

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4845



Introduced by **HON. JOY MYRA S. TAMBUNTING**

EXPLANATORY NOTE

Labor contracting is an exploitative practice which dates back to the Spanish colonial era's *cabo system*. A cabo is defined to be a person or group of persons or a labor group which, in the guise of a labor organization, supplies workers to an employer, with or without any monetary or other consideration whether in the capacity of an agent of the employer or as an ostensible independent contractor.

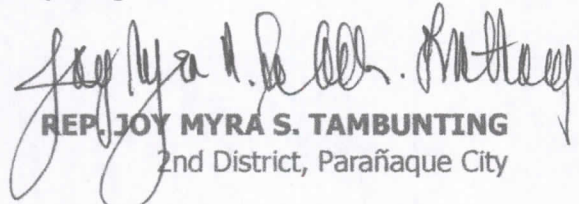
Through years, this practice has continued and has since evolved to various forms of labor contracting practices. Contractualization has been institutionalized across all economic sectors and at present, continues to proliferate in various forms of market-oriented and flexible hiring schemes. Philippine Statistics Authority claims that an estimate of 7 million Filipino workers are found to be in "employment conditions that fall under either the exploitative end of contract (ENDO) or labor-only contracting (LOC) arrangements¹".

Although we recognize legitimate concerns and interests of business as to the need for flexible labor practices, it is important that we ensure that the rights of the workers are protected and that they don't fall prey to exploitative schemes and arrangements.

Pursuant to the constitutional mandate to protect the rights and promote the welfare of laborers, this proposed measure seeks to amend the current legal framework that deals with unjust labor practices.

This proposed measure is based on House Bill No. 6908 which was a product of concerted efforts of representatives from the 17th Congress.

On behalf of the people of Parañaque City's Second District, and for the common good of the Filipino people, the approval of the said measure is earnestly sought.


REP. JOY MYRA S. TAMBUNTING
2nd District, Parañaque City

¹ As cited in Abenir, M. (2019). Contractualization and the rights of workers. Rappler.

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Introduced by **HON. JOY MYRA S. TAMBUNTING**

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:

SECTION 1. Article 106 of Presidential Decree No. 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 an 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 **AND OTHER LAWS**.

"THE CONTRACTING OUT OF THE SAME WORK CONTRACTED OUT BY THE EMPLOYER IS HEREBY PROHIBITED.

"In the event that the contractor [or subcontractor] fails to pay the wages, **ALLOWANCES AND BENEFITS** of his employees in accordance with this Code **AND OTHER LAWS**, the employer shall be jointly and severally liable with [his] **THE** 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.

"The Secretary of Labor AND EMPLOYMENT [may], **UPON CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL, 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, **WHICH IS HEREBY PROHIBITED**, and **LEGITIMATE** job contracting, **WHICH IS HEREBY PERMITTED, IN ACCORDANCE WITH THIS CODE.** [as well as] (d) Differentiations **AND RESTRICTIONS** within these types of contracting, [and] **AS WELL AS THE** [determine] **DETERMINATION OF** who among the parties involved shall be considered the employer [for purposes of] **UNDER** this

Code, **SHALL BE DISTINCTLY PROVIDED FOR IN THE REGULATIONS** to prevent any violation or circumvention of any provision of this Code.

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

SEC. 2. A new article, Article 106-A, 1s hereby inserted after Article 106 of the same decree, to read as follows:

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

"THE. LICENSE SHALL BE ISSUED TO QUALIFIED JOB CONTRACTORS UPON COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

(A) AN INDEPENDENT BUSINESS, SEPARATE AND DISTINCT FROM THE PRINCIPAL EMPLOYER;

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

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

"(D) SUFFICIENT KNOWLEDGE, EXPERIENCE. SKILLS OR COMPETENCE IN THE FIELD OF THE CONTRACTED JOB, WORK OR SERVICE;

"(E) EMPLOYMENT OF REGULAR EMPLOYEES, AND POSSE.SSION OF EQUIPMENT, MACHINERIES OR TOOLS NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK OR SERVICE CONTRACTED OUT;

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

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

THE LICENSE SHALL BE VALID FOR A PERIOD OF THREE (3) YEARS. NO LICENSE SHALL BE RENEWED UNLESS THE JOH CONTRACTOR SHALL DEMONSTRATE THAT IT HAS NET FINANCIAL CONTRACTING CAPACITY (NFCC) TO CARRY ON ITS BUSINESS BASED ON FACTORS SUCH AS, BUT NOT LIMITED TO, THE NUMBER OF ITS EMPLOYEES AND THE NATURE OF ITS BUSINESS.

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

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

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

"ART. 294. *Security of tenure.* – 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 shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, 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.]

"A DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE OR WITHOUT OBSERVANCE OF PROCEDURAL DUE PROCESS IS ILLEGAL. THE EMPLOYEE WHO IS FOUND ILLEGALLY DISMISSED BASED ON LACK OF JUST OR AUTHORIZED CAUSE IS ENTITLED TO IMMEDIATE REINSTATEMENT EVEN PENDING APPEAL AND WITHOUT LOSS OF SENIORITY RIGHTS AND BENEFITS, FULL BACKWAGES AND ACCRUED BENEFITS, AND REMUNERATIONS PROVIDED BY LAW, COMPANY POLICY OR COLLECTIVE BARGAINING AGREEMENT COMPUTED FROM THE TIME COMPENSATION WAS WITHHELD UP TO THE TIME OF ACTUAL REINSTATEMENT. AWARD OF BACKWAGES SHALL INCLUDE THE EMPLOYER'S SHARE OF CONTRIBUTIONS TO THE SOCIAL SECURITY SYSTEM, PHILIPPINE HEALTH INSURANCE CORPORATION, AND HOME DEVELOPMENT MUTUAL FUND WHICH SHALL BE REMITTED, TOGETHER WITH THE EMPLOYEE'S SHARE, TO THE AFORESAID AGENCIES FREE

FROM INTEREST AND PENALTIES FOR LATE REMITTANCE. IN THE EVENT THAT THE EMPLOYEE IS GAINFULLY EMPLOYED DURING THE PENDENCY OF THE CASE FOR ILLEGAL DISMISSAL AND THE EMPLOYEE WAS ABLE TO CONTRIBUTE TO THE SOCIAL SECURITY SYSTEM, PHILIPPINE HEALTH INSURANCE CORPORATION, AND HOME DEVELOPMENT MUTUAL FUND AN AMOUNT NEEDED TO UPDATE HIS EMPLOYEE CONTRIBUTIONS SHALL BE DEDUCTED FROM HIS BACKWAGES. ACTUAL, MORAL, EXEMPLARY AND OTHER FORMS OF DAMAGES MAY ALSO BE AWARDED. AN EMPLOYEE WHOSE DISMISSAL IS DECLARED ILLEGAL BASED EXCLUSIVELY ON LACK OF PROCEDURAL DUE PROCESS IS ENTITLED TO REASONABLE NOMINAL DAMAGES AND COSTS OF SUIT. THE EMPLOYER SHALL HAVE THE BURDEN OF PROVING THAT THE TERMINATION IS WITH CAUSE AND DUE PROCESS."

SEC. 4. Article 295 of the same decree 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 service to be performed is seasonal in nature and the employment is for the duration of the season]. **A REGULAR EMPLOYEE IS ONE WHO HAS BEEN HIRED FOR AN INDEFINITE PERIOD. NO EMPLOYMENT WITH A FIXED TERM OR DEFINITE PERIOD SHALL BE ALLOWED EXCEPT IN CASES OF OVERSEAS FILIPINO WORKERS, WORKERS ON PROBATION, RELIEVERS WHO ARE TEMPORARY REPLACEMENTS OF ABSENT REGULAR EMPLOYEES WHOSE ENGAGEMENTS SHALL NOT EXCEED SIX (6) MONTHS, PROJECT EMPLOYEES, AND SEASONAL WORKERS.**

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

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

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

[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.]"

SEC. 5. Article 296 of the same decree 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]. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards **WHICH SHALL BE** made known by the employer to the employee **IN WRITING** at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

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

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

"ART. 303-A. ADMINISTRATIVE PENALTIES. - THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL IMPOSE THE FOLLOWING:

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

2. A FINE FOR A PERSON OR ENTITY OPERATING AS A JOB CONTRACTOR WITHOUT A LICENSE AND ALSO COMMITS ANY OF THE ACTS DESCRIBED AS LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF THIS CODE. SAID FINE SHALL BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00). IN ADDITION, SAID PERSON OR ENTITY WHICH ENGAGED IN LABOR-ONLY CONTRACTING SHALL BE BARRED FROM APPLYING FOR FUTURE LICENSES. THIS DISQUALIFICATION SHALL EXTEND TO THE RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE PARTNERSHIP, CORPORATION OR COOPERATIVE;
3. A FINE FOR A LICENSED JOB CONTRACTOR WHICH COMMITS ANY OF THE ACTS DESCRIBED AS LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF THIS CODE. SAID FINE SHALL BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00). IN ADDITION, THE LICENSEE SHALL HAVE ITS OPERATION CLOSED ON THE PROJECT IN WHICH THE VIOLATION WAS COMMITTED AND SHALL BE BARRED FROM APPLYING FOR FUTURE LICENSES. ANY SUCCEEDING OFFENSE COMMITTED SHALL RESULT IN THE REVOCATION OF THE LICENSE AND CLOSURE OF THE OPERATIONS OF THE JOB CONTRACTOR. THIS DISQUALIFICATION SHALL EXTEND TO THE RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE PARTNERSHIP, CORPORATION OR COOPERATIVE;
4. A FINE FOR A PERSON OR ENTITY WHO ENGAGES FIXED-TERM EMPLOYEES IN VIOLATION OF ARTICLE 296 OF THIS CODE. SAID FINE SHALL BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE ENGAGED UNDER THE PROHIBITED FIXED-TERM ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00).

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

SEC. 7. Implementing Rules and Regulations. – Within sixty (60) days from the effectivity of this Act, the Secretary of Labor and Employment shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 8. Separability Clause. – If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SEC. 9 Repealing Clause. – All laws, decrees, order, rules and regulations and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

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

Approved,