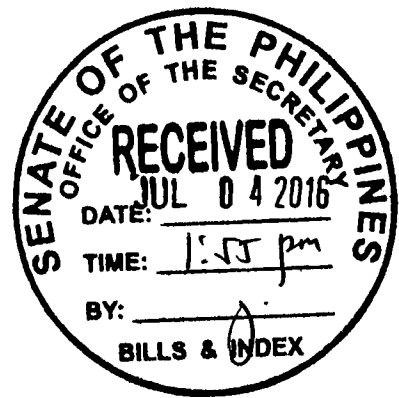


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE
SENATE BILL NO. 329

INTRODUCED BY SENATOR JOSEPH VICTOR G. EJERCITO

AN ACT
STRENGTHENING THE SECURITY OF TENURE OF
WORKERS IN THE PRIVATE SECTOR, AMENDING FOR
THE PURPOSE ARTICLES 248, 279, 280, 281 AND 288, AND
INTRODUCING NEW ARTICLES 106, 106-A, 106-B, 106-C,
106-D, 106-E, 280-A AND 280-B TO PRESIDENTIAL DECREE
NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE
LABOR CODE OF THE PHILIPPINES

EXPLANATORY NOTE

The 1987 Philippine Constitution, Article XIII, Section 3 thereof, states that:

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It is disheartening to know that our workers settle for intermittent and short-term employment which affects not only their ability to earn livelihood but also their productivity and quality of work.

This bill recognizes subcontracting as a valid business practice but also safeguards workers from unscrupulous and dubious subcontracting. Hence, it balances legitimate business interest with the need to protect workers from insecure employment conditions.

In particular, this legislative proposal is characterized by the following:

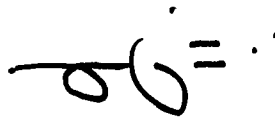
1. Many of the concepts and processes contained in the proposal reflect current practice as provided by Department Order No. 18 series of 2002 (DO 18). While some refinements have been made to DO 18 provisions, core concepts have been retained such as:

- a. Definition of the Contractor and Subcontractor
- b. Recognition of rights of subcontracted workers
- c. Maintenance of registration system for legitimate subcontractors

2. The salient features of this proposal include the following:

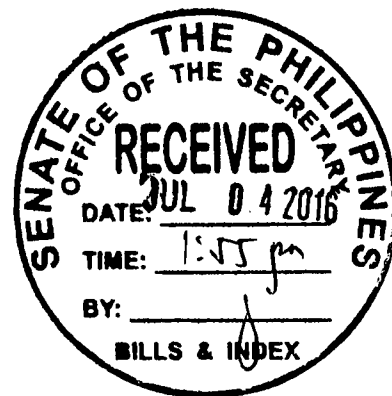
- a. Principals can engage a maximum of 10% subcontracted employees.
- b. Violation of contracting rules is made an unfair labor practice.
- c. Violation of contracting rules is penalized by a fine.

Hence, the passage of this bill is earnestly sought.



JOSEPH VICTOR G. EJERCITO
SENATOR

SEVENTEENTH CONGRESS OF THE)
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THE PURPOSE ARTICLES 248, 279, 280, 281 AND 288, AND
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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 the Labor Code is hereby repealed and substituted as
2 follows:

3

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

9

10 “In the event that the contractor or subcontractor fails to pay the wages
11 of his employees in accordance with this Code, the employer shall be
12 jointly and severally liable with his contractor or subcontractor to
13 such employees to the extent of the work performed under the
14 contract, in the same manner and extent that he is liable to employees
15 directly employed by him.

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“The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

“There is 'labor-only' contracting where the persons supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such 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.]

“ART. 106. CONCEPT AND NATURE OF SUBCONTRACTING ARRANGEMENTS. – IN LEGITIMATE SUBCONTRACTING, THERE EXISTS A TRILATERAL RELATIONSHIP UNDER WHICH THERE IS A CONTRACT FOR A SPECIFIC JOB, WORK OR SERVICE BETWEEN THE PRINCIPAL AND THE SUBCONTRACTOR, AND A CONTRACT OF EMPLOYMENT BETWEEN THE SUBCONTRACTOR AND ITS WORKERS. HENCE, THERE ARE THREE PARTIES INVOLVED IN THESE ARRANGEMENTS, THE PRINCIPAL WHICH DECIDES TO FARM OUT A JOB OR SERVICE TO A SUBCONTRACTOR, THE SUBCONTRACTOR WHICH HAS THE CAPACITY TO INDEPENDENTLY UNDERTAKE AND ACTUALLY UNDERTAKES THE PERFORMANCE OF THE JOB, WORK OR SERVICE, AND THE CONTRACTUAL WORKERS ENGAGED BY THE

1 SUBCONTRACTOR TO ACCOMPLISH THE JOB WORK OR
2 SERVICE.

3 "FOR PURPOSES OF THIS CODE, "SUBCONTRACTING" REFERS
4 TO AN ARRANGEMENT WHEREBY:

5 (A) A PRINCIPAL AGREES TO PUT OUT OR FARM OUT
6 WITH A SUBCONTRACTOR THE PERFORMANCE OR
7 COMPLETION OF A SPECIFIC JOB, WORK OR SERVICE
8 WITHIN A DEFINITE OR PREDETERMINED PERIOD,
9 REGARDLESS OF WHETHER SUCH JOB, WORK OR
10 SERVICE IS TO BE PERFORMED OR COMPLETED
11 WITHIN OR OUTSIDE THE PREMISES OF THE
12 PRINCIPAL; OR

13 (B) A PERSON, PARTNERSHIP, ASSOCIATION OR
14 CORPORATION WHICH, NOT BEING A PRINCIPAL,
15 CONTRACTS WITH A SUBCONTRACTOR FOR THE
16 PERFORMANCE OF ANY WORK, TASK, JOB OR
17 PROJECT."

18 SEC. 2. A new Article 106-A is hereby inserted in the Labor Code to read as follows:

19 "ART. 106 – A. RIGHTS AND LIABILITIES OF PARTIES. – (A.) THE
20 SUBCONTRACTED EMPLOYEE. IN ALL CASES, SUBCONTRACTED
21 EMPLOYEES SHALL BE ENTITLED TO ALL THE RIGHTS AND
22 PRIVILEGES DUE REGULAR EMPLOYEES INCLUDING THE
23 FOLLOWING:

24 I. SAFE AND HEALTHFUL WORKING CONDITIONS;
25 LABOR STANDARDS SUCH AS SERVICE
26 INCENTIVE LEAVES, REST DAYS, OVERTIME PAY,
27 HOLIDAY PAY, 13TH MONTH PAY AND SEPARATION
28 PAY;
29 RETIREMENT BENEFITS;
30 SOCIAL SECURITY AND WELFARE BENEFITS;

1 SELF-ORGANIZATION, COLLECTIVE BARGAINING
2 AND PEACEFUL CONCERTED ACTIVITIES; AND
3 SECURITY OF TENURE.

4 "IN ADDITION, SUBCONTRACTED EMPLOYEES SHALL
5 HAVE THE RIGHT TO A WRITTEN CONTRACT WHICH SHALL
6 INCLUDE THE FOLLOWING TERMS AND CONDITIONS:

7 I. THE SPECIFIC DESCRIPTION OF THE JOB, WORK OR
8 SERVICE TO BE PERFORMED BY THE CONTRACTUAL
9 EMPLOYEE; THE
10 PLACE OF WORK AND TERMS AND CONDITIONS OF
11 EMPLOYMENT, INCLUDING A STATEMENT OF THE
12 WAGE RATE APPLICABLE TO THE INDIVIDUAL
13 CONTRACTUAL EMPLOYEE; THE TERM OR
14 DURATION OF EMPLOYMENT, WHICH SHALL BE
15 COEXTENSIVE WITH THE CONTRACT OF THE
16 PRINCIPAL AND SUBCONTRACTOR, OR WITH THE
17 SPECIFIC PHASE FOR WHICH THE CONTRACTUAL
18 EMPLOYEE IS ENGAGED, AS THE CASE MAY BE.

19 "THE SUBCONTRACTED EMPLOYEE SHALL BE
20 INFORMED BY THE SUBCONTRACTOR OF THE FOREGOING
21 TERMS AND CONDITIONS ON OR BEFORE THE FIRST DAY OF
22 HIS EMPLOYMENT.

23 "(B.) THE PRINCIPAL AND THE SUBCONTRACTOR. THE
24 LEGITIMATE SUBCONTRACTOR SHALL BE CONSIDERED THE
25 EMPLOYER OF THE CONTRACTUAL EMPLOYEE FOR
26 PURPOSES OF ENFORCING THE PROVISIONS OF THE LABOR
27 CODE AND OTHER SOCIAL LEGISLATION. IN ALL CASES OF
28 SUBCONTRACTING, HOWEVER, THE PRINCIPAL SHALL BE
29 SOLIDARILY LIABLE WITH THE CONTRACTOR IN THE EVENT

1 OF ANY VIOLATION OF ANY PROVISION OF THE LABOR CODE,
2 INCLUDING THE FAILURE TO PAY WAGES.

3 "THE PRINCIPAL SHALL BE DEEMED THE EMPLOYER OF THE
4 CONTRACTUAL EMPLOYEE IN ANY OF THE FOLLOWING
5 CASES:

- 6 I. WHERE THERE IS LABOR-ONLY CONTRACTING; OR
- 7 II. IN THE ABSENCE OF THE WRITTEN CONTRACT
8 REQUIRED BY ARTICLE 106-A; OR
- 9 III. IN CASES OF VIOLATION OF ARTICLE 106 - B.

10 "IN ADDITION, THE PRINCIPAL SHALL BE SOLIDARILY LIABLE
11 WITH THE SUBCONTRACTOR IN CASE THE CONTRACT
12 BETWEEN THE PRINCIPAL AND SUBCONTRACTOR IS
13 PRETERMINATED FOR REASONS NOT ATTRIBUTABLE TO THE
14 FAULT OF THE SUBCONTRACTOR."

15
16 SEC. 3. A new Article 106-B is hereby inserted in the Labor Code to read as follows:

17 "ART. 106-B. PROHIBITION AGAINST LABOR-ONLY
18 SUBCONTRACTING. - ENGAGING IN LABOR-ONLY
19 CONTRACTING OR CONTRACTING WITH A LABOR-ONLY
20 CONTRACTOR IS STRICTLY PROHIBITED. FOR THIS PURPOSE,
21 LABOR-ONLY CONTRACTING REFERS TO AN ARRANGEMENT
22 WHERE THE SUBCONTRACTOR MERELY RECRUITS, SUPPLIES
23 OR PLACES WORKERS TO PERFORM A JOB, WORK OR
24 SERVICE FOR A PRINCIPAL, INCLUDING INSTANCES WHERE
25 ANY OF THE FOLLOWING IS PRESENT:

- 26
- 27 (A) THE SUBCONTRACTOR DOES NOT HAVE SUBSTANTIAL
28 CAPITAL AND INVESTMENT WHICH RELATES TO THE JOB,
29 WORK OR SERVICE TO BE PERFORMED;
- 30 (B) THE EMPLOYEES RECRUITED, SUPPLIED OR PLACED BY
31 SUCH SUBCONTRACTOR ARE PERFORMING ACTIVITIES

1 WHICH ARE USUALLY NECESSARY OR DESIRABLE OR
2 DIRECTLY RELATED TO THE USUAL BUSINESS OF THE
3 PRINCIPAL; OR

4 (C) THE PRINCIPAL HAS THE RIGHT TO CONTROL, WHETHER
5 EXERCISED OR NOT, NOT ONLY THE END TO BE ACHIEVED,
6 BUT ALSO THE MANNER AND MEANS TO BE USED IN
7 REACHING THAT END.

8
9 "AS USED IN THIS CODE, 'SUBSTANTIAL CAPITAL AND
10 INVESTMENT' IN SUBCONTRACTING ARRANGEMENTS
11 REFERS TO TOOLS, EQUIPMENT, IMPLEMENTS, MACHINERIES
12 AND WORK PREMISES, ACTUALLY AND DIRECTLY USED BY
13 THE SUBCONTRACTOR IN THE PERFORMANCE OR
14 COMPLETION OF THE JOB, WORK OR SERVICE CONTRACTED
15 OUT. THE USE OF THE SUBCONTRACTOR OF THE
16 EQUIPMENT, FACILITIES, MACHINERIES, AND TOOLS OF THE
17 PRINCIPAL IS AN INDICATION THAT THE SUBCONTRACTOR
18 HAS NO SUBSTANTIAL CAPITAL AND INVESTMENT. THE
19 EXISTENCE OF CAPITAL STOCKS AND SUBSCRIBED
20 CAPITALIZATION IN RELATION TO CORPORATIONS ENGAGED
21 IN SUBCONTRACTING DOES NOT BY ITSELF CONSTITUTE
22 SUBSTANTIAL CAPITAL AND INVESTMENT.

23
24 "AS USED IN THIS CODE, THE 'RIGHT TO CONTROL' IN
25 SUBCONTRACTING ARRANGEMENTS SHALL REFER TO THE
26 RIGHT RESERVED TO THE PERSON FOR WHOM THE SERVICES
27 OF THE CONTRACTUAL WORKERS ARE PERFORMED, TO
28 DETERMINE NOT ONLY THE END TO BE ACHIEVED, BUT ALSO
29 THE MANNER AND MEANS TO BE USED IN REACHING THAT
30 END."

31
32 SEC. 4. A new Article 106-C is hereby inserted in the Labor Code to read as
33 follows:

1 **“ART. 106-C. PROHIBITIONS IN SUBCONTRACTING**
2 **ARRANGEMENTS. – REGARDLESS OF COMPLIANCE WITH THE**
3 **IMMEDIATELY PRECEDING ARTICLE, THE FOLLOWING ACTS**
4 **ARE HEREBY DECLARED PROHIBITED FOR BEING CONTRARY**
5 **TO LAW OR PUBLIC POLICY:**

6 **(A) ENGAGING OR MAINTAINING BY THE PRINCIPAL OF**
7 **SUBCONTRACTED EMPLOYEES IN EXCESS OF 10% OF**
8 **THE PRINCIPAL’S TOTAL WORKFORCE. PROVIDED THAT**
9 **SUCH SUBCONTRACTED EMPLOYEES DO NOT PERFORM**
10 **WORK THAT IS NECESSARY OR DESIRABLE OR DIRECTLY**
11 **RELATED TO THE USUAL BUSINESS OR TRADE OR**
12 **BUSINESS OF THE EMPLOYER;**

13 **(B) CONTRACTING OUT OF A JOB, WORK OR SERVICE WHEN**
14 **THE SAME RESULTS IN THE TERMINATION OF REGULAR**
15 **EMPLOYEES AND REDUCTION OF WORK HOURS OR**
16 **REDUCTION OR SPLITTING OF THE BARGAINING UNIT;**

17 **(C) CONTRACTING OUT OF WORK WITH A ‘CABO’. FOR THIS**
18 **PURPOSE, ‘CABO’ REFERS TO A PERSON OR GROUP OF**
19 **PERSONS OR TO A LABOR GROUP WHICH, IN THE GUISE**
20 **OF A LABOR ORGANIZATION OR COOPERATIVE,**
21 **SUPPLIES WORKERS TO AN EMPLOYER, WITH OR**
22 **WITHOUT ANY MONETARY OR OTHER CONSIDERATION,**
23 **WHETHER IN THE CAPACITY OF AN AGENT OF THE**
24 **EMPLOYER OR AS AN OSTENSIBLE INDEPENDENT**
25 **CONTRACTOR;**

26 **(D) TAKING UNDUE ADVANTAGE OF THE ECONOMIC**
27 **SITUATION OR LACK OF BARGAINING STRENGTH OF THE**
28 **CONTRACTUAL EMPLOYEE, OR UNDERMINING HIS**
29 **SECURITY OF TENURE OR BASIC RIGHTS, OR**
30 **CIRCUMVENTING THE PROVISIONS OF REGULAR**
31 **EMPLOYMENT, IN ANY OF THE FOLLOWING INSTANCES:**

- I. IN ADDITION TO HIS ASSIGNED FUNCTIONS, REQUIRING THE CONTRACTUAL EMPLOYEE TO PERFORM FUNCTIONS WHICH ARE CURRENTLY BEING PERFORMED BY THE REGULAR EMPLOYEES OF THE PRINCIPAL OR OF THE SUBCONTRACTOR;
- II. REQUIRING HIM TO SIGN, AS A PRECONDITION TO EMPLOYMENT OR CONTINUED EMPLOYMENT, AN ANTEDATED RESIGNATION LETTER; A BLANK PAYROLL; A WAIVER OF LABOR STANDARDS INCLUDING MINIMUM WAGES AND SOCIAL OR WELFARE BENEFITS; OR A QUITCLAIM RELEASING THE PRINCIPAL, SUBCONTRACTOR FROM ANY LIABILITY AS TO PAYMENT OF FUTURE CLAIMS; AND
- III. REQUIRING HIM TO SIGN A CONTRACT FIXING THE PERIOD OF EMPLOYMENT TO A TERM SHORTER THAN THE TERM OF THE CONTRACT BETWEEN THE PRINCIPAL AND THE SUBCONTRACTOR, UNLESS THE LATTER CONTRACT IS DIVISIBLE INTO PHASES FOR WHICH SUBSTANTIALLY DIFFERENT SKILLS ARE REQUIRED AND THIS IS MADE KNOWN TO THE EMPLOYEE AT THE TIME OF ENGAGEMENT.

(E) CONTRACTING OUT OF A JOB, WORK OR SERVICE THROUGH AN IN-HOUSE AGENCY WHICH REFERS TO A:

- I. SUBCONTRACTOR ENGAGED IN THE SUPPLY OF LABOR WHICH IS OWNED, MANAGED OR CONTROLLED BY THE PRINCIPAL; OR
- II. SUBCONTRACTOR IN WHICH THE PRINCIPAL OWNS OR OTHERWISE REPRESENTS ANY SHARE OF STOCK; OR
- III. SUBCONTRACTOR WHICH OPERATES SOLELY FOR THE PRINCIPAL.

1 (F) CONTRACTING OUT OF A JOB, WORK OR SERVICE THAT IS
2 NECESSARY OR DESIRABLE OR DIRECTLY RELATED TO
3 THE BUSINESS OR OPERATION OF THE PRINCIPAL;

4 (G) CONTRACTING OUT OF A JOB, WORK OR SERVICE BEING
5 PERFORMED BY OR PREVIOUSLY PERFORMED BY
6 REGULAR EMPLOYEES AND/OR MEMBERS OF THE
7 BARGAINING UNIT.”

8 SEC. 5. A new Article 106-D is hereby inserted in the Labor Code to read as follows:

9
10 “ART. 106 – D. REGISTRATION OF SUBCONTRACTORS. – (A.)
11 *MANDATORY REGISTRATION.* IT SHALL BE MANDATORY FOR
12 ALL PERSONS OR ENTITIES ACTING AS SUBCONTRACTORS TO
13 REGISTER UNDER A REGISTRATION SYSTEM HEREBY
14 ESTABLISHED TO GOVERN CONTRACTING ARRANGEMENTS
15 AND TO BE IMPLEMENTED BY THE REGIONAL OFFICES OF
16 THE DEPARTMENT OF LABOR AND EMPLOYMENT.

17
18 “NON-REGISTERED PERSONS OR ENTITIES ACTING AS
19 SUBCONTRACTORS SHALL BE DEEMED AS LABOR-ONLY
20 CONTRACTORS. MERE REGISTRATION, WITHOUT A
21 SHOWING OF COMPLIANCE WITH ALL REQUIREMENTS FOR
22 LEGITIMATE SUBCONTRACTING AND AVOIDANCE OF ALL
23 PROHIBITIONS OF SUBCONTRACTING, SHALL NOT INDICATE
24 LEGITIMATE SUBCONTRACTING.

25
26 “(B.) *REQUIREMENTS FOR REGISTRATION.* A SUBCONTRACTOR
27 MAY BE LISTED IN THE REGISTRY OF SUBCONTRACTORS
28 UPON COMPLETION AND SUBMISSION OF AN APPLICATION
29 FORM PROVIDED BY THE DEPARTMENT. IN THE
30 APPLICATION FORM, THE APPLICANT SUBCONTRACTOR
31 SHALL PROVIDE THE FOLLOWING INFORMATION:

- 1 I. THE NAME AND BUSINESS ADDRESS OF THE
2 APPLICANT AND THE AREA OR AREAS WHERE IT
3 SEEKS TO OPERATE;
- 4 II. THE NAMES AND ADDRESSES OF OFFICERS, IF THE
5 APPLICANT IS A CORPORATION, PARTNERSHIP,
6 COOPERATIVE OR UNION;
- 7 III. THE NATURE OF THE APPLICANT'S BUSINESS AND
8 THE INDUSTRY OR INDUSTRIES WHERE THE
9 APPLICANT SEEKS TO OPERATE;
- 10 IV. THE NUMBER OF REGULAR WORKERS; THE LIST OF
11 CLIENTS, IF ANY; THE NUMBER OF PERSONNEL
12 ASSIGNED TO EACH CLIENT, IF ANY AND THE
13 SERVICES PROVIDED TO THE CLIENT;
- 14 V. THE DESCRIPTION OF THE PHASES OF THE
15 CONTRACT AND THE NUMBER OF EMPLOYEES
16 COVERED IN EACH PHASE, WHERE APPROPRIATE;
17 AND
- 18 VI. A COPY OF AUDITED FINANCIAL STATEMENTS IF
19 THE APPLICANT IS A CORPORATION, PARTNERSHIP,
20 COOPERATIVE OR A UNION, OR COPY OF THE
21 LATEST INCOME TAX RETURN IF THE APPLICANT IS
22 A SOLE PROPRIETORSHIP.

23
24 "THE APPLICATION SHALL BE SUPPORTED BY THE
25 FOLLOWING:

- 26
27 I. A CERTIFIED COPY OF A CERTIFICATE OF
28 REGISTRATION OF FIRM OR BUSINESS NAME FROM
29 THE SECURITIES AND EXCHANGE COMMISSION
30 (SEC), DEPARTMENT OF TRADE AND INDUSTRY
31 (DTI), COOPERATIVE DEVELOPMENT AUTHORITY
32 (CDA), OR FROM THE DOLE IF THE APPLICANT IS A
33 UNION; AND

1 II. A CERTIFIED COPY OF THE LICENSE OR BUSINESS
2 PERMIT ISSUED BY THE LOCAL GOVERNMENT UNIT
3 OR UNITS WHERE THE SUBCONTRACTOR
4 OPERATES.

5
6 "THE APPLICATION SHALL BE VERIFIED AND SHALL INCLUDE
7 AN UNDERTAKING THAT THE SUBCONTRACTOR SHALL ABIDE
8 BY ALL APPLICABLE LABOR LAWS AND REGULATIONS.

9
10 "(C.) *FILING AND PROCESSING OF APPLICATIONS.* THE
11 APPLICATION AND ITS SUPPORTING DOCUMENTS SHALL BE
12 FILED IN TRIPLICATE IN THE REGIONAL OFFICES WHERE
13 THE APPLICANT PRINCIPALLY OPERATES. NO APPLICATION
14 FOR REGISTRATION SHALL BE ACCEPTED UNLESS ALL THE
15 FOREGOING REQUIREMENTS ARE COMPLIED WITH. THE
16 SUBCONTRACTOR SHALL BE DEEMED REGISTERED UPON
17 PAYMENT OF A REGISTRATION FEE TO BE DETERMINED BY
18 THE REGIONAL OFFICE.

19
20 "WHERE ALL THE SUPPORTING DOCUMENTS HAVE BEEN
21 SUBMITTED, THE REGIONAL OFFICE MAY DENY OR APPROVE
22 THE APPLICATION WITHIN SEVEN (7) WORKING DAYS AFTER
23 ITS FILING.

24
25 "UPON REGISTRATION, THE REGIONAL OFFICE SHALL
26 RETURN ONE SET OF THE DULY-STAMPED APPLICATION
27 DOCUMENTS TO THE APPLICANT, RETAIN ONE SET FOR ITS
28 FILE, AND TRANSMIT THE REMAINING SET TO THE BUREAU
29 OF LOCAL EMPLOYMENT. THE BUREAU SHALL DEVISE THE
30 NECESSARY FORMS FOR THE EXPEDITIOUS PROCESSING OF
31 ALL APPLICATIONS FOR REGISTRATION.

32

1 **“(D.) ANNUAL REPORTING OF REGISTERED**
2 **CONTRACTORS. THE SUBCONTRACTOR SHALL SUBMIT IN**
3 **TRIPPLICATE COPIES AN ANNUAL REPORT USING A**
4 **PRESCRIBED FORM TO THE APPROPRIATE REGIONAL**
5 **OFFICE NOT LATER THAN THE 15TH OF JANUARY OF THE**
6 **FOLLOWING YEAR. THE REPORT SHALL INCLUDE THE**
7 **FOLLOWING DOCUMENTS:**

8
9 **I. A LIST OF CONTRACTS ENTERED WITH THE**
10 **PRINCIPAL DURING THE SUBJECT REPORTING**
11 **PERIOD;**

12 **II. THE NUMBER OF WORKERS COVERED BY EACH**
13 **CONTRACT WITH THE PRINCIPAL;**

14 **III. A SWORN STATEMENT SIGNED BY THE**
15 **HIGHEST EXECUTIVE OFFICER AND THE**
16 **CHIEF FINANCIAL OFFICER THAT THE**
17 **SUBCONTRACTOR HAS REMITTED ALL KINDS OF**
18 **PAYMENTS AND PREMIUMS TO THE SOCIAL**
19 **SECURITY SYSTEM (SSS), THE HOME DEVELOPMENT**
20 **MUTUAL FUND (HDMF), PHILHEALTH, EMPLOYEES**
21 **COMPENSATION COMMISSION (ECC), AND BUREAU**
22 **OF INTERNAL REVENUE (BIR) FOR ALL**
23 **CONTRACTUAL EMPLOYEES PERTAINING TO THE**
24 **REPORTING PERIOD.**

25
26 **“THE REGIONAL OFFICE SHALL RETURN ONE SET OF THE**
27 **DULY-STAMPED REPORT TO THE SUBCONTRACTOR, RETAIN**
28 **ONE SET FOR ITS FILE, AND TRANSMIT THE REMAINING SET**
29 **TO THE BUREAU OF LOCAL EMPLOYMENT WITHIN FIVE (5)**
30 **DAYS FROM RECEIPT THEREOF.**

31
32 **“(E.) DELISTING OF CONTRACTORS OR SUBCONTRACTORS. THE**
33 **REGIONAL DIRECTOR SHALL CANCEL THE REGISTRATION OF**

1 **SUBCONTRACTORS BASED ON ANY OF THE FOLLOWING**
2 **GROUNDS:**

- 3
- 4 **I. NON-SUBMISSION OF CONTRACTS BETWEEN THE**
5 **PRINCIPAL AND THE SUBCONTRACTOR WHEN**
6 **REQUIRED TO DO SO;**
- 7 **II. NON-SUBMISSION OF SWORN DOCUMENTS STATED**
8 **IN ARTICLE 106-D 4 (C);**
- 9 **III. ENGAGEMENT IN LABOR-ONLY CONTRACTING;**
- 10 **IV. VIOLATION OF THE PROHIBITED ACTIVITIES**
11 **PROVIDED BY THIS CODE;**
- 12 **V. NON-COMPLIANCE WITH LABOR STANDARDS AND**
13 **WORKING CONDITIONS.**

14

15 ***“(F.) RENEWAL OF REGISTRATION OF SUBCONTRACTORS. ALL***
16 ***REGISTERED SUBCONTRACTORS MAY APPLY FOR RENEWAL***
17 ***OF REGISTRATION EVERY TWO YEARS. FOR THIS PURPOSE,***
18 ***THE TRIPARTITE INDUSTRIAL PEACE COUNCIL (TIPC) AS***
19 ***CREATED UNDER EXECUTIVE ORDER NO. 49, SHALL SERVE AS***
20 ***THE OVERSIGHT COMMITTEE TO VERIFY AND MONITOR THE***
21 ***FOLLOWING:***

- 22
- 23 **I. ENGAGING IN ALLOWABLE CONTRACTING ACTIVITIES;**
24 **AND**
- 25 **II. COMPLIANCE WITH ADMINISTRATIVE REPORTING**
26 **REQUIREMENTS.”**

27

28 **SEC. 6. A new Article 106-E is hereby inserted in the Labor Code to read as follows:**

29

30 **“ART. 106-E. DUTY TO PRODUCE COPY OF CONTRACT. – THE**
31 **PRINCIPAL OR SUBCONTRACTOR SHALL PRODUCE A COPY**
32 **OF THE CONTRACT BETWEEN THE PRINCIPAL AND THE**
33 **CONTRACTOR IN THE COURSE OF INSPECTION. THE**

1 **SUBCONTRACTOR SHALL ALSO PRODUCE A COPY OF THE**
2 **CONTRACT OF EMPLOYMENT OF SUBCONTRACTED**
3 **WORKERS WHEN DIRECTED TO DO SO BY THE REGIONAL**
4 **DIRECTOR OR HIS AUTHORIZED REPRESENTATIVE.**

5
6 **“A COPY OF THE CONTRACT BETWEEN THE**
7 **SUBCONTRACTED EMPLOYEE AND THE SUBCONTRACTOR**
8 **SHALL BE FURNISHED THE CERTIFIED BARGAINING AGENT,**
9 **IF THERE IS ANY.”**

10
11 **SEC. 7.** Article 248 of the Labor Code is hereby amended to read as follows:

12
13 **“Art. 248. Unfair labor practices of employers. - It shall be unlawful for an**
14 **employer to commit any of the following unfair labor practice:**

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

17 (b) To require as a condition of employment that a person or an employee
18 shall not join a labor organization or shall withdraw from one to which
19 he belongs;

20 (c) To **ENGAGE A LABOR-ONLY CONTRACTOR OR TO**
21 contract out services or functions being performed by [union]
22 **MEMBERS OF, OR POSITIONS COVERED BY, THE**
23 **BARGAINING UNIT AND/OR REGULAR RANK-AND-FILE**
24 **AND SUPERVISORY EMPLOYEES** [when Such will interfere
25 with, restrain or coerce employees in the exercise of their rights to self-
26 organization];

27 (d) To initiate, dominate, assist or otherwise interfere with the formation or
28 administration of any labor organization, including the giving of financial
29 or other support to it or its organizers or supporters;

- 1 (e) To discriminate in regard to wages, hours of work and other terms and
2 conditions of employment in order to encourage or discourage
3 membership in any labor organization. Nothing in this Code or in any
4 other law shall stop the parties from requiring membership in a
5 recognized collective bargaining agent as a condition for employment,
6 except those employees who are already members of another union at the
7 time of the signing of the collective bargaining agreement. Employees of
8 an appropriate bargaining unit who are not members of the recognized
9 collective bargaining agent may be assessed a reasonable fee equivalent
10 to the dues and other fees paid by members of the recognized collective
11 bargaining agent, if such non-union members accept the benefits under
12 the collective bargaining agreement: Provided, that the individual
13 authorization required under Article 242, paragraph (o) of this Code shall
14 not apply to the non-members of the recognized collective bargaining
15 agent;
- 16 (f) To dismiss, discharge or otherwise prejudice or discriminate against an
17 employee for having given or being about to give testimony under this
18 Code;
- 19 (g) To violate the duty to bargain collectively as prescribed by this Code;
- 20 (h) To pay negotiation or attorney's fees to the union or its officers or agents
21 as part of the settlement of any issue in collective bargaining or any other
22 dispute; [or]
- 23 (i) To violate a collective bargaining agreement [.] **OR**
- 24 **(J) TO DENY THE EXISTENCE OF EMPLOYER-EMPLOYEE**
25 **RELATIONSHIP AND/OR TO CLASSIFY AS CASUAL,**
26 **CONTRACTUAL, SUBCONTRACTED EMPLOYEES, AGENCY**
27 **EMPLOYEES, OR OTHER NON-REGULAR CLASSIFICATION**
28 **THOSE EMPLOYEES WHO ARE REGULAR EMPLOYEES BY**
29 **VIRTUE OF ARTICLE 280 OF THIS CODE.**

1 “ The provisions of the preceding paragraph notwithstanding, only the officers
2 and agents of corporations, associations or partnerships who have actually
3 participated in, authorized or ratified unfair labor practices shall be held
4 criminally liable.”

5 **SEC. 8.** Article 279 of the Labor Code is hereby amended to read as follows:
6

7 **“ART. 279. Security of Tenure. – [In cases of regular employment, the**
8 **employer shall not terminate the services of an employee] ALL**
9 **EMPLOYEES SHALL ENJOY SECURITY OF TENURE AND SHALL**
10 **NOT BE TERMINATED** except for a just cause or when authorized by this
11 Title. **ALSO, THE RIGHT TO NOTICE IN EMPLOYMENT**
12 **RELATIONS REQUIRES ANY EMPLOYER WHO SEEKS TO**
13 **DISMISS A WORKER TO FURNISH HIM A WRITTEN NOTICE**
14 **STATING THE PARTICULAR ACTS OR OMISSION**
15 **CONSTITUTING THE GROUNDS FOR HIS DISMISSAL. IN CASES**
16 **OF ABANDONMENT OF WORK, THE WRITTEN NOTICE SHALL**
17 **BE SERVED AT THE WORKERS’ LAST KNOWN ADDRESS.**
18 **ENTITLES THE WORKER AN OPPORTUNITY TO ANSWER THE**
19 **ALLEGATIONS STATED AGAINST HIM IN THE NOTICE OF**
20 **DISMISSAL WITHIN A PERIOD OF 5 CALENDAR DAYS FROM**
21 **RECEIPT OF SUCH NOTICE AND WITH THE ASSISTANCE OF A**
22 **REPRESENTATIVE IF HE SO DESIRES. THE RIGHT TO NOTICE**
23 **REQUIRES THE EMPLOYER TO AFFORD THE WORKER AMPLE**
24 **OPPORTUNITY TO BE HEARD AND TO DEFEND HIMSELF WITH**
25 **THE ASSISTANCE OF HIS REPRESENTATIVE, IF HE SO DESIRES.**

26
27 **“An employee who is [unjustly] dismissed from work IN VIOLATION OF**
28 **ANY OF HIS RIGHTS UNDER THIS ARTICLE, INCLUDING THE**
29 **RIGHT TO NOTICE AS ELABORATED IN THE PRECEDING**
30 **PARAGRAPH, shall be entitled to IMMEDIATE reinstatement without**
31 **loss of seniority rights and other privileges and to his full back wages,**
32 **inclusive of allowances, and to his other benefits or their monetary equivalent**

1 computed from the time his compensation was withheld from him up to the
2 time of his actual reinstatement.”

3
4 **SEC. 9.** Article 280 of the Labor Code is hereby amended to read as follows:

5
6 **“ART. 280. Regular and Casual Employment.** - The provisions of written
7 agreement to the contrary notwithstanding and regardless of the oral
8 agreement of the parties, an employment shall be deemed to be regular where
9 the employee has been engaged to perform activities which are usually
10 necessary or desirable **OR DIRECTLY RELATED TO** the usual business
11 or trade of the employer [except where the employment has been fixed for a
12 specific project or undertaking the completion or termination of which has
13 been determined at the time of the engagement of the employee or where the
14 work or service to be performed is seasonal in nature and the employment is
15 for the duration of the season].

16 “An employment shall be deemed to be casual if it is not **USUALLY**
17 **NECESSARY OR DESIRABLE OR** [covered by the preceding paragraph]
18 **RELATED TO THE USUAL BUSINESS OF THE EMPLOYER:**
19 *Provided,* That any employee who has rendered at least one year of service,
20 whether such service is continuous or broken, shall be considered a regular
21 employee with respect to the activity in which he is employed and his
22 employment shall continue [while such activity exists] **UNLESS HE IS**
23 **TERMINATED FOR A JUST CAUSE OR WHEN AUTHORIZED BY**
24 **THIS TITLE.”**

25
26 **SEC. 10. Project and Extra Employment.** A new Article 280-A is hereby
27 inserted in the Labor Code to read as follows:

28
29 **“ART. 280-A. PROJECT, EXTRA AND SEASONAL EMPLOYMENT.**
30 **– PROJECT EMPLOYMENT REFERS TO THAT WHICH HAS**
31 **BEEN FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE**
32 **COMPLETION OR TERMINATION OF WHICH HAS BEEN**

1 DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE
2 TIME OF HIS ENGAGEMENT.

3
4 "EXTRA EMPLOYMENT REFERS TO ADDITIONAL WORK TO BE
5 PERFORMED IN RESTAURANT AND HOTEL ESTABLISHMENTS
6 SPECIFICALLY FOR BANQUET FUNCTIONS, SEMINARS AND
7 SIMILAR FUNCTIONS WHERE THE REGULAR EMPLOYEES
8 CANNOT REASONABLY COPE WITH THE INCREASED
9 DEMANDS OF SUCH EVENTS.

10
11 "SEASONAL EMPLOYMENT REFERS TO THE PERFORMANCE OF
12 AGRICULTURAL WORK [] THAT IS SEASONAL IN NATURE AND
13 THE EMPLOYMENT IS FOR THE DURATION OF THE PLANTING
14 OR HARVESTING SEASON.

15
16 "PROJECT, EXTRA AND SEASONAL EMPLOYEES SHALL HAVE
17 THE RIGHT TO SECURITY OF TENURE AND ARE ENTITLED TO
18 RESUME THEIR EMPLOYMENT IN THE SAME OR SIMILAR
19 POSITION UPON THE START OF THE NEXT PROJECT OR
20 OCCASION FOR EXTRA OR SEASONAL EMPLOYMENT, AS THE
21 CASE MAY BE; *PROVIDED*, THAT, DURING THE TIME THAT
22 THEIR SERVICES ARE NOT ACTUALLY AVAILED OF, THEY
23 SHALL BE CONSIDERED TO BE ON AUTHORIZED LEAVE
24 WITHOUT PAY."

25
26 SEC. 11. A new Article 280-B is hereby inserted in the Labor Code to read
27 as follows:

28
29 "ART. 280-B. PROHIBITION AGAINST FIXED TERM
30 EMPLOYMENT. - NO EMPLOYER SHALL HIRE ANY
31 EMPLOYEE FOR A FIXED PERIOD, EXCEPT: (1) PROJECT
32 EMPLOYEES; (2) EXTRA EMPLOYEES; (3) SEASONAL
33 EMPLOYEES; (4) IN INDUSTRIES THAT ARE CERTIFIED BY

1 THE PRESIDENT, IN AN EXECUTIVE ORDER, AS
2 ALLOWABLE, DUE TO EXISTING AND SUBSTANTIAL
3 LOSSES IN THE INDUSTRY AS A WHOLE, BROUGHT
4 ABOUT BY AN INABILITY TO PRICE GOODS
5 COMPETITIVELY IN THE MARKET DESPITE RESORT TO
6 ALL REASONABLE MEASURES; PROVIDED THAT SUCH
7 CERTIFICATION SHALL BE FOR A PERIOD OF AT MOST
8 THREE (3) YEARS; PROVIDED FURTHER THAT THE
9 PRESIDENT MAY RENEW THE CERTIFICATION UPON
10 EXPIRY, SHOULD THE CIRCUMSTANCES SUBSIST, FOR A
11 SIMILAR PERIOD AND SUBJECT TO SIMILAR RENEWALS;
12 (5) OVERSEAS FILIPINO WORKERS; (6) THOSE HIRED TO
13 PLAY PROFESSIONAL SPORTS; (7) THOSE APPOINTED TO
14 SENSITIVE POSITIONS IN EDUCATIONAL INSTITUTIONS
15 SUCH AS DEAN, ASSISTANT DEAN, PRINCIPAL AND
16 COLLEGE SECRETARY; AND (8) THOSE EMPLOYED AS
17 MEMBERS OF THE MANAGERIAL STAFF. OTHER THAN
18 THE FOREGOING EXCEPTIONS ANY STIPULATION
19 FIXING A PERIOD OF EMPLOYMENT SHALL BE VOID.”
20

21 **SEC. 12.** Article 281 of the Labor Code is hereby amended to read as follows:
22

23 **“ART. 281. Probationary employment.** - Probationary employment shall not
24 exceed six (6) months from the date the employee started working [unless it
25 is covered by an apprenticeship agreement stipulating a longer period]. The
26 services of an employee who has been engaged on a probationary basis may
27 be terminated for a just cause or when he fails to qualify as a regular
28 employee in accordance with reasonable standards made known by the
29 employer to the employee at the time of his engagement. An employee who is
30 allowed to work after a probationary period, **EVEN UNDER THE GUISE**
31 **OF AN EXTENSION**, shall be considered a regular employee.”
32

1 THE TERMINATION OF PROBATIONARY EMPLOYEES SHALL
2 NOT BE VALID IF DONE TO PRECLUDE ACQUISITION OF
3 SECURITY OF TENURE BY THE EMPLOYEE. THE PRESENCE
4 OF ANY OF THE FOLLOWING CIRCUMSTANCES SHALL
5 CREATE A REBUTTABLE PRESUMPTION OF THE INTENT TO
6 CIRCUMVENT THE RIGHT TO SECURITY OF TENURE OF
7 PROBATIONARY EMPLOYEES:

- 8
- 9 1. TERMINATION OF ALL OR ALMOST ALL OF THE
10 PROBATIONARY EMPLOYEES AT THE END OF THE
11 PROBATIONARY PERIOD AND THE SUBSEQUENT HIRING OF
12 EMPLOYEES PERFORMING THE SAME WORK OR TASK
13 AND/OR OCCUPYING THE SAME POSITION AS THOSE
14 VACATED BY THE PREVIOUS PROBATIONARY EMPLOYEES.
 - 15 2. MAINTAINING PROBATIONARY EMPLOYEES IN EXCESS OF
16 30% OF THE TOTAL WORKFORCE. HOWEVER, NEWLY-
17 CREATED COMPANIES/EMPLOYERS ARE EXEMPTED FROM
18 OBSERVING THE FOREGOING PERCENTAGE RESTRICTION
19 WITHIN ONE (1) YEAR FROM THE START OF THEIR BUSINESS
20 OPERATIONS.

21

22 SEC. 13. Article 288 of the Labor Code is hereby amended to read as
23 follows:

24

25 "ART. 288. Penalties. - Except as otherwise provided in this Code, or unless
26 the acts complained of hinge on a question of interpretation or
27 implementation of ambiguous provisions of an existing collective bargaining
28 agreement, any violation of the provisions of this Code declared to be
29 unlawful or penal in nature shall be punished with a fine of not less than One
30 Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos
31 (P10,000.00) or imprisonment of not less than three months nor more than
32 three years, or both such fine and imprisonment at the discretion of the court.

1 “ANY PRINCIPAL OR SUBCONTRACTOR WHO ENGAGES IN
2 LABOR ONLY CONTRACTING AND/OR VIOLATES ARTICLES
3 106, 106-A, 106-B, 106-C, 106-D AND 106-E SHALL BE SOLIDARILY
4 LIABLE TO INDEMNIFY EACH SUBCONTRACTED EMPLOYEE
5 NO LESS THAN P50,000.00 WITHOUT PREJUDICE TO OTHER
6 MONETARY AWARDS TO WHICH SUCH SUBCONTRACTED
7 EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES,
8 MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE
9 CERTIFIED BARGAINING AGREEMENT OR COMPANY POLICY,
10 WHETHER WRITTEN OR OTHERWISE.

11
12 “ANY EMPLOYER WHO DELIBERATELY CATEGORIZES OR
13 OTHERWISE TREATS REGULAR EMPLOYEES TO BE ANY NON-
14 REGULAR EMPLOYEE SHALL BE LIABLE TO INDEMNIFY EACH
15 MISCLASSIFIED EMPLOYEE NO LESS THAN P50,000.00
16 WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO
17 WHICH SUCH EMPLOYEE MAY BE ENTITLED SUCH AS
18 BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN
19 APPLICABLE CERTIFIED BARGAINING AGREEMENT.

20
21 “ In addition to such penalty, any alien found guilty shall be summarily
22 deported upon completion of service of sentence.

23
24 “ Any provision of law to the contrary notwithstanding, any criminal offense
25 punished in this Code, shall be under the concurrent jurisdiction of the
26 Municipal or City Courts and the Courts of First Instance.”

27
28 **SEC. 8. Implementing Rules and Regulations.** - The Department of Labor
29 and Employment (DOLE) shall issue, within 60 days after the effectivity of this Act,
30 the rules and regulations for its effective implementation.

31 **SEC. 9. Separability Clause.** - If, for any reason, any section or provision
32 of this Act is held unconstitutional or invalid, the other sections or provisions hereof
33 shall not be affected thereby and shall continue to be in full force and effect.

1 **SEC. 10. Repealing Clause.** - All laws, decrees, executive orders, rules and
2 regulations, or parts thereof inconsistent with the provisions of this Act are hereby
3 repealed or modified accordingly.

4

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

8

9 Approved,