

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City



SEVENTEENTH CONGRESS  
First Regular Session

House Bill No. 4443

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Introduced by HON. JOHN MARVIN "YUL SERVO" NIETO, HON. EDWARD V.P MACEDA,  
HON. VILMA SANTOS-RECTO, HON. ANGELINA TAN, HON. EDCCEL C. LAGMAN,  
HON. SARAH JANE I. ELAGO, HON. JOSE L. ATIENZA JR, and HON. DENNIS C. LAOGAN

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#### EXPLANATORY NOTE

Article II, Section 18 of the 1987 Philippine Constitution provides that:

*"The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare."*

Article II, Section 10 of the 1987 Philippine Constitution provides that:

*"The State shall promote social justice in all phases of national development."*

As it is held in the case of *Calalang vs Williams (G.R No. 47800)*, Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.


With this, it is essential for the State to protect all types and kinds of work force and to make sure that their rights are being safe guarded by the legislative arm of the State. It is our duty as Legislators to provide for a stringent law in order for them not to be prejudiced and for us to

make sure that the law is in equilibrium with regard to the rights of both the employer and employee.

As a rule, contracting or outsourcing is allowed by law. This labor contracting arrangement creates a trilateral relationship: an employer-employee relationship between the contractor and the employee who shall perform the contracted work, and a contractual relationship (governed by the New Civil Code) between the contractor and the principal or client that owns the work contracted for.

While this kind of agreements are allowed by law, it should be subjected regulations to minimize its exploitive aspects. This bill, therefore, seeks to mandate indirect employers to ensure that all benefits of employees hired through job contractors are given and/ or paid.

Approval of this initiative is earnestly sought.



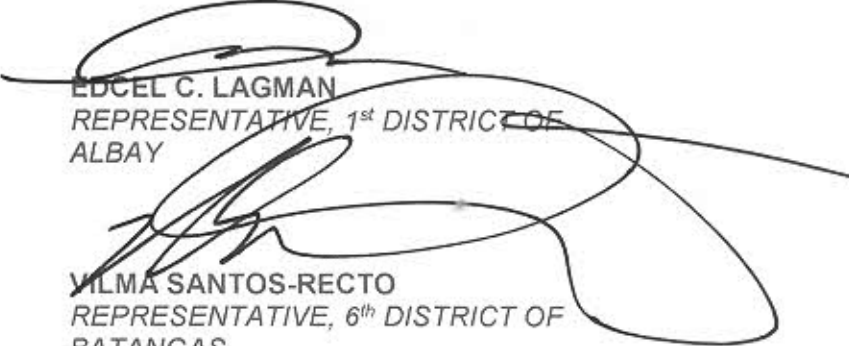
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AN ACT  
EXPANDING THE LIABILITIES OF INDIRECT EMPLOYERS IN JOB CONTRACTING,  
COVERING OTHER BENEFITS DUE THEIR EMPLOYEES, FOR THIS PURPOSE AMENDING  
ARTICLE 106 OF PRESIDENTIAL DECREE 442, AS AMENDED, OTHERWISE KNOWN AS  
THE LABOR CODE OF THE PHILIPPINES

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

SECTION 1. Article 106 of Presidential Decree 442, as amended is hereby further  
amended by adding a paragraph, to read as follows:

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

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

"IF THE EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR  
HAVE RENDERED AT LEAST ONE YEAR OF SERVICE TO THE SAME

"IF THE EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR HAVE RENDERED AT LEAST ONE YEAR OF SERVICE TO THE SAME EMPLOYER, WHETHER OR NOT SUCH EMPLOYMENT IS CONTINUOUS, SUCH EMPLOYER SHALL ALSO BE JOINTLY AND SEVERALLY BE LIABLE WITH THE CONTRACTOR OR SUBCONTRACTOR FOR THE PAYMENT OF THE EMPLOYEES' BENEFITS, INCLUDING, BUT NOT LIMITED TO THEIR SEPARATION OR RETIREMENT BENEFITS, PROVIDED, THAT THE LIABILITY OF THE INDIRECT EMPLOYER SHALL BE LIMITED ONLY TO THE PERIOD THAT SUCH EMPLOYEE RENDERED SERVICES TO THE SAID INDIRECT EMPLOYER, THE AVAILMENT AND GRANT OF SEPARATION, RETIREMENT AND OTHER BENEFITS SHALL BE IN ACCORDANCE WITH EXISTING LAWS.

"The Secretary of Labor 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. There is "labor only" contracting where the person 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 be 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."

**SEC. 2.** If any provision of this Act is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

**SEC. 3.** All laws, presidential decrees, rules and regulations insofar as they are inconsistent with this Act, are hereby repealed, amended or modified accordingly.

**SEC. 4.** This Act shall take effect fifteen (15) days following its publication in the Official Gazette or two (2) newspapers of general circulation, whichever comes first.

*Approved,*