

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

3971



Introduced by AKBAYAN Representatives Walden F. Bello and Ibarra M. Gutierrez III

EXPLANATORY NOTE

In the case of "*Antonio M. Serrano vs. Gallant Maritime Services, Inc. and Marlow Navigation Co., Inc.*" G. R. No. 167614 (March 24, 2009), the clause "or for three months for every year of the unexpired term, whichever is less" which appears in the fifth paragraph of Section 10 of Republic Act No. 8042 as follows:

"Sec. 10. *Money Claims.* - x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less."

x x x x (*Emphasis and underscoring supplied*)

was declared by the Supreme Court as unconstitutional for violating the equal protection clause of the Constitution.

The Supreme Court held in *Serrano*:

"In sum, prior to R. A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of computation of their money claims: they were uniformly entitled to their salaries for the entire unexpired portions of their contracts. But with the enactment of R. A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.

"The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.

X X X

X X X

X X X

"Thus, the subject clause in the 5th paragraph of Section 10 of R. A. No. 8042 is violative of the right of the petitioner and other OFWs to equal protection."

Unfortunately, notwithstanding the Supreme Court's ruling in the *Serrano* case, the unconstitutional clause "or for three months for every year of the unexpired term, whichever is less" in the fifth paragraph of Section 10 of Republic Act No. 8042 was carried over in the current text of Republic Act No. 8042, as amended by Republic Act No. 10022 which was passed by Congress on July 27, 2009.

This bill seeks to amend the fifth paragraph of Section 10 of Republic Act No. 8042 in order to harmonize the text of the law with the Supreme Court's decision in the *Serrano* case by deleting the unconstitutional clause "or for three months for every year of the unexpired term, whichever is less" in the fifth paragraph of Section 10 of Republic Act No. 8042, as amended.

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



WALDEN F. BELLO



IBARRA M. GUTIERREZ III

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House Bill No. **3971**

Introduced by AKBAYAN Representatives Walden F. Bello and Ibarra M. Gutierrez III

**AN ACT AMENDING THE FIFTH PARAGRAPH OF SECTION 10 OF REPUBLIC ACT NO. 8042,
AS AMENDED BY REPUBLIC ACT 10022**

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

SECTION ONE. The fifth paragraph of Section 10 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act, as amended by Republic Act No. 10022, is hereby amended by repealing the clause "or for three (3) months for every year of the unexpired term, whichever is less", to read as follows:

"SEC. 10. *Money Claims.* - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

"The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

"Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

"Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from approval of the settlement by the appropriate authority.

"In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract. **[or for three (3) months for every year of the unexpired term, whichever is less.]**

"In case of a final and executory judgement against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgement award.

"Noncompliance with the mandatory periods for resolutions of case provided under this section shall subject the responsible officials to any or all of the following penalties:

"(a) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;

"(b) Suspension for not more than ninety (90) days; or

"(c) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.

"*Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.*"

SEC. 2. Repealing Clause. – All laws, rules, regulations, orders, circulars and memoranda inconsistent with this Act are hereby repealed or modified accordingly.