

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

SENATE

S. No. 903

19 AUG 13 P 2:06

INTRODUCED BY SENATOR RISA HONTIVEROS

RECD. 13

AN ACT

**AGAINST THE PRACTICE OF "ENDO" AND CONTRACTING, AMENDING FOR
THIS PURPOSE ARTICLES 106 TO 109, 294 TO 296 OF AND ADDING A NEW
PROVISION TO PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS
THE LABOR CODE OF THE PHILIPPINES, AS AMENDED**

EXPLANATORY NOTE

The right of workers' to security of tenure has long been bannered as a social justice measure. Asymmetric power relations between capital and labor have resulted in workers being compelled to accept intermittent and short-term employment, and employers maximizing profit by denying regularization to their benefits. Practices such as endo, temporary employment contracts, unscrupulous sub-contracting and the like, violate the right of workers to a just livelihood.

However, more current evidence shows that not only are "endo" arrangements violative of the rights of workers, they are also bad for the economy. In a recent study, it was found that "temporary employment contracts" as employment modality creates and sustains market inefficiencies and locks the entire market in a suboptimal equilibrium. It retards our transition to a high value-added, high employment economy. In the end, it is not just the worker but also the consumer that suffers.¹"

In the 17th Congress, a legislative measure prohibiting endo and other forms of contractualization was passed in both Houses of Congress. Unfortunately, despite several commitments by the President to workers' groups and despite certifying the bill as urgent, the measure was vetoed by the Executive. This veto, however, only underscores the precariousness of the rights of workers, and the urgent need to correct the asymmetries that inform relations between employers and employees.

This bill has the following features:

- Establishes a prohibition against contracting or subcontracting, except where a determination has been made by the National Tripartite Industrial Peace Council (NTIPC) that a specific activity may be legitimately contracted or subcontracted out;
- Imposes solidary liability on the employer for violations committed by the contractor or sub-contractor;

¹ <https://medium.com/@futilityfunc/endo-is-bad-for-the-economy-e23eff40b1bb>

- Requires that all employees, except those under valid written probationary contracts, are deemed regular, including project and seasonal employees;
- Imposes penalties in the form of fine and imprisonment for violations

The passage of this bill is earnestly sought.

Risa Hontiveros - Zarafuel
RISA HONTIVEROS

Senator

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*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 "Anti-ENDO and
2 Contracting Law".

3 **SEC. 2.** Article 106 is hereby deleted and replaced as follows:

4 **"ART. 106. Prohibition Against Contracting or Subcontracting** - CONTRACTING,
5 WHERE A PERSON OR ENTITY FARMS OUT THE PERFORMANCE OF ITS BUSINESS OR
6 ANY PART THEREOF TO ANOTHER, IS HEREBY STRICTLY PROHIBITED EXCEPT AS
7 PROVIDED IN THE FOLLOWING PARAGRAPH.

8 THE SECRETARY OF LABOR AND EMPLOYMENT MAY, BASED ON THE UNANIMOUS
9 RECOMMENDATION OF THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL
10 (NTIPC) UNDER ART. 290 (C) OF THE LABOR CODE, AS AMENDED, SHALL DETERMINE
11 BY APPROPRIATE REGULATIONS SPECIFIC ACTIVITIES WHICH MAY BE CONTRACTED
12 OUT.

13 NATURAL OR JURIDICAL PERSONS ENGAGED IN ANY ARRANGEMENT ACTING AS
14 PRINCIPALS IN VIOLATION OF THE PROHIBITION AGAINST CONTRACTING OR
15 SUBCONTRACTING SHALL AUTOMATICALLY BE CONSIDERED THE WORKER'S DIRECT
16 EMPLOYER AND THE LATTER SHALL BE DEEMED AS DIRECT EMPLOYEES FOR ALL
17 PURPOSES. NATURAL OR JURIDICAL PERSONS ACTING AS CONTRACTORS IN
18 VIOLATION OF THE PROHIBITION AGAINST CONTRACTING OR SUBCONTRACTING
19 SHALL BE CONSIDERED MERELY AS AN AGENT OF THE EMPLOYER."

20 **SEC. 3.** Articles 107 is hereby deleted and replaced to read as follows:

21 **ART. 107. CONDITIONS ON CONTRACTING.** – CONTRACTING ALLOWED UNDER
22 THE PRECEDING ARTICLE SHALL BE DONE ONLY IF THE NATURAL OR JURIDICAL
23 PERSON ACTING AS CONTRACTOR OBTAINS A LICENSE FROM THE DEPARTMENT OF
24 LABOR AND EMPLOYMENT AND ONLY IF IT PERFORMS A JOB, WORK OR SERVICE
25 IDENTIFIED BY THE SECRETARY OF LABOR AND EMPLOYMENT, BASED ON THE

1 UNANIMOUS RECOMMENDATION OF THE NATIONAL TRIPARTITE INDUSTRIAL PEACE
2 COUNCIL (NTIPC) UNDER ART. 290 (C) OF THE LABOR CODE.

3
4 SUCH LICENSE SHALL BE ISSUED AND MAINTAINED ONLY IF THE APPLICANT:

5
6 (A) HAS A PAID-UP CAPITAL OR NET WORTH OF AT LEAST FIFTY MILLION
7 PESOS (P50,000,000.00), WHICH MAY BE INCREASED BY THE SECRETARY OF LABOR
8 AND EMPLOYMENT AS DEEMED APPROPRIATE THROUGH TRIPARTITE
9 CONSULTATION;

10
11 (B) HAS A CORE OF REGULAR EMPLOYEES CONSISTING OF COMPETENT
12 PROFESSIONALS OR SKILLED WORKERS ESPECIALLY TRAINED TO PERFORM THE JOB,
13 WORK OR SERVICE TO BE CONTRACTED OUT;

14
15 (C) HAS INVESTMENT IN THE FORM OF EQUIPMENT, MACHINERIES OR TOOLS
16 WHICH ARE REASONABLY NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK,
17 OR SERVICE TO BE CONTRACTED OUT;

18
19 (D) EXERCISES EXCLUSIVE CONTROL OVER THE PERFORMANCE AND
20 COMPLETION OF THE JOB, WORK, OR SERVICE CONTRACTED OUT;

21
22 (E) OBTAINS CERTIFICATION OF COMPLIANCE WITH LABOR AND SOCIAL
23 WELFARE LAWS INCLUDING PROOF OF PAYMENT OF SOCIAL SECURITY, PHILIPPINE
24 HEALTH INSURANCE CORPORATION, AND HOME DEVELOPMENT MUTUAL FUND (PAG-
25 IBIG) CONTRIBUTIONS; AND

26
27 (F) PAYS A LICENSE FEE, WHICH SHALL NOT BE LOWER THAN FIVE HUNDRED
28 THOUSAND PESOS (P500,000.00).

29
30 THE LICENSE SHALL BE VALID FOR A PERIOD OF TWO (2) YEARS AND MAY BE
31 RENEWED UPON COMPLIANCE WITH THE REQUIREMENTS PRESCRIBED ABOVE AND
32 OTHER REQUIREMENTS AS MAY BE DETERMINED BY THE DEPARTMENT OF LABOR
33 AND EMPLOYMENT PROVIDED THAT THE JOB, WORK, OR SERVICE TO BE
34 PERFORMED CONTINUES TO BE DETERMINED BY THE SECRETARY OF LABOR AND
35 EMPLOYMENT AS VALID FOR CONTRACTING BASED ON THE UNANIMOUS
36 RECOMMENDATION OF THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL
37 (NTIPC).

38
39 IN ALL CASES, THE JOB CONTRACTOR SHALL DEMONSTRATE THAT IT HAS FINANCIAL
40 CAPACITY TO CARRY ON ITS BUSINESS BASED ON FACTORS SUCH AS, BUT NOT
41 LIMITED, TO THE NUMBER OF ITS EMPLOYEES AND THE NATURE OF ITS BUSINESS.

42
43 ANY LEGITIMATE LABOR ORGANIZATION SHALL HAVE ACCESS TO COPIES OF
44 LICENSES ISSUED TO JOB CONTRACTORS AND ANY AND ALL SUBMISSIONS MADE IN
45 CONNECTION WITH SUCH LICENSE.

46
47 FOR THIS PURPOSE, THE SECRETARY OF LABOR AND EMPLOYMENT, IN
48 CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL
49 (NTIPC), SHALL ISSUE THE APPROPRIATE REGULATIONS FOR THE LICENSING,
50 RENEWAL, SUSPENSION, AND REVOCATION OF LICENSES OF CONTRACTORS.

51
52 IN NO CASE SHALL PRIVATE RECRUITMENT AND PLACEMENT AGENCIES (PRPA) OR
53 PRIVATE EMPLOYMENT AGENCIES (PEA) UNDER ARTICLE 25 OF THE LABOR CODE, AS
54 AMENDED, BE ALLOWED TO ENGAGE IN CONTRACTING."

1
2 **SEC. 4.** Articles 108 of the Labor Code is hereby deleted.
3

4 **SEC 5.** Article 109 of the Labor Code is hereby amended to read as follows:
5

6 ART. 109. **Solidary liability.** The provisions of existing laws to the contrary
7 notwithstanding, every employer [or indirect employer] shall be held solidarily
8 responsible with its contractor or subcontractor for any violation of any provision of this
9 Code. For purposes of determining the extent of their civil liability under this Chapter,
10 they shall be considered as direct employers.

11 **SEC. 6.** Article 294 of the Labor Code is hereby amended as follows:
12

13 **"ART. 294. Security of Tenure.** – [In case of regular employment, the employer
14 shall not terminate] [t]The services of an employee, IRRESPECTIVE OF EMPLOYMENT
15 STATUS OR POSITION, SHALL NOT BE TERMINATED except for a just cause or when
16 authorized by this Title. An employee who is unjustly dismissed from work shall be
17 entitled to reinstatement without loss of seniority rights and other privileges and to
18 his/HER full backwages, inclusive of allowances, and to his/HER other benefits or their
19 monetary equivalent computed from the time his/HER compensation was withheld from
20 him/HER up to the time of his/HER actual reinstatement.

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

23 **SEC. 7.** Article 295 is hereby deleted and replaced to read as follows:
24

25 **"ARTICLE 295. STATUS OF EMPLOYMENT.** – EXCEPT THOSE UNDER VALID
26 WRITTEN PROBATIONARY CONTRACTS, ALL EMPLOYEES ARE DEEMED REGULAR,
27 INCLUDING PROJECT AND SEASONAL EMPLOYEES, AND SHALL, IN CASE OF RANK-
28 AND-FILE OR SUPERVISORS, BE TREATED AS PART OF THE APPROPRIATE
29 BARGAINING UNIT FOR PURPOSES OF THE EXERCISE OF THE CONSTITUTIONAL
30 RIGHT TO SELF-ORGANISATION AND COLLECTIVE BARGAINING, AND SHALL BE
31 ENTITLED TO ALL THE BENEFITS UNDER THE EXISTING CBA, IF ANY.

32 PROJECT AND SEASONAL EMPLOYEES ARE REGULAR FOR THE DURATION OF THE
33 PROJECT OR SEASON, AS THE CASE MAY BE. FOR THIS PURPOSE, PROJECT
34 EMPLOYMENT IS EMPLOYMENT IN AN EXISTING PROJECT OR UNDERTAKING THE
35 COMPLETION OR TERMINATION OF WHICH HAS BEEN DETERMINED AND MADE
36 KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL
37 EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON IN AGRICULTURAL WORK
38 AS DETERMINED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT, IN
39 CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL
40 (NTIPC). WORKERS UNDER PROJECT AND SEASONAL EMPLOYMENT ARE ENTITLED TO
41 THE RIGHT OF FIRST REFUSAL TO THE TASK, WORK, OR PROJECT WHICH IS THE
42 SUBJECT MATTER OF THEIR EMPLOYMENT.

43 ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE PROHIBITED. CLAUSES IN
44 EMPLOYMENT CONTRACTS PROVIDING FOR A FIXED TERM OR DEFINITE PERIOD OF
45 EMPLOYMENT ARE VOID. WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED
46 REGULAR EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT AND
47 SHALL, IN CASE OF RANK-AND-FILE OR SUPERVISORS, BE TREATED AS PART OF THE
48 APPROPRIATE BARGAINING UNIT FOR PURPOSES OF THE EXERCISE OF THE
49 CONSTITUTIONAL RIGHT TO SELF-ORGANISATION AND COLLECTIVE BARGAINING,

1 AND SHALL BE ENTITLED TO ALL THE BENEFITS UNDER THE EXISTING CBA, IF ANY.
2
3 FOR THE AVOIDANCE OF DOUBT, AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS
4 WHEN THE WORKER IS ENGAGED TO RENDER WORK OR SERVICE UNDER THE
5 CONTROL OR SUPERVISION OF THE EMPLOYER, NOT ONLY AS TO THE END TO BE
6 ACHIEVED, BUT ALSO THE MANNER, MEANS AND METHOD IN REACHING THE END."

7
8 **SEC. 8.** Article 296 is hereby amended to read as follows:
9

10 **"Art. 296. Probationary employment.** – Probationary employment shall not exceed
11 six (6) months from the [date the employee started working, unless it is covered by an
12 apprenticeship agreement stipulating a longer period. The services of an employee
13 who has been engaged on a probationary basis may be terminated for a just cause or
14 when he fails to qualify as a regular employee in accordance with reasonable
15 standards made known by the employer to the employee at the time of his
16 engagement. An employee who is allowed to work after a probationary period shall be
17 considered a regular employee.] FIRST DAY OF SERVICE REGARDLESS OF THE
18 NATURE OF WORK TO BE PERFORMED.

19
20 The services of an employee who has been engaged on a probationary basis may be
21 terminated for a just cause or when he fails to qualify as a regular employee in
22 accordance with reasonable standards WHICH SHALL BE made known by the employer
23 to the employee IN WRITING at the time of his engagement. An employee who is
24 allowed to work after a probationary period shall be considered a regular employee.

25
26 EXCEPT WHEN THE TERMINATION IS FOR JUST CAUSE, A PROBATIONARY EMPLOYEE
27 WHO HAS RENDERED AT LEAST ONE (1) MONTH OF SERVICE IS ENTITLED TO A
28 TERMINATION PAY OF ONE-HALF (1/2) MONTH SALARY."

29
30 **SEC. 9.** Insert a new Article 303-A to read as follows:
31

32 **"ARTICLE 303-A. PENALTIES.** – (A) THE DEPARTMENT OF LABOR AND
33 EMPLOYMENT SHALL IMPOSE THE FOLLOWING PENALTIES:

- 34
35 1. FOR EVERY PERSON OR ENTITY ENGAGED IN ANY ACTIVITY IN VIOLATION OF
36 THE PROHIBITION AGAINST CONTRACTING OR SUBCONTRACTING, A FINE OF
37 AT LEAST FIFTY THOUSAND PESOS (PHP 50,000.00) ASSESSED PER EMPLOYEE
38 ENGAGED UNDER A PROHIBITED CONTRACTING ARRANGEMENT.
- 39
40 2. FOR EVERY PERSON WHO OR ENTITY WHICH MISCLASSIFIES AN EMPLOYEE'S
41 STATUS OF EMPLOYMENT IN DEROGATION OF THE EMPLOYEE'S SECURITY OF
42 TENURE, A FINE OF AT LEAST FIFTY THOUSAND PESOS (PHP 50,000.00)
43 ASSESSED PER MISCLASSIFIED EMPLOYEE.
- 44
45 3. FOR EVERY PERSON OR ENTITY ENGAGED IN ANY ACTIVITY IN VIOLATION OF
46 THE PROHIBITION AGAINST FIXED TERM EMPLOYMENT, A FINE OF AT LEAST
47 ONE HUNDRED THOUSAND PESOS (PHP 100,000.00) ASSESSED PER EMPLOYEE
48 ENGAGED UNDER SUCH PROHIBITED ARRANGEMENTS.
- 49
50 4. FOR EVERY PERSON OR ENTITY ENGAGED IN ANY ACTIVITY IN VIOLATION OF
51 THE PROVISION ON PROBATIONARY EMPLOYMENT, A FINE OF AT LEAST ONE
52 HUNDRED THOUSAND PESOS (PHP 100,000.00) ASSESSED PER EMPLOYEE
53 ENGAGED UNDER SUCH PROHIBITED ARRANGEMENTS.

54

1
2 THESE PENALTIES SHALL BE IMPOSED WITHOUT PREJUDICE TO OTHER DAMAGES
3 AND PENALTIES THAT MAY BE IMPOSED UNDER THIS CODE AND OTHER LAWS AND
4 REGULATIONS.

5
6 (B) IMPRISONMENT OF NOT LESS THAN TWELVE (12) YEARS AND ONE (1) DAY BUT
7 NOT MORE THAN TWENTY (20) YEARS SHALL BE IMPOSED UPON ANY PERSON
8 FOUND GUILTY OF COMMITTING ANY OF THE FOLLOWING:

- 9 1. ENGAGING IN ANY ACTIVITY IN VIOLATION OF THE PROHIBITION
10 AGAINST CONTRACTING OR SUBCONTRACTING;
- 11 2. MISCLASSIFYING AN EMPLOYEE'S STATUS OF EMPLOYMENT IN
12 DEROGATION OF THE EMPLOYEE'S SECURITY OF TENURE;
- 13 3. VIOLATING THE PROVISION ON PROBATIONARY EMPLOYMENT;
14 OR
- 15 4. OTHER THAN THOSE ALLOWED IN ARTICLE 295 OF THIS CODE,
16 USING FIXED TERM EMPLOYMENT IN ENGAGING WORKERS.

17
18 IN ANY OF THE FOREGOING CASES IN PARAGRAPH (B), THE PENALTY OF LIFE
19 IMPRISONMENT SHALL BE IMPOSED IF THE ACT COMMITTED PERTAINS TO AT LEAST
20 THREE (3) WORKERS.

21
22 **SEC. 10.** *Separability Clause.* - If any provision or part hereof is held invalid or
23 unconstitutional, the remainder of the law or the provision not otherwise affected shall
24 remain valid.

25
26 **SEC. 11.** *Repealing Clause.* - All acts, executive orders, administrative orders,
27 proclamations, rules and regulations or parts thereof inconsistent with any of the
28 provisions of this Act are hereby repealed or modified accordingly.

29
30 **SEC. 12.** *Effectivity.* - This Act shall take effect fifteen (15) days after
31 publication in the Official Gazette or two (2) newspapers of general circulation.

32
33
34 Approved,