREADY TAKEN PLACE
11 AT THE TIME OF ASSUMPTION, ALL STRIKING OR LOCKED OUT
12 EMPLOYEES AND OTHER EMPLOYEES SUBJECT OF THE
13 NOTICE OF STRIKE OR LOCKOUT SHALL IMMEDIATELY
14 RETURN TO WORK AND THE EMPLOYER SHALL IMMEDIATELY
15 RESUME OPERATIONS AND READMIT ALL EMPLOYEES UNDER
16 THE SAME TERMS AND CONDITIONS PREVAILING BEFORE THE
17 STRIKE OR LOCKOUT.
18

19 ESSENTIAL SERVICES REFER TO FUNCTIONS OR SERVICES
20 RENDERED BY AN ESTABLISHMENT, WHICH IF INTERRUPTED,
21 WOULD ENDANGER THE LIFE, PERSONAL SAFETY OR HEALTH
22 OF THE WHOLE OR PART OF THE POPULATION. FOR THIS
23 PURPOSE, THE SECRETARY OF LABOR AND EMPLOYMENT, BY
24 APPROPRIATE REGULATIONS, SHALL DETERMINE THE
25 INDUSTRIES ENGAGED IN ESSENTIAL SERVICES AFTER
26 CONSULTATIONS WITH THE NATIONAL TRIPARTITE
27 INDUSTRIAL PEACE COUNCIL.
28

29 IN LABOR DISPUTES AFFECTING INDUSTRIES ENGAGED IN
30 ESSENTIAL SERVICES, IT SHALL BE THE DUTY OF THE UNION
31 AND EMPLOYER TO PROVIDE AND MAINTAIN THE OPERATION
32 OR DELIVERY OF SERVICES. IN CASE OF HOSPITALS, CLINICS
33 OR MEDICAL INSTITUTIONS, THE UNION AND EMPLOYER
34 SHALL PROVIDE AND MAINTAIN AN EFFECTIVE AND
35 FUNCTIONAL WORKFORCE, WHOSE MOVEMENT AND
36 SERVICES SHALL BE UNHAMPERED AND UNRESTRICTED, AS
37 ARE NECESSARY TO ENSURE THE PROPER AND ADEQUATE
38 PROTECTION OF THE LIFE, PERSONAL SAFETY AND HEALTH
39 OF THEIR PATIENTS, MOST ESPECIALLY EMERGENCY CASES,
40 FOR THE DURATION OF THE LABOR DISPUTE.
41

- 42 h) WITHIN FIVE (5) DAYS FROM THE ISSUANCE OF THE ASSUMPTION
43 OR CERTIFICATION ORDER, A PRELIMINARY CONFERENCE OR
44 HEARING SHALL IMMEDIATELY BE CONDUCTED BY THE OFFICE
45 OF THE SECRETARY OF LABOR AND EMPLOYMENT, THE
46 NATIONAL LABOR RELATIONS COMMISSION, OR THE VOLUNTARY
47 ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, AS THE
48 CASE MAY BE.
49

- 1 i) IN CASE OF ACTUAL OR IMPENDING STRIKE OR LOCKOUT IN
2 INDUSTRIES THAT ARE NOT ENGAGED IN ESSENTIAL SERVICES,
3 THE SECRETARY OF LABOR AND EMPLOYMENT MAY ASSUME
4 JURISDICTION UPON JOINT REQUEST OF BOTH PARTIES IN THE
5 LABOR DISPUTE AFTER EXHAUSTION OF MANDATORY
6 CONCILIATION. EITHER OR BOTH PARTIES MAY ALSO OPT TO
7 SUBMIT TO COMPULSORY OR VOLUNTARY ARBITRATION.
8
- 9 j) THE FOREGOING NOTWITHSTANDING, THE PRESIDENT OF THE
10 PHILIPPINES SHALL NOT BE PRECLUDED FROM DETERMINING
11 INDUSTRIES THAT ARE ENGAGED IN ESSENTIAL SERVICES, AND
12 FROM INTERVENING AT ANY TIME AND ASSUMING JURISDICTION
13 OVER ANY LABOR DISPUTE IN ORDER TO SETTLE OR TERMINATE
14 THE SAME DURING SEVERE NATIONAL EMERGENCIES.
15

16 **SEC. 2.** Article 279 [264] of the Labor Code is hereby amended to read as
17 follows:
18

19 **Article 279 [264]. Prohibited Activities. -**
20

- 21 a) No labor organization or employer shall declare a strike or lockout without
22 first having bargained collectively in accordance with Title VII of this Book
23 or without first having filed the notice required in the preceding Article or
24 without the necessary strike or lockout vote first having been obtained and
25 reported to the [Ministry] DOLE.
26

27 No strike or lockout shall be declared after assumption of jurisdiction by
28 the President or the [Minister] SECRETARY or after certification or
29 submission of the dispute to compulsory or voluntary arbitration or during
30 the pendency of cases involving the same grounds for the strike or
31 lockout.
32

33 Any worker whose employment has been terminated as a consequence
34 of [any unlawful] AN ILLEGAL lockout shall be entitled to reinstatement
35 with full backwages. Any WORKER OR union officer who knowingly
36 participates [in an illegal strike and any worker or union officer who
37 knowingly participates] in the commission of [illegal] UNLAWFUL acts
38 during a strike may be declared to have lost his/HER employment AFTER
39 DUE PROCESS. [Provided, That] Mere participation of a worker OR
40 UNION OFFICER in a [lawful] strike DECLARED ILLEGAL FOR
41 FAILURE OF THE UNION TO COMPLY WITH PROCEDURAL
42 REQUIREMENTS UNDER PARAGRAPH (A) OF THIS ARTICLE shall
43 not [constitute sufficient] BE A ground for termination of his/HER
44 employment, even if a replacement had been hired by the employer
45 during such [lawful] ILLEGAL strike.
46

- 47 b) No person shall obstruct, impede, or interfere with, by force, violence,
48 coercion, threats or intimidation, any peaceful CONCERTED ACTION,
49 INCLUDING picketing by employees during any labor controversy or in

1 the exercise of the right of self-organization or collective bargaining, or
2 shall aid or abet such obstruction or interference.

- 3
4 c) No employer shall use or employ any strike-breaker, nor shall any person
5 be employed as a strike-breaker.
6
7 d) No public official or employee, including officers and personnel of the
8 [New] Armed Forces of the Philippines or the [Integrated] PHILIPPINE
9 National Police, or armed person, PRIVATE SECURITY GUARDS AND
10 SIMILAR PERSONNEL IN THE PRIVATE SECURITY AGENCY shall
11 bring in, introduce or escort in any manner, [any individual who seeks to
12 replace strikers in entering or leaving the premises of a strike area, or
13 work in the place of the strikers] REPLACEMENT WORKERS. The police
14 force shall keep out of the picket lines unless actual violence or other
15 criminal acts occur therein: *Provided*, That nothing herein shall be
16 interpreted to prevent any public officer from taking any measure
17 necessary] HOWEVER, THE SECRETARY OF LABOR AND
18 EMPLOYMENT OR THE NLRC MAY SEEK THE ASSISTANCE OF LAW
19 ENFORCEMENT AGENCIES to maintain peace and order, protect life
20 and property, and/or enforce the law and legal orders.
21
22 e) No person engaged in picketing shall commit any act of violence, coercion
23 or intimidation or obstruct the free ingress to or egress from the
24 employer's premises for lawful purposes, or obstruct public
25 thoroughfares.
26

27 **SEC. 3.** Article 287 [272] of the Labor Code is hereby amended to read as
28 follows:
29

30 **Article 287 [272]. [Penalties] FINES.**
31

- 32 a) Any person, EMPLOYER, LABOR ORGANIZATION OR CORPORATION
33 FOUND violating any of the provisions of Article 264 of this Code shall be
34 punished by a fine of not less than [one thousand pesos (P1,000.00)]
35 TEN THOUSAND PESOS (P10,000.00) nor more than [ten thousand
36 pesos (P10,000.00)] ONE HUNDRED THOUSAND PESOS
37 (P100,000.00) [and/or imprisonment for not less than three months nor
38 more than three (3) years, or both such fine and imprisonment,] at
39 the discretion of the [court] NLRC. [Prosecution under this provision
40 shall preclude prosecution for the same act under the Revised Penal
41 Code, and vice versa.]
42
43 b) Upon the recommendation of the [Minister] SECRETARY of Labor and
44 Employment and the [Minister] Secretary of National Defense, foreigners
45 who violate the provisions of this Title shall be subject to immediate and
46 summary deportation by the [Commission on] BUREAU OF Immigration
47 [and Deportation] and shall be permanently barred from re-entering the
48 country without the special permission of the President of the Philippines.
49

1 c) THE REGULAR COURTS SHALL HAVE JURISDICTION OVER ANY
2 CRIMINAL ACTION ARISING FROM VIOLATION OF ANY OF THE
3 PROVISIONS OF ARTICLE 264 OF THE LABOR CODE, AS AMENDED,
4 SUBJECT TO THE REQUIRED CLEARANCE FROM DOLE ON CASES
5 ARISING OUT OF OR RELATED TO A LABOR DISPUTE.
6

7 NO CRIMINAL PROSECUTION UNDER ARTICLE 264 MAY BE
8 INSTITUTED WITHOUT A FINAL JUDGMENT THAT AN ILLEGAL
9 STRIKE OR LOCKOUT HAS BEEN COMMITTED. THE PRESCRIPTIVE
10 PERIOD OF THE CRIMINAL OFFENSE SHALL BE CONSIDERED
11 INTERRUPTED DURING THE PENDENCY OF ADMINISTRATIVE
12 PROCEEDINGS: *PROVIDED, HOWEVER,* THAT THE FINAL
13 JUDGMENT IN THE SAID PROCEEDINGS SHALL NOT BE BINDING IN
14 THE CRIMINAL CASE NOR SHALL IT CONSTITUTE AS AN EVIDENCE
15 OF GUILT.
16

17 d) COMPLAINTS ON ACTS OR OMISSIONS OF THE PERSONNEL OF
18 THE PHILIPPINE NATIONAL POLICE OR THE ARMED FORCES OF
19 THE PHILIPPINES IN VIOLATION OF ARTICLE 264 OF THIS CODE
20 SHALL BE FILED WITH THE CONCERNED AGENCY, WITHOUT
21 PREJUDICE TO THE FILING OF APPROPRIATE CASES BEFORE THE
22 OMBUDSMAN.
23

24 **SEC. 4. Implementing Rules and Regulations.** – Within sixty (60) days from
25 the effectivity of this Act, the Secretary of Labor and Employment, in consultation with
26 the appropriate government agencies and other stakeholders, shall promulgate the
27 necessary rules and regulations to implement the provisions of this Act.
28

29 **SEC. 5. Separability Clause.** - If any part or provision of this Act is declared
30 unconstitutional or invalid, the remainder of this Act or the provisions not otherwise
31 affected shall remain valid and subsisting.
32

33 **SEC. 6. Repealing Clause.** - All laws, presidential decrees, proclamations,
34 executive orders issuances, rules and regulations, or any part thereof, inconsistent
35 with the provisions of this Act are hereby repealed, amended or modified
36 accordingly.
37

38 **SEC. 7. Effectivity Clause.** - This Act shall take effect fifteen (15) days after
39 its complete publication in the Official Gazette or in at least two (2) newspapers of
40 general circulation.
41

42 **Approved,**