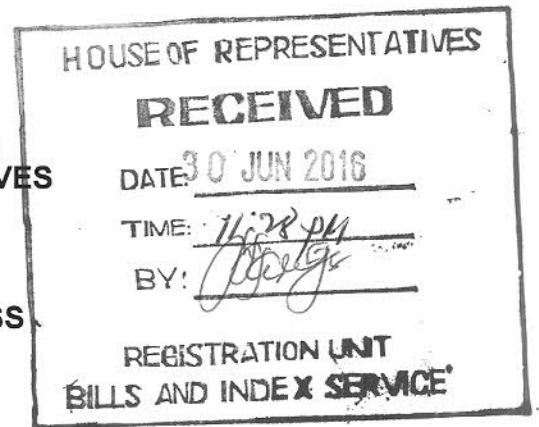


Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City

**SEVENTEENTH CONGRESS**  
First Regular Session

H. B. No. 710



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Introduced by **HONORABLE BELLAFLOR J. ANGARA-CASTILLO**

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#### EXPLANATORY NOTE

The Labor Code of the Philippines, as amended, was enacted in 1974. Through the years, the trend towards integration and inter-connectedness of countries into a single global community has increased in the form of various political and economic agreements. In 1991, the Philippines became a member of the World Trade Organization (WTO). As a member, the country is also a signatory to the General Agreement on Trade in Services (GATS), a treaty of the WTO, which entered into force in 1995. The GATS is a framework for a multilateral trading system in the service sector which includes an annex on the movement of natural persons. One of the Philippine commitments to the WTO-GATS is to review the restrictions in Title II, Article 40 of the Labor Code of the Philippines, as amended. The main restriction in the hiring of a foreign national is the Labor Market Test (LMT) which is used to determine the non-availability of a qualified, able and willing person in the Philippines to do the services for which the foreign national is being hired. It is comparable to an Economics Needs Test implemented by other countries.

The Philippines is also a member-state of the Association of Southeast Asian Nations (ASEAN), and is likewise obliged to review the said provision in preparation for the envisioned regional integration in 2015 as envisioned in the ASEAN Economic Community (AEC) Blueprint. ASEAN member countries committed to the AEC in 2007.

The proposed amendment of the provision in the Labor Code is to facilitate uniformity by properly stating the term used by the Philippines in its commitments entered in its agreements. It is a way for the country to determine if there is a short supply of workers in specific industries, occupations and professions which probably inhibits the country from increased productivity and industry development. Also, this bill includes a provision for training of Filipino understudies to transfer skills and technology from the foreign national. Increased fines and penalties for violations by foreign nationals are also updated to address inflation since the law was enacted almost four decades ago.

As the Philippines strives to meet its commitments in the WTO-GATS, AEC, and other agreements, it is expected to at least review the affected national laws and policies. This bill is a timely initiative to update our law as the country modernizes as part of a global community. It is also a show of good faith to countries, regions, and international bodies the Philippines has agreements with that the country is willing to accommodate changes in order to meet its commitments. The proposed amendment is beneficial to the country as it paves the way to an improved but still protective policy on employment of foreign nationals.

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

  
**BELLAFLOR J. ANGARA-CASTILLO**  
Representative  
Lone District, Province of Aurora

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Introduced by HONORABLE BELLAFLOR J. ANGARA-CASTILLO

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**AN ACT TO ENHANCE THE REGULATION ON EMPLOYMENT OF FOREIGN NATIONALS AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE PURPOSE ARTICLE NUMBERS 40, 41, AND 42, TITLE II, BOOK 1 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES**

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

1 **SECTION 1.** Article 40 of Presidential Decree No. 442, otherwise known as the Labor Code  
2 of the Philippines, as amended, is hereby amended to read as follows:

3  
4 "Title II  
5 Employment of Non-Resident Foreign Nationals

6  
7 **ART. 40. Employment permit of non-resident foreign nationals.** Any non-  
8 resident foreign nationals seeking employment in the Philippines shall obtain an  
9 employment permit from the Department of Labor and Employment.

10  
11 An employment permit may be issued to a non-resident foreign national subject to  
12 the labor market test based on the non-availability of qualified and willing Filipino  
13 national.

14  
15 The Secretary of Labor and Employment is authorized to grant exemptions from the  
16 labor market test to foreign nationals as provided for under existing laws and  
17 agreements, as well as in industries or occupations or practice of professions  
18 where there is short supply, after tripartite consultation.

19  
20 Foreign nationals issued employment permits shall transfer technology to Filipino  
21 understudies within a prescribed period.

22  
23 For an enterprise registered in preferred areas of investments, said employment  
24 permit may be issued upon recommendation of the government agency charged with  
25 the supervision of said registered enterprise."

26  
27 **SEC. 2.** Article 41 of the same Code is hereby amended to read as follows:

28  
29 "Art. 41. Prohibition against transfer of employment.

30  
31 1. After the issuance of an employment permit, the foreign national shall not  
32 transfer to another job or change his employer without prior approval of the  
33 Secretary of Labor and Employment.

34  
35 2. Any non-resident foreign national who shall take up employment in violation of  
36 the provision of this Title and its implementing rules and regulations, as well as

1 the employer or the responsible person representing the employer, shall be  
2 punished with a fine not less than Fifty thousand pesos (₱50,000.00) nor more  
3 than One hundred thousand pesos (₱100,000.00), or imprisonment of not less  
4 than six months nor more than six years, or both such fine and imprisonment,  
5 at the discretion of the court.  
6

7 In addition, the foreign national shall be subject to deportation after service of his  
8 or her sentence.  
9

10 The Secretary of Labor and Employment is authorized to impose a fine of Fifty  
11 thousand pesos (₱50,000.00) for every year or fraction thereof to both the foreign  
12 national found working without valid employment permit and to the employer.”  
13

14 **SEC. 3.** Article 41 of the same Code is hereby amended to read as follows:  
15

16 “**Art. 42. Submission of List.** Any employer employing non-resident foreign  
17 nationals shall submit a list of such nationals to the Regional Director of the  
18 Department of Labor and Employment which has jurisdiction on the employer within  
19 thirty (30) days after hiring, indicating their names, citizenship, foreign and local  
20 addresses, nature of employment and status of stay in the country.”  
21

22 **SEC. 4. Implementing Rules and Regulations.** – The Secretary of Labor and  
23 Employment, in coordination with concerned agencies, shall promulgate the necessary  
24 rules and regulations to implement the provisions of this Act within ninety (90) days from its  
25 effectivity.  
26

27 **SEC. 5. Repealing Clause.** – Presidential Decree No. 442, as amended, otherwise known  
28 as the "Labor Code of the Philippines", and all other acts, laws, presidential issuances, rules  
29 and regulations inconsistent herewith are hereby repealed, amended or modified  
30 accordingly.  
31

32 **SEC. 6. Separability Clause.** – If any provision of this Act is declared unconstitutional or  
33 invalid, the other provisions not affected thereby shall remain in full force and effect.  
34

35 **Sec. 7. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its publication  
36 in the Official Gazette or in a newspaper of general circulation.  
37

38 Approved,