

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 895

HOUSE OF REPRESENTATIVES

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Introduced by: Hon. Angelina "Helen" D.L. Tan, M.D.

AN ACT STRENGTHENING THE PROHIBITION AGAINST LABOR-ONLY CONTRACTING, AMENDING FOR THIS PURPOSE PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

EXPLANATORY NOTE

Article II, Section 18 of the 1987 Constitution provides that "The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare." Article XIII, Section 3 also states that "[t]he State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all." The same provision further mandates the right of all workers to security of tenure, humane conditions of work, and a living wage.

To implement these constitutional guarantees, Presidential Decree No. 442, otherwise known as The Labor Code of the Philippines, as amended, was enacted. P.D. No. 442 construes security of tenure to mean that in cases of regular employment, the employer shall not terminate the services of an employee without just or authorized cause.

Despite the rights of the workers under constitutional and labor laws, there are employers who wantonly circumvent labor laws through a system that is designed to prevent workers from attaining regular employment and security of tenure, such as by terminating employment every five months and thereafter rehiring the same workers for the same duration, or by denying the existence of employer-employee relationship by engaging the services of workers either from workers' cooperatives or manpower agencies, which will be the purported employers, to perform functions which are necessary and desirable to their main business without attaining regular employment.

These prevalent practices of labor contractualization have made it difficult for workers to attain the security of tenure guaranteed by the Constitution. Hence, this proposed bill, which was originally filed by Senator Aquilino Koko Pimentel III, expressly prohibits these practices.

In view of the foregoing, the passage of this measure is earnestly requested.


ANGELINA "HELEN" D.L. TAN, M.D.
4th District, Quezon

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

SECTION 1. *Title.* – Article 106 of Presidential Decree No. 442, as amended, is hereby amended to read as follows:

xxx.

xxx.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, **AMOUNTING TO AT LEAST FIVE MILLION PESOS (PHP5,000,000) PAID-UP CAPITAL STOCK/SHARES IN THE CASE OF CORPORATIONS, PARTNERSHIPS, AND COOPERATIVES AND AT LEAST FIVE MILLION PESOS (PHP5,000,000) NET WORTH IN CASE OF SINGLE PROPRIETORSHIP**, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

SEC. 2. A new Article 106-A of Presidential Decree No. 442, as amended, is hereby provided to read as follows:

ARTICLE 106-A. PROHIBITION ON "LABOR-ONLY" CONTRACTING. – "LABOR-ONLY" CONTRACTING IS HEREBY DECLARED PROHIBITED.

FOR THIS PURPOSE, "LABOR-ONLY" CONTRACTING SHALL INCLUDE ARRANGEMENTS WHERE:

(1) A MANPOWER AGENCY RECRUITS, SUPPLIES OR PLACES ITS HIRES TO A PRINCIPAL TO PERFORM JOBS NECESSARY, DESIRABLE, OR DIRECTLY RELATED TO THE MAIN BUSINESS OF THE PRINCIPAL; OR

(2) A WORKERS' COOPERATIVE ADMITS WORK APPLICANTS TO BECOME ITS MEMBERS WHO ARE FARMED OUT TO PERFORM THE JOBS NECESSARY, DESIRABLE, OR DIRECTLY RELATED TO THE MAIN BUSINESS OF THE PRINCIPAL; AND

(3) THE PERSONNEL OF THE PRINCIPAL, TO WHERE THE HIRES OF THE MANPOWER AGENCY OR THE MEMBERS OF THE WORKERS' COOPERATIVE WERE PLACED, EXERCISE DIRECT CONTROL AND SUPERVISION OVER THEM AS REGARDS THE METHOD AND MEANS TO PERFORM THE JOB AND IN ACHIEVING ITS DESIRED RESULTS.

SEC. 3. A new Article 106-B of Presidential Decree No. 442, as amended, is hereby provided to read as follows:

ARTICLE 106-B, OTHER PROHIBITIONS. – NOTWITHSTANDING ARTICLES 106 AND 106-A OF THIS CODE, THE FOLLOWING ARE HEREBY DECLARED PROHIBITED FOR BEING CONTRARY TO LAW OR PUBLIC POLICY:

A. CONTRACTING OUT OF JOBS, WORKS, OR SERVICES WHEN NOT DONE IN GOOD FAITH AND NOT JUSTIFIED BY THE EXIGENCIES OF THE BUSINESS, SUCH AS THE FOLLOWING:

(1) CONTRACTING OUT OF JOBS, WORKS, OR SERVICES WHEN THE SAME RESULTS IN THE TERMINATION OR REDUCTION OF REGULAR EMPLOYEES AND REDUCTION OR SPLITTING OF THE BARGAINING UNIT.

(2) CONTRACTING OUT OF WORK WITH A "CABO".

(3) TAKING UNDUE ADVANTAGE OF THE ECONOMIC SITUATION OR LACK OF BARGAINING STRENGTH OF THE CONTRACTOR'S EMPLOYEES, OR UNDERMINING THEIR SECURITY OF TENURE OR BASIC RIGHTS, OR CIRCUMVENTING THE PROVISIONS OF REGULAR EMPLOYMENT, IN ANY OF THE FOLLOWING INSTANCES:

(i) REQUIRING THEM TO DISCHARGE FUNCTIONS WHICH ARE CURRENTLY BEING PERFORMED BY THE REGULAR EMPLOYEES OF THE PRINCIPAL; AND

(ii) REQUIRING THEM TO SIGN, AS A PRECONDITION TO EMPLOYMENT OR CONTINUED EMPLOYMENT, AN ANTEDATED RESIGNATION LETTER; A BLANK PAYROLL; A WAIVER OF LABOR STANDARDS INCLUDING MINIMUM WAGES AND SOCIAL OR WELFARE BENEFITS; OR A QUITCLAIM RELEASING THE PRINCIPAL, CONTRACTOR, OR FROM ANY LIABILITY AS TO PAYMENT OF FUTURE CLAIMS.

(4) CONTRACTING OUT OF A JOB, WORK, OR SERVICE THROUGH AN IN-HOUSE AGENCY.

(5) CONTRACTING OUT OF A JOB, WORK, OR SERVICE THAT IS NECESSARY OR DESIRABLE, OR DIRECTLY RELATED TO THE BUSINESS OR OPERATION OF THE PRINCIPAL BY REASON OF A STRIKE OR LOCKOUT WHETHER ACTUAL OR IMMINENT.

(6) CONTRACTING OUT OF A JOB, WORK, OR SERVICE BEING PERFORMED BY UNION MEMBERS WHEN SUCH WILL INTERVENE WITH, RESTRAIN, OR COERCE EMPLOYEES IN THE EXERCISE OF THEIR RIGHTS TO SELF-ORGANIZATION AS PROVIDED IN ARTICLE 248(C) OF THE LABOR CODE, AS AMENDED.

(7). REPEATED HIRING OF EMPLOYEES UNDER AN EMPLOYMENT CONTRACT OF SHORT DURATION OR UNDER A SERVICE AGREEMENT OF SHORT DURATION WITH THE SAME OR DIFFERENT CONTRACTORS, WHICH CIRCUMVENTS THE LABOR CODE PROVISIONS ON SECURITY OF TENURE.

(8) REFUSAL TO PROVIDE COPY OF THE SERVICE AGREEMENT AND THE EMPLOYMENT CONTRACTS BETWEEN THE CONTRACTOR AND THE EMPLOYEES DEPLOYED TO WORK IN THE BARGAINING UNIT OF THE PRINCIPAL'S CERTIFIED BARGAINING AGENT TO THE SOLE AND EXCLUSIVE BARGAINING AGENT.

(9) ENGAGING OR MAINTAINING BY THE PRINCIPAL OF SUBCONTRACTED EMPLOYEES IN THE EXCESS OF THOSE PROVIDED FOR IN THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT OR AS SET BY THE INDUSTRY TRIPARTITE COUNCIL.

B. CONTRACTING OUT JOBS OR SERVICES ANALOGOUS TO THE ABOVE WHEN NOT DONE IN GOOD FAITH AND NOT JUSTIFIED BY THE EXIGENCIES OF THE BUSINESS.

SEC. 4. A new Article 106-C of the Presidential Decree No. 442, as amended, is hereby provided to read as follows:

ARTICLE 106-C. IN ALL CASES WHERE "LABOR-ONLY" CONTRACTING IS PRESENT, THE PRINCIPAL SHALL *IPSO FACTO* BE DEEMED THE DIRECT EMPLOYER OF THE

AFFECTED EMPLOYEES WHO WILL BE CONSIDERED REGULAR EMPLOYEES RETROACTIVE TO THE DATE WHEN THEY WERE FIRST HIRED, AGREEMENTS TO THE CONTRARY NOTWITHSTANDING, WITHOUT PREJUDICE TO ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE CASE AGAINST THE LABOR-ONLY CONTRACTOR AND THE PRINCIPAL.

SEC. 5. A new Article 280-A of the Presidential Decree No. 442, as amended, is hereby provided to read as follows:

ARTICLE 280-A. EXCEPT FOR ACTIVITIES WHICH ARE COVERED BY ALLOWABLE CONTRACTING ARRANGEMENTS, EMPLOYEES WHO HAVE BEEN HIRED REPEATEDLY BY THE SAME GROUP OF COMPANIES, THE PARENT AND SUBSIDIARY COMPANIES, OR BY COMPANIES WITH INTERLOCKING DIRECTORS, OFFICERS, AND/OR MAJORITY STOCKHOLDERS TO EITHER PERFORM THE SAME OR DIFFERENT JOBS SHALL BE CONSIDERED REGULAR EMPLOYEES FROM THE DATE WHEN THEY WERE FIRST HIRED, WHETHER SUCH SERVICE IS CONTINUOUS OR BROKEN.

SEC. 6. *Implementing Rules and Regulations.* – Within ninety (90) days from the promulgation of this Act, the Department of Labor and Employment, shall formulate the Implementing Rules and Regulations of this Act.

SEC. 7. *Non-impairment of existing contracts; Non-diminution of benefits.* – Subject to the provisions of Articles 106 to 109 of Presidential Decree No. 442, as amended, the applicable provisions of the Civil Code and existing jurisprudences, nothing herein shall impair the rights or diminish the benefits being enjoyed by the parties to existing contract or subcontracting arrangements.

SEC. 8. *Separability Clause.* – Should any provision of this Act or part hereof be declared unconstitutional, the other provisions or parts not affected thereby shall remain valid and effective.

SEC. 9. *Repealing Clause.* – All laws, decrees, orders, and issuances, or portions thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended, or modified accordingly.

SEC. 10. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days from its publication in two (2) newspapers of general circulation.

Approved,