

Republic of the Philippines

House of Representatives

Quezon City, Metro Manila

Eighteenth Congress

First Regular Session

HOUSE BILL NO. 1540



Introduced by:

ACT-CIS Party Representative: Jocelyn P. Tulfo

EXPLANATORY NOTE

All laws punishing and criminalizing the act of illegal recruitment have in its core the protection of the basic human rights of the Overseas Filipino Worker. This treatment is afforded to OFWs as they are left vulnerable in the face of injustices being hundreds or thousands of miles away from their home country. However, most protections now afforded to all OFWs against illegal recruitment are limited to the stage of pre-deployment or control acts affecting the process of getting deployed.

This bill seeks to afford greater protection to OFWs who are already abroad and are being victimized not only by their employers but also by the agencies in the Philippines that swore to protect them. It has come to this representative's attention that it is high time that illegal recruitment be expanded to include the facilitation of abuse by foreign employers. Countless OFWs come home irreparably damaged in all aspects of their well-being because of the slave-like treatment they have experienced abroad which was woefully sustained by the inaction and even active involvement of the agency which sent them abroad in exchange for, what most workers, are their entire family's fortunes.

The passage of this bill is not only sought but is urged to be recognized as a matter of national emergency as there is an increase in the number of abused OFWs in the manner this bill seeks to punish.

Hon. Jocelyn Pua Tulfo
ACT-CIS 2nd Representative
Republic of the Philippines

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HOUSE BILL NO. 1540

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**AN ACT EXPANDING THE DEFINITION OF ILLEGAL RECRUITMENT TO
INCLUDE POST-DEPARTURE ABANDONMENT OF OFW'S BY THEIR TRAVEL
RECRUITMENT AGENCIES.**

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

Chapter I – Introductory Provisions

Section 1. SHORT TITLE – this act shall be known as “The act further amending R.A. No. 8042 to expand the definition of illegal recruitment to include Post Departure Abandonment”

Section 2. DECLARATION OF POLICIES –

- a. Pursuant to the constitutional mandate to the protection of labor, whether local or overseas, organized and unorganized, the State shall protect the rights of our Overseas Filipino Workers while upholding the respective laws of their host nation.
- b. The State recognizes the abuses done to our OFW's done by their employers or agencies after their deployment. Because of this the state shall see to the expansion of the protection afforded to them in their work abroad. Mere distance from the Philippines shall not devoid or limit the rights granted to our citizens working abroad.
- c. In the pursuit to protect our OFW's, Illegal recruitment must be expanded to ensure all possible offenses committed towards our fellow citizens shall be punished. Thus, the State shall strive to defend the rights of our people abroad.
- d. The threat of Abandonment by agencies or employers alike are a real threat to the security and safety of our OFW's. As such, the State now wishes to extend its capability to aid those who are victimized by such abandonment by giving the capacity to penalize such infractions of our OFW's rights.

Section 3. DEFINITIONS –

For the purposes of this act, the following terms shall mean:

- a. **Overseas Filipino Workers (OFW)** refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State or country of which the worker is not a citizen. A “person to be engaged in a remunerated activity” refers to an applicant worker who has been promised or assured employment overseas.
- b. **Post departure abandonment** shall refer to any single act or series of acts which tend to cause or actually cause any physical, mental, emotional, or psychological harm to the OFW through acts of facilitating, concealing, or any other aid given to the employer or counterpart agency to which the OFW is assigned.

Section 4. COVERAGE –

This bill shall cover all OFWs, Agencies relating to OFW employment, and employers of OFW's.

Chapter II – Expanding the definition of Illegal Recruitment under R.A. No. 8042, which was amended by R.A. No. 10022

SECTION 5. A new sub-paragraph “(o)” under Section 6 of R.A. No. 8042, as amended by R.A. No. 10022. Section 6 of R.A. No. 8042 shall now read as follows:

"SEC. 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

"(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;

"(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

"(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;

"(d) To include or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

"(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;

"(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

"(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

"(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the

expiration of the same without the approval of the Department of Labor and Employment;

"(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of travel agency;

"(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;

"(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

"(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage;

"(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency; and

“(o) Any single act or series of acts which tend to cause or actually cause any physical, mental, emotional, or psychological harm to the OFW through acts of facilitating, concealing, or any other aid given to the employer or counterpart agency to which the OFW is assigned.”

"Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

"In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

"(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

"(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

"(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;

"(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

"(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

"(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and

"(7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

"The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

"In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

"In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

"The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations."

CHAPTER III – Miscellaneous Provisions

Section 6. SEPARABILITY CLAUSE –

Should any provision of this Act or any part thereof be declared invalid, the other provisions insofar as they are separable from the invalid ones, shall remain in full force and effect.

Section 7. REPEALING CLAUSE –

All laws, orders, issuances, rules, and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Section 8 EFFECTIVITY –

This Act shall take effect fifteen (15) days after its complete publication in at least two newspapers of general circulation.

Approved.