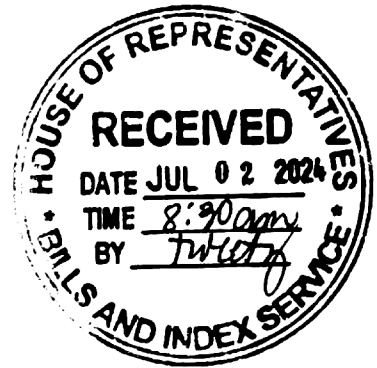




Republic of the Philippines
House of Representatives
Quezon City, Metro Manila



Nineteenth Congress

Third Regular Session
House Bill No. **10580**

Introduced by:

HON. MARISSA 'DEL MAR' MAGSINO
OFW PARTY LIST

EXPLANATORY NOTE

The 1987 Constitution upholds the right of every person to due process and equal protection of the law. Moreover, the fundamental law mandates the State to accord all members of the labor sector, including overseas Filipino workers (OFWs), the full protection of their rights and welfare. More so in cases of illegal dismissal from their jobs and in their claims for their unpaid salaries for the unexpired portion of their employment contracts.

Accordingly, in a long-line of cases, the Supreme Court has consistently ruled that in cases of illegal dismissal, OFWs are entitled to their salaries for the unexpired portion of their contracts.

On June 7, 1995, Republic Act No. 8042, also known as the 'Migrant Workers and Overseas Filipinos Act of 1995' was enacted into law which provides in Section 10, paragraph 5, that:

'..... 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 unexpired term, whichever is less.'

Significantly, however, the High Court in *Antonio M. Serrano vs Gallant Maritime Services* (G.R. No. 167614, March 24, 2009) declared the last phrase of the fifth paragraph

of RA 8042, that is, ***'or for three (3) months for every year of unexpired term, whichever is less'***, as unconstitutional for being violative of the equal protection clause, substantive due process, and the protection to labor clause. The Court noted:

'Prior to RA 8042, all OFWs, regardless of contract periods or the unexpired portions thereof, were treated alike in terms of the computation of their monetary benefits in case of illegal dismissal. Their claims were subjected to a uniform rule of computation: their basic salaries multiplied by the entire unexpired portion of their employment contracts. The enactment of the subject clause in RA 8042 introduced a differentiated rule of computation, ... the subject clause creates a sub-layer of discrimination among OFWs: those who are illegally dismissed with less than one (1) year left in their contracts shall be entitled to their salaries for the entire unexpired portion of the contract, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the subject clause, and their monetary benefits limited to their salaries for three (3) months only for every year of the unexpired term of their contracts.'

The subject clause singles out one classification of OFWs; those who are illegally dismissed with one year or more remaining in their contracts and impermissibly interferes with their exercise of a fundamental right (entitlement to claim unpaid salaries for the unexpired portion of contract) which operates to the unreasonable disadvantage of the burdened class.

Unfortunately, the clause (last phrase of the fifth paragraph of Section 10 of RA 8042) struck down by the Court in the *Serrano case*, was reinstated in Republic Act No. 10022 promulgated on March 8, 2010, amending RA 8042. This presents a unique situation where the law more recently passed incorporates the exact clause already declared as unconstitutional, without any perceived substantial change in the circumstances.

Addressing the peculiar situation, the Supreme Court stated in *Sameer Overseas Placement Agency vs Joy Cabiles*, G. R. No. 170139, August 5, 2014:

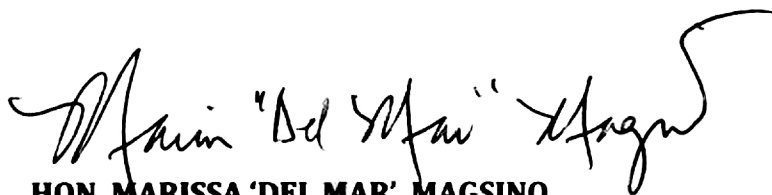
'In the hierarchy of laws, the Constitution is supreme. Thus, when a provision of law is null because it is inconsistent with the Constitution, the nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision. A law or provision of law that was already declared unconstitutional remains as such unless circumstances have so changed so as to warrant a reverse conclusion.'

This bill seeks to amend paragraph 5 of Section 10 of RA 8042 as amended by RA 10022 by deleting the phrase ***'or for three (3) months for every year of unexpired term, whichever is less'***, in order to harmonize the text of the law with the Supreme Court's decisions in the *Serrano* and *Sameer* cases declaring the subject phrase unconstitutional

for violating the substantive due process and equal protection clauses, and the protection to labor clause.

This proposed measure is an adoption of House Bill No. 5988 principally authored by AKBAYAN Partylist Representative Tomasito Villarin, which was passed on Third Reading in the 16th Congress, but failed to be enacted into law due to lack of material time.

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



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OFW PARTY LIST

AN ACT
GRANTING THE OVERSEAS FILIPINO WORKERS THE RIGHT TO EQUAL
PROTECTION ON MONEY CLAIMS, AMENDING FOR THE PURPOSE THE FIFTH
PARAGRAPH OF SECTION 10 OF REPUBLIC ACT NO. 8042, AS AMENDED BY
REPUBLIC ACT NO. 10022, OTHERWISE KNOWN AS THE 'MIGRANT WORKERS AND
OVERSEAS FILIPINOS ACT OF 1995'

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

Section 1. The fifth paragraph of Section 10 of Republic Act No. 8042, otherwise known as the 'Migrant Workers and Overseas Filipinos Act of 1995', as amended by Republic Act No. 10022, is hereby further amended to read as follows:

'Section 10. Money Claims. – x x x

x x x

x x x

x x x

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].~~

Section 2. All laws, presidential decrees, issuances, executive orders, letters of instruction, rules or regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 3. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved.