

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session
3184
House Bill No. _____



Introduced by Rep. LAWRENCE LEMUEL H. FORTUN

EXPLANATORY NOTE

Section 3, Article XIII of the 1987 Constitution guarantees the right of workers to security of tenure. However, in the current state of industrial growth, business competitiveness, labor demands and employment competition, the practice of contractualization and labor only contracting has become commonplace in the country. This has resulted in a state of uncertainty among the workers who are treated as contractual or labor only workers. This runs counter to the principle enshrined in the Constitution that the State shall guarantee security of tenure among Filipino workers.

This bill seeks to further amend P.D. 442, otherwise known as the Labor Code of the Philippines to expressly prohibit labor-only contracting with limited exceptions under certain circumstances. It simplifies the classification of employees into regular employment as a general rule and prohibiting fixed-term employment. The bill seeks to require entities in the business of job contracting to obtain a license beforehand from the Department of Labor and Employment. Probationary employees who have at least one (1) month of service will be entitled to a one-half month of termination pay. Relievers, project and seasonal employees shall enjoy the rights of regular employees for the duration of their work as well as the right of first refusal once the jobs are opened for regular employment. Clauses in employment contracts providing for a fixed period of employment are considered void. Workers under such arrangements are deemed regular employees reckoned from the first day of employment.

This measure seeks to give life to Article II of the Constitution which provides that the State recognizes labor as "*the primary social economic force*" of the country and shall seek to promote the general welfare of workers including their right to security of tenure. The same was approved on Third and Final Reading in the 17th Congress. However, the bill was vetoed by President Rodrigo Roa Duterte taking into consideration the imperativeness of a "*healthy balance between the conflicting interests of labor and management.*"¹ Nevertheless, the President reiterated his "*firm commitment to protect workers' right to security of tenure by eradicating all forms of abusive employment practices.*"²

This bill is refiled to pave the way for further deliberations on the matter of workers' security of tenure in order for Congress to finally come up with a version most acceptable to both labor and management.

In view of the foregoing considerations, immediate consideration of this bill is most earnestly sought.

REP. LAWRENCE LEMUEL H. FORTUN
1st District of Agusan del Norte

¹ Veto message of President Rodrigo R. Duterte on consolidated enrolled Senate Bill No.

1826 and House Bill No. 6908

² Ibid

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EIGHTEENTH CONGRESS
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House Bill No. 3184

Introduced by Rep. LAWRENCE LEMUEL H. FORTUN

**AN ACT STRENGTHENING THE SECURITY OF TENURE OF WORKERS,
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 House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. Article 106 of Presidential Decree No. 442, as amended, otherwise known as
2 the "Labor Code of the Philippines", is hereby amended to read as follows:

3 4 "ART. 106. *Contractor* [or subcontractor]. - Whenever an employer enters into a
4 contract with another person for the performance of the former's work, the employees of
5 the contractor [and of the latter's subcontractor, if any,] shall be paid in accordance with
6 the provisions of this Code **AND OTHER LAWS**.

7 8 9 **"THE CONTRACTING OUT OF THE SAME WORK CONTRACTED OUT
10 BY THE EMPLOYER IS HEREBY PROHIBITED.**

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 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80671 80672 80673

38 who shall be responsible to the workers in the same manner and extent as if the latter where
39 directly employed by him."

40
41 SEC. 2. A new article, Article 106-A, is hereby inserted after Article 106 of the same
42 decree, to read as follows:

43
44 **"ART. 106-A. LICENSING OF JOB CONTRACTORS. ALL PERSONS OR**
45 **ENTITIES DOING BUSINESS AS JOB CONTRACTORS SHALL OBTAIN A**
46 **LICENSE FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT**
47 **THROUGHT ITS REGIONAL OFFICES, THE TERM 'JOB CONTRACTOR'**
48 **REFERS TO A SOLE PROPRIETORSHIP, CORPORATION, PARTNERSHIP,**
49 **ASSOCIATION, COOPERATIVE OR ANY OTHER ORGANIZATION THAT**
50 **PERFORMS A SPECIFIC WORK, JOB OR SERVICE FOR A PRINCIPAL**
51 **EMPLOYER, THE TERM 'PRINCIPAL EMPLOYER' REFERS TO THE**
52 **PERSON OR ENTITY, INCLUDING THE GOVERNMENT, THAT CONTRACTS**
53 **OUT A SPECIFIC WORK, JOB OR SERVICE.**

54
55 **"THE LICENSE SHALL BE ISSUED TO A QUALIFIED JOB**
56 **CONTRACTORS UPON COMPLIANCE WITH THE FOLLOWING**
57 **REQUIREMENTS:**

58
59 **"(A) AN INDEPENDENT BUSINESS, SEPARATE AND DISTINCT FROM**
60 **THE PRINCIPAL EMPLOYER;**

61
62 **"(B) PAID-UP CAPITAL OR CAPITALIZATION OF AT LEAST FIVE**
63 **MILLION PESOS (P5,000,000.00) WHICH MAY BE ADJUSTED AS DEEMED**
64 **APPROPRIATE THROUGH TRIPARTITE CONSULTATION EVERY THREE**
65 **(3) YEARS;**

66
67 **"(C) AN UNDERTAKING OF FINANCIAL CAPACITY, AND**
68 **COMPLIANCE WITH ALL LABOR LAWS AND REGULATIONS;**

69
70 **"(D) SUFFICIENT KNOWLEDGE, EXPERIENCE, SKILLS OR**
71 **COMPETENCE IN THE FIELD OF THE CONTRACTED JOB, WORK OR**
72 **SERVICE;**

73
74 **"(E) EMPLOYMENT OF REGULAR EMPLOYEES, AND POSSESSION**
75 **OF EQUIPMENT, MACHINERIES OR TOOLS NECESSARY TO PERFORM OR**
76 **COMPLETE THE JOB, WORK OR SERVICE CONTRACTED OUT;**

77
78 **"(F) CONTROL OVER THE PERFORMANCE AND COMPLETION OF**
79 **THE CONTRACTED JOB, WORK OR SERVICE; AND**

80
81 **"(G) PAYMENT OF A LICENSE FEE OF ONE HUNDRED THOUSAND**
82 **PESOS (P100,000.00) WHICH MAY BE ADJUSTED AS DEEMED APPROPRIATE**
83 **THROUGH TRIPARTITE CONSULTATION.**

84
85 **"THE LICENSE SHALL BE VALID FOR A PERIOD OF THREE (3)**
86 **YEARS. NO LICENSE SHALL BE RENEWED UNLESS THE JOB CONTRACT**
87 **SHALL DEMONSTRATE THAT IT HAS NET FINANCIAL CONTRACTING**
88 **CAPACITY (NFCC) TO CARRY ON ITS BUSINESS BASED ON FACTORS SUCH**
89 **AS, BUT NOT LIMITED TO, THE NUMBER OF ITS EMPLOYEES AND THE**
90 **NATURE OF ITS BUSINESS.**

91
92 **"A LICENSED JOB CONTRACTOR SHALL SUBMIT AN ANNUAL**
93 **REPORT WHICH MUST INCLUDE, BUT NOT LIMITED TO, PROOF OF**
94 **PAYMENT OF THE APPROPRIATE SOCIAL AND OTHER WELFARE**
95 **BENEFITS TO ITS EMPLOYEES.**

95

96 **"CONTRACTORS OR SIMILAR ENTITIES WHO ENGAGE IN JOB**
97 **CONTRACTING WITHOUT A LICENSE SHALL BE PENALIZED IN**
98 **ACCORDANCE WITH THIS CODE.'**

99

100 SEC. 3. Article 294 of the same decree is hereby further amended to read as follows:

101 ART. 294. *Security of Tenure.* - In cases of regular employment, the employer
102 shall not terminate the services of any employee except for a just cause or when authorized
103 by this Title. [An employee who is unjustly dismissed from work shall be entitled to
104 reinstatement without loss of seniority rights and other privileges and to his full backwages,
105 inclusive of allowances, and to his other benefits or their monetary equivalent computed
106 from the time his compensation was withheld from him up to the time of his actual
107 reinstatement.]

108

109 **"A DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE OR**
110 **WITHOUT OBSERVANCE OF PROCEDURAL DUE PROCESS IS ILLEGAL.**
111 **THE EMPLOYEE WHO IS FOUND ILLEGALLY DISMISSED BASED ON LACK**
112 **OF JUST OR AUTHORIZED CAUSE IS ENTITLED TO IMMEDIATE**
113 **REINSTATEMENT EVEN PENDING APPEAL AND WITHOUT LOSS OF**
114 **SENIORITY RIGHTS AND BENEFITS, FULL BACKWAGES AND ACCRUED**
115 **BENEFITS, AND REMUNERATIONS PROVIDED BY LAW, COMPANY**
116 **POLICY OR COLLECTIVE BARGAINING AGREEMENT COMPUTED FROM**
117 **THE TIME COMPENSATION WAS WITHHELD UP TO THE TIME OF**
118 **ACTUAL REINSTATEMENT, AWARD OF BACKWAGES SHALL INCLUDE**
119 **THE EMPLOYER'S SHARE OF CONTRIBUTIONS TO THE SOCIAL**
120 **SECURITY SYSTEM, PHILIPPINE HEALTH INSURANCE CORPORATION,**
121 **AND HOME DEVELOPMENT MUTUAL FUND WHICH SHALL BE REMITTED,**
122 **TOGETHER WITH THE EMPLOYEE'S SHARE, TO THE AFORESAID**
123 **AGENCEIS FREE FROM INTEREST AND PENALTIES FOR LATE**
124 **REMITTANCE. IN THE EVENT THAT THE EMPLOYEE IS GAINFULLY**
125 **EMPLOYED DURING THE PENDENCY OF THE CASE FOR ILLEGAL**
126 **DISMISSAL AND THE EMPLOYEE WAS ABLE TO CONTRIBUTE TO THE**
127 **SOCIAL SECURITY SYSTEM, PHILIPPINE HEALTH INSURANCE**
128 **CORPORATION, AND HOME DEVELOPMENT MUTAL FUND AN AMOUNT**
129 **NEEDED TO UPDATE HIS EMPLOYEE CONTRIBTUIONS SHALL BE**
130 **DEDUCTED FROM HIS BACKWAGES. ACTUAL, MORAL, EXEMPLARY AND**
131 **OTHER FORMS OF DAMAGES MAY ALSO BE AWARDED. AN EMPLOYEE**
132 **WHOSE DISMISSAL IS DECLARED ILLEGAL BASED EXCLUSIVELY ON**
133 **LACK OF PROCEDURAL DUE PROCESS IS ENTITLED TO REASONABLE**
134 **NOMINAL DAMAGES AND COSTS OF SUIT. THE EMPLOYER SHALL HAVE**
135 **THE BURDEN OF PROVING THAT THE TERMINATION IS WITH CAUSE AND**
136 **DUE PROCESS."**

137

138 SEC. 4. Article 295 of the same decree is hereby amended to read as follows:

139 "ART. 295. *Regular [and casual] employment.* The provisions of written
140 agreement to the contrary notwithstanding and regardless of the oral agreement of the
141 parties, an employment shall be deemed to be regular [where the employee has been
142 engaged to perform activities which are usually necessary or desirable in the usual business
143 or trade of the employer, except where the employment has been fixed for a specific project
144 or undertaking the completion or termination of which has been determined at the time of
145 the engagement of the employee or where the work or service to be performed is seasonal
146 in nature and the employment is for the duration of the season]. A **REGULAR**
147 **EMPLOYEE IS ONE WHO HAS BEEN HIRED FOR AN INDEFINITE PERIOD.**
148 **NO EMPLOYMENT WITH A FIXED TERM OR DEFINITE PERIOD SHALL BE**
149 **ALLOWED EXCEPT IN CASES OF OVERSEAS FILIPINO WORKERS,**
150 **WORKERS ON PROBATION, RELIEVERS WHO ARE TEMPORARY**
151 **REPLACEMENTS OF ABSENT REGULAR EMPLOYEES WHOSE**

152 ENGAGEMENTS SHALL NOT EXCEED SIX (6) MONTHS , PROJECT
153 EMPLOYEES, AND SEASONAL WORKERS.

154
155 "RELIEVERS, PROJECT AND SEASONAL EMPLOYEES SHALL ENJOY
156 THE RIGHTS OF REGULAR EMPLOYEES FOR THE DURATION OF THE
157 ENGAGEMENT, PROJECT OR SEASON, RESPECTIVELY. PROJECT
158 EMPLOYMENT REFERS TO AN EXISTING PROJECT OR UNDERTAKING
159 THE NATURE OF WHICH IS TEMPORARY AND THE COMPLETION OR
160 TERMINATION HAS BEEN DETERMINED AND MADE KNOWN TO THE
161 EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL
162 EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON IN A TYPE OF
163 WORK. A SEASON IS THAT ESTABLISHED IN AGRICULTURAL WORK OR
164 ESTABLISHED PERIODS OF INCREASED WORK DEMAND INHERENT TO
165 THE INDUSTRY AS DETERMINED BY THE DEPARTMENT OF LABOR AND
166 EMPLOYMENT IN CONSULTATION WITH THE NATIONAL TRIPARTITE
167 INDUSTRIAL PEACE COUNCIL.

168
169 "FOR RELIEVERS, PROJECT, AND SEASONAL EMPLOYMENT,
170 WORKERS ARE CALLED TO WORK FROM TIME TO TIME AND
171 TEMPORARILY LAID OFF DURING THE COMPLETION OF THE
172 ENGAGEMENT, PROJECT OR OFF-SEASON BUT ARE IN THE WORK POOL
173 ON LEAVE WITH OR WITHOUT PAY STATUS IN BETWEEN
174 ENGAGEMENTS, PROJECTS OR SEASONS. RELIEVERS, PROJECT, AND
175 SEASONAL WORKERS ARE ENTITLED TO THE RIGHT OF FIRST REFUSAL
176 TO THE TASK, WORK OR PROJECT WHICH IS THE SUBJECT MATTER OF
177 THE EMPLOYMENT. THEY SHALL ALSO ENJOY THE RIGHT OF FIRST
178 REFUSAL IN THE HIRING FOR OPEN REGULAR POSITIONS.

179
180 "ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE
181 PROHIBITED. CLAUSES IN EMPLOYMENT CONTRACTS PROVIDING FOR
182 A FIXED TERM OR DEFINITE PERIOD OF EMPLOYMENT ARE VOID.
183 WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED REGULAR
184 EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT.

185
186 [An employment shall be deemed to be casual if it is not covered by the preceding
187 paragraph: *Provided*, That any employee who has rendered at least one year of service,
188 whether such service is continuous or broken, shall be considered a regular employee with
189 respect to the activity in which is employed and his employment shall continue while such
190 activity exists.]"

191
192 SEC. 5. Article 296 of the same decree is hereby amended to read as follows:

193 "ART. 296. *Probationary employment*. - Probationary employment shall not
194 exceed six (6) months from the date employee started working. [unless it is covered by an
195 apprenticeship agreement stipulating a longer period.] The services of an employee who
196 has been engaged on a probationary basis may be terminated for a just cause or when he
197 fails to qualify as a regular employee in accordance with reasonable standards **WHICH**
198 **SHALL BE** made known by the employer to the employee **IN WRITING** at the time of
199 his engagement. An employee who is allowed to work after a probationary period shall be
200 considered a regular employee.

201
202 "EXCEPT WHEN THE TERMINATION IS FOR JUST CAUSE, A
203 PROBATIONARY EMPLOYEE WHO HAS RENDERED AT LEAST ONE (1)
204 MONTH OF SERVICE IS ENTITLED TO A TERMINATION PAY OF ONE-HALF
205 (1/2) MONTH SALARY."

206
207 SEC. 6. A new article, Article 303-A, is hereby inserted after Article 303 of the
208 same decree to read as follows:

209
210 **"ART. 303-A. ADMINISTRATIVE PENALTIES. – THE DEPARTMENT OF**
211 **LABOR AND EMPLOYMENT SHALL IMPOSE THE FOLLOWING:**

- 212 1. A FINE OF THIRTY THOUSAND PESOS (P30,000.00) FOR A PERSON
213 OR ENTITY OPERATING AS A JOB CONTRACTOR WITHOUT A
214 LICENSE, PROVIDED THAT SAID PERSON OR ENTITY DOES NOT
215 COMMIT ANY OTHER ACT DESCRIBED AS LABOR-ONLY
216 CONTRACT IN UNDER ARTICLE 106 OF THIS CODE.
- 217 2. A FINE FOR A PERSON OR ENTITY OPERATING AS A JOB
218 CONTRACTOR WITHOUT A LICENSE AND ALSO COMMITS ANY
219 OF THE ACTS DESCRIBED AS LABOR-ONLY CONTRACTING
220 UNDER ARTICLE 106 OF THIS CODE. SAID FINE SHALL BE
221 THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER
222 EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING
223 ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF
224 FIVE MILLION PESOS (P5,000,000.00). IN ADDITION, SAID PERSON
225 OR ENTITY WHICH ENGAGED IN LABOR-ONLY CONTRACTING
226 SHALL BE BARRED FROM APPLYING FOR FUTURE LICENSES.
227 THIS DISQUALIFICATION SHALL EXTEND TO THE
228 RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS OF THE
229 LIABLE PARTNERSHIP, CORPORATION OR COOPERATIVE;
- 230 3. A FINE FOR A LICENSED JOB CONTRACTOR WHICH COMMITS
231 ANY OF THE ACTS DESCRIBED AS LABOR-ONLY CONTRACTING
232 UNDER ARTICLE 106 OF THE CODE. SAID FINE SHALL BE
233 THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER
234 EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING
235 ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF
236 FIVE MILLION PESOS (5,000,000.00). IN ADDITION, THE LICENSEE
237 SHALL HAVE ITS OPERATION CLOSED ON THE PROJECT IN
238 WHICH THE VIOLATION WAS COMMITTED AND SHALL BE
239 BARRED FROM APPLYING FOR FUTURE LICENSES. ANY
240 SUCCEEDING OFFENSES COMMITTED SHALL RESULT IN THE
241 REVOCATION OF THE LICENSE AND CLOSURE OF THE
242 OPERATIONS OF THE JOB CONTRACTOR. THIS
243 DISQUALIFICATION SHALL EXTEND TO THE RESPONSIBLE
244 PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE
245 PARTNERSHIP, CORPORATION OR COOPERATIVE.
- 246 4. A FINE FOR A PERSON OR ENTITY WHO ENGAGES FIXED TERM
247 EMPLOYEES IN VIOLATION OF ARTICLE 295 OF THIS CODE.
248 SAID FINE SHALL BE THIRTY THOUSAND PEOSOS (P30,000.00)
249 ASSESSED PER EMPLOYEE ENGAGED UNDER THE PROHIBITED
250 FIXED-TERM ARRANGEMENT BUT NOT TO EXCEED THE TOTAL
251 AMOUNT OF FIVE MILLION PEOSOS (P5,000,000)
252 "THE ABOVE FINES SHALL BE IMPOSED JOINTLY AND
253 SEVERALLY AGAINST THE PRINCIPAL EMPLOYER AND
254 CONTRACTOR, MANPOWER AGENCY, WORKERS'
255 COOPERATIVE OR ANY OTHER SIMILAR ENTITY OR THE
256 LATTER'S RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS
257 ENGAGED IN THE PROHIBITED ARRANGEMENTS DESCRIBED
258 ABOVE. THE FINES SHALL BE IMPOSED WITHOUT PREJUDICE
259 TO OTHER DAMAGES THAT MAY BE IMPOSED UNDER THIS
260 CODE AND OTHER LAWS AND REGULATIONS."

266 *SEC. 7. Implementing Rules and Regulations.* - Within sixty (60) dyas from the
267 effectivity of this Act, the Secretary of Labor and Employment shall promulgate the
268 necessary rules and regulations for the effective implementation of this Act.
269

270 *SEC. 8. Separability Clause.* - If any provision or part of this Act is declared
271 invalid or unconstitutional, the remaining parts or provisions not affected remain in full
272 force and effect.
273

274 *SEC. 9. Repealing Clause.* - All laws, decrees, orders, rules and regulations and
275 other issuances or parts thereof which are inconsistent with the provisions of this act are
276 hereby repealed or amended accordingly.
277

278 *SEC. 10. Effectivity.* - This Act shall take effect fifteen (15) days after its
279 publication in the *Official Gazette* or in any newspaper of general circulation.
280

281 Approved,