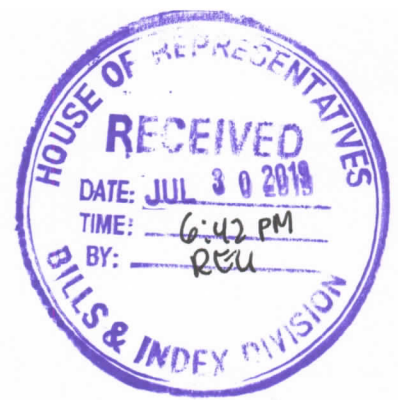


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 3184



Introduced by **Rep. LAWRENCE LEMUEL H. FORTUN**

EXPLANATORY NOTE

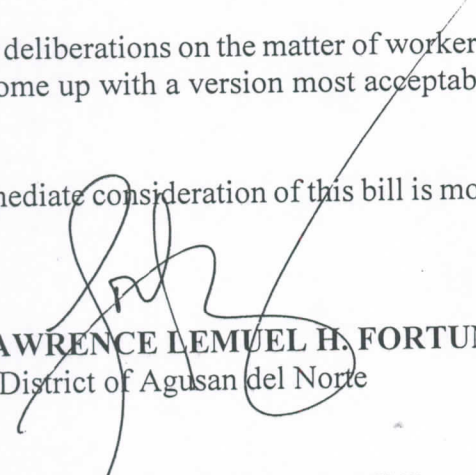
Section 3, Article XIII of the 1987 Constitution guarantees the right of workers to security of tenure. However, in the current state of industrial growth, business competitiveness, labor demands and employment competition, the practice of contractualization and labor only contracting has become commonplace in the country. This has resulted in a state of uncertainty among the workers who are treated as contractual or labor only workers. This runs counter to the principle enshrined in the Constitution that the State shall guarantee security of tenure among Filipino workers.

This bill seeks to further amend P.D. 442, otherwise known as the Labor Code of the Philippines to expressly prohibit labor-only contracting with limited exceptions under certain circumstances. It simplifies the classification of employees into regular employment as a general rule and prohibiting fixed-term employment. The bill seeks to require entities in the business of job contracting to obtain a license beforehand from the Department of Labor and Employment. Probationary employees who have at least one (1) month of service will be entitled to a one-half month of termination pay. Relievers, project and seasonal employees shall enjoy the rights of regular employees for the duration of their work as well as the right of first refusal once the jobs are opened for regular employment. Clauses in employment contracts providing for a fixed period of employment are considered void. Workers under such arrangements are deemed regular employees reckoned from the first day of employment.

This measure seeks to give life to Article II of the Constitution which provides that the State recognizes labor as "*the primary social economic force*" of the country and shall seek to promote the general welfare of workers including their right to security of tenure. The same was approved on Third and Final Reading in the 17th Congress. However, the bill was vetoed by President Rodrigo Roa Duterte taking into consideration the imperativeness of a "*healthy balance between the conflicting interests of labor and management.*"¹ Nevertheless, the President reiterated his "*firm commitment to protect workers' right to security of tenure by eradicating all forms of abusive employment practices.*"²

This bill is refiled to pave the way for further deliberations on the matter of workers' security of tenure in order for Congress to finally come up with a version most acceptable to both labor and management.

In view of the foregoing considerations, immediate consideration of this bill is most earnestly sought.


REP. LAWRENCE LEMUEL H. FORTUN
1st District of Agusan del Norte

¹ Veto message of President Rodrigo R. Duterte on consolidated enrolled Senate Bill No. 1826 and House Bill No. 6908

² *Ibid*

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EIGHTEENTH CONGRESS
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House Bill No. 3184

Introduced by **Rep. LAWRENCE LEMUEL H. FORTUN**

**AN ACT STRENGTHENING THE SECURITY OF TENURE OF WORKERS,
AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 442, AS
AMENDED, OTHERWISE KNOWN AS THE "LABOR CODE OF THE
PHILIPPINES"**

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

1 *SECTION 1.* Article 106 of Presidential Decree No. 442, as amended, otherwise known as
2 the "Labor Code of the Philippines", is hereby amended to read as follows:

3
4 "ART. 106. *Contractor* [or subcontractor]. - Whenever an employer enters into a
5 contract with another person for the performance of the former's work, the employees of
6 the contractor [and of the latter's subcontractor, if any,] shall be paid in accordance with
7 the provisions of this Code **AND OTHER LAWS**.

8
9 **"THE CONTRACTING OUT OF THE SAME WORK CONTRACTED OUT**
10 **BY THE EMPLOYER IS HEREBY PROHIBITED.**

11
12 "In the event that the contractor [or subcontractor] fails to pay the wages,
13 **ALLOWANCES AND BENEFITS** of his employees in accordance with this Code **AND**
14 **OTHER LAWS**, the employer shall be jointly and severally liable with [his] **THE**
15 contractor [or subcontractor] to such employees to the extent of the work performed under
16 the contract, in the same manner and extent that he is liable to employees directly employed
17 by him.

18
19 "The Secretary of Labor **AND EMPLOYMENT** [may] **UPON**
20 **CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE**
21 **COUNCIL SHALL** by appropriate regulations, restrict or prohibit the contracting out of
22 labor to protect the rights of workers established under this Code. In so prohibiting or
23 restricting, he may make appropriate distinctions between labor-only contracting, **WHICH**
24 **IS HEREBY PERMITTED, IN ACCORDANCE WITH THIS CODE.** [as well as]
25 [d]Differentiations **AND RESTRICTIONS** within these types of contracting, [and] **AS**
26 **WELL AS THE** [determine] **DETERMINATION OF** who among the parties involved
27 shall be considered the employer [for purposes of] **UNDER** this Code, **SHALL BE**
28 **DISTINCTLY PROVIDED FOR IN THE REGULATIONS** to prevent any violation or
29 circumvention of any provision of this Code.

30
31 "There is 'labor-only' contracting where the person supplying workers to any
32 employer does not have substantial capital or investment in the form of tools, equipment,
33 machineries, work premises, among others [and] **OR HAS NO CONTROL OVER THE**
34 **WORKERS' METHODS AND MEANS OF ACCOMPLISHING THEIR WORK**
35 **OR** the workers recruited and placed by such person are performing activities which are
36 directly related **AND NECESSARY** to the principal business of such employer. In such
37 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.”

SEC. 2. A new article, Article 106-A, is hereby inserted after Article 106 of the same decree, to read as follows:

“ART. 106-A. LICENSING OF JOB CONTRACTORS. ALL PERSONS OR ENTITIES DOING BUSINESS AS JOB CONTRACTORS SHALL OBTAIN A LICENSE FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT THROUGH ITS REGIONAL OFFICES, THE TERM ‘JOB CONTRACTOR’ REFERS TO A SOLE PROPRIETORSHIP, CORPORATION, PARTNERSHIP, ASSOCIATION, COOPERATIVE OR ANY OTHER ORGANIZATION THAT PERFORMS A SPECIFIC WORK, JOB OR SERVICE FOR A PRINCIPAL EMPLOYER, THE TERM ‘PRINCIPAL EMPLOYER’ REFERS TO THE PERSON OR ENTITY, INCLUDING THE GOVERNMENT, THAT CONTRACTS OUT A SPECIFIC WORK, JOB OR SERVICE.

“THE LICENSE SHALL BE ISSUED TO A QUALIFIED JOB CONTRACTORS UPON COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

“(A) AN INDEPENDENT BUSINESS, SEPARATE AND DISTINCT FROM THE PRINCIPAL EMPLOYER:

“(B) PAID-UP CAPITAL OR CAPITALIZATION OF AT LEAST FIVE MILLION PESOS (P5,000,000.00) WHICH MAY BE ADJUSTED AS DEEMED APPROPRIATE THROUGH TRIPARTITE CONSULTATION EVERY THREE (3) YEARS;

“(C) AN UNDERTAKING OF FINANCIAL CAPACITY, AND COMPLIANCE WITH ALL LABOR LAWS AND REGULATIONS;

“(D) SUFFICIENT KNOWLEDGE, EXPERIENCE, SKILLS OR COMPETENCE IN THE FIELD OF THE CONTRACTED JOB, WORK OR SERVICE;

“(E) EMPLOYMENT OF REGULAR EMPLOYEES, AND POSSESSION OF EQUIPMENT, MACHINERIES OR TOOLS NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK OR SERVICE CONTRACTED OUT;

“(F) CONTROL OVER THE PERFORMANCE AND COMPLETION OF THE CONTRACTED JOB, WORK OR SERVICE; AND

“(G) PAYMENT OF A LICENSE FEE OF ONE HUNDRED THOUSAND PESOS (P100,000.00) WHICH MAY BE ADJUSTED AS DEEMED APPROPRIATE THROUGH TRIPARTITE CONSULTATION.

“THE LICENSE SHALL BE VALID FOR A PERIOD OF THREE (3) YEARS. NO LICENSE SHALL BE RENEWED UNLESS THE JOB CONTRACT SHALL DEMONSTRATE THAT IT HAS NET FINANCIAL CONTRACTING CAPACITY (NFCC) TO CARRY ON ITS BUSINESS BASED ON FACTORS SUCH AS, BUT NOT LIMITED TO, THE NUMBER OF ITS EMPLOYEES AND THE NATURE OF ITS BUSINESS.

“A LICENSED JOB CONTRACTOR SHALL SUBMIT AN ANNUAL REPORT WHICH MUST INCLUDE, BUT NOT LIMITED TO, PROOF OF PAYMENT OF THE APPROPRIATE SOCIAL AND OTHER WELFARE BENEFITS TO ITS EMPLOYEES.

95
96 **“CONTRACTORS OR SIMILAR ENTITIES WHO ENGAGE IN JOB**
97 **CONTRACTING WITHOUT A LICENSE SHALL BE PENALIZED IN**
98 **ACCORDANCE WITH THIS CODE.’**
99

100 *SEC. 3.* Article 294 of the same decree is hereby further amended to read as follows:

101 **ART. 294. *Security of Tenure.*** - In cases of regular employment, the employer
102 shall not terminate the services of any employee except for a just cause or when authorized
103 by this Title. [An employee who is unjustly dismissed from work shall be entitled to
104 reinstatement without loss of seniority rights and other privileges and to his full backwages,
105 inclusive of allowances, and to his other benefits or their monetary equivalent computed
106 from the time his compensation was withheld from him up to the time of his actual
107 reinstatement.]
108

109 **“A DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE OR**
110 **WITHOUT OBSERVANCE OF PROCEDURAL DUE PROCESS IS ILLEGAL.**
111 **THE EMPLOYEE WHO IS FOUND ILLEGALLY DISMISSED BASED ON LACK**
112 **OF JUST OR AUTHORIZED CAUSE IS ENTITLED TO IMMEDIATE**
113 **REINSTATEMENT EVEN PENDING APPEAL AND WITHOUT LOSS OF**
114 **SENIORITY RIGHTS AND BENEFITS, FULL BACKWAGES AND ACCRUED**
115 **BENEFITS, AND REMUNERATIONS PROVIDED BY LAW, COMPANY**
116 **POLICY OR COLLECTIVE BARGAINING AGREEMENT COMPUTED FROM**
117 **THE TIME COMPENSATION WAS WITHHELD UP TO THE TIME OF**
118 **ACTUAL REINSTATEMENT, AWARD OF BACKWAGES SHALL INCLUDE**
119 **THE EMPLOYER’S SHARE OF CONTRIBUTIONS TO THE SOCIAL**
120 **SECURITY SYSTEM, PHILIPPINE HEALTH INSURANCE CORPORATION,**
121 **AND HOME DEVELOPMENT MUTUAL FUND WHICH SHALL BE REMITTED,**
122 **TOGETHER WITH THE EMPLOYEE’S SHARE, TO THE AFORESAID**
123 **AGENCEIS FREE FROM INTEREST AND PENALTIES FOR LATE**
124 **REMITTANCE. IN THE EVENT THAT THE EMPLOYEE IS GAINFULLY**
125 **EMPLOYED DURING THE PENDENCY OF THE CASE FOR ILLEGAL**
126 **DISMISSAL AND THE EMPLOYEE WAS ABLE TO CONTRIBUTE TO THE**
127 **SOCIAL SECURITY SYSTEM, PHILIPPINE HEALTH INSURANCE**
128 **CORPORATION, AND HOME DEVELOPMENT MUTAL FUND AN AMOUNT**
129 **NEEDED TO UPDATE HIS EMPLOYEE CONTRIBTUIONS SHALL BE**
130 **DEDUCTED FROM HIS BACKWAGES. ACTUAL, MORAL, EXEMPLARY AND**
131 **OTHER FORMS OF DAMAGES MAY ALSO BE AWARDED. AN EMPLOYEE**
132 **WHOSE DISMISSAL IS DECLARED ILLEGAL BASED EXCLUSIVELY ON**
133 **LACK OF PROCEDURAL DUE PROCESS IS ENTITLED TO REASONABLE**
134 **NOMINAL DAMAGES AND COSTS OF SUIT. THE EMPLOYER SHALL HAVE**
135 **THE BURDEN OF PROVING THAT THE TERMINATION IS WITH CAUSE AND**
136 **DUE PROCESS.”**
137

138 *SEC. 4.* Article 295 of the same decree is hereby amended to read as follows:

139 **“ART. 295. *Regular [and casual] employment.*** The provisions of written
140 agreement to the contrary notwithstanding and regardless of the oral agreement of the
141 parties, an employment shall be deemed to be regular [where the employee has been
142 engaged to perform activities which are usually necessary or desirable in the usual business
143 or trade of the employer, except where the employment has been fixed for a specific project
144 or undertaking the completion or termination of which has been determined at the time of
145 the engagement of the employee or where the work or service to be performed is seasonal
146 in nature and the employment is for the duration of the season]. **A REGULAR**
147 **EMPLOYEE IS ONE WHO HAS BEEN HIRED FOR AN INDEFINITE PERIOD.**
148 **NO EMPLOYMENT WITH A FIXED TERM OR DEFINITE PERIOD SHALL BE**
149 **ALLOWED EXCEPT IN CASES OF OVERSEAS FILIPINO WORKERS,**
150 **WORKERS ON PROBATION, RELIEVERS WHO ARE TEMPORARY**
151 **REPLACEMENTS OF ABSENT REGULAR EMPLOYEES WHOSE**

ENGAGEMENTS SHALL NOT EXCEED SIX (6) MONTHS , PROJECT EMPLOYEES, AND SEASONAL WORKERS.

“RELIEVERS, PROJECT AND SEASONAL EMPLOYEES SHALL ENJOY THE RIGHTS OF REGULAR EMPLOYEES FOR THE DURATION OF THE ENGAGEMENT, PROJECT OR SEASON, RESPECTIVELY. PROJECT EMPLOYMENT REFERS TO AN EXISTING PROJECT OR UNDERTAKING THE NATURE OF WHICH IS TEMPORARY AND THE COMPLETION OR TERMINATION HAS BEEN DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON IN A TYPE OF WORK. A SEASON IS THAT ESTABLISHED IN AGRICULTURAL WORK OR ESTABLISHED PERIODS OF INCREASED WORK DEMAND INHERENT TO THE INDUSTRY AS DETERMINED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT IN CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL.

“FOR RELIEVERS, PROJECT, AND SEASONAL EMPLOYMENT, WORKERS ARE CALLED TO WORK FROM TIME TO TIME AND TEMPORARILY LAID OFF DURING THE COMPLETION OF THE ENGAGEMENT, PROJECT OR OFF-SEASON BUT ARE IN THE WORK POOL ON LEAVE WITH OR WITHOUT PAY STATUS IN BETWEEN ENGAGEMENTS, PROJECTS OR SEASONS. RELIEVERS, PROJECT, AND SEASONAL WORKERS ARE ENTITLED TO THE RIGHT OF FIRST REFUSAL TO THE TASK, WORK OR PROJECT WHICH IS THE SUBJECT MATTER OF THE EMPLOYMENT. THEY SHALL ALSO ENJOY THE RIGHT OF FIRST REFUSAL IN THE HIRING FOR OPEN REGULAR POSITIONS.

“ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE PROHIBITED. CLAUSES IN EMPLOYMENT CONTRACTS PROVIDING FOR A FIXED TERM OR DEFINITE PERIOD OF EMPLOYMENT ARE VOID. WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT.

[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 with respect to the activity in which is employed and his employment shall continue while such activity exists.]”

SEC. 5. Article 296 of the same decree is hereby amended to read as follows:

“ART. 296. *Probationary employment.* - Probationary employment shall not exceed six (6) months from the date 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 to qualify as a regular employee in accordance with reasonable standards **WHICH SHALL BE** made known by the employer to the employee **IN WRITING** at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

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

SEC. 6. A new article, Article 303-A, is hereby inserted after Article 303 of the same decree to read as follows:

209
210 "ART. 303-A. *ADMINISTRATIVE PENALTIES.* – THE DEPARTMENT OF
211 LABOR AND EMPLOYMENT SHALL IMPOSE THE FOLLOWING:
212

- 213 1. A FINE OF THIRTY THOUSAND PESOS (P30,000.00) FOR A PERSON
214 OR ENTITY OPERATING AS A JOB CONTRACTOR WITHOUT A
215 LICENSE, PROVIDED THAT SAID PERSON OR ENTITY DOES NOT
216 COMMIT ANY OTHER ACT DESCRIBED AS LABOR-ONLY
217 CONTRACT IN UNDER ARTICLE 106 OF THIS CODE.
218
- 219 2. A FINE FOR A PERSON OR ENTITY OPERATING AS A JOB
220 CONTRACTOR WITHOUT A LICENSE AND ALSO COMMITS ANY
221 OF THE ACTS DESCRIBED AS LABOR-ONLY CONTRACTING
222 UNDER ARTICLE 106 OF THIS CODE. SAID FINE SHALL BE
223 THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER
224 EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING
225 ARRANGMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF
226 FIVE MILLION PESOS (P5,000,000.00). IN ADDITION, SAID PERSON
227 OR ENTITY WHICH ENGAGED IN LABOR-ONLY CONTRACTING
228 SHALL BE BARRED FROM APPLYING FOR FUTURE LICENSES.
229 THIS DISQUALIFICATION SHALL EXTEND TO THE
230 RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS OF THE
231 LIABLE PARTNERSHIP, CORPORATION OR COOPERATIVE;
232
- 233 3. A FINE FOR A LICENSED JOB CONTRACTOR WHICH COMMITS
234 ANY OF THE ACTS DESCRIBED AS LABOR-ONLY CONTRACTING
235 UNDER ARTICLE 106 OF THE CODE. SAID FINE SHALL BE
236 THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER
237 EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING
238 ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF
239 FIVE MILLION PESOS (5,000,000.00). IN ADDITION, THE LICENSEE
240 SHALL HAVE ITS OPERATION CLOSED ON THE PROJECT IN
241 WHICH THE VIOLATION WAS COMMITTED AND SHALL BE
242 BARRED FROM APPLYING FOR FUTURE LICENSES. ANY
243 SUCCEEDING OFFENSES COMMITTEED SHALL RESULT IN THE
244 REVOCATION OF THE LICENSE AND CLOSURE OF THE
245 OPERATIONS OF THE JOB CONTRACTOR. THIS
246 DISQUALIFICATION SHALL EXTEND TO THE RESPONSIBLE
247 PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE
248 PARTNERSHIP, CORPORATION OR COOPERATIVE.
249
- 250 4. A FINE FOR A PERSON OR ENTITY WHO ENGAGES FIXED TERM
251 EMPLOYEES IN VIOLATION OF ARTICLE 295 OF THIS CODE.
252 SAID FINE SHALL BE THIRTY THOUSAND PESOS (P30,000.00)
253 ASSESSED PER EMPLOYEE ENGAGED UNDER THE PROHIBITED
254 FIXED-TERM ARRANGEMENT BUT NOT TO EXCEED THE TOTAL
255 AMOUNT OF FIVE MILLION PESOS (P5,000,000)
256 "THE ABOVE FINES SHALL BE IMPOSED JOINTLY AND
257 SEVERALLY AGAINST THE PRINCIPAL EMPLOYER AND
258 CONTRACTOR, MANPOWER AGENCY, WORKERS'
259 COOPERATIVE OR ANY OTHER SIMILAR ENTITY OR THE
260 LATTER'S RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS
261 ENGAGED IN THE PROHIBITED ARRANGMENTS DESCRIBED
262 ABOVE. THE FINES SHALL BE IMPOSED WITHOUT PREJUDICE
263 TO OTHER DAMAGES THAT MAY BE IMPOSED UNDER THIS
264 CODE AND OTHER LAWS AND REGULATIONS."
265

266 *SEC. 7. Implementing Rules and Regulations.* - Within sixty (60) dyas from the
267 effectivity of this Act, the Secretary of Labor and Employment shall promulgate the
268 necessary rules and regulations for the effective implementation of this Act.

269
270 *SEC. 8. Separability Clause.* - If any provision or part of this Act is declared
271 invalid or unconstitutional, the remaining parts or provisions not affected remain in full
272 force and effect.

273
274 *SEC. 9. Repealing Clause.* - All laws, decrees, orders, rules and regulations and
275 other issuances or parts thereof which are inconsistent with the provisions of this act are
276 hereby repealed or amended accordingly.

277
278 *SEC. 10. Effectivity.* - This Act shall take effect fifteen (15) days after its
279 publication in the *Official Gazette* or in any newspaper of general circulation.

280
281 Approved,