

Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City

Sixteenth Congress  
Second Regular Session

**5470**  
HOUSE BILL NO. \_\_\_\_\_



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INTRODUCED BY: REP. KARLO ALEXEI B. NOGRALES, REP. EMMELINE Y.  
AGLIPAY VILLAR, REP. FLORENCIO T. FLORES, JR.  
AND REP. DEOGRACIAS B. RAMOS, JR.

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#### EXPLANATORY NOTE

The Labor Code of the Philippines, as amended, was enacted in 1974. Through the years, the trend towards integration and interconnectedness of countries into a single global community has increased in the form of various political and economic agreements. In 1991, the Philippines became a member of the World Trade Organization (WTO). As a member, the country is also a signatory to the General Agreement on Trade in Services (GATS), a treaty of the WTO, which entered into force in 1995. The GATS is a framework for a multilateral trading system in the service sector which includes an annex on the movement of natural persons.

One of the Philippine commitments to the WTO-GATS is to review the restrictions in Title II, Article 40 of the Labor Code of the Philippines, as amended. The main restriction in the hiring of a foreign national is the Labor Market Test (LMT) which is used to determine the non-availability of a qualified, able and willing person in the Philippines to do the services for which the foreign national is being hired. It is comparable to an Economics Needs Test implemented by other countries.

In relation to this, the Philippines is also a member-state of the Association of Southeast Asian Nations (ASEAN), and is likewise obliged to review the said provision in preparation for the envisioned regional integration in 2015 as envisioned in the ASEAN Economic Community (AEC) Blueprint. ASEAN member countries committed to the AEC in 2007.

The proposed amendment of the provision in the Labor Code is to facilitate uniformity by properly stating the term used by the Philippines in its commitments entered into bilateral, regional and multilateral agreements. It is a way for the country to determine if there is a short supply of workers in specific industries, occupations and professions which probably inhibits the country from increased productivity and industry development. It includes a provision for training of Filipino understudies to

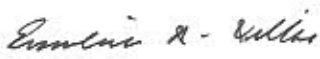
transfer skills and technology from the foreign national.

Increased fines and penalties for violations by foreign nationals are also updated to address inflation since the law was enacted almost four decades ago.

In conclusion, as the Philippines strives to meet its commitments in the WTO-GATS, AEC, and other bilateral, regional and multilateral agreements, it is expected to at least review the affected national laws and policies. This proposed agreement is a timely initiative to update the said law as the country modernizes as part of a global community. It is also a show of good faith to countries, regions, and international bodies the Philippines has agreements with that the country is willing to accommodate changes in order to meet its commitments. The proposed amendment is beneficial to the country as it paves the way to an improved but still protective policy on employment of foreign nationals.



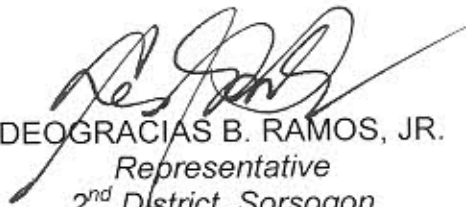
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**“AN ACT TO ENHANCE THE REGULATION ON EMPLOYMENT OF FOREIGN NATIONALS AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE PURPOSE ARTICLES 40, 41, AND 42, TITLE II, BOOK 1 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED OR THE LABOR CODE OF THE PHILIPPINES”**

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

**Section 1.** Article 40 of the Labor Code is hereby amended to read as follows:

Title II - Employment of Non-Resident [~~Aliens~~] FOREIGN NATIONALS

ART. 40. *Employment permit of non-resident [aliens] FOREIGN NATIONALS* - [~~Any alien~~] ALL NON-RESIDENT FOREIGN NATIONALS seeking [~~admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for~~] employment in the Philippines shall obtain an employment permit from the Department of Labor AND EMPLOYMENT.

[~~The~~] AN employment permit may be issued to a non-resident [~~alien~~] FOREIGN NATIONAL [~~or to the applicant employer after a determination of the~~] SUBJECT TO THE LABOR MARKET TEST BASED ON THE non - availability of [~~a person in the Philippines who is competent, able and~~] QUALIFIED AND willing [~~at the time of application to perform the services for which the alien is desired~~] FILIPINO NATIONAL.

THE SECRETARY OF LABOR AND EMPLOYMENT IS AUTHORIZED TO GRANT EXEMPTIONS FROM THE LABOR MARKET TEST TO FOREIGN NATIONALS AS PROVIDED FOR UNDER EXISTING LAWS AND AGREEMENTS, AS WELL AS IN INDUSTRIES OR OCCUPATIONS OR PRACTICE OF PROFESSIONS WHERE THERE IS SHORT SUPPLY, AFTER TRIPARTITE CONSULTATION.

FOREIGN NATIONALS ISSUED EMPLOYMENT PERMITS SHALL TRANSFER TECHNOLOGY TO FILIPINO UNDERSTUDIES WITHIN A PRESCRIBED PERIOD.

For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise.

**Section 2.** Article 41 of the Labor Code is hereby amended to read as follows:

ART. 41. Prohibition against transfer of employment.

(a) After the issuance of an employment permit, the [alien] FOREIGN NATIONAL shall not transfer to another job or change his employer without prior approval of the Secretary of Labor AND EMPLOYMENT.

(b) Any non-resident [alien] FOREIGN NATIONAL who shall take up employment in violation of the provision of this Title and its implementing rules and regulations, AS WELL AS THE EMPLOYER OR THE RESPONSIBLE PERSON REPRESENTING THE EMPLOYER, shall be punished [~~in accordance with the provisions of Articles 289 and 290~~] WITH A FINE of [~~the Labor Code.~~] NOT LESS THAN FIFTY THOUSAND PESOS (P50,000.00) NOR MORE THAN ONE HUNDRED THOUSAND PESOS (P100,000.00), OR IMPRISONMENT OF NOT LESS THAN SIX MONTHS NOR MORE THAN SIX YEARS OR BOTH SUCH FINE AND IMPRISONMENT AT THE DISCRETION OF THE COURT.

In addition, the [alien-worker] FOREIGN NATIONAL shall be subject to deportation after service of his OR HER sentence.

THE SECRETARY OF LABOR AND EMPLOYMENT IS AUTHORIZED TO IMPOSE A FINE OF FIFTY THOUSAND PESOS (P50,000.00) FOR EVERY YEAR OR FRACTION THEREOF TO BOTH THE FOREIGN NATIONAL FOUND WORKING WITHOUT VALID EMPLOYMENT PERMIT AND TO THE EMPLOYER.

**Section 3.** Article 42 of the Labor Code is hereby amended to read as follows:

ART. 42. *Submission of List.* – Any employer employing non-resident foreign nationals [on the effective date of this Code] shall submit a list of such nationals to the REGIONAL DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT WHICH HAS JURISDICTION ON THE EMPLOYER

~~[Secretary of Labor and Employment] within 30 days after HIRING, [such date] indicating their names, citizenship, foreign and local addresses, nature of employment and status of stay in the country. [The Secretary of Labor and Employment shall then determine if they are entitled to an employment permit.]~~

**Section 4. Implementing Rules and Regulations.** Within ninety (90) days from the effectivity of this Act, the Secretary of Labor and Employment, in coordination with concerned agencies, shall formulate the necessary rules and regulations to implement the provisions of this Act.

**Section 5. Repealing Clause.** All statutory laws, orders and issuances, rules and regulations and/or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**Section 6. Effectivity.** This Act shall take effect after fifteen (15) days from the date of its publication in Official Gazette or in a newspaper of general circulation.

*Approved,*