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SENATE

Senate Bill No. 580

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

In cases of corporate mergers, consolidations and acquisitions, including the sale of all the assets or the entire business enterprise or a going concern, the rules on the liability of the transferee to the employees of the transferor are quite confusing. Sometimes, the transferee is liable; other times the transferee is not. Some transferees are made to absorb the employees, while others are not.

As a general rule, except when the creditors are the workers, the transferee of a business enterprise that is a going concern, is liable for payment of the credits and loans due to the transferor. This bill seeks to equalize the status of the workers and other creditors by making the transferee of all or substantially all of the assets liable to the workers, but only to the extent that they cannot collect from the transferor and only up to the amount of the assets transferred.

Also, in case of the transfer of a business enterprise of a going concern, whether at the assets level or at the stock level, the transferee and/or the corporation that has a new owner should continue the employer-employee relationship. One of the major excuses used to dismiss workers is that the corporation now has new owners, or that the company has just been purchased or will be bought by another group of owners.

This bill seeks to make the transferee in certain cases liable for the money claims and also compels the transferee to continue the employer employee relationship. This bill borrows heavily from Supreme Court jurisprudence on the liability of the transferee to the non-employee/worker creditors and to the employees and workers. It is very much consistent with the constitutional obligation of the State to promote the welfare of workers.

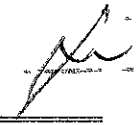
Finally, the bill also seeks to make labor relations more predictable and harmonious in cases of mergers, consolidations, acquisitions, sales, and leases.

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


JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
PROMOTING THE WELFARE OF WORKERS IN CASES OF MERGERS,
ACQUISITIONS, CONSOLIDATION, SALE OF ALL OR SUBSTANTIALLY ALL
ASSETS, BUSINESS ENTERPRISE TRANSFER, OR TRANSFER OF A
GOING CONCERN AND FOR OTHER PURPOSES

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

SECTION 1. Definition of Terms. -

a) "Corporation" means those entities organized under the Corporation Code or those with original charters granted by law.

b) "Employer" includes any person acting in the interest of an employer, directly or indirectly.

c) "Transferor" means the employer which sells or transfers its assets to another employer, or one of the corporations that is a party to a consolidation, or the corporation which was merged into another corporation.

d) "Transferee" means the employer which received the assets from another employer, or the corporation into which one or more corporation was merged, or the consolidated corporation.

e) "Merger" is the process by which two or more corporations merge into a single corporation which shall be one of the constituent corporations. For example, if Corporation A is merged with Corporation B, the merged/surviving corporation will shall either be Corporation A or Corporation B.

(f) "Consolidation" is the process by which two or more corporations may consolidate into a new single corporation which shall be the consolidated corporation. For example, if Corporation A is consolidated with Corporation B consolidated corporation shall be Corporation C.

g) "Lease"- a written agreement in which the owner of property (real, personal, intangible) allows use of the property for a specified period of time (term) for specific periodic payments (rent), and other terms and conditions.

h) "Bargaining Unit"- refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the

entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.

SEC. 2. *Liability of the transferee for money claims to the employees of the transferor.* - In cases of mergers, consolidations, acquisitions, sales or lease of all or substantially all assets, or business enterprises or going concern transfers, the transferee shall be liable for money claims pertaining to the period when the transferor corporation was still the employer.

In cases where the employer is a corporation organized under the Corporation Code or one with original charter, the change of stockholders shall not affect the relationship between the corporation and its employees. The corporation shall continue to be regarded as the real owner and employer.

SEC. 3. *Maintenance of the Employer-Employee Relationship.* - In cases of mergers, consolidations, acquisitions, sales of all or substantially all assets, or business enterprises or going concern transfers, the transferee shall have the obligation to continue the employment of the transferor's employees, without loss of seniority rights and other privileges.

SEC. 4. *Recognition of Existing Bargaining Agents.* - In cases of mergers, consolidations, acquisitions, sale or lease of all or substantially all assets, or business enterprises or going concern transfers, where both the transferor and the transferee are organized, the appropriate bargaining units and the corresponding sole and exclusive bargaining agents (SEBAs) in the transferor and the transferee shall be merged. Thereafter, local elections shall be held among all of the members of the merged SEBA.

If either or both the transferee or the transferor are unorganized, both bargaining units shall be merged and a petition for certification election may be filed only by any legitimate labor organization existing in either establishment at the time of the merger, consolidation, acquisition, sale of all or substantially all assets, or business enterprises or going concern transfer. Should there be no legitimate labor organization existing in either establishment at the time of the merger, consolidation, acquisition, sale or lease of all or substantially all assets, or business, enterprises or going concern transfer, any legitimate labor organization (LLO) may file a Petition for Certification Election (PCE).

Those employees who are part of the bargaining unit of merged, consolidated, joined bargaining units, or other similar fusion are eligible to join the union, or may be compelled to join as provided for by law and the collective bargaining agreement (CBA). Those who legally opt not to join shall be assessed agency fees.

SEC. 5. *Effect on Collective Bargaining Agreements* - In case of a merger, consolidation, acquisition, sale of all or substantially all assets, or business enterprises or going concern transfer, where the transferee and transferor bargaining units have their own CBA's, the said CBA's shall likewise be merged. In case of conflict, the those provisions which are more favorable to workers shall prevail, as determined by the majority of the workers.

SEC. 6. *Applicability* - This law shall apply to both corporations with original charters as well as those organized under the Corporation Code. Each of the terms and conditions of employment in the transferee, transferor, merged, or consolidated employers shall be deemed incorporated in the terms and conditions of the merged, consolidated or transferee corporation. In case there is a conflict with the different terms and conditions, those which are more favorable to the employees shall prevail.

SEC. 7. *Implementing Rules*. - The Secretary of Labor and Employment shall issue the pertinent rules with regard to this Act, including but not limited to, the administration of union funds, the administration of collective bargaining agreements CBAs,

SEC. 8. *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.

SEC. 9. *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.

SEC. 10. *Effectivity*. - This Act shall take effect after 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,