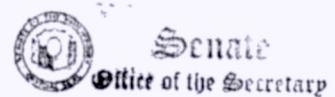


EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session



19 JUL 24 A9:52

SENATE

S. B. NO. 712

RECEIVED BY: SF

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

Articles 278[263], 279[264] and 287[272] of the 1974 Labor Code of the Philippines, as amended, are remnants of Martial Rule, which over the years 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 since decisions by the Secretary of Labor 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. This is borne by the approximately ten (10) cases of trade union rights violations against the Philippine government before the International Labour Organization (ILO) and the US Trade Representatives.

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 of Labor and Employment 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 of Labor after his 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.

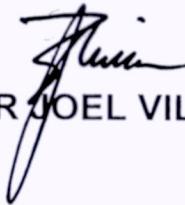
In this regard, both the ILO and the US Trade Representatives have observed that the penalties of loss of employment, fine and imprisonment for administrative non-compliance is disproportionate to the procedures laid down for notices of strike and on cooling-off periods, the absence of which would make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

Beginning July 2010, the Department of Labor and Employment (DOLE) implemented clear procedures and criteria for the exercise of the Secretary's assumption of jurisdiction power through a tripartite-supported department orders (Department Order No. 40-G-10, Series of 2010 and Department Order No. 40-H-13, Series of 2013). Under these issuances, the

"indispensable to the national interest" criteria for assumption of jurisdiction was aligned with the ILO criteria of "essential services." Through this, the Constitutional mandate to use voluntary modes in dispute settlement through conciliation-mediation was expansively used and the institution of collective bargaining was strengthened. This has resulted in annual single digit actual strikes from July 2010 to June 2016 ushering relative industrial peace in the workplaces. According to the National Conciliation and Mediation Board (NCMB), from July 2010 to June 2016, there were 20 actual strikes, 22 assumed cases and 43 certified to the NLRC while the July 2004 to June 2010 labor relations data showed 69 actual strikes, 140 assumed cases and 145 certified to the NLRC for compulsory arbitration.

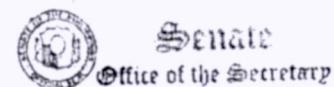
Thus, the proposed bill seeks to amend Article 278[263], 279[264] and 287[272] of the Labor Code to rationalize government interventions in labor disputes by: (a) adopting the essential services criteria, i.e., functions or services which if interrupted would endanger the life, personal safety or health 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.

The immediate passage of this bill is earnestly sought.



SENATOR JOEL VILLANUEVA

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**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**

*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
2 as follows:

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

- 4
- 5 a) It is the policy of the State to encourage free trade unionism and free
6 collecting bargaining.
- 7
- 8 b) Workers shall have the right to engage in concerted activities for
9 purposes of collective bargaining or for their mutual benefit and
10 protection. The right of legitimate labor organizations to strike and
11 picket and of employers to lockout [, consistent with the national
12 interest,] shall continue to be recognized and respected. However, no
13 labor union may strike and no employer may declare a lockout on
14 grounds involving inter-union and intra-union disputes.
- 15
- 16 c) In case of bargaining deadlocks, the duly certified or recognized
17 bargaining agent may file a notice of strike or the employer may file a
18 notice of lockout with the [Ministry] DEPARTMENT OF LABOR AND

1 EMPLOYMENT at least 30 days before the intended date thereof. In
2 cases of unfair labor practice, the period of notice shall be 15 days and
3 in the absence of a duly certified or recognized bargaining agent, the
4 notice of strike may be filed by any legitimate labor organization in
5 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
8 of the union is threatened, the 15 day cooling-off period shall not apply
9 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
13 may promulgate.
- 14
- 15 e) During the cooling-off period, it shall be the duty of the [Ministry]
16 DEPARTMENT OF LABOR AND EMPLOYMENT to exert all efforts at
17 the mediation and conciliation to effect a voluntary settlement. Should
18 the dispute remain unsettled until the lapse of the requisite number of
19 days from the mandatory filing of notice, the labor union may strike or
20 the employer may declare a lockout.
- 21
- 22 f) A decision to declare a strike must be approved by a majority of the
23 total union membership in the bargaining unit concerned, obtained by
24 secret ballot in meetings or referenda called for that purpose. A
25 decision to declare a lockout must be approved by a majority of the
26 board of directors of the corporation or association or of the partners in
27 a partnership obtained by secret ballot in a meeting called for that
28 purpose. The decision shall be valid for the duration of the dispute
29 based on substantially the same grounds considered when the strike or
30 lockout vote was taken. The [Ministry] DEPARTMENT OF LABOR AND
31 EMPLOYMENT may its own initiative or upon the request of any
32 affected party, supervise the conduct of the secret balloting. In every
33 case, the union or the employer shall furnish the [Ministry] DOLE the
34 results of the voting at least seven days before the intended strike or
35 lockout, subject to the cooling-off period herein provided.
- 36
- 37 g) When [in his opinion] there exists a labor dispute causing or likely to
38 cause a strike or lockout in an industry [indispensable to the national
39 interest,] ENGAGED IN ESSENTIAL SERVICES, the Secretary of
40 Labor and Employment may assume jurisdiction over the dispute,
41 PROVIDED, THAT ANY OF THE FOLLOWING CONDITIONS IS
42 PRESENT:
- 43
- 44 1. BOTH PARTIES HAVE REQUESTED THE SECRETARY OF
45 LABOR AND EMPLOYMENT TO ASSUME JURISDICTION
46 OVER THE LABOR DISPUTE; OR
- 47
- 48 2. UPON REQUEST OR PETITION BY EITHER PARTY, OR
49 MOTU PROPRIO ON THE PART OF THE SECRETARY OF

1 LABOR AND EMPLOYMENT, PROVIDED, THAT A
2 CONFERENCE CALLED BY THE OFFICE OF THE
3 SECRETARY ON THE PROPRIETY OF ITS ISSUANCE HAS
4 BEEN CONDUCTED.
5

6 IN SUCH CASE, THE SECRETARY OF LABOR AND EMPLOYMENT
7 MAY DECIDE OR CERTIFY THE LABOR DISPUTE TO THE
8 NATIONAL LABOR RELATIONS COMMISSION FOR COMPULSORY
9 ARBITRATION, OR TO A VOLUNTARY ARBITRATOR OR PANEL OF
10 VOLUNTARY ARBITRATORS.
11

12 SAID ASSUMPTION SHALL HAVE THE EFFECT OF
13 AUTOMATICALLY ENJOINING AN IMPENDING STRIKE OR
14 LOCKOUT. IF A STRIKE/LOCKOUT HAS ALREADY TAKEN PLACE
15 AT THE TIME OF ASSUMPTION, ALL STRIKING OR LOCKED OUT
16 EMPLOYEES AND OTHER EMPLOYEES SUBJECT OF THE
17 NOTICE OF STRIKE OR LOCKOUT SHALL IMMEDIATELY RETURN
18 TO WORK AND THE EMPLOYER SHALL IMMEDIATELY RESUME
19 OPERATIONS AND READMIT ALL EMPLOYEES UNDER THE SAME
20 TERMS AND CONDITIONS PREVAILING BEFORE THE STRIKE OR
21 LOCKOUT.
22

23 ESSENTIAL SERVICES REFER TO FUNCTIONS OR SERVICES
24 RENDERED BY AN ESTABLISHMENT, WHICH IF INTERRUPTED,
25 WOULD ENDANGER THE LIFE, PERSONAL SAFETY OR HEALTH
26 OF WHOLE OR PART OF THE POPULATION. FOR THIS PURPOSE,
27 THE SECRETARY OF LABOR AND EMPLOYMENT, BY
28 APPROPRIATE REGULATIONS, SHALL DETERMINE THE
29 INDUSTRIES ENGAGED IN ESSENTIAL SERVICES AFTER
30 CONSULTATIONS WITH THE NATIONAL TRIPARTITE INDUSTRIAL
31 PEACE COUNCIL.
32

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

- 1 h) WITHIN FIVE (5) DAYS FROM THE ISSUANCE OF THE
2 ASSUMPTION OR CERTIFICATION ORDER, A PRELIMINARY
3 CONFERENCE OR HEARING SHALL IMMEDIATELY BE
4 CONDUCTED BY THE OFFICE OF THE SECRETARY OF LABOR
5 AND EMPLOYMENT, THE NATIONAL LABOR RELATIONS
6 COMMISSION, OR THE VOLUNTARY ARBITRATOR OR PANEL OF
7 VOLUNTARY ARBITRATORS AS THE CASE MAY BE.
8
- 9 i) IN CASE OF ACTUAL OR IMPENDING STRIKE OR LOCKOUT IN
10 INDUSTRIES THAT ARE NOT ENGAGED IN ESSENTIAL
11 SERVICES, THE SECRETARY OF LABOR AND EMPLOYMENT MAY
12 ASSUME JURISDICTION UPON JOINT REQUEST OF BOTH
13 PARTIES IN THE LABOR DISPUTE AFTER EXHAUSTION OF
14 MANDATORY CONCILIATION. EITHER OR BOTH PARTIES MAY
15 ALSO OPT TO SUBMIT TO COMPULSORY OR VOLUNTARY
16 ARBITRATION.
17
- 18 j) THE FOREGOING NOTWITHSTANDING, THE PRESIDENT OF THE
19 PHILIPPINES SHALL NOT BE PRECLUDED FROM DETERMINING
20 INDUSTRIES THAT ARE ENGAGED IN ESSENTIAL SERVICES,
21 AND FROM INTERVENING AT ANY TIME AND ASSUMING
22 JURISDICTION OVER ANY LABOR DISPUTE IN ORDER TO
23 SETTLE OR TERMINATE THE SAME DURING SEVERE NATIONAL
24 EMERGENCIES.

1 [illegal] UNLAWFUL acts during a strike may be declared to have lost
2 his/HER employment AFTER DUE PROCESS. [Provided, That] Mere
3 participation of a worker OR UNION OFFICER in a [lawful] strike
4 DECLARED ILLEGAL FOR FAILURE OF THE UNION TO COMPLY
5 WITH PROCEDURAL REQUIREMENTS UNDER PARAGRAPH (A)
6 OF THIS ARTICLE, shall not [constitute sufficient] BE A ground for
7 termination of his OR HER employment, even if a replacement had
8 been hired by the employer during such [lawful] ILLEGAL strike.
9

- 10 b) No person shall obstruct, impede, or interfere with, by force, violence,
11 coercion, threats or intimidation, any peaceful CONCERTED ACTION
12 INCLUDING picketing by employees during any labor controversy or
13 in the exercise of the right of self-organization or collective
14 bargaining, or shall aid or abet such obstruction or interference.
15
- 16 c) No employer shall use or employ any strike-breaker, nor shall any
17 person be employed as a strike-breaker.
18
- 19 d) No public official or employee, including officers and personnel of the
20 [New] Armed Forces of the Philippines or the [Integrated]
21 PHILIPPINE National Police, or armed person, PRIVATE SECURITY
22 GUARDS AND SIMILAR PERSONNEL IN THE PRIVATE SECURITY
23 AGENCY shall bring in, introduce or escort in any manner, [any
24 individual who seeks to replace strikers in entering or leaving the
25 premises of a strike area, or work in the place of the strikers]
26 REPLACEMENT WORKERS. The police force shall keep out of the
27 picket lines unless actual violence or other criminal acts occur
28 therein[: Provided, That nothing herein shall be interpreted to prevent
29 any public officer from taking any measure necessary] HOWEVER,
30 THE SECRETARY OF LABOR AND EMPLOYMENT OR THE
31 NATIONAL LABOR RELATIONS COMMISSION MAY SEEK THE
32 ASSISTANCE OF LAW ENFORCEMENT AGENCIES to maintain
33 peace and order, protect life and property, and/or enforce the law and
34 legal orders.
35
- 36 e) No person engaged in picketing shall commit any act of violence,
37 coercion or intimidation or obstruct the free ingress to or egress from
38 the employer's premises for lawful purposes, or obstruct public
39 thoroughfares.
40

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

43 **"Article 287 [272]. [Penalties] FINES.**

- 44 a) Any person, EMPLOYER, LABOR ORGANIZATION OR
45 CORPORATION FOUND violating any of the provisions of Article 264

1 of this Code shall be punished by a fine of not less than [one
2 thousand pesos (P1,000.00] TEN THOUSAND PESOS (P10,000.00)
3 nor more than [ten thousand pesos (P10,000.00)] ONE HUNDRED
4 THOUSAND PESOS (P100,000.00) [and/or imprisonment for not less
5 than three months nor more than three (3) years, or both such
6 fine and imprisonment,] at the discretion of the [court] NATIONAL
7 LABOR RELATIONS COMMISSION. [Prosecution under this provision
8 shall preclude prosecution for the same act under the Revised Penal
9 Code, and vice versa.]

10

11 b) Upon the recommendation of the [Minister] SECRETARY of Labor and
12 Employment and the [Minister] Secretary of National Defense,
13 foreigners who violate the provisions of this Title shall be subject to
14 immediate and summary deportation by the [Commission on] BUREAU
15 OF Immigration [and Deportation] and shall be permanently barred
16 from re-entering the country without the special permission of the
17 President of the Philippines.

18

19 c) THE REGULAR COURTS SHALL HAVE JURISDICTION OVER ANY
20 CRIMINAL ACTION ARISING FROM VIOLATION OF ANY OF THE
21 PROVISIONS OF ARTICLE 264 OF THE LABOR CODE, AS
22 AMENDED, SUBJECT TO THE REQUIRED CLEARANCE FROM THE
23 DEPARTMENT OF LABOR AND EMPLOYMENT ON CASES
24 ARISING OUT OF OR RELATED TO A LABOR DISPUTE.

25

26 NO CRIMINAL PROSECUTION UNDER ARTICLE 264 MAY BE
27 INSTITUTED WITHOUT A FINAL JUDGMENT THAT AN ILLEGAL
28 STRIKE OR LOCKOUT HAS BEEN COMMITTED. THE
29 PRESCRIPTIVE PERIOD OF THE CRIMINAL OFFENSE SHALL BE
30 CONSIDERED INTERRUPTED DURING THE PENDENCY OF
31 ADMINISTRATIVE PROCEEDINGS: PROVIDED, HOWEVER, THAT
32 THE FINAL JUDGMENT IN THE SAID PROCEEDINGS SHALL NOT
33 BE BINDING IN THE CRIMINAL CASE NOR SHALL IT CONSTITUTE
34 AS AN EVIDENCE OF GUILT.

35

36 d) COMPLAINTS ON ACTS OR OMISSIONS OF THE PERSONNEL OF
37 THE PHILIPPINE NATIONAL POLICE OR THE ARMED FORCES OF
38 THE PHILIPPINES IN VIOLATION OF ARTICLE 264 OF THIS CODE
39 SHALL BE FILED WITH THE CONCERNED AGENCY, WITHOUT
40 PREJUDICE TO THE FILING OF THE APPROPRIATE CASES
41 BEFORE THE OMBUDSMAN.

42

43 **SEC. 4. Implementing Rules and Regulations.** – Within sixty (60) days from
44 the effectivity of this Act, the Secretary of Labor and Employment, in
45 consultation with the relevant stakeholders, shall promulgate the necessary
46 rules and regulations to implement the provisions of this Act.

47

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

4
5 **SEC. 6. Repealing Clause.** - All laws, presidential decrees, proclamations,
6 executive orders, issuances, rules and regulations, or any part thereof,
7 inconsistent with the provisions of this Act are hereby repealed,
8 amended or modified accordingly.

9
10 **SEC. 7. Effectivity.** - This Act shall take effect fifteen (15) days after its
11 complete publication in the official gazette or in at least two (2) newspapers of
12 national circulation.

13

14 **Approved,**