

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**FIFTEENTH CONGRESS
First Regular Session**

House Bill No. 891

**Introduced by TUCP Party-List Representative
Hon. Raymond Democrito C. Mendoza**

EXPLANATORY NOTE

Contracting out of labor is being used to deprive workers of their universally recognized as well as constitutionally guaranteed rights, departing from the spirit and letter of the law.

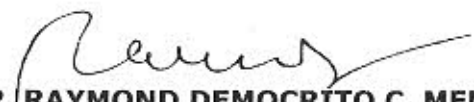
The Philippine Constitution affirms "labor as primary social and economic force," and mandates the State to "protect the rights of workers and promote their welfare." Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, needs to be in step with the State policy to "afford protection to labor" considering jurisprudence and practice.

Prohibiting and criminalizing labor-only contracting is of utmost importance because employers have been increasingly using labor-only contracting to avoid their responsibilities under labor laws, more particularly workers rights to self-organization, security of tenure, social security benefits and compensation packages otherwise available to the workers in the client or principal companies.

DOLE Department Order No. 18-02, which liberalizes labor-only contracting, does not encourage employers to provide workers with knowledge, skills, and attitudes for productive, long-term engagement in the enterprise. Implementing rules must conform to the provisions of the law.

Contractualization robs workers of their just share in the fruits of their labor in work processes. Work arrangements and terms and conditions of employment should contribute to decent work where workers and their families should be able to live with dignity and improved quality of life.

Prohibiting and criminalizing labor-only contracting will give justice to the contribution of workers in the profitability of companies and in economic development. To give effect to the policy of protecting workers' rights and promoting their welfare, the passage of this bill is earnestly sought.


**REP. RAYMOND DEMOCRITO C. MENDOZA
TUCP Party-List**

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AN ACT
CRIMINALIZING LABOR-ONLY CONTRACTING,
AMENDING FOR THAT PURPOSE CERTAIN PROVISIONS 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. Short Title. – This Act shall be known as the "Criminalizing Labor-Only Contracting Act of 2010."

Section 2. Prohibition against Labor-Only Contracting. Article 106 the Labor Code is hereby amended to read as follows:

"ARTICLE 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.

"In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the 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.

"'LABOR-ONLY' CONTRACTING IS HEREBY DECLARED PROHIBITED **AND CRIMINAL IN NATURE**. FOR THIS PURPOSE, LABOR-ONLY CONTRACTING SHALL REFER TO AN ARRANGEMENT WHERE THE CONTRACTOR OR SUBCONTRACTOR MERELY RECRUITS, SUPPLIES OR PLACES WORKERS TO PERFORM A JOB, WORK OR SERVICE FOR A PRINCIPAL, AND ANY OF THE FOLLOWING ELEMENTS ARE PRESENT:

- A. THE CONTRACTOR OR SUBCONTRACTOR DOES NOT HAVE SUBSTANTIAL CAPITAL OR INVESTMENT WHICH RELATES TO THE JOB, WORK OR SERVICE TO BE PERFORMED AND THE EMPLOYEES RECRUITED, SUPPLIED OR PLACED BY SUCH CONTRACTOR OR SUBCONTRACTOR ARE PERFORMING ACTIVITIES WHICH ARE DIRECTLY RELATED TO THE MAIN BUSINESS OF THE PRINCIPAL; OR

B. THE CONTRACTOR DOES NOT EXERCISE THE RIGHT TO CONTROL OVER THE PERFORMANCE OF THE WORK OF THE CONTRACTUAL EMPLOYEE.

"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 HIM.

"THE FOREGOING PROVISIONS SHALL BE WITHOUT PREJUDICE TO THE APPLICATION OF ARTICLE 248(C) OF THE LABOR CODE, AS AMENDED.

"SUBSTANTIAL CAPITAL OR INVESTMENT' REFERS TO CAPITAL STOCKS AND SUBSCRIBED CAPITALIZATION IN THE CASE OF CORPORATIONS, TOOLS, EQUIPMENT, IMPLEMENTS, MACHINERIES AND WORK PREMISES, ACTUALLY AND DIRECTLY USED BY THE CONTRACTOR OR SUBCONTRACTOR IN THE PERFORMANCE OR COMPLETION OF THE JOB, WORK OR SERVICE CONTRACTED OUT.

"THE "RIGHT TO CONTROL" SHALL REFER TO THE RIGHT RESERVED TO THE PERSON FOR WHOM THE SERVICES OF THE CONTRACTUAL WORKERS ARE PERFORMED, TO DETERMINE NOT ONLY THE END TO BE ACHIEVED, BUT ALSO THE MANNER AND MEANS TO BE USED IN REACHING THAT END.

"A CRIMINAL COMPLAINT IN VIOLATION OF THIS ARTICLE SHALL FALL UNDER THE CONCURRENT JURISDICTION OF THE MUNICIPAL OR REGIONAL TRIAL COURT."

Section 3. Licensing. There shall be incorporated after Article 106 of the Labor Code a new article to read as follows:

"ARTICLE 106-A. LICENSING OF JOB CONTRACTORS. - THE SECRETARY OF LABOR AND EMPLOYMENT THROUGH THE REGIONAL OFFICE SHALL ISSUE QUALIFIED APPLICANTS THE JOB CONTRACTOR'S LICENSE IN ACCORDANCE WITH 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, COOPERATIVE, CRAFT UNION OR ANY OTHER ENTITY. SUCH A CONTRACTOR SHALL, LIKEWISE, COMPLY WITH THE REQUIREMENTS OF OTHER GOVERNMENT AUTHORITIES."

Section 4. Liability. Article 109 of the Labor Code is hereby amended to read as follows:

"ARTICLE 109. Solidary Liability. - The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code.

"For purposes of determining the extent of their civil **AND CRIMINAL** liability under this Chapter, they shall be considered as direct employers IF THE CONTRACTOR OR SUBCONTRACTOR IS NOT AUTHORIZED BY THE SECRETARY OF LABOR AND EMPLOYMENT OR HIS DULY AUTHORIZED REPRESENTATIVE TO UNDERTAKE CONTRACTING ACTIVITIES."

Section 5. False Reporting. Article 119 of the Labor Code is hereby amended to read as follows:

"ARTICLE 119. False reporting. - It shall be unlawful for any person to make any statement, report, or record filed or kept pursuant to the provisions of this

Code knowing such statement, report or record to be false in any material respect.

"NOTWITHSTANDING THE PROVISIONS OF ARTICLE 128 OF THIS CODE, AN EMPLOYER'S FAILURE TO KEEP EMPLOYMENT RECORDS AND PRODUCE THEM UPON REQUEST IS DEEMED AN ADMISSION OF THE CHARGES OR COMPLAINTS TO WHICH SAID EMPLOYMENT RECORDS RELATE."

Section 6. Separability Provisions. - If any provision or part thereof, or the application thereof to any person or circumstances, is held invalid, the remainder, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

Section 7. Repealing Clause. - All provisions of existing laws, executive orders, decrees, rules and regulations or any part thereof which are contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

Section 8. Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two newspapers of general circulation.

Approved,