

HOUSE OF REPRESENTATIVES

H. No. 7036

BY REPRESENTATIVES AGLIPAY, CASTELO, BELMONTE, FORTUN, GO (M.), VILLANUEVA (E.),
RIVERA, TAMBUNTING, NIETO, DALIPE, SAVELLANO, MANGAOANG, PINEDA, VELASCO AND
ARROYO, PER COMMITTEE REPORT NO. 389

**AN ACT STRENGTHENING THE SECURITY OF TENURE OF WORKERS IN THE PRIVATE
SECTOR, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 442, AS AMENDED,
OTHERWISE KNOWN AS THE "LABOR CODE OF THE PHILIPPINES"**

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

1 **SECTION 1. Short Title.** This Act shall be known as the "Security of Tenure Act."
2

3 **SEC. 2.** Article 106 of Presidential Decree No. 442, as amended, otherwise known
4 as the "Labor Code of the Philippines", is hereby amended to read as follows:
5

6 **"ARTICLE 106. Contractor [or subcontractor].** – Whenever an employer
7 enters into a contract with another person for the performance of the
8 former's work, the employees of the contractor [and of the latter's
9 subcontractor, if any,] shall be paid in accordance with the provisions of this
10 Code **AND OTHER LAWS.**

11
12 **"In the event that the contractor [or subcontractor] fails to pay the wages,**
13 **ALLOWANCES AND BENEFITS** of his employees in accordance with this Code
14 **AND OTHER LAWS,** the employer shall be jointly and severally liable with
15 [his] **THE contractor [or subcontractor]** to such employees to the extent of
16 the work performed under the contract, in the same manner and extent that
17 he is liable to employees directly employed by him.

1 "The Secretary of Labor and Employment [may], **AFTER CONSULTATION**
2 **WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL, SHALL** by
3 appropriate regulations, restrict or prohibit the contracting-out of labor to
4 protect the rights of workers established under this Code. In so prohibiting
5 or restricting, [he] **THE SECRETARY** may make appropriate distinctions
6 between labor-only contracting, **WHICH IS HEREBY PROHIBITED**, and
7 **LEGITIMATE** job contracting, **WHICH IS HEREBY PERMITTED IN**
8 **ACCORDANCE WITH THIS CODE**, as well as differentiations **AND**
9 **RESTRICTIONS** within these types of contracting and **THE** [determine]
10 **DETERMINATION OF** who among the parties involved shall be considered
11 the employer [for purposes of this Code, to prevent any violation or
12 circumvention of any provision of this Code].
13

14 "There is "labor-only" contracting where the person supplying workers to an
15 employer does not have substantial capital or investment in the form of
16 tools, equipment, machineries, work premises, among others[, and] **OR HAS**
17 **NO CONTROL OVER THE WORKERS' METHODS AND MEANS OF**
18 **ACCOMPLISHING THEIR WORK OR** the workers recruited and placed by
19 such person are performing activities which are directly related **AND**
20 **NECESSARY** to the principal business of such employer. In such cases, the
21 person or intermediary shall be considered merely as an agent of the
22 employer who shall be responsible to the workers in the same manner and
23 extent as if the latter were directly employed by him."
24

25 **SEC. 3.** A new article, Article 106-A, is hereby inserted after Article 106 of the same
26 decree, to read as follows:
27

28 **"ART. 106-A. LICENSING OF JOB CONTRACTORS. - ALL PERSONS OR**
29 **ENTITIES DOING BUSINESS AS JOB CONTRACTORS SHALL OBTAIN A**
30 **LICENSE FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT**
31 **THROUGH ITS REGIONAL OFFICES. THE TERM 'JOB CONTRACTOR' REFERS**
32 **TO A SOLE PROPRIETORSHIP, CORPORATION, PARTNERSHIP,**
33 **ASSOCIATION, COOPERATIVE OR ANY OTHER ORGANIZATION THAT**
34 **PERFORMS A SPECIFIC WORK, JOB OR SERVICE FOR A PRINCIPAL**
35 **EMPLOYER. THE TERM 'PRINCIPAL EMPLOYER' REFERS TO THE PERSON OR**
36 **ENTITY, INCLUDING THE GOVERNMENT THAT CONTRACTS OUT A SPECIFIC**
37 **WORK, JOB OR SERVICE.**
38

39 **"THE LICENSE SHALL BE ISSUED TO QUALIFIED JOB CONTRACTORS UPON**
40 **COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:**
41

42 **(A) REPRESENT AN INDEPENDENT BUSINESS, SEPARATE AND DISTINCT**
43 **FROM THE PRINCIPAL EMPLOYER;**
44

45 **(B) HAVE PAID-UP CAPITAL OR CAPITALIZATION OF AT LEAST FIVE MILLION**
46 **PESOS (P5,000,000.00) WHICH MAY BE INCREASED AS DEEMED**

1 APPROPRIATE THROUGH TRIPARTITE CONSULTATION EVERY THREE (3)
2 YEARS;

3
4 (C) EXECUTION OF AN UNDERTAKING OF FINANCIAL CAPACITY, AND
5 COMPLIANCE WITH ALL LABOR LAWS AND REGULATIONS;
6

7 (D) HAVE SUFFICIENT KNOWLEDGE, EXPERIENCE, SKILLS OR COMPETENCE
8 IN THE FIELD OF THE CONTRACTED JOB, WORK OR SERVICE;
9

10 (E) EMPLOY REGULAR EMPLOYEES AND POSSESS EQUIPMENT,
11 MACHINERIES OR TOOLS NECESSARY TO PERFORM OR COMPLETE THE JOB,
12 WORK OR SERVICE CONTRACTED OUT;
13

14 (F) HAVE CONTROL OVER THE PERFORMANCE AND COMPLETION OF THE
15 CONTRACTED JOB, WORK OR SERVICE; AND
16

17 (G) PAYMENT OF A LICENSE FEE OF ONE HUNDRED THOUSAND PESOS
18 (P100,000.00) WHICH MAY BE INCREASED AS DEEMED APPROPRIATE
19 THROUGH TRIPARTITE CONSULTATION.
20

21 "THE LICENSE SHALL BE VALID FOR A PERIOD OF THREE (3) YEARS. NO
22 LICENSE SHALL BE RENEWED UNLESS THE JOB CONTRACTOR SHALL
23 DEMONSTRATE THAT IT HAS NET FINANCIAL CONTRACTING CAPACITY TO
24 CARRY ON ITS BUSINESS BASED ON FACTORS SUCH AS THE NUMBER OF ITS
25 EMPLOYEES AND THE NATURE OF ITS BUSINESS.
26

27 "A LICENSED JOB CONTRACTOR SHALL SUBMIT AN ANNUAL REPORT
28 WHICH MUST INCLUDE, BUT NOT LIMITED TO, PROOF OF PAYMENT OF THE
29 APPROPRIATE SOCIAL AND OTHER WELFARE BENEFITS TO ITS EMPLOYEES.
30

31 "CONTRACTORS OR SIMILAR ENTITIES WHO ENGAGE IN JOB
32 CONTRACTING WITHOUT A LICENSE SHALL BE PENALIZED IN ACCORDANCE
33 WITH THIS CODE."
34

35 SEC. 4. Article 294 of the same decree is hereby further amended to read as follows:
36

37 "ARTICLE 294. *Security of tenure.* – In cases of regular employment, the
38 employer shall not terminate the services of an employee except for a just
39 cause or when authorized by this Title. [An employee who is unjustly
40 dismissed from work shall be entitled to reinstatement without loss of
41 seniority rights and other privileges and to his full backwages, inclusive of
42 allowances, and to his other benefits or their monetary equivalent
43 computed from the time his compensation was withheld from him up to the
44 time of his actual reinstatement.]

1 "A DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE OR WITHOUT
2 OBSERVANCE OF PROCEDURAL DUE PROCESS IS ILLEGAL. THE EMPLOYEE
3 WHO IS FOUND ILLEGALLY DISMISSED BASED ON LACK OF JUST OR
4 AUTHORIZED CAUSE IS ENTITLED TO IMMEDIATE REINSTATEMENT EVEN
5 PENDING APPEAL AND WITHOUT LOSS OF SENIORITY RIGHTS AND
6 BENEFITS, FULL BACKWAGES AND ACCRUED BENEFITS, AND
7 REMUNERATIONS PROVIDED BY LAW, COMPANY POLICY OR COLLECTIVE
8 BARGAINING AGREEMENT COMPUTED FROM THE TIME COMPENSATION
9 WAS WITHHELD UP TO THE TIME OF ACTUAL REINSTATEMENT. AWARD OF
10 BACKWAGES SHALL INCLUDE THE EMPLOYER'S SHARE OF CONTRIBUTIONS
11 TO THE SOCIAL SECURITY SYSTEM (SSS), PHILIPPINE HEALTH INSURANCE
12 CORPORATION (PHILHEALTH), AND HOME DEVELOPMENT MUTUAL FUND
13 (PAGIBIG) WHICH SHALL BE REMITTED TOGETHER WITH THE EMPLOYEE'S
14 SHARE TO THE AFORESAID AGENCIES FREE FROM INTEREST AND
15 PENALTIES FOR LATE REMITTANCE. IN THE EVENT THAT THE EMPLOYEE IS
16 GAINFULLY EMPLOYED DURING THE PENDENCY OF THE CASE FOR ILLEGAL
17 DISMISSAL AND THE EMPLOYEE WAS ABLE TO CONTRIBUTE TO THE SSS,
18 PHILHEALTH AND PAGIBIG FUND, AN AMOUNT NEEDED TO UPDATE HIS
19 EMPLOYEE CONTRIBUTIONS SHALL BE DEDUCTED FROM HIS BACKWAGES.
20 ACTUAL, MORAL, EXEMPLARY AND OTHER FORMS OF DAMAGES MAY
21 ALSO BE AWARDED. AN EMPLOYEE WHOSE DISMISSAL IS DECLARED
22 ILLEGAL BASED EXCLUSIVELY ON LACK OF PROCEDURAL DUE PROCESS IS
23 ENTITLED TO REASONABLE NOMINAL DAMAGES AND COSTS OF SUIT. THE
24 EMPLOYER SHALL HAVE THE BURDEN OF PROVING THAT THE
25 TERMINATION IS WITH JUST CAUSE AND DUE PROCESS."
26

27 SEC. 5. Article 295 of the same decree is hereby further amended to read as follows:
28

29 "**ART. 295. Regular and casual employment.** - The provisions of written
30 agreement to the contrary notwithstanding and regardless of the oral
31 agreement of the parties, an employment shall be deemed to be regular
32 [where the employee has been engaged to perform activities which are
33 usually necessary or desirable in the usual business or trade of the employer,
34 except where the employment has been fixed for a specific project or
35 undertaking the completion or termination of which has been determined
36 at the time of the engagement of the employee or where the work or service
37 to be performed is seasonal in nature and the employment is for the
38 duration of the season]. **NO EMPLOYMENT WITH A FIXED TERM OR
39 DEFINITE PERIOD SHALL BE ALLOWED EXCEPT IN CASES OF OVERSEAS
40 FILIPINO WORKERS; WORKERS ON PROBATION; RELIEVERS WHO ARE
41 TEMPORARY REPLACEMENTS OF ABSENT REGULAR EMPLOYEES WHOSE
42 ENGAGEMENTS SHALL NOT EXCEED SIX (6) MONTHS; PROJECT
43 EMPLOYEES; AND SEASONAL WORKERS.**

1 "RELIEVERS, PROJECT, AND SEASONAL EMPLOYEES SHALL ENJOY THE
2 RIGHTS OF REGULAR EMPLOYEES FOR THE DURATION OF THE
3 ENGAGEMENT, PROJECT OR SEASON, RESPECTIVELY.
4

5 "PROJECT EMPLOYMENT REFERS TO AN EXISTING PROJECT OR
6 UNDERTAKING, THE NATURE OF WHICH IS TEMPORARY AND THE
7 COMPLETION OR TERMINATION HAS BEEN DETERMINED AND MADE
8 KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL
9 EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON IN A TYPE OF
10 WORK. A SEASON IS THAT ESTABLISHED PERIOD OF INCREASED WORK
11 DEMAND INHERENT TO THE INDUSTRY AS DETERMINED BY THE
12 DEPARTMENT OF LABOR AND EMPLOYMENT IN CONSULTATION WITH THE
13 NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL.
14

15 "FOR RELIEVER, PROJECT, AND SEASONAL EMPLOYMENT, WORKERS ARE
16 CALLED TO WORK FROM TO TIME TO TIME AND TEMPORARILY LAID-OFF
17 DURING THE COMPLETION OF THE ENGAGEMENT OR PROJECT, OR DURING
18 OFF-SEASON BUT ARE IN THE WORK POOL ON LEAVE WITH OR WITHOUT
19 PAY STATUS IN BETWEEN ENGAGEMENTS, PROJECTS OR SEASONS.
20 RELIEVERS, PROJECT, AND SEASONAL WORKERS ARE ENTITLED TO THE
21 RIGHT OF FIRST REFUSAL TO THE TASK, WORK OR PROJECT WHICH IS THE
22 SUBJECT MATTER OF THE EMPLOYMENT. THEY SHALL ALSO ENJOY THE
23 RIGHT OF FIRST REFUSAL IN THE HIRING FOR OPEN REGULAR POSITIONS.
24

25 "ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE PROHIBITED.
26 CLAUSES IN EMPLOYMENT CONTRACTS PROVIDING FOR A FIXED TERM OR
27 DEFINITE PERIOD OF EMPLOYMENT ARE VOID. WORKERS UNDER SUCH
28 ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM
29 THE FIRST DAY OF EMPLOYMENT.
30

31 "[An employment shall be deemed to be casual if it is not covered by the
32 preceding paragraph: *Provided*, That any employee who has rendered at
33 least one year of service, whether such service is continuous or broken, shall
34 be considered a regular employee with respect to the activity in which he is
35 employed and his employment shall continue while such activity exists.]"
36

37 SEC. 6. Article 296 of the same decree is hereby further amended to read as follows:
38

39 "Art. 296. *Probationary employment.* - Probationary employment shall not
40 exceed six (6) months from the date the employee started working[, unless
41 it is covered by an apprenticeship agreement stipulating a longer
42 period].The services of an employee who has been engaged on a
43 probationary basis may be terminated for a just cause or **AUTHORIZED**
44 **CAUSE OR** when he fails to qualify as a regular employee in accordance with
45 reasonable standards made known by the employer to the employee at the

1 time of his engagement. An employee who is allowed to work after a
2 probationary period shall be considered a regular employee.”
3

4 **SEC. 7.** A new article, Article 303-A, is hereby inserted after Article 303 of the same
5 decree to read as follows:
6

7 **“ART. 303-A. ADMINISTRATIVE PENALTIES. – THE DEPARTMENT OF LABOR**
8 **AND EMPLOYMENT SHALL IMPOSE THE FOLLOWING:**
9

10 **“1. A FINE OF THIRTY THOUSAND PESOS (P30,000.00) ON A PERSON OR**
11 **ENTITY OPERATING AS A JOB CONTRACTOR WITHOUT A LICENSE, PROVIDED**
12 **THAT SAID PERSON OR ENTITY DOES NOT COMMIT ANY OTHER ACT**
13 **DESCRIBED AS LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF THIS**
14 **CODE;**
15

16 **“2. A FINE ON A PERSON OR ENTITY OPERATING AS A JOB CONTRACTOR**
17 **WITHOUT A LICENSE AND ALSO COMMITS ANY OF THE ACTS DESCRIBED AS**
18 **LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF THIS CODE. SAID FINE**
19 **SHALL BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE**
20 **ENGAGED UNDER A LABOR-ONLY CONTRACTING ARRANGEMENT BUT NOT**
21 **TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00).**
22 **IN ADDITION, SAID PERSON OR ENTITY WHICH ENGAGED IN LABOR-ONLY**
23 **CONTRACTING SHALL BE BARRED FROM APPLYING FOR LICENSES IN THE**
24 **FUTURE. THIS DISQUALIFICATION SHALL EXTEND TO THE RESPONSIBLE**
25 **PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE PARTNERSHIP,**
26 **CORPORATION OR COOPERATIVE;**
27

28 **“3. A FINE ON A LICENSED JOB CONTRACTOR WHO COMMITS ANY OF THE**
29 **ACTS DESCRIBED AS LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF**
30 **THIS CODE. THE FINE SHALL BE THIRTY THOUSAND PESOS (P30,000.00)**
31 **ASSESSED PER EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING**
32 **ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION**
33 **PESOS (P5,000,000.00). IN ADDITION, THE LICENSEE SHALL HAVE ITS**
34 **OPERATION CLOSED ON THE PROJECT IN WHICH THE VIOLATION WAS**
35 **COMMITTED AND SHALL BE BARRED FROM APPLYING FOR LICENSES IN THE**
36 **FUTURE. ANY SUCCEEDING OFFENSE COMMITTED SHALL RESULT IN THE**
37 **TERMINATION OF OPERATIONS AND DISQUALIFICATION OF THE JOB**
38 **CONTRACTOR. THIS DISQUALIFICATION SHALL EXTEND TO THE**
39 **RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE**
40 **PARTNERSHIP, CORPORATION OR COOPERATIVE;**
41

42 **“4. A FINE ON A PERSON OR ENTITY WHICH ENGAGES FIXED-TERM**
43 **EMPLOYEES IN VIOLATION OF ARTICLE 295 OF THIS CODE. THE FINE SHALL**
44 **BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE**
45 **ENGAGED UNDER THE PROHIBITED FIXED-TERM ARRANGEMENT BUT NOT**
46 **TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00).**

1 THE ABOVE FINES SHALL BE IMPOSED JOINTLY AND SEVERALLY AGAINST
2 THE PRINCIPAL EMPLOYER, AND CONTRACTOR, MANPOWER AGENCY,
3 WORKERS' COOPERATIVE OR ANY OTHER SIMILAR ENTITY OR THEIR
4 RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS ENGAGED IN THE
5 PROHIBITED ARRANGEMENTS DESCRIBED ABOVE. THE FINES SHALL BE
6 IMPOSED WITHOUT PREJUDICE TO OTHER DAMAGES THAT MAY BE
7 IMPOSED UNDER THIS CODE AND OTHER LAWS AND REGULATIONS."
8

9 SEC. 8. Within sixty (60) days, the Secretary of Labor and Employment shall
10 promulgate the necessary rules and regulations to implement the provisions of this Act.
11

12 SEC. 9. If any part or provision of this Act is declared unconstitutional or invalid, the
13 remainder of this Act or the provisions not otherwise affected shall remain valid and
14 subsisting.
15

16 SEC. 10. All laws, presidential decrees, proclamations, executive orders, issuances,
17 rules and regulations or any part thereof inconsistent with the provisions of this Act are
18 hereby repealed, amended or modified accordingly.
19

20 SEC. 11. This Act shall take effect fifteen (15) days after its complete publication in
21 the *Official Gazette* or in a newspaper of national circulation.

Approved,