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SUMMARY OF SENATE BILL ON SECOND READING*

Second Regular Session, Eighteenth Congress

S. NO. 1778 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

Author: Senators Joel Villanueva and Ramon Bong Revilla Jr.

Referred to: Committee on Labor, Employment and Human Resources Development

Key words: amendment of Articles 40, 41, 42 of the Labor Code of the Philippines, as amended, DOLE, non-resident foreign nationals, employment permit, exemption from labor market test, understudy/skills development program

The bill proposes to amend Art. 40 of the Labor Code as amended, by providing that all non-resident foreign nationals who seek employment in the Philippines shall obtain an employment permit from the Department of Labor and Employment. An employment permit may be issued to a non-resident foreign national after a determination of the non-availability of a qualified and willing Filipino national who will perform the services for which the foreign national is desired.

Under the bill, the Secretary of Labor and Employment is authorized to grant exemptions from the labor market test to foreign nationals as provided for under existing laws, as well as to occupations in short supply as determined by the DOLE's labor market information report and upon tripartite consultation.

The bill inserts a new Article 40-A which provides that foreign nationals issued employment permits in industries to be determined by the DOLE shall implement an understudy/skills development program. The program shall be approved by the DOLE and shall ensure the transfer of technology/skills to Filipinos with the potential of succeeding the foreign national

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in the same establishment within a specific period as may be determined by the DOLE, upon consultation with relevant government agencies and industry experts.

Failure of the foreign national to conduct or complete the understudy/skills development program within the specified period shall be meted with a fine of not less than one hundred thousand pesos (P100,000.00) for every year of non-compliance, without prejudice to the non-renewal of the work permit issued to the foreign national, and/or the blacklisting of the employer of such foreign national.

The bill also seeks to amend Article 41 of the Labor Code as amended, to read as follows: Prohibition against transfer of employment and other violations.

(a) Employment permit issued to a foreign national shall be specific to a particular position and employer or establishment. No change in the position or employer of the foreign national shall be made without prior notice and approval of the Secretary of Labor and Employment.

Notice to the DOLE shall be made thirty (30) days prior to the intended change in position or employer or establishment. For this purpose, the DOLE shall maintain a registry of foreign nationals indicating the status of employment and movement of position or employment after he/she has been issued an employment permit.

(b) Any non-resident foreign national who shall take up employment in violation of the provision of this title and its implementing rules and regulations, shall be meted with a fine of not less than twenty five thousand pesos (P25,000.00) nor more than fifty thousand pesos (P50,000.00) and shall be blacklisted from reentering the country. In addition, the foreign national shall be subject to deportation.

(c) Any employer, his/her attorney-in-fact or any other duly authorized representative, who shall hire non-resident foreign nationals in violation of any of the provision of this title and its implementing rules and regulations, shall be meted with a fine of not less than one hundred thousand pesos (P100,000.00) nor more than two hundred thousand pesos (P200,000.00). The Secretary of Labor and Employment may also suspend or order the closure of an erring employer for repeated violations or blatant disregard of the provisions of this title.

In all cases, the fines imposed herein shall be without prejudice to other administrative, civil or criminal liability they may incur by reason of such act or omission.

Lastly, the bill seeks to amend Article 42 of the Labor Code as amended, by providing that all employers shall submit a list of engaged or employed non-resident foreign nationals to the DOLE through the regional office having jurisdiction over their principal place of business. the list shall be submitted within 30 calendar days after hiring, indicating their names, citizenship, foreign and local addresses, nature of employment and status of stay in the country.

(Summary prepared by: Ma. Gloria Socorro A. Ocampo, 13 October 2020)

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