

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City

Eighteenth Congress  
First Regular Session

House Bill No. **4514**



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Introduced by: Hon. Jericho Jonas B. Nograles

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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 interconnectedness 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 came 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 commitment 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 restrictions in the hiring of a foreign national is the Labor Market Test (LMT) which is used to determine the non-availability of 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 Economic Needs test implemented by other countries.


In relation to this, the Philippines is also a member-state of the Association of Southeast Asian Nations (ASEAN), and it is likewise obliged to review the said provisions 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 commitment entered in bilateral, regional and multilateral 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. It 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.

In conclusion, as the Philippines strives to meet its commitments in the WTO-GATS, AEC and other bilateral, regional and multilateral agreements, it is expected to at least review the affected national laws and policies. This proposed agreement is a timely initiative to update the said 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 agreement 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 way to an improved but still protective policy on employment of foreign national.

Approval if this Bill is therefore earnestly sought.



JERICO JONAS B. NOGRALES



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AN ACT STRENGTHENING THE REGULATION OF EMPLOYMENT OF FOREIGN NATIONALS, AMENDING FOR THE PURPOSE ARTICLES 40, 41, AND 42 OF TITLE II, BOOK ONE OF 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:*

**SECTION 1.** Article 40 of the Labor Code is hereby further amended to read as follows:

"Title II"  
"EMPLOYMENT OF NONRESIDENT [ALIENS] **FOREIGN NATIONALS**"

"ART. 40. Employment Permit for Non-Resident [Aliens] **FOREIGN NATIONALS**. – [Any Alien] **ALL NONRESIDENT FOREIGN NATIONALS** seeking [admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for] employment in the Philippines shall obtain an employment permit from the Department of Labor **AND EMPLOYMENT**.

"[The] **AN** employment permit may be issued to a nonresident [alien] **FOREIGN NATIONAL** [or to the applicant employer after a determination of the] **SUBJECT TO THE LABOR MARKET TEST BASED ON THE** non-availability of [a person in the Philippines who is competent, able] **QUALIFIED** and willing [at the time of application to perform the services for which the alien is desired] **FILIPINO NATIONALS**.

"**THE SECRETARY OF LABOR AND EMPLOYMENT** **IA AUTHORIZED TO GRANT EXEMPTIONS FROM THE LABOR MARKET TEST TO FOREIGN NATIONALS AS PROVIDED FOR UNDER EXISTING LAWS AND AGREEMENT, AS WELL AS IN INDUSTRIES OR OCCUPATIONS OR PRACTICE OF PROFESSIONS WHERE THERE IS SHORT SUPPLY, AFTER TRIPARTITE CONSULTATION.**

"**FOREIGN NATIONALS** **ISUED EMPLOYMENT PERMITS SHALL TRANSFER TECHNOLOGY TO FILIPINO UNDERSTUDIES WITHIN A PRESCRIBED PERIOD.**

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

**SECTION 2.** Article 41 of the Labor Code is hereby amended to read as follows:

*"ART. 41. Prohibition Against Transfer of Employment. – (A) After the issuance of an employment permit, the [alien] FOREIGN NATIONAL, shall not transfer to another job or change his employment without prior approval of the Secretary of Labor AND EMPLOYMENT.*

*"(B) Any nonresident [alien] FOREIGN NATIONAL who shall take up employment in violation of the provision of this Title and its implementing rules and regulations, AS WELL AS THE EMPLOYER OR THE RESPONSIBLE PERSON REPRESENTING THE EMPLOYER, shall be punished [in accordance with the provision of Articles 289 and 290 of the Labor Code] WITH A FINE OF NOT LESS THAN FIFTY THOUSAND PESOS (P 50,000.00) NOR MORE THAN ONE HUNDRED THOUSAND PESOS (P 100,000.00), OR IMPRISONMENT OF NOT LESS THAN SIX (6) MONTHS NOR MORE THAN SIX (6) YEARS, OR BOTH SUCH FINE AND IMPRISONMENT, AT THE DISCRETION OF THE COURT.*

*"In addition, the [alien worker] FOREIGN NATIONAL shall be subject to deportation after service of his sentence.*

*"THE SECRETARY OF LABOR AND EMPLOYMENT IS AUTHORIZED TO IMPOSE A FINE OF FIFTY THOUSAND (P 50,000.00) FOR EVERY YEAR OR FRACTION THEREOF TO BOTH THE FOREIGN NATIONAL FOUND WORKING WITHOUT VALID EMPLOYMENT PERMIT AND TO THE EMPLOYER."*

**SECTION 3.** Article 42 of the Labor Code is hereby amended to read as follows:

*" ART. 42. Submission of List. – Any employee employing nonresident foreign nationals [on the effective date of this Code] shall submit a list of such nationals to the [Secretary] REGIONAL DIRECTOR OF THE DEPARTMENT of Labor AND EMPLOYMENT WHICH HAS JURISDICTION OVER THE EMPLOYER within thirty (30) days after [such date] HIRING, indicating their names, citizenship, foreign and local addresses, nature of employment and status of stay in the country. [The Secretary of Labor AND EMPLOYMENT shall then determine if they are entitled to an employment permit.]"*

**SECTION 4.** Implementing Rules and Regulation. – The Secretary of Labor and Employment, in coordination with concerned agencies, shall formulate the necessary rules and regulations within ninety (90) days from the effectivity of this Act.

**SECTION 5.** Separability Clause. – If any provision of this Act is held invalid or unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

**SECTION 6.** Repealing Clause. – All laws, presidential decrees, issuances, executive orders, letter of instructions, and rules and regulations contrary to or inconsistent with the provisions of this Act are hereby amended accordingly.

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

Approved.