

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila**

**THIRTEENTH CONGRESS
First Regular Session**

House Bill No. 1024

Introduced by GABRIELA Women's Party List
Representative Liza Largoza-Maza, Anak Pawis Party List Representatives
Crispin B. Beltran and Rafael V. Mariano, and Bayan Muna Party List
Representatives Satur C. Ocampo, Teodoro A. Casino and Joel G. Virador

EXPLANATORY NOTE

For a number of decades now, the Philippine labor force is made to bear the excruciating cost of underdevelopment and backwardness.

Existing anti-people economic policies, the lack of genuine agrarian reform and nationalist industrialization programs perpetuate the economic crisis. The onslaught of globalization has given rise to high rates of unemployment and underemployment.

Through the years, an average of 10 percent of the labor force remains jobless while underemployment rates have progressively increased reaching 16.6 percent by October 2001.

Those who are employed, meanwhile, have to struggle with sorely inadequate legislated minimum daily wages and, to a large extent, with substandard labor conditions.

Unemployment, underemployment and substandard labor conditions have pushed over eight million Filipinos, many of them women, to leave their families and endure contract work overseas. As such, the Philippines is the world's largest exporter of labor for the last 10 years.

In recent years, labor's plight worsened as a significant number of workers are left with no choice but to work under employment terms and conditions that do not afford full rights, especially security of tenure.

Violations of the employees' right to security of tenure are reported to be prevalent in export-oriented industries and wholesale and retail businesses where contractualization and labor-only contracting under different guises continue to be the rule more than the exception.

For example, ninety percent of the approximately 20,000 workers in Shoe Mart (SM) branches nationwide, most of them sales ladies and store personnel, are reported to be employed as contractual hired on a five-month contract basis. This circumvents the Labor Code provision granting regular employment status after a probationary employment period of six months.

Furthermore, unscrupulous employers have resorted to other devious schemes to subvert employees' right to security of tenure and other labor rights.

One thousand workers in Mode International, for instance, --again, a great majority of them women --are allegedly made to join "workers cooperatives". In this way, Mode International, makers and exporters of clothes and garments bearing the Osh Kosh, GAP, Girbaud and Tommy Hillfiger brand names, is not bound by an employer-employee relationship with "members" of the "workers' cooperatives". Such "workers" of Mode International are then outside the coverage of whatever limited protection afforded to regular workers by the Labor Code.

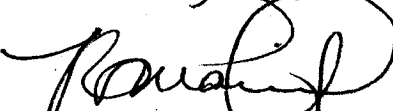
Individual and organized workers, with concerned groups and sectors, continue to address contractualization. The Koalisyon Laban sa Kontraktwalisasyon (KLK) or Coalition Against Contractualization, composed of organizations including the GABRIELA, Kilusang Mayo Uno, Kilusan ng Manggagawang Kababaihan, Sandigan ng mga Manggagawa sa Shoe Mart, Samahan ng mga Manggagawa sa Mode International, MIGRANTE, COURAGE and Workers Assistance Center vowed to uphold workers' rights and welfare.

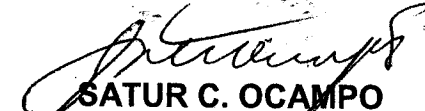
The KLK believes that while the full realization of workers' rights can only be achieved under a genuine democratic and nationalist social structure, legislative measures such as the instant bill will hopefully afford the workers some respite from globalization strategies and schemes --such as contractualization and flexibilization --that undermine the workers' right to security of tenure.

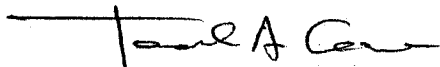
It is in this view and in support of such initiatives that the passage of this bill is earnestly urged.

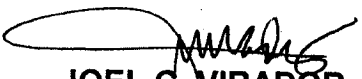

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**AN ACT STRENGTHENING THE RIGHT TO SECURITY OF TENURE, PROVIDING
PENALTIES FOR VIOLATIONS THEREOF, AMENDING PERTINENT PORTIONS
OF THE LABOR CODE, AND FOR OTHER PURPOSES**

WHEREAS, anti-people economic policies and the lack of genuine agrarian reform and nationalist industrialization programs perpetuate the economic crisis, thus giving rise to high rates of unemployment and underemployment, which in turn make workers vulnerable to violations of rights, including the right to security of tenure;

WHEREAS, the current state of the law affords some protection to the gains achieved by the workers' mass movement in connection with their right to security of tenure;

WHEREAS, in particular, the Constitution provides that:

Article II. Section 9. *The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life.*

Section 10. *The State shall promote social justice in all phases of national development.*

Section 18. *The State affirms labor as primary social economic force. It shall protect the rights of workers and promote their welfare.*

Article XIII. Section 1. *The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good.*

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 3. *The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.*

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiation, and peaceful concerted activities, including the right to strike in accordance with law.

They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. xxx.

WHEREAS, the prevalent practices and schemes implemented by unscrupulous employers effectively circumvent and subvert employees' right to security of tenure and other rights;

WHEREAS, violations of the employees' right to security of tenure are prevalent in industries and businesses where the overwhelming majority of the employees are women, such as garments, retail and the like;

WHEREAS, there is a need to enact laws to strengthen employees' right to security of tenure and prevent schemes aimed at subverting said right;

WHEREAS, apprenticeship and learnership programs are rendered useless considering the absence of genuine industrialization to absorb the large number of unemployed skilled workforce; Moreover, apprenticeship and learnership programs are being used to subvert employee's right to security of tenure;

WHEREFORE, be it enacted, as it is hereby enacted, **AN ACT STRENGTHENING THE RIGHT TO SECURITY OF TENURE, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AMENDING PERTINENT PORTIONS OF THE LABOR CODE, AND FOR OTHER PURPOSES**

SECTION 1. This Act shall be known as the "Strengthening the Right to Security of Tenure Act of 2001".

SECTION 2. Articles 57 to 77 of the Labor Code of the Philippines, referring to Apprentices and Learners, are hereby repealed.

SECTION 3. Article 280 of the Labor Code is hereby amended as follows:

ARTICLE 280- REGULAR EMPLOYMENT

IN THE ABSENCE OF A WRITTEN AGREEMENT, AN EMPLOYMENT SHALL BE DEEMED REGULAR FROM THE TIME OF ITS COMMENCEMENT. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties AS WELL AS ITS ACTUAL OR AGREED PERIOD, an employment shall be deemed to be regular FROM ITS COMMENCEMENT where the employee has been engaged to perform activities BY THE EMPLOYER WHETHER OR NOT SUCH ACTIVITIES are usually necessary or desirable in the usual business or trade or 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 the work or services to be performed is seasonal in nature and the employment is for the duration of the season. THE PROJECT OR UNDERTAKING MUST BY ITS NATURE BE FOR A FIXED PERIOD SUCH AS IN THE CASE OF CONSTRUCTION PROJECTS AND SPECIALIZED COMPUTER PROGRAMMING SERVICES. THE CONTRACTUAL

EMPLOYEE SHALL BE ENTITLED TO ALL RIGHTS AND PRIVILEGES OF A REGULAR EMPLOYEE DURING THE PROJECT OR UNDERTAKING.

SPECIFIC PROJECTS AND UNDERTAKINGS FOR A FIXED PERIOD AS REFERRED TO IN THIS ARTICLE SHALL NOT INCLUDE ACTIVITIES IN ENTERPRISES ENGAGED IN SERVICE, RETAIL, MANUFACTURING, EXPORT AND SIMILAR ACTIVITIES;

SECTION 4. Article 279 of the Labor Code is hereby amended as follows:

ART 279. The employer shall not terminate the services of an employee except for just cause or when authorized by this Title. An employee who is dismissed from work WITHOUT JUST OR AUTHORIZED CAUSE shall be entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of his OR HER actual reinstatement, REGARDLESS OF WHETHER OR NOT THE ILLEGALLY-TERMINATED EMPLOYEE WAS EMPLOYED ELSEWHERE DURING THE SAID PERIOD.

AN EMPLOYEE WHO IS DISMISSED FOR JUST OR AUTHORIZED CAUSE BUT WITHOUT DUE PROCESS, OR AN EMPLOYEE LEGALLY DISMISSED, SHALL NOT BE ENTITLED TO REINSTATEMENT, BUT THE EMPLOYER SHALL BE LUFFLE TO PAY TO SAID EMPLOYEE ALL OTHER BENEFITS, INCLUDING BUT NOT LIMITED TO SEPARATION PAY IN THE AMOUNT CORRESPONDING TO ONE MONTH SALARY FOR EVERY YEAR OF SERVICE BUT IN NO CASE LOWER THAN ONE MONTH SALARY.

SECTION 5. Article 281 of the Labor Code, referring to Probationary Employment, is hereby repealed. Probationary and casual employment are hereby declared illegal.

SECTION 6. Any person violating the provisions of this Act or the rules and regulations issued pursuant thereto shall, upon conviction, be punished as follows:

- a) By a fine of not less than One Hundred Thousand Pesos (P100,000.00), but not more than Five Hundred Thousand Pesos (P500,000.00), or imprisonment for not less than six (6) months and one (1) day but not more than one (1) year, or both, for an employer who refuses or fails to grant his or her employee any of the rights provided for in this law, including, but not limited to the granting or recognition of the regular employment status of employee;
- b) By a fine of not less than Two Hundred Thousand Pesos (P200,000.00), but not more than Seven Hundred Thousand Pesos (P700,000.00), or imprisonment for not less than six (6) years and one (1) day but not more than twelve (12) years, or both, for an employer who illegally terminates his or her employee;

The institution of any criminal action under this Act shall not bar the aggrieved party from filini an independent action for reinstatement, money claims, which may include claims for damages, and other affirmative relief.

If the offender is a juridical person, its license, permit and/or registration shall immediately be revoked. Its officers shall be held criminally liable pursuant to the next preceding paragraph.

Any alien found guilty under this Act shall be summarily deported upon payment of fines and/or completion of sentence, and shall be permanently barred from re-entering the country.

SECTION 7. The Secretary of Labor and Employment shall, within thirty (30) days after the effectivity of this Act, promulgate the rules and regulations necessary to implement the provisions hereof.

SECTION 8. Repealing Clause. All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed.

SECTION 9. Separability Clause. If any section or provision of this Article is held unconstitutional or invalid, the validity of other sections herein shall not be affected thereby.

SECTION 10. Effectivity. This Act shall take effect upon its approval.

APPROVED.