

Republic of the Philippines
House of Representatives
Quezon City

Sixteenth Congress
First Regular Session

House Bill No. 2419



Introduced by 1-BAP Party-list Representative Silvestre H. Bello III

EXPLANATORY NOTE

The Constitution recognizes and guarantees the employees' right to security of tenure. A profession, trade or calling has been defined as a property right within the meaning of this constitutional guarantee and one cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which constitutes an actionable wrong.

The Labor Code of the Philippines, as amended, construes security of tenure to mean that in cases of regular employment, the employer shall not terminate the services of an employee except for just cause or when authorized by the Labor Code.

However, the Constitutional and Labor Code guarantees notwithstanding, workers are prevented from attaining regular employment and security of tenure either by **(a)** firing them after every 5 months then rehiring them for the same duration, or **(b)** denying the existence of employer-employee relationships by hiring them as "agency workers", with the hiring and placement agency as the purported employer, or **(c)** engaging them from external manpower cooperatives whose members are farmed out to industries for unlimited periods performing functions which are

necessary and desirable to their main business without attaining regular employment. These are the three most prevalent practices which abrogate workers' rights through **CONTRACTUALIZATION**.

That the attainment of security of tenure has remained elusive to many of our countrymen because the unchecked proliferation of the 3 described anti-worker practices have continually served as roadblock calls for decisive action to rectify that glaring gap in our present laws, so this proposed legislation seeks to outlaw "*contractualization*" practices, provide penalties for its violation, and finally place the constitutionally guaranteed right to security of tenure within the reach of our toiling countrymen.

Strong collective support from my fellow lawmakers for the approval of this Bill is therefore earnestly sought.



Silvestre H. Bello III

Representative, 1-BAP Party-list

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AN ACT STRENGTHENING EMPLOYEES' SECURITY OF TENURE, AMENDING FOR THIS PURPOSE ARTICLES 106 AND 280 OF PRESIDENTIAL DECREE NUMBER 442, OR THE LABOR CODE OF THE PHILIPPINES BY ADDING ARTICLES 106-A ON EXAMPLES OF LABOR-ONLY CONTRACTING PRACTICES; ARTICLE 106-B ON THE EFFECT OF THE COMMISSION OF LABOR-ONLY CONTRACTING; ADDING A LAST SENTENCE TO ARTICLE 280 ON EMPLOYMENT DURING EXTRAORDINARY BUT TEMPORARY SURGE IN DEMAND FOR PRODUCTS; NEW PARAGRAPH 2 FOR ARTICLE 280 ON REGULAR EMPLOYMENT FOR EMPLOYEES OF LABOR-ONLY CONTRACTING SCHEMES; NEW PARAGRAPH 3 ARTICLE 280 ON SEASONAL EMPLOYEES ACQUIRING REGULAR EMPLOYMENT STATUS IN CERTAIN CONDITIONS; NEW ARTICLE 280-A ON EMPLOYEES ATTAINING REGULAR EMPLOYMENT STATUS AS A RESULT OF REPEATED REHIRING BY THE SAME EMPLOYER; NEW ARTICLE 280-B FOR

ON-THE-JOB TRAINEES AND LEARNERS; AND DELETING THE LAST SENTENCE OF THE 2ND PARAPGRAPH OF ARTICLE 280, ON A CASUAL EMPLOYMENT BECOMING REGULAR WITH RESPECT TO THE ACTIVITY IN WHICH HE IS EMPLOYED WHICH SHALL CONTINUE WHILE SUCH ACTIVITY EXISTS, AND PROVIDING PENALTIES FOR THEIR VIOLATIONS.

Be it enacted by the Senate and House of Representatives of the Republic of the Philippines in Congress assembled:

SECTION 1. Short Title. – This Act shall be known as the “Security of Tenure Act of 2013”

SECTION 2. Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended with the addition of the following Articles, to read as follows:

ARTICLE 106-A. PROHIBITION ON LABOR-ONLY CONTRACTING. – LABOR ONLY CONTRACTING IS HEREBY DECLARED PROHIBITED.

FOR THIS PURPOSE, LABOR-ONLY CONTRACTING SHALL INCLUDE ARRANGEMENTS WHERE:

- (I) A MANPOWER AGENCY RECRUITS, HIRES AND SUPPLIES OR PLACES ITS HIREES TO A PRINCIPAL**

OR INDUSTRY WHICH ACTUALLY PROVIDES THEM THE JOBS, OR

(II) A WORKERS' COOPERATIVE ADMITS WORK APPLICANTS TO BECOME ITS MEMBERS THEN FARMS THEM OUT TO PRINCIPALS OR INDUSTRIES WHICH ACTUALLY PROVIDES THEM THE JOBS, AND

(III) THE MANPOWER SO PLACED OR PROVIDED PERFORM JOBS OR FUNCTIONS WHICH ARE USUALLY NECESSARY AND DESIRABLE IN THE MAIN BUSINESS ACTIVITY OF THE PRINCIPAL OR INDUSTRY, OR

(IV) THE PERSONNEL OF THE PRINCIPAL OR INDUSTRY TO WHERE THEY WERE PLACED EXERCISE DIRECT CONTROL AND SUPERVISION ON THEM AS REGARDS THE METHODS AND MEANS TO PERFORM THE JOB AND IN ACHIEVING ITS DESIRED RESULTS.

ARTICLE 106-B. IN ALL CASES WHERE LABOR-ONLY CONTRACTING IS PRESENT, THE PRINCIPAL OR INDUSTRY SHALL IPSO FACTO BE DEEMED THE DIRECT EMPLOYER OF THE AFFECTED EMPLOYEES WHO WILL BE CONSIDERED REGULAR EMPLOYEES RETROACTIVE TO THE DATE THEY

WERE FIRST HIRED, AGREEMENTS TO THE CONTRARY NOTWITHSTANDING.

SECTION 3. Article 280 of Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended with the addition of the following phrase in Art. 280 (1), and subparagraphs (2) and (3) to read as follows:

Art. 280 - Regular and casual employment.

(1)The provisions of written agreements 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, **OR THE EMPLOYMENT IS PURSUANT TO AN EXTRAORDINARY BUT TEMPORARY SURGE IN DEMAND FOR THE EMPLOYER'S PRODUCTS AND IS FOR THE DURATION OF THE TEMPORARY SURGE.**

(2) THIS SHALL INCLUDE EMPLOYEES WHO WERE HIRED IN CIRCUMSTANCES DEEMED TO BE LABOR-ONLY

CONTRACTING AS DEFINED IN ARTICLE 106-A AND 106-B.

(3) SEASONAL EMPLOYEES, EXCEPT THOSE IN THE CONSTRUCTION INDUSTRY, WHO HAVE BEEN HIRED REPEATEDLY SHALL ACQUIRE SECURITY OF TENURE AND CONSIDERED REGULAR FOR THE FUNCTIONS THEY HAVE PERFORMED ON SEASONAL BASIS, PROVIDED THAT THEY HAVE ATTAINED 12 MONTHS OF SERVICE, WHETHER BROKEN OR CONTINUOUS, PROVIDED FURTHER, THAT DURING OFF-SEASONS NOT EXCEEDING 6 MONTHS, THEY SHALL BE CONSIDERED ON AUTHORIZED LEAVE WITHOUT PAY, PROVIDED FINALLY, THAT IN COMPUTING THEIR YEARS OF SERVICE FOR RETIREMENT PURPOSES, THE OFF-SEASON PERIODS WHERE THEIR SERVICES WERE NOT AVAILED OF BY THE ESTABLISHMENT SHALL NOT BE CONSIDERED.

SECTION 4. The second paragraph of Article 280 defining Casual employment is shortened to delete the last phrase *"with respect to the activity to which he is employed and his employment shall continue while such activity exists."* The paragraph shall now read as;

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.

SECTION 5. The following sub-articles are hereby added to Article 280, to wit;

ART. 280- EXCEPT FOR PERSONNEL IN ACTIVITIES WHICH ARE COVERED BY ALLOWABLE CONTRACTING ARRANGEMENTS LIKE JANITORIAL, MESSENGERIAL AND SECURITY GUARD SERVICES, EMPLOYEES WHO HAVE BEEN HIRED REPEATEDLY BY THE SAME EMPLOYER TO EITHER PERFORM THE SAME OR DIFFERENT JOBS SHALL BE CONSIDERED REGULAR RETROACTIVE TO THE DATE THEY ATTAINED THEIR SIXTH MONTH OF EMPLOYMENT, BROKEN OR CONTINUOUS.

ART. 280-B - ON-THE-JOB TRAINEES, LEARNERS OR OTHER FRESH ENTRANTS TO THE JOB MARKET WHO POSSESS NO TECHNICAL SKILLS ARE EXEMPTED FROM THE BENEFITS OF THIS PROVISION, PROVIDED THEIR TRAINING PERIODS DO NOT EXCEED 12 MONTHS.

SECTION 6. Penalty provisions are hereby added as additional sub-paragraphs with sub-sections to Article 280, to wit;

ART. 280-C - PENALTY CLAUSE. - ESTABLISHMENTS OR EMPLOYERS FOUND VIOLATING THE FOREGOING SHALL BE LIABLE TO THE FOLLOWING PENALTIES;

SECTION 1. PAY EACH AFFECTED EMPLOYEE AN INDEMNITY OF PESOS TEN THOUSAND (PHP 10,000.00) FOR EACH YEAR OF SERVICE WHERE THE EMPLOYEE WAS ON CONTRACTUAL EMPLOYMENT;

A. FIRST OFFENSE - A FINE OF FROM A MINIMUM OF PESOS FIFTY THOUSAND (PHP 50,000.00) TO A MAXIMUM OF PESOS THREE HUNDRED THOUSAND (PHP 300,000.00) DEPENDING ON THE EXTENT OF VIOLATION IN TERMS OF EMPLOYEES AFFECTED.

B. SECOND OFFENSE - SUSPENSION OF BUSINESS OPERATIONS FROM A MINIMUM OF ONE (1) WEEK TO A MAXIMUM OF FOUR (4) WEEKS.

C. THIRD OFFENSE - INDEFINITE SUSPENSION OF BUSINESS OPERATIONS.

SECTION 2. EMPLOYEES OF ESTABLISHMENTS WHICH HAVE BEEN IMPOSED PENALTIES OF SUSPENSION OF OPERATIONS SHALL BE CONSIDERED ON FULL PAY WITHOUT LOSS OF BENEFITS DURING THE PENDENCY OF THE SUSPENSION OF BUSINESS OPERATIONS OF THE EMPLOYER.

SECTION 3. SUPERSEDEAS BOND. IN ALL CASES WHERE THE ESTABLISHMENT OR EMPLOYER FILES AN APPEAL, THE APPEAL MAY BE GIVEN DUE COURSE ONLY AFTER SUPERSEDEAS BONDS HAVE BEEN POSTED TO GUARANTEE PAYMENT OF THE IMPOSABLE FINE AS WELL AS EMPLOYEES' INDEMNITY.

1. THE FILING OF AN APPEAL SHALL STAY THE EXECUTION OF THE PENALTY OF SUSPENSION, PROVIDED THAT SUCH FILING OF APPEAL SHALL BE MADE IMMEDIATELY AFTER THE PENALTY OF SUSPENSION HAS BEEN IMPOSED AND BEFORE THE EFFECTIVE DATE OF ITS IMPOSITION, OTHERWISE, THE APPEAL SHALL NO LONGER BE TENABLE AND THE SUSPENSION SHALL BE EXECUTED.

2. BEFORE IT MAY BE AUTHORIZED TO RESUME BUSINESS OPERATIONS AFTER THE IMPOSITION OF SUSPENSION UNDER SECTION 1B AND 1C, THE ESTABLISHMENT MUST FIRST SHOW SATISFACTORY PROOF OF PAYMENT OF BOTH THE FINE AND THE EMPLOYEES' INDEMNITY.

ART. 280-D - REWARD TO TIPSTERS - ANY PERSON OR GROUP OF PERSONS WHO PROVIDE INFORMATION LEADING TO THE SUCCESSFUL RECOVERY OF IMPOSABLE FINES

ENUMERATED UNDER ART. 280-C SECTION 1 ABOVE SHALL RECEIVE A REWARD OF FIFTY PERCENT (50%) OF THE FINE RECOVERED, UP TO A MAXIMUM OF PESOS ONE HUNDRED THOUSAND (PHP 100,000.00).

THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL PROVIDE THE GUIDELINES AND MECHANISM FOR THE PROPER HANDLING OF TIPS, THE INVESTIGATION OF CASES ARISING FROM SUCH TIPS, AS WELL AS THE CONFIDENTIAL HANDLING OF TIPSTERS' IDENTITIES.

1. UPON RECEIPT OF A TIP OR REPORT, WHETHER ANONYMOUS OR SIGNED, THE NEAREST REGIONAL OR FIELD OFFICE OF THE DEPARTMENT OF LABOR AND EMPLOYMENT BUREAU OF WORKING CONDITIONS SHALL SEND ITS PERSONNEL TO VERIFY THE REPORT AND INSPECT THE PREMISES INCLUDING THE EMPLOYMENT RECORDS OF THE CONCERNED ESTABLISHMENT.

2. IN HIS INSPECTION VISIT OF THE PREMISES, THE LABOR INSPECTION OFFICER SHALL BE ACCOMPANIED BY A REPRESENTATIVE OF THE EMPLOYEES' ASSOCIATION OR EMPLOYEES' UNION, AS THE CASE MAY BE, AND SHALL INTERVIEW EMPLOYEES SELECTED AT RANDOM.

3. AN INSPECTION REPORT SHALL IMMEDIATELY BE SUBMITTED TO THE REGIONAL DIRECTOR OR FIELD OFFICE HEAD WITHIN THE SAME DAY THAT THE INSPECTION WAS MADE, OR THE FOLLOWING DAY AT THE LATEST.

4. UPON RECEIPT OF A REPORT CONFIRMING THE COMMISSION OF THE PROHIBITED ACTS ENUMERATED AND DEFINED UNDER ARTICLE 106-A ABOVE, AND AFTER BEING SATISFIED HIMSELF THAT SUCH PROHIBITED ACTS ARE INDEED BEING COMMITTED, THE CONCERNED FIELD OFFICE HEAD SHALL RECOMMEND TO THE REGIONAL DIRECTOR WHO, OR THE LATTER HIMSELF, AS THE CASE MAY BE, SHALL FORTHWITH ISSUE WITHIN 3 CALENDAR DAYS A NOTICE OF VIOLATION TO THE ERRING ESTABLISHMENT.

5. THE NOTICE SHALL SPECIFY THE PROHIBITED ACTS COMMITTED, THE IMPOSABLE PENALTIES THEREFOR, AND THE DATE THAT THE PRESCRIBED PENALTIES SHALL TAKE EFFECT, UNLESS THE ESTABLISHMENT SUBMITS WITHIN 5 CALENDAR DAYS FROM RECEIPT A VERIFIED EXPLANATION AND SHOWS CAUSE WHY THE PENALTIES PRESCRIBED THEREIN SHALL NOT BE IMPOSED ON HIM.

SECTION 7. IMPLEMENTING RULES. The Department of Labor and Employment shall, within 90 days from the effectivity of this Act, issue the required implementing rules and regulations for the efficient monitoring and implementation of its provisions.

SECTION 8. REPEALING CLAUSE. – All laws, decrees, rules, and regulations or parts thereof, which are contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 9. SEPARABILITY CLAUSE. – If any part or provision of this Act is declared unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SECTION 10. EFFECTIVITY CLAUSE. – This Act shall take effect fifteen (15) days from its publication in two (2) national newspapers of general circulation after its approval by the President.

Approved.