

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **1754**

Introduced by: **REP. PROSPERO A. PICHAY JR.**

EXPLANATORY NOTE

The fundamental law of the land declares labor as a primary social economic force and mandates the protection of the rights of workers and the promotion of their welfare [Art. II, Sec. 18, Constitution]. This constitutional concern for the welfare of labor is further spelled out in Art XIII, Sec. 3. The protection of the rights of workers and the promotion of their welfare, especially of migrant workers and overseas Filipinos, is further given flesh through R.A. No. 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995." And justifiably so because overseas Filipino workers (OFWs) contribute over ₱6 billion to our GNP.

However, R.A. No. 8042 unjustly and unfairly lumps licensed recruitment and placement agencies along with illegal recruiters. Even simple administrative acts which a licensed placement agency may commit or omit, like failure to submit necessary reports, is considered by R.A. No. 8042 as an act of illegal recruitment.

This situation makes many legitimate placement agencies dissatisfied, having been relegated to the rank of unscrupulous recruiters. The unjust and sweeping provision of R.A. No. 8042 on illegal recruitment negates the intent of the Constitution to encourage private enterprises [Art. II, Sec. 20] and renders nugatory "the commitment to create economic opportunities based on freedom of initiative and self-reliance" as a means to promote social justice [Art. XIII, Section 2].

The contribution of the OFWs is indubitably invaluable. It should not, however, be forgotten that such contribution by the majority of OFWs would not be possible were it not for the contribution of the legitimate recruitment and placement agencies in facilitating job generation for the OFWs.

Hence, it is imperative for government to treat them justly and fairly and not categorize them along with illegal recruiters. It can only be done by addressing the need to review R.A. No. 8042 and redefine illegal recruitment as spelled out thereof. This bill responds exactly to such a need. It seeks to differentiate acts or omissions by the illegal recruiters which constitute the crime of illegal recruitment from the prohibited acts or omissions of legitimate and licensed placement or recruitment agencies.

Approval of this bill is earnestly sought.

PROSPERO A. PICHAY JR.



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AN ACT
REDEFINING ILLEGAL RECRUITMENT, AMENDING FOR THE PURPOSE REPUBLIC ACT
NO. 8042 OTHERWISE KNOWN AS THE "MIGRANT WORKERS AND OVERSEAS
FILIPINOS ACT OF 1995," AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* - This Act shall be known as the "Migrant Workers and
Overseas Filipinos Act Amendment of 1998.

SECTION 2. *Amendatory Provisions.* - (a) The title of Article II of R.A. No. 8042 is
hereby amended by adding the phrase "and other prohibited acts" after the word
"recruitment" such that the title shall read:

"II. Illegal Recruitment AND OTHER PROHIBITED ACTS"

(b) Sec. 6, Art. II, R.A. No. 8042 is hereby amended by:

1. deleting the last sentence of paragraph 1 and combining paragraphs 1,2, and
3 into a new sub-section to be called subsection (a) with the title "Definition of Illegal
Recruitment;"

2. creating a sub-section (b) to be called "Other Prohibited Acts", changing into
numerals the alphabetical designation of sub-paragraphs (a) through (m), enumerating
the redesignated paragraphs under the newly created sub-section (b);

3. changing redesignated paragraphs 10,12, and 13 from passive to active voice, re-wording redesignated paragraph 10 through the insertion of the phrase "to become" followed by a comma at the beginning of the paragraph, inserting a comma after the phrase "placement agency," and deleting the phrase "to become" between the phrases "placement agency" and "an officer", and re-wording redesignated paragraphs 12 and 13 by inserting the phrase "to fail" at the beginning of each paragraph and deleting the word "failure" at the beginning of each, respectively, and;

4. redesignating paragraph 4 as sub-section (c) to be called "Persons Criminally Liable" such that Sec. 6 shall read as follows:

"Sec. 6. (a) DEFINITION OF Illegal Recruitment. - 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 a 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 of authority who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed as engaged. [It shall likewise include the following acts whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority.]

Illegal recruitment, when committed by a syndicate or in large scale, shall be considered an offense involving economic sabotage.

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.

(b) PROHIBITED ACTS. - IT SHALL BE UNLAWFUL FOR ANY PERSON, ENTITY, LICENSEE OR HOLDER OF AUTHORITY:

(1) 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 any amount greater than that actually received by him as a loan or advance;

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

(3) 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;

(4) to induce 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;

(5) to influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(6) 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;

(7) to obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(8) 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;

(9) 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;

(10) TO BECOME, 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 a travel agency;

(11) to withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(12) TO FAIL [Failure] to actually deploy without valid reason as determined by the Department of Labor and Employment, and;

(13) TO FAIL [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.

(c) PERSONS CRIMINALLY LIABLE. - The persons criminally liable for the above offense are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

(c) Sub-section (a), Section 7, Art. II, R.A. No. 8042 is hereby amended by inserting the clause "or any of the prohibited acts enumerated in the preceding section" between the words "recruitment " and "shall" such that paragraph (a) of Section 7 shall read as follows:

"(a) Any person found guilty of illegal recruitment OR ANY OF THE PROHIBITED ACTS ENUMERATED IN THE PRECEDING SECTION shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00).

SECTION 3. *Repealing Clause.* - All laws, decrees, executive orders, proclamations, LOIs, rules and regulations, or parts thereof, which are inconsistent, impliedly or expressly, with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 4. *Separability Clause.* - If for any reason any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions hereof which are not affected thereby shall continue in full force and effect.

SECTION 5. *Effectivity.* - This Act shall take effect fifteen days from its publication in two newspapers of general circulation.

Approved,