

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 170



INTRODUCED BY REP. KARLO ALEXEI B. NOGRALES AND HON. JERICO JONAS
B. NOGRALES

EXPLANATORY NOTE

Innovation and fast-paced technological progress has constantly redefined jobs and work arrangements in the private sector. New forms of employment engagements emerged, such as contracting or subcontracting, that were not adequately captured by the provisions of the 1974 Labor Code of the Philippines, being tailored for the manufacturing industries work arrangement. As a consequence, the existence of new work arrangements in the absence of clear policy guidelines blurred the employer-employee relationship, and gave rise to issues on the circumvention of the law on security of tenure of workers and employees in the private sector, not to mention gaps in their entitlement to labor standards benefits, and obstructions to the exercise of their labor rights.

To address the above-mentioned concerns, this bill proposes the following:

- (1) clearly defining legitimate contractor or subcontractor as an employer engaged in providing job, work or services to another business;
- (2) recognizing industry peculiarities in the determination of functions and standards on contracting and subcontracting;
- (3) criminalizing labor-only contracting;
- (4) licensing of contractors and subcontractors;
- (5) mandatory posting of bond to answer for the wages and other monetary benefits due the workers and employees in case the contractor fails to pay the same;
- (6) coverage of the cooperatives as employers in contracting or subcontracting;
- (7) reiterating the right to security of tenure to the effect that all workers and employees in the private sector shall not be dismissed without cause and due process;
- (8) defining the criteria for the existence of an employer-employee relationship;
- (9) classifying all employees as regular except those under probationary employment, or those under industry-specific work arrangement as may

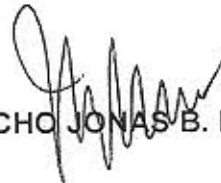
be determined by the Secretary of Labor and Employment, through tripartite consultation; and
(10) providing for probationary employment which shall not exceed six (6) months.

The bill also provides that repeated engagement of the same employee after the expiration of the probationary employment or contract of employment in industry-specific work arrangements will render the employment as regular in nature.

To secure compliance with the constitutional and statutory guarantee to security of tenure of workers and employees in the private sector, among other concerns, the passage of this bill is earnestly sought.



KARLO A. B. NOGRALES



JERICHON JONAS B. NOGRALES

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HOUSE BILL NO. _____

INTRODUCED BY REP. KARLO ALEXEI B. NOGRALES and REP. JERICHO JONAS
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AN ACT
STRENGTHENING THE SECURITY OF TENURE OF WORKERS AND EMPLOYEES 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:

SECTION 1. Article 106 of PD 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:

"ART. 106. **CONTRACTOR OR SUBCONTRACTOR.** - Whenever a[n] **PRINCIPAL** employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

"In the event that the contractor or subcontractor fails to pay the wages **AND OTHER WAGE-RELATED BENEFITS, INCLUDING SOCIAL WELFARE BENEFITS**, of his employees in accordance with this Code, the **PRINCIPAL** employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

"FOR PURPOSES OF THIS CODE, CONTRACTING OR SUBCONTRACTING REFERS TO AN ARRANGEMENT WHEREBY THE PRINCIPAL EMPLOYER AGREES TO PUT OUT OR FARM OUT TO A CONTRACTOR OR ITS SUBCONTRACTOR THE PERFORMANCE OR COMPLETION OF A SPECIFIC JOB, WORK OR SERVICE WITHIN A DEFINITE OR PREDETERMINED PERIOD, REGARDLESS OF WHETHER SUCH JOB, WORK OR SERVICE IS TO BE PERFORMED OR COMPLETED WITHIN OR OUTSIDE OF THE PREMISES OF THE PRINCIPAL EMPLOYER.

"A CONTRACTOR OR SUBCONTRACTOR IS A PERSON OR ENTITY WITH WHOM A PRINCIPAL EMPLOYER ENTERS INTO A CONTRACT FOR THE PERFORMANCE OF THE LATTER'S WORK. FOR THIS PURPOSE, A LEGITIMATE CONTRACTOR OR SUBCONTRACTOR MUST:

- A) BE LICENSED WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT;
- B) HAVE SUBSTANTIAL CAPITALIZATION OF AT LEAST THREE MILLION PESOS (P3,000,000.00) FULLY PAID UP OR AS MAY BE DETERMINED THROUGH TRIPARTITE CONSULTATION, PROVIDED THAT THE AMOUNT SHALL NOT BE LOWER THAN THREE MILLION PESOS (P3,000,000.00);
- C) HAVE THE EQUIPMENT, MACHINERIES AND TOOLS NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK OR SERVICE CONTRACTED OUT; AND,
- D) EXERCISE CONTROL OVER THE PERFORMANCE OR COMPLETION OF THE JOB, WORK OR SERVICE CONTRACTED OUT.

"The Secretary of Labor [may] **SHALL**, by appropriate regulations, [restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code] **DETERMINE FUNCTIONS THAT CAN BE SUBCONTRACTED, WITH THE CONCURRENCE OF THE APPROPRIATE INDUSTRY TRIPARTITE COUNCIL. IN THE ABSENCE OF INDUSTRY-SPECIFIC TRIPARTITE STANDARDS ON CONTRACTING AND SUBCONTRACTING, THE SECRETARY OF LABOR AND EMPLOYMENT SHALL DETERMINE STANDARDS AND ISSUE APPROPRIATE REGULATIONS AFTER CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL.**

"**LABOR-ONLY CONTRACTING IS HEREBY DECLARED PROHIBITED AND CRIMINAL IN NATURE.** There is "labor-only" contracting where the person supplying workers to a[n] **PRINCIPAL** employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, [and] **OR** the workers recruited and placed [by such persons are performing activities which are directly related to the principal business of such employer] **ARE UNDER THE CONTROL AND SUPERVISION OF THE PRINCIPAL EMPLOYER.** In such cases, the person or intermediary shall be considered merely as an agent of the **PRINCIPAL** 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. Article 107 of the Labor Code is hereby amended to read as follows:

"ART. 107. **[INDIRECT] PRINCIPAL EMPLOYER.** - The provisions of the immediately preceding Article shall [likewise] apply to any person, partnership, association or corporation which [, not being an employer] contracts with an independent contractor for the performance of any work, task, job or project."

SEC. 3. A new article Article 107-A is hereby introduced to the Labor Code to read as follows:

"ART. 107-A. **LICENSING OF JOB CONTRACTORS.** - THE SECRETARY OF LABOR AND EMPLOYMENT, THROUGH THE REGIONAL OFFICES, SHALL ISSUE QUALIFIED APPLICANTS THE JOB CONTRACTOR'S LICENSE IN ACCORDANCE WITH THE GUIDELINES PRESCRIBED FOR THE PURPOSE. THE APPLICANT MUST BE A FILIPINO CITIZEN OR A CORPORATION OF WHICH ONE HUNDRED PERCENT (100%) OF AUTHORIZED AND VOTING CAPITAL IS OWNED AND CONTROLLED BY FILIPINO CITIZENS, A PARTNERSHIP, CRAFT UNION OR ANY OTHER ENTITY. SUCH CONTRACTOR SHALL LIKEWISE COMPLY WITH THE REQUIREMENTS OF OTHER GOVERNMENT AUTHORITIES.

"CONTRACTORS OR SUBCONTRACTORS WITHOUT A LICENSE SHALL BE DEEMED ENGAGED IN LABOR-ONLY CONTRACTING. THE PRINCIPAL EMPLOYER SHALL BE CONSIDERED THE DIRECT EMPLOYER OF ALL EMPLOYEES UNDER THE CONTRACTING OR SUBCONTRACTING AGREEMENT.

"THE SECRETARY OF LABOR AND EMPLOYMENT MAY IMPOSE A FINE AGAINST CONTRACTORS OR SUBCONTRACTORS WITHOUT A LICENSE IN AN AMOUNT TO BE DETERMINED THROUGH CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL."

SEC. 4. Article 108 of the Labor Code is hereby amended to read as follows:

"ART. 108. **MANDATORY POSTING OF BOND.** - [An employer or indirect employer may require t] The contractor or subcontractor [to] **SHALL** furnish THE PRINCIPAL EMPLOYER a bond equal to the cost of labor under THE contract [,] **BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND ITS EMPLOYEES.** [on condition that t]The bond [will] **SHALL** answer for the wages **AND OTHER MONETARY BENEFITS** due the employees [should] **IN CASE** the contractor or subcontractor [, as the case may be,] failS to pay the same."

SEC. 5. A new Article 108-A is hereby introduced to the Labor Code to read as follows:

"ART. 108-A. **APPLICABILITY TO COOPERATIVES.** - THE PROVISIONS OF THIS ACT SHALL APPLY TO COOPERATIVES

ENGAGED IN CONTRACTING OR SUBCONTRACTING ARRANGEMENTS. COOPERATIVES ARE DEEMED EMPLOYERS AND THEIR EMPLOYEES, MEMBERS OR NON-MEMBERS SHALL BE ENTITLED TO THE FOLLOWING RIGHTS AND PRIVILEGES ACCORDED TO THE CONTRACTOR'S OR SUBCONTRACTOR'S EMPLOYEES:

- A) MINIMUM WAGE;
- B) SAFE AND HEALTHFUL WORKING CONDITIONS;
- C) LABOR STANDARDS SUCH AS SERVICE INCENTIVE LEAVE, REST DAYS, OVERTIME PAY, HOLIDAY PAY, THIRTEENTH MONTH PAY, AND SEPARATION PAY AS MAY BE PROVIDED IN THE SERVICE AGREEMENT OR UNDER THE LABOR CODE;
- D) RETIREMENT BENEFITS UNDER THE SOCIAL SECURITY SYSTEM (SSS) OR RETIREMENT PLANS OF THE CONTRACTOR, IF THERE IS ANY;
- E) SOCIAL SECURITY AND WELFARE BENEFITS;
- F) SELF-ORGANIZATION, COLLECTIVE BARGAINING, AND PEACEFUL CONCERTED ACTIVITIES; AND
- G) SECURITY OF TENURE."

SEC. 6. Article 294 of the Labor Code is hereby further amended to read as follows:

"ART. 294. SECURITY OF TENURE. - ALL EMPLOYEES, IRRESPECTIVE OF EMPLOYMENT STATUS OR POSITION, SHALL NOT BE DISMISSED WITHOUT CAUSE AND DUE PROCESS.

"[In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title.] An employee who is [unjustly] dismissed [from work] **WITHOUT CAUSE AND DUE PROCESS** shall be entitled to reinstatement without loss of seniority rights [and other privileges and to his] **AND BENEFITS**, full backwages, [inclusive of] allowances, **COMMISSION, SSS, PHILHEALTH, AND PAG-IBIG BENEFITS, AND ALL OTHER BENEFITS AND REMUNERATIONS PROVIDED BY LAW, COMPANY POLICY AND COLLECTIVE BARGAINING AGREEMENT, COMPUTED** [and to his other benefits or their monetary equivalent computed] from the time [his] compensation was withheld [from him] up to the time of [his] actual reinstatement.

"THE EMPLOYER SHALL HAVE THE BURDEN OF PROVING THAT THE TERMINATION IS WITH CAUSE AND DUE PROCESS."

SEC. 7. A new Article 294-A is hereby introduced to the Labor Code to read as follows:

"ART. 294-A. EMPLOYER-EMPLOYEE RELATIONSHIP. - THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP WHEN THE WORKER IS ENGAGED TO RENDER WORK OR SERVICE UNDER THE

CONTROL OR SUPERVISION OF THE EMPLOYER, NOT ONLY AS TO THE END TO BE ACHIEVED, BUT ALSO TO THE MANNER AND MEANS IN ACHIEVING THE END.

"THE PAYMENT OF REMUNERATION TO THE WORKER ALSO INDICATES THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP."

SEC. 8. Article 295 of the Labor Code is hereby amended to read as follows:

"ART. 295. [REGULAR AND CASUAL EMPLOYMENT. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.] STATUS OF EMPLOYMENT. - ALL EMPLOYEES ARE DEEMED REGULAR EXCEPT THOSE UNDER:

- A) PROBATIONARY EMPLOYMENT WHICH SHALL NOT EXCEED SIX (6) MONTHS AND AS DEFINED IN ARTICLE 281 OF THIS ACT ; OR
- B) INDUSTRY-SPECIFIC WORK ARRANGEMENT AS MAY BE DETERMINED BY THE SECRETARY OF LABOR AND EMPLOYMENT THROUGH TRIPARTITE APPROVAL, PROVIDED THAT THERE SHALL BE A WRITTEN CONTRACT OF EMPLOYMENT WHICH MUST NOT BE LESS THAN SIX (6) MONTHS BUT NOT MORE THAN ONE YEAR SPECIFYING THE RIGHTS, TERMS AND CONDITIONS OF EMPLOYMENT NOT LOWER THAN THE MINIMUM STANDARDS SET BY LAWS OR REGULATIONS.

THE ENGAGEMENT OF THE SAME EMPLOYEE AFTER THE EXPIRATION OF THE PROBATIONARY EMPLOYMENT OR CONTRACT OF EMPLOYMENT IN AN INDUSTRY-SPECIFIC WORK ARRANGEMENT SHALL RENDER THE EMPLOYMENT REGULAR."

SEC. 9. Article 296 of the Labor Code is hereby amended to read as follows:

"ART. 296. PROBATIONARY EMPLOYMENT. - Probationary

employment shall not exceed six (6) months from the [date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period] **FIRST DAY OF SERVICE REGARDLESS OF THE NATURE OF WORK TO BE PERFORMED.**

"THE RIGHTS, TERMS AND CONDITIONS OF EMPLOYMENT OF A PROBATIONARY EMPLOYEE WHICH SHALL NOT BE LOWER THAN THE MINIMUM STANDARDS SET BY LAWS OR REGULATIONS, THE JOB DESCRIPTION, AND QUALIFICATION STANDARDS FOR REGULAR EMPLOYMENT SHALL BE IN A WRITTEN CONTRACT AND MADE KNOWN BY THE EMPLOYER TO THE EMPLOYEE AT THE TIME OF HIS ENGAGEMENT.

"The services of a[n] **PROBATIONARY** employee [who has been engaged on a probationary basis] may be terminated for a just **AND AUTHORIZED** cause **UNDER ARTICLES 297 AND 298 OF THE LABOR CODE** or when he fails to qualify as a regular employee [in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee].

"THE PROBATIONARY EMPLOYEE SHALL AUTOMATICALLY BECOME A REGULAR EMPLOYEE AFTER MEETING THE STANDARDS STIPULATED IN THE WRITTEN CONTRACT OF PROBATIONARY EMPLOYMENT."

SEC. 10. *Implementing Rules and Regulations.* - The Secretary of Labor and Employment shall promulgate the necessary implementing rules and regulations within one hundred and twenty (120) days from the effectivity of this Act.

SEC. 11. *Separability Clause.* - If any provision of this law or the application thereof to any person or circumstance is held invalid, the remainder of this law or the application of such provision or part to other persons or circumstances shall not be affected thereby.

SEC. 12. *Repealing Clause.* - All laws, decrees, rules, and regulations or parts thereof which are contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 13. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of national circulation.

Approved,