

NINETEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
*First Regular Session* )



'22 DEC -7 P2:53

**SENATE**

**S. No. 1606**

RECEIVED BY:

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**Introduced by SENATOR RAMON BONG REVILLA, JR.**

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**AN ACT**  
**ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN NATIONALS**  
**AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE PURPOSE ARTICLES**  
**40, 41 AND 42 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED,**  
**OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES AND FOR**  
**OTHER PURPOSES**

**EXPLANATORY NOTE**

In light of the outpour of Chinese and other foreign workers in the Philippines, there is a need to revisit the laws which regulate their employment. Title II of Presidential Decree No. 442, otherwise known as the "*Labor Code of the Philippines*", as amended, governs the employment of non-resident aliens. However, the guidelines laid down in Articles 40 to 42 stay feeble because of the mild penalties. Article 41, subparagraph (a), thus provides:

"a. Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provisions of Articles 289 and 290 of the Labor Code<sup>1</sup>. x x x"

Articles 289 and 290 of the Labor Code provide for only a fine of One thousand pesos (P1,000.00) nor more than Ten thousand pesos (P10,000.00) or imprisonment

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<sup>1</sup> Articles 289 and 290 were renumbered as Articles 288 and 289, respectively, by virtue of Executive Order No. 111. They are now renumbered as Articles 303 and 304, respectively.

of not less than three (3) months nor more than three (3) years, or both such fine or imprisonment at the discretion of the court.

Stiffer penalties should be put in place as such will deter not only non-resident alien employees and employers from illegally acquiring employment in the country but will also deter employers from violating Articles 40 to 42, thus making available more employment opportunities for Filipinos.

It is imperative that the State stays true to the tenet of the 1987 Constitution, Article XII, Section 12, which provides that the State shall promote the preferential use of Filipino labor.

Given the foregoing, the immediate passage of this measure is sought.



**RAMON BONG REVILLA, JR.**

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AN ACT

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2 **ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN NATIONALS**  
3 **AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE PURPOSE ARTICLES**  
4 **40, 41 AND 42 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED,**  
5 **OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES AND FOR**  
6 **OTHER PURPOSES**

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

7 Section 1. Title II, Book I of Presidential Decree No. 442, otherwise known as  
8 the "*Labor Code of the Philippines*", is hereby amended to read as follows:

9 "Title II – Employment of Non-Resident [~~Aliens~~] **FOREIGN NATIONALS**"

10 Sec. 2. Article 40 of the Labor Code is hereby amended to read as follows:

11 "ARTICLE 40. Employment permit of non-resident [~~aliens~~]  
12 **FOREIGN NATIONALS** – [~~Any alien~~] **ALL NON-RESIDENT**  
13 **FOREIGN NATIONALS** seeking [~~admission to the Philippines for~~  
14 ~~employment purposes and any domestic or foreign employer who~~  
15 ~~desires to engage an alien for~~] employment in the Philippines shall  
16 obtain an employment permit from the Department of Labor **AND**  
17 **EMPLOYMENT (DOLE).**

18 "[The] **AN** employment permit may be issued to a non-resident  
19 [~~alien~~] **FOREIGN NATIONAL** after a determination of the non-  
20 availability of a [~~person in the Philippines who is competent, able~~]  
21 **QUALIFIED** and willing [~~at the time of application~~] **FILIPINO**

1 **NATIONAL WHO WILL** perform the services for which the **FOREIGN**  
2 **NATIONAL** is desired.

3 **"THE SECRETARY OF LABOR AND EMPLOYMENT SHALL BE**  
4 **AUTHORIZED TO GRANT EXEMPTIONS FROM THE LABOR**  
5 **MARKET TEST TO FOREIGN NATIONALS AS PROVIDED FOR**  
6 **UNDER EXISTING LAWS, AS WELL AS TO OCCUPATIONS IN**  
7 **SHORT SUPPLY AS DETERMINED BY THE DOLE'S LABOR**  
8 **MARKET INFORMATION REPORT AND UPON TRIPARTITE**  
9 **CONSULTATION.**

10 "For an enterprise registered in preferred areas of investments,  
11 **TOURISM ENTERPRISE ZONES, OR IN DESIGNATED ECONOMIC**  
12 **ZONES, THE** employment permit **SHALL ONLY BE ISSUED BY THE**  
13 **DOLE,** [~~may be issued~~] upon recommendation [~~of~~] **BY** the government  
14 agency charged with the supervision of said registered enterprise."

15 Sec. 3. A new Article 40-A of the Labor Code is hereby provided to read as  
16 follows:

17 **"ARTICLE 40-A. UNDERSTUDY / SKILLS DEVELOPMENT**  
18 **PROGRAM. – FOREIGN NATIONALS ISSUED EMPLOYMENT**  
19 **PERMITS IN INDUSTRIES TO BE DETERMINED BY THE DOLE**  
20 **SHALL IMPLEMENT AN UNDERSTUDY / SKILLS DEVELOPMENT**  
21 **PROGRAM. THE PROGRAM SHALL BE APPROVED BY THE DOLE**  
22 **AND SHALL ENSURE THE TRANSFER OF TECHNOLOGY / SKILLS**  
23 **TO FILIPINOS, WHETHER NEXT-IN-RANK OR OTHERWISE,**  
24 **WITH THE POTENTIAL OF SUCCEEDING THE FOREIGN**  
25 **NATIONAL IN THE SAME ESTABLISHMENT OR ITS**  
26 **SUBSIDIARY, WITHIN A SPECIFIC PERIOD AS MAY BE**  
27 **DETERMINED BY THE DOLE, UPON CONSULTATION WITH**  
28 **RELEVANT GOVERNMENT AGENCIES AND INDUSTRY EXPERTS.**

29 **"FAILURE OF THE FOREIGN NATIONAL TO CONDUCT AND**  
30 **COMPLETE THE UNDERSTUDY / SKILLS DEVELOPMENT**  
31 **PROGRAM WITHIN THE SPECIFIED PERIOD SHALL BE METED**  
32 **WITH A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND**

1       **PESOS (P100,000.00) FOR EVERY YEAR OF NON-COMPLIANCE,**  
2       **WITHOUT PREJUDICE TO THE NON-RENEWAL OF THE WORK**  
3       **PERMIT ISSUED TO THE FOREIGN NATIONAL, AND/OR THE**  
4       **BLACKLISTING OF THE EMPLOYER OF SUCH FOREIGN**  
5       **NATIONAL."**

6       Sec. 4. Article 41 of Presidential Decree No. 442 is hereby amended to read as  
7 follows:

8               "ARTICLE 41. Prohibition against transfer of employment **AND**  
9       **OTHER VIOLATIONS.**

10              "(a) After the issuance of an employment permit, the [alien]  
11       **FOREIGN NATIONAL** shall not transfer to another job or change his  
12       employer without prior approval of the Secretary of Labor. **THE**  
13       **EMPLOYMENT PERMIT ISSUED TO A FOREIGN NATIONAL**  
14       **SHALL BE SPECIFIC TO A PARTICULAR POSITION AND**  
15       **EMPLOYER OR ESTABLISHMENT. NO CHANGE IN THE**  
16       **POSITION OR EMPLOYER OF THE FOREIGN NATIONAL SHALL**  
17       **BE MADE WITHOUT PRIOR NOTICE AND APPROVAL OF THE**  
18       **SECRETARY OF LABOR. NOTICE TO THE DOLE SHALL BE MADE**  
19       **THIRTY (30) DAYS PRIOR TO THE INTENDED CHANGE IN**  
20       **POSITION OR EMPLOYER OR ESTABLISHMENT. FOR THIS**  
21       **PURPOSE, THE DOLE SHALL MAINTAIN A REGISTRY OF**  
22       **FOREIGN NATIONALS INDICATING THE STATUS OF**  
23       **EMPLOYMENT AND MOVEMENT OF POSITION OR**  
24       **EMPLOYMENT AFTER THE FOREIGN NATIONAL HAS BEEN**  
25       **ISSUED AN EMPLOYMENT PERMIT.**

26              "(b) Any non-resident [alien] **FOREIGN NATIONAL** who shall  
27       take up employment in violation of the provision of this Title and its  
28       implementing rules and regulations, shall be [~~punished in accordance~~  
29       ~~with the provisions of Articles 289 and 290 of the Labor Code~~] **METED**  
30       **WITH A FINE OF NOT LESS THAN TWENTY FIVE THOUSAND**  
31       **PESOS (P25,000.00) NOR MORE THAN FIFTY THOUSAND**

1 **PESOS (P50,000.00) AND SHALL BE BLACKLISTED FROM RE-**  
2 **ENTERING THE COUNTRY.**

3 "In addition, the [~~alien worker~~] **FOREIGN NATIONAL** shall be  
4 subject to deportation after service of his sentence.

5 **"(C) ANY EMPLOYER, ITS ATTORNEY-IN-FACT OR ANY**  
6 **OTHER DULY AUTHORIZED REPRESENTATIVE, WHO SHALL**  
7 **HIRE NON-RESIDENT FOREIGN NATIONALS IN VIOLATION OF**  
8 **ANY OF THE PROVISIONS OF THIS TITLE AND ITS**  
9 **IMPLEMENTING RULES AND REGULATIONS (IRR), SHALL BE**  
10 **METED WITH A FINE OF NOT LESS THAN ONE HUNDRED**  
11 **THOUSAND PESOS (P100,000.00) NOR MORE THAN TWO**  
12 **HUNDRED THOUSAND PESOS (P200,000.00). THE SECRETARY**  
13 **OF LABOR AND EMPLOYMENT MAY ALSO SUSPEND OR ORDER**  
14 **THE CLOSURE OF AN ERRING EMPLOYER FOR REPEATED**  
15 **VIOLATION OR BLATANT DISREGARD OF THE PROVISIONS OF**  
16 **THIS TITLE.**

17 **"IN ALL CASES, THE FINES IMPOSED HEREIN SHALL BE**  
18 **WITHOUT PREJUDICE TO OTHER ADMINISTRATIVE, CIVIL OR**  
19 **CRIMINAL LIABILITY THEY MAY INCUR BY REASON OF SUCH**  
20 **ACT OR OMISSION."**

21 Sec. 5. Article 42 of Presidential Decree No. 442 is hereby amended to read as  
22 follows:

23 **"ARTICLE 42. Submission of List. - [~~Any employer employing~~**  
24 **~~non-resident foreign nationals on the effective date of this Code~~] ALL**  
25 **EMPLOYERS** shall submit a list of [~~such nationals~~] **ENGAGED OR**  
26 **EMPLOYED NON-RESIDENT FOREIGN NATIONALS** to the  
27 [~~Secretary of Labor and Employment~~] **DOLE THROUGH THE**  
28 **REGIONAL OFFICE HAVING JURISDICTION OVER THEIR**  
29 **PRINCIPAL PLACE OF BUSINESS. THE LIST SHALL BE**  
30 **SUBMITTED** within thirty (30) **CALENDAR** days after [~~such date~~]  
31 **HIRING** indicating their names, citizenship, foreign and local  
32 addresses, nature of employment and status of stay in the country. [~~The~~

1            Secretary of Labor and Employment shall then determine if they are  
2            entitled to an employment permit.]

3            *Sec. 6. Implementing Rules and Regulations (IRR).* – Within ninety (90) days  
4            from the effectivity of this Act, the Secretary of Labor and Employment, in coordination  
5            with concerned agencies and in consultation with the relevant stakeholders, shall  
6            formulate the necessary IRR to implement the provisions of this Act.

7            *Sec. 7. Repealing Clause.* – Any law, presidential decree or issuance, executive  
8            order, letter of instruction, administrative order, rule, or regulation contrary to, or  
9            inconsistent with, the provisions of this Act are hereby repealed, modified, or amended  
10           accordingly.

11           *Sec. 8. Separability Clause.* – If any provision or part hereof is held invalid or  
12           unconstitutional, the remainder of the law or the provision or part not otherwise  
13           affected shall remain in full force and effect.

14           *Sec. 9. Effectivity.* – This Act shall take effect fifteen (15) days after its  
15           publication either in the *Official Gazette* or in at least two (2) newspapers of general  
16           circulation in the Philippines.

*Approved,*