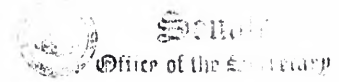


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'22 JUL 12 P 1 :55

SENATE

S. No. 398

RECEIVED BY

INTRODUCED BY SENATOR JOSEPH VICTOR G. EJERCITO

**AN ACT
STRENGTHENING THE SECURITY OF TENURE OF WORKERS IN THE PRIVATE
SECTOR, AMENDING FOR THE PURPOSE ARTICLES 106, 107, 108, 109, AND
294 OF PRESIDENTIAL DECREE NO. 442 OTHERWISE KNOWN AS THE LABOR
CODE OF THE PHILIPPINES, AS AMENDED**

EXPLANATORY NOTE

The Filipino workers deserve better.

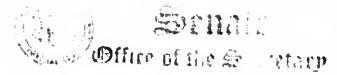
The 1987 Constitution affords protection to labor and assures the right of workers to security of tenure. The long history of workers' plight to attain this protected right paint their vulnerabilities and the inadequacy of State protection.

This proposed measure seeks to strengthen the security of tenure of workers in the private sector by absolutely prohibiting labor-only contracting and providing for stiffer penalties for violation thereof. These shall serve as deterrence for unscrupulous entities to take advantage of the vulnerable situation of the workforce.

To further protect workers' right to security of tenure, the bill clarifies that regardless of employment status of an employee, his/her employment may only be terminated for a just or authorized causes. More so, it emphasizes that the expiration of service agreement between the principal and the contractor shall not be a valid cause for termination of employment.

Finally, this measure also defines legitimate contractualization and provides for

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



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CODE OF THE PHILIPPINES, AS AMENDED**

Be it enacted by the Senate and 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 **of 2022**".

3 Sec. 2. Article 106 of the Labor Code is hereby amended as follows:

4 "Art. 106. [~~Contractor or subcontractor.~~] -
5 **LEGITIMATE CONTRACTOR. A LEGITIMATE**
6 **CONTRACTOR REFERS TO ANY LICENSED PERSON**
7 **OR ENTITY ENGAGED IN A LEGITIMATE**
8 **CONTRACTING ARRANGEMENT PROVIDING**
9 **SERVICES FOR A SPECIALIZED JOB OR**
10 **UNDERTAKING UNDER A SERVICE AGREEMENT FOR**
11 **A DEFINITE OR PREDETERMINED PERIOD,**
12 **REGARDLESS SUCH WORK IS TO BE PERFORMED OR**
13 **COMPLETED WITHIN OR OUTSIDE THE PREMISES**

1 **OF THE PRINCIPAL.**

2 **THE SECRETARY OF LABOR AND**
3 **EMPLOYMENT, BASED ON THE RECOMMENDATION**
4 **OF THE NATIONAL TRIPARTITE INDUSTRIAL PEACE**
5 **COUNCIL (NTIPC), UNDER ART. 290 (C) OF THE**
6 **LABOR CODE, AS AMENDED, SHALL DETERMINE BY**
7 **APPROPRIATE REGULATIONS SPECIFIC**
8 **ACTIVITIES WHICH MAY BE CONTRACTED OUT.**

9 Whenever an employer enters into a contract with
10 another person for the performance of the former's work,
11 the employees of the **LEGITIMATE** contractor [~~and of the~~
12 ~~latter's subcontractor, if any,~~] shall be paid in accordance
13 with the provisions of this Code.

14 In the event that the **LEGITIMATE** contractor [~~or~~
15 ~~subcontractor~~] fails to pay the wages **AND OTHER WAGE-**
16 **RELATED BENEFITS** of his employees in accordance with
17 this Code, the employer shall be jointly and severally liable
18 with his **LEGITIMATE** contractor [~~or subcontractor~~] to
19 such employees to the extent of the work performed under
20 the contract, in the same manner and extent that he is
21 liable to employees directly employed by him.

22 ~~[The Secretary of Labor and Employment may, by~~
23 ~~appropriate regulations, restrict or prohibit the contracting-~~
24 ~~out of labor to protect the rights of workers established~~
25 ~~under this Code. In so prohibiting or restricting, he may~~
26 ~~make appropriate distinctions between labor only~~
27 ~~contracting and job contracting as well as differentiations~~
28 ~~within these types of contracting and determine who~~
29 ~~among the parties involved shall be considered the~~
30 ~~employer for purposes of this Code, to prevent any violation~~

1 ~~or circumvention of any provision of this Code.]~~

2 ~~[There is "labor only" contracting where the person~~
3 ~~supplying workers to an employer does not have substantial~~
4 ~~capital or investment in the form of tools, equipment,~~
5 ~~machineries, work premises, among others, and the~~
6 ~~workers recruited and placed by such person are~~
7 ~~performing activities which are directly related to the~~
8 ~~principal business of such employer. In such cases, the~~
9 ~~person or intermediary shall be considered merely as an~~
10 ~~agent of the employer who shall be responsible to the~~
11 ~~workers in the same manner and extent as if the latter were~~
12 ~~directly employed by him.]"~~

13 Sec. 3. A new article, Article 106-A, is hereby inserted after Article 106, to read as
14 follows:

15 **"ART. 106-A. CONDITIONS OF LEGITIMATE**
16 **CONTRACTING. CONTRACTING ALLOWED UNDER**
17 **THE PRECEDING ARTICLE SHALL BE DONE ONLY IF**
18 **THE PERSON OR ENTITY ACTING AS CONTRACTOR**
19 **OBTAINS A LICENSE FROM THE DEPARTMENT OF**
20 **LABOR AND EMPLOYMENT (DOLE) AND ONLY IF IT**
21 **PERFORMS A JOB, WORK, OR SERVICE IDENTIFIED**
22 **BY THE SECRETARY OF LABOR AND EMPLOYMENT,**
23 **BASED ON THE RECOMMENDATION OF THE**
24 **NATIONAL TRIPARTITE INDUSTRIAL PEACE**
25 **COUNCIL (NTIPC), UNDER ART. 290 (C) OF THE**
26 **LABOR CODE, AS AMENDED.**

27 **SUCH LICENSE SHALL BE ISSUED AND**
28 **MAINTAINED ONLY IF THE APPLICANT:**

29 **A. HAS A PAID-UP CAPITAL OF AT LEAST TEN**
30 **MILLION PESOS (P10,000,000.00), WHICH**

1 **MAY BE INCREASED BY THE SECRETARY OF**
2 **LABOR AND EMPLOYMENT AS DEEMED**
3 **APPROPRIATE THROUGH TRIPARTITE**
4 **CONSULTATION;**

5 **B. ENGAGES IN AN IDENTIFIED SPECIALIZED**
6 **JOB, WORK, OR SERVICE WHICH ARE NOT**
7 **DIRECTLY RELATED TO THE MAIN BUSINESS**
8 **OF THE PRINCIPAL;**

9 **C. FURNISHES A BOND UNDER ARTICLE 108 OF**
10 **THIS CODE EQUAL TO TWENTY-FIVE**
11 **PERCENT (25%) OF THE TOTAL CONTRACT**
12 **COST; AND**

13 **D. PAYS A LICENSE FEE OF FIFTY THOUSAND**
14 **PESOS (P50,000.00), WHICH MAY BE**
15 **INCREASED BY THE SECRETARY OF LABOR**
16 **AND EMPLOYMENT AS DEEMED**
17 **APPROPRIATE THROUGH TRIPARTITE**
18 **CONSULTATION;**

19 **THE LICENSE SHALL BE VALID FOR A PERIOD OF**
20 **TWO (2) YEARS AND MAY BE RENEWED UPON**
21 **COMPLIANCE WITH THE REQUIREMENTS**
22 **PRESCRIBED AND OTHER REQUIREMENTS AS MAY**
23 **BE DETERMINED BY THE DOLE. PROVIDED, THAT**
24 **THE JOB, WORK, OR SERVICE TO BE PERFORMED**
25 **CONTINUES TO BE DETERMINED BY THE**
26 **SECRETARY OF LABOR AND EMPLOYMENT AS VALID**
27 **FOR CONTRACTING, BASED ON THE**
28 **RECOMMENDATION OF THE NATIONAL TRIPARTITE**
29 **INDUSTRIAL PEACE COUNCIL (NTIPC)."**

30 Sec. 4. Article 107 of the Labor Code is hereby deleted and replaced as follows:

1 **"ART. 107. ABSOLUTE PROHIBITION AGAINST**
2 **LABOR-ONLY CONTRACTING. THERE IS LABOR-**
3 **ONLY CONTRACTING WHEN THE CONTRACTOR**
4 **MERELY RECRUITS, SUPPLIES, OR PLACES**
5 **WORKERS TO PERFORM A JOB OR WORK FOR A**
6 **PRINCIPAL.**

7 **LABOR-ONLY CONTRACTING, WHICH IS**
8 **TOTALLY PROHIBITED, REFERS TO AN**
9 **ARRANGEMENT WHERE:**

10 **1. a. THE CONTRACTOR DOES NOT HAVE**
11 **SUBSTANTIAL CAPITAL, OR**

12 **b. THE CONTRACTOR DOES NOT HAVE**
13 **INVESTEMENTS IN THE FORM OF TOOLS,**
14 **EQUIPMENT, MACHINERIES,**
15 **SUPERVISION, WORK PREMISES,**
16 **AMONG OTHERS, AND**

17 **c. THE CONTRACTOR'S EMPLOYEES**
18 **RECRUITED AND PLACED ARE**
19 **PERFORMING ACTIVITIES WHICH ARE**
20 **DIRECTLY RELATED TO THE MAIN**
21 **BUSINESS OPERATION OF THE**
22 **PRINCIPAL; OR**

23 **2. THE CONTRACTOR DOES NOT EXERCISE THE**
24 **RIGHT TO CONTROL OVER THE**
25 **PERFORMANCE OF THE WORK OF THE**
26 **EMPLOYEE.**

27 **THE LICENSE OF THE CONTRACTOR ENGAGED**
28 **IN LABOR-ONLY CONTRACTING SHALL BE**
29 **REVOKED. IN ADDITION, A FINE OF FIVE MILLION**
30 **PESOS (P5,000,000.00) SHALL BE IMPOSED.**

1
2 **PROPRIETORS, PARTNERS, OFFICERS, AND/OR**
3 **DIRECTORS DIRECTLY OR INDIRECTLY**
4 **RESPONSIBLE FOR THE COMMISSION OF LABOR-**
5 **ONLY CONTRACTING SHALL BE PROHIBITED FROM**
6 **FURTHER ENGAGING IN THE BUSINESS OF**
7 **CONTRACTING.”**

8 Sec. 5. Article 108 of the Labor Code is hereby amended as follows:

9 “Art. 108. Posting of bond. - ~~[An employer or indirect~~
10 ~~employer may]~~ **THE PRINCIPAL SHALL** require the
11 contractor ~~[or subcontractor]~~ to furnish a bond ~~[equal to~~
12 ~~the cost of labor under contract]~~ **EQUAL TO TWENTY-**
13 **FIVE PERCENT (25%) OF THE TOTAL CONTRACT**
14 **COST**, on condition that the bond will answer for the wages
15 **AND WAGE-RELATED BENEFITS** due the employees
16 should the contractor ~~[or subcontractor, as the case may~~
17 ~~be,]~~ fail to pay the same.”

18 Sec. 6. Article 109 is hereby amended as follows:

19 “Art. 109. Solidary liability. The provisions of existing
20 laws to the contrary notwithstanding, every **PRINCIPAL**
21 ~~[employer or indirect employer]~~ shall be held responsible
22 with his contractor ~~[or subcontractor]~~ for any violation of
23 any provision of this Code. For purposes of determining the
24 extent of their civil liability under this Chapter, they shall be
25 considered as direct employers.”

26 Sec. 7. Article 294 of the Labor Code is hereby amended as follows:

27 “Art. 294. Security of tenure. ~~[In cases of regular~~
28 ~~employment, the employer shall not terminate]~~ ~~[t]~~The
29 services of an employee, **IRRESPECTIVE OF**
30 **EMPLOYMENT STATUS OR POSITION, SHALL NOT BE**

1 **TERMINATED** except for a just cause or when authorized
2 by this Title. An employee who is unjustly dismissed from
3 work shall be entitled to reinstatement without loss of
4 seniority rights and other privileges and to his/**HER** full
5 backwages, inclusive of allowances, and to his/**HER** other
6 benefits or their monetary equivalent computed from the
7 time his/**HER** compensation was withheld from him/**HER**
8 up to the time of his actual reinstatement.

9 **THE MERE EXPIRATION OF THE SERVICE**
10 **AGREEMENT UNDER ARTICLE 106 OF THIS CODE**
11 **SHALL NOT BE DEEMED AS A TERMINATION OF**
12 **EMPLOYMENT OF THE CONTRACTOR'S EMPLOYEES**
13 **WHO ARE REGULAR EMPLOYEES OF THE LATTER.**

14 Sec. 8. *Separability Clause.* - If any portion or provision of this Act is declared
15 unconstitutional, the remainder of this Act or any provisions not affected thereby shall
16 remain in force and effect.

17 Sec. 9. *Repealing Clause.* - Any law, presidential decree or issuance, executive
18 order, letter of instruction, rule or regulation inconsistent with the provisions of this Act
19 is hereby repealed or modified accordingly.

20 Sec. 10. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication
21 in the Official Gazette or in a newspaper of general circulation.

Approved,