Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

House Bill No. 999

Introduced by **Representative Juan Miguel F. Zubiri**

EXPLANATORY NOTE

Even as the Constitution provides in no unclear terms the right of workers to security of tenure, employment practices that abrogate this right persist. Preventing workers from becoming regular employees and the denial by employers of the existence of employee-employer relationship are but two of the grave employment practices inconsistent with the workers' 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 labor practices violate the right of workers to just and humane employment terms and conditions, 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 provisions at present do 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
3rd District, Bukidnon

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AN ACT
STRENGTHENING THE CONSTITUTIONAL RIGHT TO SECURITY OF TENURE

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

SECTION 1. *Short Title*. This Act shall be known as the SECURITY OF TENURE ACT OF 2004.

SECTION 2. *Labor-only contracting*. Art 106 shall be amended to read as follows:

"Art. 106. Contractor or sub-contractor. – 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 sub-contractor 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 sub-contractor 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.

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 as well as differentiation 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 person supplying workers to an employer does not have substantial capital [or] AND investment in the form of tools, equipment, machinery, work premises, among others, and the workers recruited and

placed by such person are performing activities which are directly related to the principal business of such employer or WHERE THE PRINCIPAL EMPLOYER HAS THE RIGHT OF CONTROL OVER MEANS BY WHICH THE PURPORTED AGENCY OR CONTRACTUAL EMPLOYEE PERFORMS THE ACTIVITIES, NOTWITHSTANDING THE FACT THAT THE AGENCY OR CONTRACTOR HAS SUBSTANTIAL CAPITAL AND/OR INVESTMENT IN THE FORM OF TOOLS, EQUIPMENT, MACHINERIES, WORK PREMISES, AMONG OTHERS. 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 SUCH PRINCIPAL EMPLOYER.

IN THE PERFORMANCE OF ITS JOB, THE LEGITIMATE SUBCONTRACTOR MUST USE ITS OWN EQUIPMENT, FACILITIES, MACHINERIES AND TOOLS AND CANNOT RELY ON THE PRINCIPAL CONTRACTO. THE USE OF THE SUBCONTRACTOR OF THE EQUIPMENT, FACILITIES, MACHINERIES AND TOOLS OF THE PRINCIPAL IS AN INDICATION THAT THE SUBCONTRACTOR HAS NO SUBSTANTIAL CAPITAL AND INVESTMENT.

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

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

"ART. 280. Regular and Casual Employment; Penalty in Case of Violation - The provisions of written contract to the contrary notwithstanding and regardless of the oral agreement of the parties, an employee shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary and desirable in the usual trade or business of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee, or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

SEASONAL AND PROJECT EMPLOYEES SHALL HAVE THE RIGHT TO SECURITY OF TENURE, SUBJECT TO THE PROVISIONS ON PROBATIONARY EMPLOYMENT, AND ARE ENTITLED TO RESUME THEIR EMPLOYMENT IN THE SAME OR SIMILAR POSITION UPON THE START OF THE NEXT SEASON OR PROJECT, AS THE CASE MAY BE; PROVIDED THAT, DURING THE TIME THAT THEIR SERVICES ARE NOT ACTUALLY AVAILED OF BY THE

ESTABLISHMENT, THEY SHALL BE CONSIDERED TO BE ON AUTHORIZED LEAVE WITHOUT PAY.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph. [Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.] CASUAL EMPLOYMENT SHALL HAVE THE RIGHT TO SECURITY OF TENURE AND MAY BE TERMINATED ONLY FOR JUST OR AUTHORIZED CAUSES. HOWEVER, THEIR POSITION, NOT BEING NECESSARY OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER, MAY BE ELIMINATED IF THE SERVICES ATTACHED THERETO ARE NO LONGER AVAILED OF BY THE EMPLOYER. PROVIDED THAT IF THE POSITION HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR, IT SHALL BE CONSIDERED AS REGULAR IN NATURE, SUBJECT TO THE PROVISIONS ON PROBATIONARY EMPLOYMENT. TERMINATION WILL THEN BE ALLOWED ONLY IF THERE IS JUST OR AUTHORIZED CAUSE.

THE PRINCIPAL EMPLOYER MUST DIRECTLY HIRE WORKERS WHO ARE PERFORMING ACTIVITIES WHICH ARE USUALLY NECESSARY OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER, WITHOUT PREJUDICE TO THEIR PROPER CLASSIFICATION AS REGULAR, SEASOSNAL, PROJECT, OR EMPLOYEES HIRED FOR A SPECIFIC UNDERTAKING, AS PROVIDED FOR IN THE FIRST PARAGRAPH. THE PRINCIPAL EMPLOYER CANNOT HIRE THROUGH SUBCONTRACTORS, LABOR CONTRACTORS, OR OTHER SIMILAR AGENCIES AND "MANPOWER" SERVICE PROVIDERS, WORKERS PERFORMING ACTIVITIES WHICH ARE USUALLY NECESSARY OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER, REGARDLESS OF THE AMOUNT OF INVESTMENT AND CAPITAL OF THE SUBCONTRACTOR OR LABOR CONTRACTOR.

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

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

EMPLOYEES WHO ARE REGULAR, REGARDLESS OF THE ORAL OR WRITTEN AGREEMENTS TO THE CONTRARY, SHALL BE CONSIDERED PART

OF THE APPROPRIATE COLLECTIVE BARGAINING UNIT AND MAY EXERCISE THE RIGHT TO SELF-ORGANIZATION AND COLLECTIVE BARGAINING.

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

SECTION 4. Non-recognition of regular status as unfair labor practice. Art. 248 (Unfair labor practices of employers) shall be amended as follows:

"ART. 248. Unfair labor practices of employers. – It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
(b) To require as a condition for employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;
(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or officers;
(e) To discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall prevent the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except of those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees belonging to an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement. Provided, That the individual authorization required under Article 242, paragraph (o), of this Code shall not apply to non-members of the recognized collective bargaining agent;
(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
(g) To violate the duty to bargain collectively as prescribed by this Code;
(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agent of corporations, associations, or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

(j) TO CLASSIFY AS CASUAL, CONTRACTUAL, SUBCONTRACTOR'S OR LABOR-ONLY CONTRACTOR'S EMPLOYEES, AGENCY EMPLOYEES, AND OTHER NON-REGULAR WORKERS THOSE EMPLOYEES WHO ARE REGULAR EMPLOYEES BY VIRTUE OF THE ACTIVITIES THEY PERFORM AND OTHER CIRCUMSTANCES WHICH MAKE THEIR EMPLOYMENT REGULAR.

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

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

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

Approved.