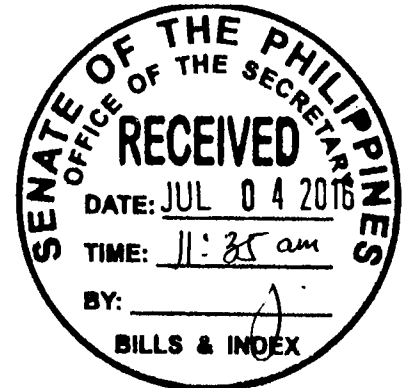


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

SENATE
S. No. 302



Introduced by Senator JUAN MIGUEL F. ZUBIRI

**AN ACT
STRENGTHENING THE CONSTITUTION RIGHT TO SECURITY OF TENURE,
AMENDING FOR THE PURPOSE THE LABOR CODE OF THE PHILIPPINES,
AND
FOR OTHER PURPOSES**

EXPLANATORY NOTE

Even as the Constitution provides in no uncertain terms the right of workers to security of tenure, employment practices that abrogate this right still persist. Preventing workers from becoming regular employees and the denial by employees of the existence of employee-employer relationship are but of the grave employment practices inconsistent with the works' right to security of tenure. Such practices are usually effected through the classification of regular employees as "casual", "renewal" of employment contract every six months; firing of employees and hiring of new ones every five or six months; labor-only contracting; and hiring of "agency workers".

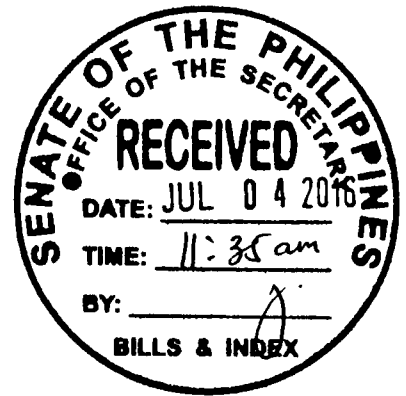
In general, these unfair practices violate the right of workers to just and humane employment terms and condition, to self-organization and collective bargaining. The non-recognition of workers as regular employees, for instance, is tantamount to withholding from them benefits accorded to regular employees, including the right to join unions and engage in collective bargaining. Similarly, these labor practices violate the right of regular members in the sense that they weaken the latter's bargaining unit because they cannot recruit workers who should have been regular employees.

Unfortunately, the legal provision at present does not deter unscrupulous employers from committing anti-labor practices. Furthermore, the law on subcontracting is even vague and admits interpretation inconsistent with the provision of the law on regular employment.

This legislation therefore intends to correct the significant omissions and loopholes in our laws by amending relevant sections in our Labor Code. Specifically, it seeks to: (1) render the misclassification of regular employees into other kinds of employees as an unfair labor practice and provide penalties thereof; and (2) harmonize the laws on subcontracting and regular employment. Through these, we hope to secure and strengthen the constitutionally guaranteed right of our workers to security of tenure.

Hence, support of this bill is earnestly sought.


JUAN MIGUEL F. ZUBIRI



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

1 SECTION 1. **Short Title.** This Act shall be known as the " Security of Tenure
2 Act. of 2016."

3 SECTION 2. **Labor-only contracting.** Act 106 of the Labor Code shall be
4 amended to read as follows:

5 "Art. 106. Contractor or sub-contractor.- Whenever an employment
6 enters into a contract with another person for the performance of the former's
7 work, the employees of the contractor and of the latter's subcontractor, if any,
8 shall be paid in according with the provisions of this Code.

9 In the event that the contractor or sub-contractor fails to pay the wages
10 of his employees in according with this Code, the employer shall be jointly and
11 severally liable to employees directly employed by him.

12 The Secretary of Labor and Employment may, by appropriate regulations,
13 restrict or prohibit the contracting out of labor to protect the right of workers
14 established under this Code. In so prohibiting or restricting, he may make
15 appropriate distinctions between labor-only contracting as well as differentiation
16 within these types of contracting, and determine who among the parties
17 involved shall be consideration the employer for purpose of this Code, to
18 prevent any violation or circumvention of any provision of this Code.
19

20 There is "labor-only" contracting where the person supplying workers to
21 an employer does not have substantial investment in the form of tools,
22 equipment, machinery, work premises, among others, and the workers recruited
23 and placed by such person are performing activities which are directly related to
24 the principal business of such employer or **WHERE THE PRINCIPAL**
25 **EMPLOYER HAS THE RIGHT OF CONTROL OVER MEANS BY WHICH THE**

1 **PURPORTED AGENCY OR CONTRACTUAL EMPLOYEE PERFORMS THE**
2 **ACTIVITIES, NOTWITHSTANDING CAPITAL AND/OR INVESTMENT IN**
3 **THE FORM OF TOOLS, EQUIPMENT, MACHINERIES, WORK PREMISES,**
4 **AMONG OTHERS.** In such cases, the person or intermediary shall be
5 considered merely as an agent of the employer who be responsible to the
6 workers in the same manner and extend as if the letter were directly employed
7 by **SUCH PRINCIPAL EMPLOYER.**

8 **IN THE PERFORMANCE OF ITS JOB, THE LEGITIMATE**
9 **SUBCONTRACTOR MUST USE ITS OWN EQUIPMENT, FACILITIES,**
10 **MACHINERIES AND TOOLS AND CANNOT RELY ON THE PRINCIPAL**
11 **CONTRACTOR. THE USE OF THE SUBCONTRACTOR OF THE**
12 **EQUIPMENT, FACILITIES, MACHINERIES AND TOOLS OF THE**
13 **PRINCIPAL IS AN INDICATION THAT THE SUBCONTRACTOR HAS NO**
14 **SUBSTANTIAL CAPITAL AND INVESTMENT.**

15 **THE EMPLOYER AND THE LABOR-ONLY CONTRACTOR OR**
16 **SUBCONTRACTOR WHO VIOLATE THE FOREGOING PROVISION SHALL**
17 **BE SOLIDARY LIABLE TO PAY INDEMNITY OF NO LESS THAN**
18 **P50,000.00 TO EACH EMPLOYEE UNDER THEN LABOR-ONLY**
19 **CONTRACTOR OR SUBCONTRACTOR, WITHOUT PREJUDICE TO THE**
20 **OTHER MONETARY AWARDS SUCH AS BACKWAGES, MONETARY**
21 **CLAIMS, AND CBA BENEFITS.**

22 SECTION 3. Lawful classification of regular employment. Art 280 of the
23 Labor Code shall be amended as follows:

24 "ART. 280. Regular and Casual Employment; Penalty in Case of Violation

25 -The provisions of written contract to the contrary notwithstanding and
26 regardless of the oral agreement of the parties, an employee shall be deemed to
27 be regular where the employee has been engaged to perform activities which
28 are usually necessary and desirable in the usual trade or business of the
29 employer, except where the employment has been fixed for a specific project or
30 undertaking the completion or termination of which has been determined at the
31 time of engagement of the employee, or where the work or services to be
32 performed is seasonal in nature and the employment is for the duration of the
33 season.

34 **SEASONAL AND PROJECT EMPLOYEES SHALL HAVE THE RIGHT**
35 **TO SECURITY OF TENURE, SUBJECT TO THE PROVISIONS ON**
36 **PROBATIONARY EMPLOYMENT, AND ARE ENTITLED TO RESUME**
37 **THEIR EMPLOYMENT IN THE SAME OR SIMILAR POSITION UPON THE**
38 **START OF THE NEXT SEASON OR PROJECT, AS THE CASE MAY BE;**
39 **PROVIDED THAT, DURING THE TIME THAT THEIR SERVICES ARE NOT**
40 **ACTUALLY AVAILED OF BY THE ESTABLISHMENT, THEY SHALL BE**
41 **CONSIDERED TO BE ON AUTHORIZED LEAVE WITHOUT PAY.** An
42 employment shall be deemed to be casual if it is not covered by the preceding
43 paragraph. [Provided, That any employee who has rendered at least one year of
44 service, whether such service is continuous or broken, shall be considered a
45 regular employee with respect to the activity in which he is employed and his

1 employment shall continue while such activity exists.] **CASUAL EMPLOYMENT**
2 **SHALL HAVE THE RIGHT TO SECURITY OF TENURE AND MAY BE**
3 **TERMINATED ONLY FOR JUST OR AUTHORIZED CAUSES. HOWEVER,**
4 **THEIR POSITION, NOT BEING NECESSARY OR DESIRABLE TO THE**
5 **USUAL TRADE OR BUSINESS OF THE EMPLOYER, MAY BE ELIMINATED**
6 **IF THE SERVICES ATTACHED THERETO ARE NO LONGER AVAILED OF**
7 **BY THE EMPLOYER. PROVIDED THAT IF THE POSITION HAS BEEN IN**
8 **EXISTENCE FOR MORE THAN ONE YEAR, IT SHALL BE CONSIDERED AS**
9 **REGULAR IN NATURE, SUBJECT TO THE PROVISIONS ON**
10 **PROBATIONARY EMPLOYMENT. TERMINATION WILL THEN BE**
11 **ALLOWED ONLY IF THERE IS JUST OR AUTHORIZED CAUSE.**

12 **THE PRINCIPAL EMPLOYER MUST DIRECTLY HIRE WORKERS**
13 **WHO ARE PERFORMING ACTIVITIES WHICH ARE USUALLY**
14 **NECESSARY OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF**
15 **THE EMPLOYER, WITHOUT PREJUDICE TO THEIR PROPER**
16 **CLASSIFICATION AS REGULAR, 30 SEASONAL, PROJECT, OR**
17 **EMPLOYEES HIRED FOR A SPECIFIC UNDERTAKING, AS PROVIDED**
18 **FOR IN THE FIRST PARAGRAPH. THE PRINCIPAL EMPLOYER' CANNOT**
19 **HIRE THROUGH SUBCONTRACTORS, LABOR CONTRACTORS,OR OTHER**
20 **SIMILAR AGENCIES AND "MANPOWER" SERVICE PROVIDERS,**
21 **WORKERS PERFORMING ACTIVITIES WHICH ARE USUALLY**
22 **NECESSARY OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF**
23 **THE EMPLOYER, REGARDLESS OF THE AMOUNT OF INVESTMENT AND**
24 **CAPITAL OF THE SUBCONTRACTOR OR LABOR CONTRACTOR.**

25 **LIKEWISE, IN NO CASE SHALL REGULAR EMPLOYMENT BE**
26 **SUBJECT TO A TERM, EXCEPT WHERE THE EMPLOYMENT HAS BEEN**
27 **FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE COMPLETION**
28 **OR TERMINATION OF WHICH HAS BEEN DETERMINED AT THE TIME**
29 **OF ENGAGEMENT OF THE EMPLOYEE, OR WHERE THE WORK OR**
30 **SERVICE TO BE PERFORMED IS SEASONAL IN NATURE AND THE**
31 **EMPLOYMENT IS FOR THE DURATION OF THE SEASON SUBJECT TO**
32 **PARAGRAPH 2 HEREOF.**

33 **HOWEVER, TERM EMPLOYMENT SHALL BE ALLOWED FOR**
34 **OVERSEAS FILIPINO WORKERS, SHOULD THE VALID CONTRACT OF**
35 **EMPLOYMENT SO PROVIDED FOR A TERM.**

36 **EMPLOYEES WHO ARE REGULAR, REGARDLESS OF THE ORAL**
37 **OR WRITTEN AGREEMENTS TO THE CONTRARY, SHALL BE**
38 **CONSIDERED PART OF THE APPROPRIATE COLLECTIVE BARGAINING**
39 **UNIT AND MAY EXERCISE THE RIGHT TO SELF-ORGANIZATION AND**
40 **COLLECTIVE BARGAINING.**

41 **AN EMPLOYER WHO VIOLATES THE FOREGOING SHALL BE**
42 **LIABLE TO PAY AN INDEMNITY OF P50,000.00 TO EACH EMPLOYEE,**
43 **WITHOUT PREJUDICE TO THE OTHER MONETARY AWARDS SUCH AS**
44 **BACKWAGES, MONETARY CLAIMS, AND CBA BENEFITS.**

1 SECTION 4. ***Non-recognition of regular status as unfair labor practice.***
2 Art. 249 (Unfair labor practices of employers) shall be amended as follows:

3 "ART. 249. Unfair labor practices of employers. - It shall be unlawful for an 24
4 employer to commit any of the following unfair labor practices:

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

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

9 (c) To contract out services or functions being performed by union members
10 when such will interfere with, restrain or coerce employees in the exercise of
11 their right to self-organization;

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

15 (e) To discriminate in regard to hire or tenure of employment or any term or
16 condition of employment in order to encourage or discourage membership in
17 any labor organization. Nothing in this Code or in any other law shall prevent
18 the parties from requiring membership in a recognized collective bargaining
19 agent as **LIKewise, IN NO CASE SHALL REGULAR EMPLOYMENT BE**
20 **SUBJECT TO A TERM, EXCEPT WHERE THE EMPLOYMENT HAS BEEN**
21 **FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE COMPLETION**
22 **OR TERMINATION OF WHICH HAS BEEN DETERMINED AT THE TIME**
23 **OF ENGAGEMENT OF THE EMPLOYEE, OR WHERE THE WORK OR**
24 **SERVICE TO BE PERFORMED IS SEASONAL IN NATURE AND THE**
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38 **BACKWAGES, MONETARY CLAIMS, AND CBA BENEFITS.**

39 (f) x x x

40 **(k) TO CLASSIFY WORKERS OF SUBCONTRACTORS OR LABOR-ONLY**
41 **CONTRACTORS, AGENCIES, AND OTHER NON-REGULAR WORKERS,**
42 **DEEMED AS REGULAR EMPLOYEES BY VIRTUE OF THE ACTIVITIES**

1 **THEY PERFORM AND OTHER CIRCUMSTANCES WHICH MADE THEIR**
2 **EMPLOYMENT REGULAR, AS CASUAL OR CONTRACTUAL WORKERS.**

3 **SECTION 5. *Repealing Clause.*** - Art. PD 442, as amended, otherwise known
4 as the Labor Code of the Philippines, and all other acts, laws, rules and regulations are
5 hereby repealed, modified, or amended accordingly.

6 **SECTION 6. *Separability Clause.*** - If any part, section or provision of this
7 Act shall be held invalid or unconstitutional, the other provisions shall not be affected
8 thereby.

9 **SECTION 7. *Effectivity Clause.*** - This Act shall take effect fifteen (15) days
10 after its publication in the Official Gazette or in at least two (2) newspapers of general
11 circulation.

12 Approved,