

'14 MAY 28 P 6 :08

SENATE

Senate Bill No. 2259

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

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

EXPLANATORY NOTE

In an economy where job opportunities remain limited in the midst of globalization, security of tenure, which is dearly valued by employees, should be protected by the State. This bill ensures that especially in cases of merger or consolidation of their employer with other entities, security of tenure should be protected together with the employees' wages, benefits and other employment terms and conditions. Such protection should also apply 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.

This measure seeks to oblige the acquiring or transferee employers to continue the employment of the transferor employer's employees during such instance. 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 sets out guidelines regarding termination of employment which determines the circumstances when there can be a declaration of redundancy. Further, it ensures that existing bargaining agents, including collective bargaining agreements, will continuously be recognized.

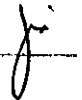
In view of the foregoing, the immediate passage of this bill is earnestly sought.


JINGGOY EJERCITO ESTRADA
Senator

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

1 **SECTION 1. Declaration of Policy.** – It shall be the policy of the State to extend
2 utmost protection to the security of tenure, wages, benefits and other
3 employment terms and conditions of employees in cases of merger or
4 consolidation of the business of their employer with other entities. The protection
5 shall extend in case an employer acquire, transfer, sell assign, convey or lease
6 all or substantially all assets, business enterprise or going concern to another
7 employer or business entity.
8
9

10 **SEC. 2. Definition of Terms.** – As defined under this Act. The following terms
11 shall have the following meaning:
12

- 13 a) **“Employer”** = shall include any person or entity, natural or juridical ,
14 acting in the interest of an employer as defined under the Labor Code
15 or Presidential Decree No. 442, as Amended;
16
17 b) **“Merger and/or Consolidation”** – shall not merely refer to the
18 process of merger and/or consolidation of two or more corporations
19 under Section 76 of the Corporation Code, but likewise to the merger
20 and/or consolidation of business, enterprises or operations, of all other
21 juridical entities;
22
23 c) **“Transfer of Business”** – shall refer to the transfer, sale, assignment,
24 conveyance or lease of an employer of all substantially all assets,
25 business enterprise or going concern of the employer to another entity;
26
27 d) **“Going Concern”** – shall refer to a branch, division, sanction, group,
28 class, part or parcel of the entire business or enterprise of an
29 employer;
30
31 e) **“Transferor Employer”** – shall refer to the employer which sells,
32 assigns, conveys or transfer its assets or business to another
33 employer, or one of the corporations or entities that is a party to a

1 consolidation, or the corporation which was merged into another
2 corporation;

3
4 f) **"Transferee Employer"** – means the employer which buys, acquires,
5 receives. Gains or leases the assts or business from another
6 employer, or the corporation into which one or more corporation was
7 merged, or the consolidated corporation;

8
9 g) **"Lease"** – shall not merely refer to the agreement allowing use of the
10 property by another for a specified period of time for consideration, as
11 defined under the Civil of the Philippines, but also to lease of the
12 business itself, a going concern or other aspects of the enterprise;

13
14
15 **SEC. 3. Maintenance of Employer-Employee Relationship.** – in the
16 abovementioned cases of merger, consolidation or transfer of business, the
17 transferee employer shall have the obligation to continue the employment of the
18 transferor employer's employees, without loss of seniority rights and other
19 privileges.

20
21
22 **SEC. 4. Protection on Wages and Other Benefits.** – The occurrences of
23 merger, consolidation or transfer of business shall not diminish the wages,
24 benefits and other employment terms and conditions of the affected employees.
25 In case of differences in the employment levels, wage and benefit scales, and
26 other employment terms or conditions, the superior or most favorable to the
27 employees shall prevail.

28
29
30 **SEC. 5. Liability of Transferee employer.** – The transferor employer shall be
31 liable to such money claims pertaining to the period when the transferee
32 employer was still the employer.

33
34
35 **SEC. 6. Termination of Employment.** – The employment of any employee of
36 the transferee employer, or in some instances, the transferor employer, may be
37 terminated only due to redundancy. In such a case, the transferee employer shall
38 be liable for separation pay or other benefits as prescribed under the Labor
39 Code.

40
41 However, if in terms of finances, assets, among other economic indicators, the
42 transferee employer becomes a bigger entity than the transferor employer, the
43 presumption is that the business can absorb the employees and there can be no
44 declaration of redundancy.

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

49
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51 **SEC. 7. Recognition of Existing Bargaining Agents.** – In cases of mergers,
52 consolidations, or transfer of business, where both the transferor employer and
53 the transferee employer are organized establishments:

54
55 (a) The union members or all other employees enjoying benefits under their
56 respective and prevailing Collective Bargaining Agreements shall continue
57 to enjoy the benefits thereon. If one CBA expires, while the other is still in

1 effect, the respective union shall be allowed to negotiate on the economic
2 provisions of their expired CBA. During the freedom period of the CBA
3 with a later expiration terms, a certification election would be labor
4 organizations, and other participating labor organizations, if any.
5 Thereafter, the winner shall have a fresh mandate to represent the
6 merged bargaining unit.
7

8 (b) With majority vote of both unions voting separately, even pending the term
9 of either or both their CBA's, a certification election may immediately be
10 conducted after the merger, consolidation or transfer of business to
11 determine who shall have a fresh mandate to represent the merged
12 bargaining unit.
13

14 In cases of mergers, consolidation, or transfer of business where either of the
15 transferee or transferor employers unorganized, and a CBA is still in effect in the
16 organized establishment, a petition for certification election for the transferor
17 employer may be filed only by the legitimate labor organization existing in the
18 organized establishment. Thereafter, if said labor organization wins, it shall be
19 the bargaining agent for the merged bargaining unit, but only for the remaining
20 term of the said CBA. In case the petition for certification elections is filed during
21 the freedom period of the said CBA, the winner shall have a fresh mandate to
22 represent the merged bargaining unit.
23

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25 **SEC. 8. Implementing Rules.** – Within sixty (60) days after the effectivity of this
26 Act, the Secretary of Labor and Employment is hereby mandated to issue its
27 Implementing Rules
28

29
30 **SEC. 9. Separability Clause.** – If any provision of this Act, or any part thereof,
31 is declared unconstitutional, the same shall not affect the validity and effectivity of
32 the other portions.
33

34
35 **SEC. 10. Repealing Clause.** – All laws, executive orders, presidential decrees,
36 proclamations, rules, regulations, issuances and enactments of parts thereof
37 inconsistent with this Act are hereby repealed or modified accordingly.
38

39
40 **SEC. 11. Effectivity.** – This Act shall take effect fifteen (15) days from its
41 complete publication in the Official Gazette or in a newspaper of general
42 circulation in the Philippines, whichever comes earlier.
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48 *Approved,*