Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 573

Introduced by AKBAYAN Representatives Walden F. Bello and Ibarra M. Gutierrez III

Explanatory Note

Arguably, the gravest threat to our workers' right of security of tenure comes from the current trend towards contractualization and de-regularization. Workers settle for intermittent and short-term employment affecting not only their ability to earn livelihood but also their productivity and quality of work.

The present proposal recognizes subcontracting as a valid business practice but also protects workers from unscrupulous and unnecessary subcontracting. Hence, it balances legitimate business interests with the need to protect workers from insecure employment conditions.

May of the concepts and processes contained in the proposal reflects current practice as provided by the Department of Labor and Employment's Department Order No. 18, Series of 2002, as amended (DO 18). While some refinements have been made to DO 18 provisions, core concepts have been retained such as the definition of contracted work and labor-only contracting, the recognition of rights of subcontracted workers and the maintenance of registration system for legitimate contractors.

The salient innovations introduced by this bill in this regard include the following: 1) principals can engage a maximum of 20% subcontracted employees; 2) violation of contracting rules is made an unfair labor practice; and 3) violation of contracting rules is penalized by a fine.

These proposals on the matter of subcontracting are made within the framework of a need to revise the provisions on security of tenure and regular employment of Presidential Decree No. 442, otherwise known as the Labor Code. There is a need to incorporate the numerous interpretations of this provisions made through the years by the Executive through implementing rules and by the Judiciary through jurisprudence, in order to create a coherent and consistent framework of employment classification.

The bill, therefore, includes proposals drawing from these executive and judicial pronouncements on security of tenure in order to create a holistic and harmonious set of rules regarding classes and rights of employees. In

particular, the bill incorporates the executive and judicial recognition that all classes of employees are entitled to security of tenure, institutionalizes the workers' right to notice and hearing and clarifies what constitutes regular, casual and project employment.

Building on these concepts, the bill seeks to introduce the following innovations:

1) employment may be fixed by the term of the project, task or work to be performed but may not be bound to a mere reference to a time;
2) the period of probationary employment is fixed at six months when all the employers shall have enough time to ascertain whether a worker is fit for retention or not; and
3) deliberate misclassification of employees for the purpose of misleading them as to their rights is deemed an unfair labor practice.

With these amendments to the Labor Code, the proposal seeks to balance the legitimate business interests of the employer with the need for protection of workers from the prejudice of non-regularization. After all, for as long as the employer profits through and by the labor of its employees, it is but fair to recognize the workers' right to remain employed absent any legal cause for his dismissal.

This legislative proposal is based on Committee Report No.1234 dated 9 June 2011 of the House of Representatives Committee on Labor and Employment during the 15th Congress. However, due to lack of material time, this bill was not passed during the last Congress. Hence, the early approval of this bill is earnestly sought.

WALDEN F. BELLO

IBARRA M. GUTIERREZ III

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AN ACT
STRENGTHENING THE SECURITY OF TENURE OF WORKERS IN THE PRIVATE SECTOR, AMENDING FOR THE PURPOSE ARTICLES 248, 279, 280, 281 AND 288, AND INTRODUCING NEW ARTICLES 106, 106-A, 106-B, 106-C, 106-D, 106-E, 280-A AND 280-B TO 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 the Labor Code is hereby repealed and substituted 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.
>
> "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.
>
> "The Secretary of Labor and Employment may, 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.

"There is 'labor-only' only contracting where the persons supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons and performing activities which are directly related 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 him.]

"ART. 106. CONCEPT AND NATURE OF SUBCONTRACTING ARRANGEMENTS. – IN LEGITIMATE SUBCONTRACTING, THERE EXISTS A TRILATERAL RELATIONSHIP UNDER WHICH THERE IS A CONTRACT FOR A SPECIFIC JOB, WORK OR SERVICE BETWEEN THE PRINCIPAL AND THE SUBCONTRACTOR, AND A CONTRACT OF EMPLOYMENT BETWEEN THE SUBCONTRACTOR AND ITS WORKERS. HENCE, THERE ARE THREE PARTIES INVOLVED IN THESE ARRANGEMENTS: THE PRINCIPAL WHICH DECIDES TO FARM OUT A JOB OR SERVICE TO A SUBCONTRACTOR, THE SUBCONTRACTOR WHICH HAS THE CAPACITY TO INDEPENDENTLY UNDERTAKE AND ACTUALLY UNDERTAKES THE PERFORMANCE OF THE JOB,WORK OR SERVICE, AND THE CONTRACTUAL WORKERS ENGAGED BY THE SUBCONTRACTOR TO ACCOMPLISH THE JOB, WORK OR SERVICE.

"FOR PURPOSES OF THIS CODE, 'SUBCONTRACTING' REFERS TO AN ARRANGEMENT WHEREBY:

(A) A PRINCIPAL AGREES TO PUT OUT OR FARM OUT WITH A 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 THE PREMISES OF THE PRINCIPAL; OR

(B) A PERSON, PARTNERSHIP, ASSOCIATION OR CORPORATION WHICH NOT BEING A PRINCIPAL, CONTRACTS WITH A SUBCONTRACTOR FOR THE PERFORMANCE OF ANY WORK, TASK, JOB OR PROJECT."

SEC.2. A new Article 106-A is hereby inserted in the Labor Code to read as follows:

"ART. 106 – A. RIGHTS AND LIABILITIES OF PARTIES. – (A.) <u>THE SUBCONTRACTED EMPLOYEE</u>, IN ALL CASES, SUBCONTRACTED EMPLOYEES SHALL BE ENTITLED TO ALL RIGHTS AND PRIVILEGES DUE REGULAR EMPLOYEES INCLUDING THE FOLLOWING:

1. SAFE AND HEALTHFUL WORKING CONDITIONS;
2. LABOR STANDARDS SUCH AS SERVICE INCENTIVE LEAVES, REST DAYS, OVERTIME PAY, HOLIDAY PAY, THIRTEENTH MONTH PAY AND SEPARATION PAY;
3. RETIREMENT BENEFITS;
4. SOCIAL SECURITY AND WELFARE BENEFITS;
5. SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES; AND
6. SECURITY OF TENURE.

"IN ADDITION, SUBCONTRACTED EMPLOYEES SHALL HAVE THE RIGHT TO A WRITTEN CONTRACT WHICH SHALL INCLUDE THE FOLLOWING TERMS AND CONDITIONS:

1. THE SPECIFIC DESCRIPTION OF THE JOB, WORK OR SERVICE TO BE PERFORMED BY THE CONTRACTUAL EMPLOYEE;
2. THE PLACE OF WORK AND TERMS AND CONDITIONS OF EMPLOYMENT, INCLUDING A STATEMENT OF THE WAGE RATE APPLICABLE TO THE INDIVIDUAL CONTRACTUAL EMPLOYEE;
3. THE TERM OR DURATION OF EMPLOYMENT WHICH SHALL BE CO-EXTENSIVE WITH THE CONTRACT OF THE PRINCIPAL AND SUBCONTRACTOR OR WITH THE SPECIFIC PHASE FOR WHICH THE CONTRACTUAL EMPLOYEE IS ENGAGED, AS THE CASE MAY BE.

"THE SUBCONTRACTED EMPLOYEE SHALL BE INFORMED BY THE SUBCONTRACTOR OF THE FOREGOING TERMS AND CONDITIONS ON OR BEFORE THE FIRST DAY OF HIS EMPLOYMENT.

"(B.) <u>THE PRINCIPAL AND THE SUBCONTRACTOR.</u> THE LEGITIMATE SUBCONTRACTOR SHALL BE CONSIDERED THE EMPLOYER OF THE CONTRACTUAL EMPLOYEE FOR PURPOSES OF ENFORCING THE PROVISIONS OF THE LABOR CODE AND OTHER SOCIAL LEGISLATION. IN ALL CASES OF SUBCONTRACTING, HOWEVER, THE PRINCIPAL SHALL BE SOLIDARILY LIABLE WITH THE CONTRACTOR IN THE EVENT OF ANY VIOLATION OF ANY PROVISION OF THE LABOR CODE, INCLUDING THE FAILURE TO PAY WAGES.

"THE PRINCIPAL SHALL BE DEEMED THE EMPLOYER OF THE CONTRACTUAL EMPLOYEE IN ANY OF THE FOLLOWING CASES:

I. WHERE THERE IS LABOR-ONLY CONTRACTING;OR
II. IN THE ABSENCE OF THE WRITTEN CONTRACT REQUIRED BY ARTICLE 106-A; OR
III. IN CASES OF VIOLATION OF ARTICLE 106 – B.

"IN ADDITION, THE PRINCIPAL SHALL BE SOLIDARILY LIABLE WITH THE SUBCONTRACTOR IN CASE THE CONTRACT BETWEEN THE

PRINCIPAL AND SUBCONTRACTOR IS PRE-TERMINATED FOR REASONS NOT ATTRIBUTABLE TO THE FAULT OF THE SUBCONTRACTOR."

SEC.3. A new Article 106-B is hereby inserted in the Labor Code to read as follows:

"ART. 106-B. PROHIBITION AGAINST LABOR-ONLY SUBCONTRACTING. – ENGAGING IN LABOR-ONLY CONTRACTING OR CONTRACTING WITH A LABOR-ONLY CONTRACTOR IS STRICTLY PROHIBITED. FOR THIS PURPOSE, LABOR-ONLY CONTRACTING REFERS TO AN ARRANGEMENT WHERE THE SUBCONTRACTOR MERELY RECRUITS, SUPPLIES OR PLACES WORKERS TO PERFORM A JOB, WORK OR SERVICE FOR A PRINCIPAL, INCLUDING INSTANCES WHERE ANY OF THE FOLLOWING IS PRESENT:

(A) THE SUBCONTRACTOR DOES NOT HAVE SUBSTANTIAL CAPITAL AND INVESTMENT WHICH RELATES TO THE JOB, WORK OR SERVICE TO BE PERFORMED;
(B) THE EMPLOYEES RECRUITED, SUPPLIED OR PLACED BY SUCH SUBCONTRACTOR ARE PERFORMING ACTIVITIES WHICH USUALLY NECESSARY OR DESIRABLE OR DIRECTLY RELATED TO THE USUAL BUSINESS OF THE PRINCIPAL; OR
(C) THE PRINCIPAL HAS THE RIGHT TO CONTROL, WHETHER EXERCISED OR NOT, NOT ONLY THE END TO BE ACHIEVED, BUT ALSO THE MANNER AND MEANS TO BE USED IN REACHING THAT END.

"AS USED IN THIS CODE, 'SUBSTANTIAL CAPITAL AND INVESTMENT' IN SUBCONTRACTING ARRANGEMENTS REFERS TO TOOLS, EQUIPMENT, IMPLEMENTS, MACHINERIES AND WORK PREMISES ACTUALLY AND DIRECTLY USED BY THE SUBCONTRACTOR IN THE PERFORMANCE OR COMPLETION OF THE JOB, WORK OR SERVICE CONTRACTED OUT. THE USE OF THE SUBCONTRACTOR OF THE EQUIPMENT, FACILITIES, MACHINERIES, AND TOOLS OF THE PRINCIPAL IS AN INDICATION THAT THE SUBCONTRACTOR HAS NO SUBSTANTIAL CAPITAL AND INVESTMENT. THE EXISTENCE OF CAPITAL STOCKS AND SUBSCRIBED CAPITALIZATION IN RELATION TO CORPORATIONS ENGAGED IN SUBCONTRACTING DOES NOT ITSELF CONSTITUTION SUBSTANTIAL CAPITAL AND INVESTMENT.

"AS USED IN THIS CODE, THE 'RIGHT TO CONTROL' IN SUBCONTRACTING ARRANGEMENTS SHALL REFER TO THE RIGHT RESERVED TO THE PERSON 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."

SEC. 4. A new Article 106-C is hereby inserted in the Labor Code to read as follows:

"ART. 106-C. PROHIBITIONS IN SUBCONTRACTING ARRANGEMENTS. – REGARDLESS OF COMPLIANCE WITH THE IMMEDIATELY PRECEDING ARTICLE, THE FOLLOWING ACTS SHALL BE PROHIBITED FOR BEING CONTRARY TO LAW OR PUBLIC POLICY:

(A) ENGAGING OR MAINTAING BY THE PRINCIPAL OF SUBCONTRACTED EMPLOYEES IN EXCESS OF TWENTY PERCENT (20%) OF THE PRINCIPAL'S TOTAL WORKFORCE PROVIDED THAT SUCH SUBCONTRACTED EMPLOYEES DO NOT PERFORM WORK THAT IS NECESSARY OR DESIRABLE OR DIRECTLY RELATED TO THE USUAL BUSINESS OR TRADE OR BUSINESS OF THE EMPLOYER;

(B) CONTRACTING OUT OF A JOB, WORK OR SERVICE WHEN THE SAME RESULTS IN THE TERMINATION OF REGULAR EMPLOYEES AND REDUCTION OF WORK HOURS OR REDUCTION OR SPLITTING OF THE BARGAINING UNIT;

(C) CONTRACTING OUT OF WORK WITH A 'CABO.' FOR THIS PURPOSE, 'CABO' REFERS TO A PERSON OR GROUP OF PERSONS OR TO A LABOR GROUP WHICH, IN THE GUISE OF A LABOR ORGANIZATION OR COOPERATIVE, 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;

(D) TAKING UNDUE ADVANTAGE OF THE ECONOMIC SITUATION OR LACK OF BARGAINING STRENGTH OF THE CONTRACTUAL EMPLOYEE, OR UNDERMINING HIS SECURITY OF TENURE OR BASIC RIGHTS, OR CIRCUMVENTING THE PROVISIONS OF REGULAR EMPLOYMENT IN ANY OF THE FOLLOWING INSTANCES:

I. IN ADDITION TO HIS ASSIGNED FUNCTIONS, REQUIRING THE CONTRACTUAL EMPLOYEE TO PERFORM FUNCTIONS WHICH ARE CURRENTLY BEING PERFORMED BY THE REGULAR EMPLOYEES OF THE PRINCIPAL OR OF THE SUBCONTRACTOR;

II. REQUIRING HIM TO SIGN, AS A PRECONDITION TO EMPLOYMENT OR CONTINUED EMPLOYMENT, AN ANTEDATED RESIGNATION LETTER, A BLANK PAYROLL, A WAIVER OF LABOR STANDARDS INCLUDING MINIMUM WAGES AND SOCIAL WELFARE BENEFITS, OR A QUITCLAIM RELEASING THE PRINCIPAL OR SUBCONTRACTOR FROM ANY

LIABILITY AS TO THE PAYMENT OF FUTURE CLAIMS; AND

III. REQUIRING HIM TO SIGN A CONTRACT FIXING THE PERIOD OF EMPLOYMENT TO A TERM SHORTER THAN THE TERM OF THE CONTRACT BETWEEN THE PRINCIPAL AND THE SUBCONTRACTOR, UNLESS THE LATTER CONTRACT IS DIVISIBLE INTO PHASES FOR WHICH SUBSTANTIALLY DIFFERENT SKILLS ARE REQUIRED AND THIS IS MADE KNOWN TO THE EMPLOYEE AT THE TIME OF ENGAGEMENT.

(E) CONTRACTING OUT OF A JOB, WORK OR SERVICE THROUGH AN IN-HOUSE AGENCY WHICH REFERS TO A:

I. SUBCONTRACTOR ENGAGED IN THE SUPPLY OF LABOR WHICH IS OWNED, MANAGED AND CONTROLLED BY THE PRINCIPAL; OR

II. SUBCONTRACTOR IN WHICH THE PRINCIPAL OWNS OR OTHERWISE REPRESENTS ANY SHARE OF STOCK; OR

III. SUBCONTRACTOR WHICH OPERATES SOLELY FOR THE PRINCIPAL.

(F) CONTRACTING OUT OF A JOB, WORK OR SERVICE THAT IS NECESSARY AND DESIRABLE OR DIRECTLY RELATED TO THE BUSINESS OR OPERATION OF THE PRINCIPAL;

(G) CONTRACTING OUT OF A JOB, WORK OR SERVICE BEING PERFORMED BY OR PREVIOUSLY PERFORMED BY REGULAR EMPLOYEES AND/OR MEMBERS OF THE BARGAINING UNIT."

SEC. 5. A new Article 106-D is hereby inserted in the Labor Code to read as follows:

"ART. 106 – D. REGISTRATION OF SUBCONTRACTORS. – (A.) MANDATORY REGISTRATION. IT SHALL BE MANDATORY FOR ALL PERSONS OR ENTITIES ACTING AS SUBCONTRACTORS TO REGISTER UNDER A REGISTRATION HEREBY ESTABLISHED TO GOVERN CONTRACTING ARRANGEMENTS AND TO BE IMPLMENTED BY THE REGIONAL OFFICES OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

"NON-REGISTERED PERSONS OR ENTITIES ACTING AS SUBCONTRACTORS SHALL BE DEEMED AS LABOR-ONLY CONTRACTORS. MERE REGISTRATION WITHOUT A SHOWING OF COMPLIANCE WITH ALL REQUIREMENTS FOR LEGITIMATE SUBCONTRACTING AND AVOIDANCE OF ALL PROHIBITIONS OF

SUBCONTRACTING SHALL NOT INDICATE LEGITIMATE SUBCONTRACTING.

"(B.) REQUIREMENTS FOR REGISTRATION. A SUBCONTRACTOR MAY BE LISTED IN THE REGISTRY OF SUBCONTRACTORS UPON COMPLETION AND SUBMISSION OF AN APPLICATION FORM PROVIDED BY THE DEPARTMENT. IN THE APPLICATION FORM, THE APPLICANT SUBCONTRACTOR SHALL PROVIDE THE FOLLOWING INFORMATION:

I. THE NAME AND BUSINESS ADDRESS OF THE APPLICANT AND THE AREA OR AREAS WHERE IT SEEKS TO OPERATE;

II. THE NAMES AND ADDRESSES OF OFFICERS, IF THE APPLICANT IS A CORPORATION, PARTNERSHIP, COOPERATIVE OR UNION;

III. THE NATURE OF THE APPLICANT'S BUSINESS AND THE INDUSTRY OR INDUSTRIES WHERE THE APPLICANT SEKKS TO OPERATE;

IV. THE NUMBER OF REGULAR WORKERS, THE LIST OF CLIENTS, IF ANY, THE NUMBER OF PERSONNEL ASSIGNED TO EACH CLIENT, IF ANY, AND THE SERVICES PROVIDED TO THE CLIENT;

V. THE DESCRIPTION OF THE PHASES OF THE CONTRACT AND THE NUMBER OF EMPLOYEES COVERED IN EACH PHASE, WHERE APPROPRIATE; AND

VI. A COPY OF AUDITED FINANCIAL STATEMENTS IF THE APPLICANT IS A CORPORATION, PARTNERSHIP, COOPERATIVE OR A UNION, OR A COPY OF THE LATEST INCOME TAX RETURN IF THE APPLICANT IS A SOLE PROPRIETORSHIP.

"THE APPLICATION SHALL BE SUPPORTED BY THE FOLLOWING:

I. A CERTIFIED COPY OF A CERTIFICATE OF REGISTRATION OF FIRM OR BUSINESS NAME FROM THE SECURITIES AND EXCHANGE COMMISSION (SEC), DEPARTMENT OF TRADE AND INDUSTRY (DTI), COOPERATIVE DEVELOPMENT AUTHORITY (CDA), OR FROM THE DOLE IF THE APPLICANT IS A UNION; AND

II. A CERTIFIED COPY OF THE LICENSE OR BUSINESS PERMIT ISSUED BY THE LOCAL GOVERNMENT UNIT OR UNITS WHERE THE SUBCONTRACTOR OPERATES.

"THE APPLICATION SHALL BE VERIFIED AND SHALL INCLUDE AN UNDERTAKING THAT THE SUBCONTRACTORS SHALL ABIDE BY ALL APPLICABLE LABOR LAWS AND REGULATIONS.

"(C.) FILING AND PROCESSING OF APPLICATIONS. THE APPLICATION AND ITS SUPPORTING DOCUMENTS SHALL BE FILED IN TRIPLICATE IN THE REGIONAL OFFICES WHERE THE APPLICANT PRINCIPALLY OPERATES. NO APPLICATION FOR REGISTRATION SHALL BE ACCEPTED UNLESS ALL THE FOREGOING REQUIREMENTS ARE COMPLIED WITH. THE SUBCONTRACTOR SHALL BE DEEMED REGISTERED UPON PAYMENT OF A REGISTRATION FEE TO BE DETERMINED BY THE REGIONAL OFFICE.

"WHERE ALL THE SUPPORTING DOCUMENTS HAVE BEEN SUBMITTED, THE REGIONAL OFFICE MAY DENY OR APPROVE THE APPLICATION WITHIN SEVEN (7) WORKING DAYS AFTER ITS FILING.

"UPON REGISTRATION, THE REGIONAL OFFICE SHALL RETURN ONE SET OF THE DULY-STAMPED APPLICATION DOCUMENTS TO THE APPLICANT, RETAIN ONE SET FOR ITS FILE, AND TRANSMIT THE REMAINING SET TO THE BUREAU OF LOCAL EMPLOYMENT. THE BUREAU SHALL DEVICE THE NECESSARY FORMS FOR THE EXPEDITIOUS PROCESSING OF ALL APPLICATIONS FOR REGISTRATION.

"(D.) ANNUAL REPORTING OF REGISTERED CONTRACTORS. THE SUBCONTRACTOR SHALL SUBMIT IN TRIPLICATED COPIES AN ANNUAL REPORT USING A PRESCRIBED FORM TO THE APPROPRIATE REGIONAL OFFICE NOT LATER THAN THE FIFTEENTH OF JANUARY OF THE FOLLOWING YEAR. THE REPORT SHALL INCLUDE THE FOLLOWING DOCUMENTS:

I. A LIST OF CONTRACTS ENTERED WITH THE PRINCIPAL DURING THE SUBJECT REPORTING PERIOD;

II. THE NUMBER OF WORKERS COVERED BY EACH CONTRACT WITH THE PRINCIPAL;

III. A SWORN STATEMENT SIGNED BY THE HIGHEST EXECUTIVE OFFICER AND THE CHIEF FINANCIAL OFFICER THA THE SUBCONTRACTOR HAS REMITTED ALL KINDS OF PAYMENTS AND PREMIUMS TO THE SOCIAL SECURITY SYSTEM (SSS), THE HOME DEVELOPMENT MUTUAL FUND (HDMF), PHILHEALTH, EMPLOYEES COMPENSATION COMMISSION (ECC), AND THE BUREAU OF INTERNAL REVENUE (BIR) FOR ALL CONTRACTUAL EMPLOYEES PERTAINING TO THE REPORTING PERIOD.

"THE REGIONAL OFFICE SHALL RETURN ONE SET OF THE DULY-STAMPED REPORT TO THE SUBCONTRACTOR, RETAIN

ONE SET FOR ITS FILE, AND TRANSMIT THE REMAINING SET TO THE BUREAU OF LOCAL EMPLOYMENT WITHIN FIVE (5) DAYS FROM RECEIPT THEREOF.

"(E) DELISTING OF CONTRACTORS OR SUBCONTRACTORS. THE REGIONAL DIRECTOR SHALL CANCEL THE REGISTRATION OF SUBCONTRACTORS BASED ON ANY OF THE FOLLOWING GROUNDS:

I. NON-SUBMISSION OF CONTRACTS BETWEEN THE PRINCIPAL AND THE SUBCONTRACTOR WHEN REQUIRED TO DO SO;

II. NON-SUBMISSION OF THE ANNUAL REPORT INCLUDING THE DOCUMENTS LISTED UNDER ARTICLE 106 (D);

III. ENGAGEMENT IN LABOR-ONLY CONTRACTING;

IV. VIOLATION OF THE PROHIBITED ACTIVITIES PROVIDED BY THIS CODE;

V. NON-COMPLIANCE WITH LABOR STANDARDS AND WORKING CONDITIONS.

"(F.) RENEWAL OF REGISTRATION OF SUBCONTRACTORS. ALL REGISTERED SUBCONTRACTORS MAY APPLY FOR RENEWAL OF REGISTRATION EVERY TWO (2) YEARS. FOR THIS PURPOSE, THE TRIPARTITE INDUSTRIAL PEACE COUNCIL (TIPC) AS CREATED UNDER EXECUTIVE ORDER NO. 49, SHALL SERVCE AS THE OVERSIGHT COMMITTEE TO VERIFY AND MONITOR THE FOLLOWING:

I. ENGAGING IN ALLOWABLE CONTRACTING ACTIVITIES; AND

II. COMPLIANCE WITH ADMINISTRATIVE REPORTING REQUIREMENTS;

SEC. 6. A new Article 106-E is hereby inserted in the Labor Code to read as follows:

"ART. 106-E. DUTY TO PRODUCE COPY OF CONTRACT. – THE PRINCIPAL OR SUBCONTRACTOR SHALL PRODUCE A COPY OF THE CONTRACT BETWEEN THE PRINCIPAL AND THE CONTRACTOR IN THE COURSE OF INSPECTION. THE SUBCONTRACTOR SHALL ALSO PRODUCE A COPY OF THE CONTRACT OF EMPLOYMENT OF SUBCONTRACTED WORKERS WHEN DIRECTED TO DO SO BY THE REGIONAL DIRECTOR OR HIS AUTHORIZED REPRESENTATIVE.

"A COPY OF THE CONTRACT BETWEEN THE SUBCONTRACTED EMPLOYEE AND THE SUBCONTRACTOR SHALL BE FURNISHED THE CERTIFIED BARGAINING AGENT, IF THERE IS ANY.

SEC. 7. Article 248 of the Labor Code is hereby amended to read as follows:

"**Art. 248. Unfair Labor Practices of Employers.** – It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To **ENGAGE A LABOR-ONLY CONTRACTOR OR TO** contract out services, function being performed by **[**union**]** **MEMBERS OF, OR POSITION COVERED BY, THE BARGAINING UNIT AND/OR REGULAR RANK-AND-FILE AND SUPERVISORY EMPLOYEES[**when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization**]**;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement.

Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided*, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; **[**or**]**

(i) To violate a collective bargaining agreement **[**..**]**; **OR**

(J) TO DENY THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP AND/OR TO CLASSIFY AS CASUAL, CONTRACTUAL, SUBCONTRACTED EMPLOYEES, AGENCY EMPLOYEES, OR OTHER NON-REGULAR CLASSIFICATION THOSE EMPLOYEES WHO ARE REGULAR EMPLOYEES BY VIRTUE OF ARTICLE 280 OF THIS CODE.

"The provisions of the preceding paragraph notwithstanding, only the officer and agents of corporation, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable."

SEC. 8. Article 279 of the Labor Code is hereby amended to read as follows:

"ART. 279. Security of Tenure. – **[**In cases of regular employment, the employer shall not terminate the services of an employee**]ALL EMPLOYERS SHALL ENJOY SECURITY OF TENURE AND SHALL NOT BE TERMINATED** except for a just cause or when authorized by this Title. **ALSO, THE RIGHT TO NOTICE IN EMPLOYMENT RELATIONS REQUIRES ANY EMPLOYER WHO SEEKS TO DISMISS A WORKER TO FURNISH HIM A WRITTEN NOTICE STATING THE PARTICULAR ACTS OR OMMISSIONS CONSTITUTING THE GROUNDS FOR HIS DISMISSAL. IN CASES OF ABANDONMENT OF WORK, THE WRITTEN NOTICE SHALL BE SERVED AT THE WORKERS' LAST KNOWN ADDRESS. DUE PROCESS ENTITLES THE WORKER AN OPPORTUNITY TO ANSWER THE ALLEGATIONS STATED AGAINST HIM IN THE NOTICE OF DISMISSAL WITHIN A PERIOD OF FIVE (5) CALENDAR DAYS FROM RECEIPT OF SUCH NOTICE AND WITH THE ASSISTANCE OF A REPRESENTATIVE IF HE SO DESIRES. THE RIGHT TO NOTICE REQUIRES THE EMPLOYER TO AFFORD THE WORKER AMPLE OPPORTUNITY TO BE HEARD AND TO DEFEND HIMSELF WITH THE ASSISTANCE OF HIS REPRESENTATIVE IF HE SO DESIRES.**

"An employee who is **[**unjustly**]** dismissed from work **IN VIOLATION OF ANY OF HIS RIGHTS UNDER THIS ARTICLE, INCLUDING THE RIGHT TO NOTICE AS ELABORATED IN THE PRECEDING PARAGRAPH** shall be entitled to **IMMEDIATE** 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 time of his actual reinstatement."

SEC. 9. Article 280 of the Labor Code is hereby amended to read as follows:

"ART. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the 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 **OR DIRECTLY RELATED TO** 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].

"An employment shall be deemed to be casual if it is not USUALLY NECESSARY OR DESIRABLE OR [covered by the preceding paragraph] **RELATED TO THE USUAL BUSINESS OF THE EMPLOYER**; *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 **IN** and his employment shall continue [while such activity exists] **UNLESS HE IS TERMINATED FOR A JUST CAUSE OR WHEN AUTHORIZED BY THIS TITLE**."

SEC. 10. A new Article 280-A is hereby inserted in the Labor Code to read as follows:

"ART. 280-A. PROJECT, EXTRA AND SEASONAL EMPLOYMENT. – PROJECT EMPLOYMENT REFERS TO THAT WHICH HAS BEEN FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE COMPLETION OR TERMINATION OF WHICH HAS BEEN DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME OF HIS ENGAGEMENT.

"EXTRA EMPLOYMENT REFERS TO ADDITIONAL WORK TO BE PERFORMED IN RESTAURANT AND HOTEL ESTABLISHEMENTS SPECIFICALLY FOR BANQUET FUNCTIONS, SEMINARS AND SIMILAR FUNCTIONS WHERE THE REGULAR EMPLOYEES CANNOT REASONABLY COPE WITH THE INCREASED DEMANDS OF SUCH EVENTS.

"SEASONAL EMPLOYMENT REFERS TO THE PERFORMANCE OF AGRICULTURAL WORK THAT IS SEASONAL IN NATURE AND THE EMPLOYMENT IS FOR THE DURATION OF THE PLANTING OR HARVESTING SEASON.

"PROJECT, EXTRA AND SEASONAL EMPLOYEES SHALL HAVE THE RIGHT TO SECURITY OF TENURE AND ARE ENTITLED TO RESUME THEIR EMPLOYMENT IN THE SAME OR SIMLAR POSITION UPON THE START OF THE NEXT PROJECT OR OCCASION FOR EXTRA OR SEASONAL EMPLOYMENT, AS THE CASE MAY BE: *PROVIDED*, THAT DURING THE TIME THAT THEIR SERVICES ARE NOT ACTUALLY AVAILED OF, THEY SHALL BE CONSIDERED TO BE ON AUTHORIZED LEAVE WITHOUT PAY."

SEC.11. A new Article 280-B is hereby inserted in the Labor Code to read as follows:

"ART. 280-B. PROHIBITION AGAINST FIXED TERM EMPLOYMENT. – NO EMPLOYER SHALL HIRE ANY EMPLOYEE FOR A FIXED PERIOD,

EXCEPT: (1) PROJECT EMPLOYEES; (2) EXTRA EMPLOYEES; (3) SEASONAL EMPLOYEES, (4) IN INDUSTRIES THAT ARE CERTIFIED BY THE PRESIDENT IN AN EXECUTIVE ORDER, AS ALLOWABLE, DUE TO EXISTING AND SUBSTANTIAL LOSSES IN THE INDUSTRY AS A WHOLE BROUGHT ABOUT BY AN INABILITY TO PRICE GOODS COMPETITIVELY IN THE MARKET DESPITE RESORT TO ALL REASONABLE MEASURES; *PROVIDED*, THAT SUCH CERTIFICATION SHALL BE FOR A PERIOD OF AT MOST THREE (3) YEARS: *PROVIDED FURTHER*, THAT THE PRESIDENT MAY RENEW THE CERTIFICATION UPON EXPIRY SHOULD THE CIRCUMSTANCES SUBSIT FOR A SIMILAR PERIOD AND SUBJECT TO SIMILAR RENEWALS; (5) OVERSEAS FILIPINO WORKERS; (6) THOSE HIRED TO PLAY PROFESSIONAL SPORTS; (7) THOSE APPOINTED TO SENSITIVE POSITIONS IN EDUCATIONAL INSTITUTIONS SUCH AS DEAN, ASSISTANT DEAN, PRINCIPAL AND COLLEGE SECRETARY; AND (8) THOSE EMPLOYED AS MEMBERS OF MANAGERIAL STAFF, OTHER THAN THE FOREGOING EXCEPTIONS, ANY STIPULATION FIXING A PERIOD OF EMPLOYMENT SHALL BE VOID."

SEC. 12. Article 281 of the Labor Code is hereby amended to read as follows:

"**ART. 281. 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**]UPON FAILURE**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, **EVEN UNDER THE GUISE OF AN EXTENSION**, shall be considered a regular employee."

THE TERMINATION OF PROBATIONARY EMPLOYEES SHALL NOT BE VALID IF DONE TO PRECLUDE ACQUISITION OF SECURITY OF TENURE BY THE EMPLOYEE. THE PRESENCE OF ANY OF THE FOLLOWING CIRCUMSTANCES SHALL CREATE A REBUTTABLE PRESUMPTION OF THE INTENT TO CIRCUMVENT THE RIGHT TO SECURITY OF TENURE OF PROBATIONARY EMPLOYEES:

1. TERMINATION OF ALL OR ALMOST ALL OF THE PROBATIONARY EMPLOYEES AT THE END OF THE PROBATIONARY PERIOD AND THE SUBSEQUENT HIRING OF EMPLOYEES PERFORMING THE SAME WORK OR TASK AND/OR OCCUPYING THE SAME POSITION AS THOSE VACATED BY THE PREVIOUS PROBATIONARY EMPLOYEES.

2. MAINTAINING PROBATIONARY EMPLOYEES IN EXCESS OF THIRTY PERCENT (30%) OF THE TOTAL WORKFORCE. HOWEVER, NEWLY-CREATED COMPANIES/EMPLOYERS ARE EXEMPTED FROM OBSERVING THE FOREGOING PERCENTAGE RESTRICTION WITHIN ONE (1) YEAR FROM THE START OF THEIR BUSINESS OPERATIONS.

SEC. 13. Article 2888 of the Labor Code is hereby amended to read as follows:

"**ART. 288. Penalties**. – Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P 1,000.00) nor more than Ten Thousand Pesos (P 10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.

"ANY PRINCIPAL OR SUBCONTRACTOR WHO ENGAGES IN LABOR ONLY CONTRACTING AND/OR VIOLATES ARTICLES 106, 106-A, 106-B, 106-C, 106-D AND 106-E SHALL BE SOLIDARILY LIABLE TO INDEMNIFY EACH SUBCONTRACTED EMPLOYEE NO LESS THAN FIFTY THOUSAND PESOS (P 50,000.00) WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH SUBCONTRACTED EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED BARGAINING AGREEMENT OR COMPANY POLICY, WHETHER WRITTEN OR OTHERWISE.

"ANY EMPLOYER WHO DELIBERATELY CATEGORIZES OR OTHERWISE TREATS REGULAR EMPLOYEES TO BE ANY NON-REGULAR EMPLOYEE SHALL BE LIABLE TO INDEMNIFY EACH MISCLASSIFIED EMPLOYEE NO LESS THAN FIFTY THOUSAND PESOS (P 50,000.00) WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED BARGAINING AGREEMENT.

"In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.

"Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Court s and Courts of First Instance."

SEC. 14. Implementing Rules and Regulations. – The Department of Labor and Employment (DOLE) shall issue, within sixty (60) days after the effectivity of this Act, the rules and regulations for its effective implementation.

SEC. 15. Separability Clause. – If for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby and shall continue to be in full force and effect.

SEC. 16. Repealing Clause. – All laws, decrees, executive orders, rules and regulations, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 17. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general publications.

Approved,