

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. **4932**



Introduced by TUCP Partylist Representative
HON. RAYMOND DEMOCRITO C. MENDOZA

EXPLANATORY NOTE

The Trade Union Congress of the Philippines, as the largest aggrupation of labor federations and labor unions in the country, has consistently advocated, not merely for job generation, but more importantly, job protection and preservation.

An employment that has been zealously earned, industriously worked for, valued and treasured, should be secured. The protection should extend to remunerations and benefits, with all the enhancements thereon, merited due to years of arduous service.

This is most especially in this interesting time and age of globalization. Competition among businesses has become tremendously intense that the dictum "*bigger is better*" has obtained zealous advocates the world over, including our country's multinational companies.

Because of the need to become bigger and more competitive, the incidence of mergers, consolidations and acquisitions, including the sale or transfer of all or substantial assets, business enterprise or a going concern, has become very rampant.

Yet some employers device these schemes not really for the purpose of obtaining competitiveness. A few utilize such corporate mechanism with the end in view of violating their worker's security of tenure, among other rights of employees.

This plethora of previously unfamiliar corporate occurrences creates a trail of novel issues. With respect to labor, an issue that arises is the rules on the rights of employees and liabilities of the employers, if any, during such happenings. This is particularly when the issue of the security of tenure, diminution of wages and benefits and other employment terms and conditions comes to fore.

This bill seeks to oblige the acquiring or transferee employers to continue the employment of the transferor employer's employees during such instances. It likewise mandates that merger, consolidation or transfer of business shall not diminish the wages, benefits and other employment terms and conditions of the affected employees.

Moreover, the bill aims to limit the ground for termination of employment in case of such business overhauls only to redundancy. Plus it sets a presumption that if the transferee employer or new company becomes a bigger entity than the prior one, there can be no declaration of redundancy as the business can absorb the employees.

Finally, it sets out rules on recognition of existing bargaining agents and agreements. This will not only protect the unions, but also the benefits worked hard for by them as embodied in the Collective Bargaining Agreements.

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



HON. RAYMOND DEMOCRITO C. MENDOZA
TUCP Partylist Representative

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AN ACT
PROTECTING EMPLOYEES IN CASES OF MERGER OR
CONSOLIDATION, SALE OR TRANSFER OF ALL OR
SUBSTANTIALLY ALL ASSETS OR BUSINESSES OF THEIR
EMPLOYERS AND OTHER PURPOSES

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

SECTION 1. Declaration of Policy. – It shall be the policy of the State to extend utmost protection to the security of tenure, wages, benefits and other employment terms and conditions of employees in cases of merger or consolidation of the business of their employer with other entities. The protection shall extend in case an employer acquire, transfer, sell, assign, convey or lease all or substantially all assets, business enterprise or going concern to another employer or business entity.

SECTION 2. Definition of Terms. – As defined under this Act, the following terms shall have the following meaning:

- a) **"Employer"** - shall include any person or entity, natural or juridical, acting in the interest of an employer as defined under the Labor Code or Presidential Decree No. 442, as Amended;

- b) **"Merger and/or Consolidation"** - shall not merely refer to the process of merger and/or consolidation of two or more corporations under Section 76 of the Corporation Code, but likewise to the merger and/or consolidation of businesses, enterprises or operations, of all other juridical entities.
- c) **"Transfer of Business"** shall refer to the transfer, sale, assignment, conveyance or lease of an employer of all or substantially all assets, business enterprise or a going concern of the employer to another entity;
- d) **"Going Concern"** - shall refer to a branch, division, section, group, class, part or parcel of the entire business or enterprise of an employer;
- e) **"Transferor Employer"** - shall refer to the employer which sells, assigns, conveys or transfers its assets or business to another employer, or one of the corporations or entities that is a party to a consolidation, or the corporation which was merged into another corporation;
- f) **"Transferee Employer"** - means the employer which buys, acquires, receives, gains or leases the assets or business from another employer, or the corporation into which one or more corporation was merged, or the consolidated corporation;
- g) **"Lease"** - shall not merely refer to the agreement allowing use of the property by another for a specified period of time for consideration, as defined under the Civil Code of the Philippines, but also to lease of the business itself, a going concern or other aspects of the enterprise.

SECTION 3. *Maintenance of Employer-Employee Relationship.* - In the abovementioned cases of merger, consolidation or transfer of business, the transferee

employer shall have the obligation to continue the employment of the transferor employer's employees, without loss of seniority rights and other privileges.

SECTION 4. *Protection on Wages and Other Benefits.* – The occurrences of merger, consolidation or transfer of business shall not diminish the wages, benefits and other employment terms and conditions of the affected employees. In case of differences in the employment levels, wage and benefit scales, and other employment terms or conditions, the superior or most favorable to the employees shall prevail.

SECTION 5. *Liability of Transferee employer.* – The transferor employer shall be liable to such money claims pertaining to the period when the transferee employer was still the employer.

SECTION 6. *Termination of Employment.* – The employment of any employee of the transferee employer, or in some instances, the transferor employer, may be terminated only due to redundancy. In such a case, the transferee employer shall be liable for separation pay or other benefits as prescribed under the Labor Code.

However, if in terms of finances, assets, among other economic indicators, the transferee employer becomes a bigger entity than the transferor employer, the presumption is that the business can absorb the employees and there can be no declaration of redundancy.

An employee declared to be redundant in a certain position shall always be granted the first opportunity for employment in a newly created position, if he or she possesses the minimum qualifications.

SECTION 7. *Recognition of Existing Bargaining Agents.* - In cases of mergers, consolidations, or transfer of business, where both the transferor employer and the transferee employer are organized establishments:

- a) The union members or all other employees enjoying benefits under their respective and prevailing Collective Bargaining Agreements shall continue to enjoy the benefits thereon. If one CBA expires, while the other is still in effect, the respective union shall be allowed to negotiate on the economic provisions of their expired CBA. During the freedom period of the CBA with a later expiration term, a certification election would be conducted between the two labor organizations, and other participating labor organizations, if any. Thereafter, the winner shall have a fresh mandate to represent the merged bargaining unit.
- b) With majority vote of both unions voting separately, even pending the term of either or both their CBAs, a certification election may immediately be conducted after the merger, consolidation or transfer of business to determine who shall have a fresh mandate to represent the merged bargaining unit.

In cases of mergers, consolidations, or transfer of business where either of the transferee or transferor employer is unorganized, and a CBA is still in effect in the

organized establishment, a petition for certification election for the transferor employer may be filed only by the legitimate labor organization existing in the organized establishment. Thereafter, if said labor organization wins, it shall be the bargaining agent for the merged bargaining unit, but only for the remaining term of the said CBA. In case no petition for certification election is filed, employees concerned shall be assessed agency fees in order to enjoy the benefits of the said CBA. In case the petition for certification elections is filed during the freedom period of the said CBA, then other labor organizations shall be allowed to participate and thereafter, the winner shall have a fresh mandate to represent the merged bargaining unit.

SECTION 8. *Implementing Rules.* – Within sixty (60) days after the effectivity of this Act, the Secretary of Labor and Employment is hereby mandated to issue its Implementing Rules.

SECTION 9. *Separability Clause.* - If any provision of this Act, or any parts thereof, is declared unconstitutional, the same shall not affect the validity and effectivity of the other portions.

SECTION 10. *Repealing Clause.* - All laws, executive orders, presidential decrees, proclamations, rules, regulations, issuances and enactments of parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 11. *Effectivity.* - This Act shall take effect fifteen (15) days from its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines, whichever comes earlier.

APPROVED,