

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 5369



Introduced by Rep. Christopher P. De Venecia

**AN ACT
PROVIDING PROTECTION AND INCENTIVES FOR FREELANCERS**

EXPLANATORY NOTE

According to the Merriam-Webster Dictionary, a freelancer refers to a person who pursues a profession without a long-term commitment to any one employer. In layman's terms, a freelancer is a self-employed person who offers his/her services to clients and works only for the duration required by their agreement. Obvious advantages of freelancing are flexibility of work hours, affordability and control over work.

Freelancing is slowly becoming a way of life in the Philippines, especially in the advent of the internet and online freelance job portals. In Freelancer.com alone, an online platform for freelancing jobs and crowd sourcing marketplace for entrepreneurs, there is an estimated 800,000 Filipino users. Majority of our artists – actors, writers, singers, dancers, composers, directors – are also freelancers due to the nature of their jobs.

In fact, more and more freelancers are becoming “multi-hyphenates,” or persons with hyphenated professions, e.g. singer-songwriter, actor-director, because of the competitive nature of freelancer jobs and the higher cost of living. Another factor adding to the multi-hyphenate freelance phenomenon is the entry of millennials into the workforce. According to an article published by *Time Magazine*, millennials consist of people born from 1980 to 2000; when they were born, technology was already available. Growing up with access to so many things has, it seems, made them want to be everything at the same time;¹ however, it is the same access that give them the confident entrepreneurial spirit to pursue their passions fearlessly. Thus, they can't be constrained by traditional labels and don't relate to traditional systems of employment.²

Moreover, Filipinos are increasingly going into freelancing as it has become an avenue to augment one's income to sustain the increasing cost of living. Freelancers often agree to take on freelance work with below minimum wage pay and without any of the benefits provided by law. Thus, there is a need to pay attention to this growing sector.

¹ “They're human mash-ups” by Audrey N. Carpio, published in The Philippine Star on 24 January 2014; <http://www.philstar.com/young-star/2014/01/24/1282204/theyre-human-mash-ups> last accessed on 17 October 2016.

² *Id.*


One of the biggest challenges of a Filipino freelancer is the non-payment for services rendered. More often than not, the freelancer does not pursue any course of action to demand payment for lack of remedial channels, fear of retribution, or lack of resources to pursue legal action.

Furthermore, many freelancers are not registered with the Bureau of Internal Revenue. It is important to account for this income-generating sector so that they may contribute to the country's tax revenue. A tax incentive mechanism should be put in place to encourage freelancers to register with the BIR.

In view thereof, this bill aims to give freelancers the power to demand payment for services rendered through several legal channels, impose civil penalties on unscrupulous hiring parties, and criminalize non-payment of compensation of freelancers.

For the information of my colleagues, this bill is intended as a counterpart measure for the consideration of this House of Representatives, of Senate Bill No. 351 filed in the Senate of the Philippines by Senator Bam Aquino, although with certain differences relative thereto.

In view of the foregoing, the approval of this bill is earnestly sought.


REP. CHRISTOPHER P. DE VENECIA
Fourth District, Pangasinan

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

CHAPTER I
GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “*Freelancers Protection Act.*”

SEC. 2. *Declaration of Policy.* – Pursuant to Section 18, Article II and Section 3, Article XIII of the 1987 Constitution, it is hereby declared the policy of the State to protect the rights of workers, local and overseas, organized and unorganized, promote their welfare, and ensure their entitlement to humane conditions of work and a living wage. Towards this end, the State shall recognize the right of freelancers to protection from late or non-payment for services rendered.

SEC. 3. *Definition of Terms.* – As used in this Act, the following terms shall mean:

- a) *Department* refers to the Department of Labor and Employment.
- b) *Freelancer* refers to any natural person or entity composed of no more than one natural person, whether incorporated under the Securities and Exchange Commission (SEC), registered as a sole proprietorship under the Department of Trade and Industry (DTI), or registered as self-employed with the Bureau of Internal Revenue (BIR), that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation.
- c) *Hazardous Work* refers to services performed by a freelancer which expose the freelancer to hazards likely to cause any disabling injury, illness, death or physical or psychological harm.

- d) *Hiring Party* refers to any person or entity who retains a freelancer to provide any service.
- e) *Retaliation* refers to any act reasonably likely to prevent a freelancer from further being offered freelance work and contracts.

SEC. 4. *Required Written Contract.* – Any hiring party retaining the services of a freelancer in exchange for compensation of at least One Thousand Pesos (P1,000) shall execute a written contract with such freelancer before said services are rendered. The hiring party and the freelancer shall each retain a copy thereof.

SEC. 5. *Contents of the Written Contract.* – The contract shall be written in plain language and in a language understood by both parties. The contract shall include, at a minimum, the following details:

- a) Itemization of all services to be provided by the freelancer;
- b) Method of compensation;
- c) Rate of compensation, which in no case shall be below the minimum wage and/or the standard minimum rates mandated by the respective sectors' association/union/guild;
- d) Date/s of payment of compensation, or the mechanism by which such date/s of payment will be determined;
- e) Grounds for breach of contract on the part of the hiring party and of the freelancer; and
- f) Any other conditions, terms or clauses that the Department may direct.

No modification of the terms of the contract shall be enforceable unless signed by both the hiring party and the freelancer.

SEC. 6. *Accident Insurance.* – If the freelance work for which the freelancer is hired by the hiring party involves hazardous work, accident insurance in favor of the freelancer shall be provided by the hiring party.

SEC. 7. *Unlawful Practices.* – It shall be unlawful for any hiring party to:

- a) Pay the compensation due the freelancer later than thirty (30) days after the date/s of payment of compensation stated in the written contract, or after the rendition of services in cases where there is no written contract, except as otherwise provided by law;

- b) Require as a condition of payment of compensation, at any time after a freelancer has commenced rendition of services, that a freelancer accept less than the specified contract price; and
- c) Commit any acts of retaliation against any freelancer or person for:
 - i.) Opposing any practice prohibited by this Act;
 - ii.) Filing a complaint authorized under this Act;
 - iii.) Testifying or assisting in any proceeding authorized under this Act;
 - iv.) Commencing a civil action alleging a violation of this Act;
 - v.) Assisting the Department in an investigation commenced pursuant to this Act; or
 - vi.) Providing information to the Department pursuant to the terms of a mediation or conciliation agreement under this Act.

SEC. 8. Criminal Penalty. – Any person found guilty by the court to have committed any of the unlawful acts provided under the preceding section shall suffer the penalty of imprisonment of one (1) month and one (1) day to six (6) months and a fine of not less than the amount of the contract price plus interest and not more than twice such amount.

CHAPTER II AGENCY ENFORCEMENT AND ADMINISTRATIVE PROCESS

SEC. 9. Complaints. – Any person aggrieved by a violation of this Act, or such person's authorized representative, may file a complaint with the Regional Office of the Department having jurisdiction over the place where the services were rendered without prejudice to the filing of a criminal action in appropriate cases.

SEC. 10. Jurisdiction. – A complaint against a hiring party shall be filed with the Department.

SEC. 11. Forum Shopping. – When a civil action has been initiated in a court of competent jurisdiction arising from any violation of this Act, a breach of contract, or any similar claim at law or equity arising out of the same transaction or series of transactions, no other case involving the same cause of action shall be filed with the Department.

SEC. 12. Investigation. – Upon receiving a complaint alleging a violation of this Act, the Department shall notify the respondent in writing and investigate such complaint in a timely manner. Within thirty (30) days of receiving such written notification, the respondent

shall provide the Department with a written response and such other information as the Department may request. The Department shall notify each complainant in writing, not less than sixty (60) days after the complaint is filed, of the status of the complaint and any resulting investigation.

SEC. 13. *Mediation and Conciliation.* – The Department may, at any time after the filing of a complaint, attempt to resolve the complaint by any method of dispute resolution, including mediation and conciliation. If a conciliation agreement is entered into, the Department shall embody such agreement in an order and serve a copy thereof upon all parties to the conciliation agreement.

SEC. 14. *Notice of Violation and Order of Payment.* – If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the Department finds cause to believe that a violation of this Act has occurred, it shall issue a notice of violation to the respondent and order the corresponding payment of compensation due to the prevailing party.

SEC. 15. *Other Relief.* – The Department may include in the Order of Payment appropriate relief to the prevailing party, including but not limited to damages, attorney's fees, costs, and any other equitable relief.

SEC. 16. *Violation of Order of Payment.* – The Order of Payment shall include the appropriate penalties for violation of an order pursuant to this Act, which shall be a penalty of an amount of not less than Fifty Thousand Pesos (P50,000) but not more than Five Hundred Thousand Pesos (P500,000) and an additional penalty of Five Thousand Pesos (P5,000) for each day that the violations continues, to be awarded to the prevailing party.

CHAPTER III CIVIL ENFORCEMENT

SEC. 17. *Civil Action.* – Except as otherwise provided for by law, any person claiming to be aggrieved by a violation of this Act has a cause of action to file a complaint in a court of competent jurisdiction for damages, injunctive relief and such other remedies as may be appropriate, without prejudice to the filing of a criminal action in appropriate cases. The prevailing party shall be entitled to an award of reasonable attorney's fees and costs.

No person claiming to be aggrieved by a violation of this Act may bring a civil action in a court of competent jurisdiction if such aggrieved person, or his/her representative, has filed a complaint with the Department pursuant to Chapter II of this Act and based upon the same transaction or series of transactions, unless that complaint has been terminated without prejudice to a subsequent civil action.

SEC. 18. *Civil Penalties.* – Any person found to have violated this Act or any rule or regulation promulgated thereunder is liable for a civil penalty of an amount of not less than Fifty Thousand Pesos (P50,000) but not more than Five Hundred Thousand Pesos (P500,000).

SEC. 19. *Non-Waiver.* – Except as otherwise provided by law, any provision of any contract or agreement purporting to waive rights under this Act is void for being against public policy.

SEC. 20. Coverage. – This Act shall apply only to contracts or agreements entered into on or after the effectivity of this Act.

CHAPTER IV TAXATION

SEC. 21. Taxpayer Registration. – All freelancers as defined under this Act shall be required to register with the Bureau of Internal Revenue (BIR).

SEC. 22. Taxpayer Service. – Every BIR Revenue District Office (RDO) shall have a lane or a special assistance desk dedicated to freelancers. This lane shall have an officer who shall assist freelancers in their application, registration, processing of documents and other inquiries.

SEC. 23. Filing and Payment. – Except as otherwise provided for by law, all freelancers must pay their income taxes annually.

SEC. 24. Implementing Rules and Regulations. – Within sixty (60) days from the effectivity of this Act, the Department, in coordination with the BIR and other relevant agencies, shall promulgate the necessary rules and regulations from the implementation of this Act.

SEC. 25. Separability Clause. – Should any provision herein be declared unconstitutional, the same shall not affect the validity of the other provisions of this Act.

SEC. 26. Repealing Clause. – All laws, decrees, orders, rules, and regulations, or others issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 27. Effectivity. – This Act shall take effect fifteen (15) days after its complete publication either in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,