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NINETEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES  
First Regular Session

 Senate  
Office of the Secretary

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'22 JUL 12 A11 :24

SENATE

RECEIVED BY: 

S. B. NO. 362

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Introduced by **SENATOR JOEL VILLANUEVA**

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**AN ACT  
ENHANCING THE REGULATION ON EMPLOYMENT OF  
FOREIGN NATIONALS AND TRANSFER OF TECHNOLOGY,  
AMENDING FOR THE PURPOSE ARTICLES 40, 41, AND 42 OF  
PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE  
KNOWN AS THE LABOR CODE OF THE PHILIPPINES AND FOR  
OTHER PURPOSES**

**EXPLANATORY NOTE**

The proposed amendments to Articles 40, 41, and 42 of the Philippine Labor Code is triggered by the lingering problem of coordination and accountability among government agencies for the increasing number of foreign nationals working illegally in the country. Additionally, it is a show of good faith to other countries, regions, and international bodies that the country honors its commitments in the WTO-GATS, ASEAN Economic Community (AEC), and other bilateral, regional and multilateral agreements, to at least review the restriction in the hiring of foreign nationals, or 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.

The amendments aim to: (1) update the provisions and reflect the terms used by the country in trade negotiations and in its bilateral, regional and multilateral agreements' commitments; (2) provide flexibility in the Labor Market Test in cases where there is a short supply of skilled workers in specific industries, occupations and professions; (3) provide for training of Filipino understudies to transfer skills and technology from the foreign national through an understudy program; (4) emphasize that the Department of Labor and Employment is the sole issuing authority of employment permits all over the

country including those working or employed in enterprises in preferred areas of investments or in economic zones; and (5) update the fines and penalties for violations which was set several decades ago.

In conclusion, as the Philippines strives to meet its commitments in the WTO-GATS, AEC, and other bilateral, regional and multilateral agreements, the proposed amendments will improve but reiterate the restrictive policy on employment of foreign nationals.

The immediate passage of this bill is earnestly sought.

  
SENATOR JOEL VILLANUEVA *jr*

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AN ACT  
ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN  
NATIONALS AND TRANSFER OF TECHNOLOGY, AMENDING FOR  
THE PURPOSE ARTICLES 40, 41, AND 42 OF PRESIDENTIAL  
DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE  
LABOR CODE OF THE PHILIPPINES AND FOR OTHER PURPOSES

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

1 **SECTION. 1.** Title II, Book I of the Labor Code is hereby amended to read as  
2 follows:  
3

4 Title II - Employment of Non-Resident [Aliens] FOREIGN NATIONALS  
5

6 **SEC. 2.** Article 40 of the Labor Code is hereby amended to read as follows:  
7

8 ARTICLE 40. Employment permit of non-resident [*aliens*] FOREIGN  
9 NATIONALS – [Any alien] ALL NON-RESIDENT FOREIGN  
10 NATIONALS seeking [admission to the Philippines for employment  
11 purposes and any domestic or foreign employer who desires to  
12 engage an alien for] employment in the Philippines shall obtain an  
13 employment permit from the Department of Labor AND  
14 EMPLOYMENT.  
15

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

1 THE SECRETARY OF LABOR AND EMPLOYMENT IS  
2 AUTHORIZED TO GRANT EXEMPTIONS FROM THE LABOR  
3 MARKET TEST TO FOREIGN NATIONALS AS PROVIDED FOR  
4 UNDER EXISTING LAWS AND REGULATIONS, AS WELL AS IN  
5 INDUSTRIES OR OCCUPATIONS OR PRACTICE OF  
6 PROFESSIONS WHERE THERE IS SHORT SUPPLY, AS  
7 DETERMINED THROUGH TRIPARTITE CONSULTATION.

8  
9 For an enterprise registered in preferred areas of investments OR  
10 IN DESIGNATED ECONOMIC ZONES, THE employment permit  
11 SHALL ONLY BE ISSUED BY THE DEPARTMENT OF LABOR  
12 AND EMPLOYMENT, [may be issued] upon recommendation [of]  
13 BY the government agency charged with the supervision of said  
14 registered enterprise OR LOCATOR.

15  
16 **SEC. 3.** A new Article 40-A of the Labor Code is hereby provided to read as  
17 follows:

18  
19 ARTICLE 40-A. UNDERSTUDY PROGRAM – FOREIGN  
20 NATIONALS ISSUED EMPLOYMENT PERMITS SHALL  
21 TRANSFER TECHNOLOGY TO AT LEAST TWO (2) FILIPINO  
22 UNDERSTUDIES WITHIN THE PRESCRIBED PERIOD AS  
23 INDICATED IN THE DEPARTMENT OF LABOR AND  
24 EMPLOYMENT-APPROVED UNDERSTUDY PROGRAM OF THE  
25 ENTERPRISE.

26  
27 **SEC. 4.** Article 41 of the Labor Code is hereby amended to read as follows:

28  
29 ARTICLE 41. Prohibition against transfer of employment.

30  
31 (a) After the issuance of an employment permit, the [alien]  
32 FOREIGN NATIONAL shall not transfer to another job or change  
33 his/HER employer without prior approval of the Secretary of Labor  
34 AND EMPLOYMENT.

35  
36 (b) Any non-resident [alien] FOREIGN NATIONAL who shall take  
37 up employment in violation of the provision of this Title and its  
38 implementing rules and regulations, AS WELL AS THE  
39 EMPLOYER OR THE RESPONSIBLE PERSON REPRESENTING  
40 THE EMPLOYER, shall be punished [in accordance with the  
41 provisions of Articles 289 and 290] WITH A FINE of [the Labor  
42 Code.] NOT LESS THAN FIFTY THOUSAND PESOS  
43 (P50,000.00) NOR MORE THAN ONE HUNDRED THOUSAND  
44 PESOS (P100,000.00), OR IMPRISONMENT OF NOT LESS  
45 THAN SIX MONTHS NOR MORE THAN SIX YEARS OR BOTH  
46 SUCH FINE AND IMPRISONMENT AT THE DISCRETION OF THE  
47 COURT.



1 In addition, the [alien worker] FOREIGN NATIONAL shall be subject  
2 to deportation after service of his/HER sentence.  
3

4 THE SECRETARY OF LABOR AND EMPLOYMENT SHALL ALSO  
5 IMPOSE A FINE OF FIFTY THOUSAND PESOS (P50,000.00) OR  
6 A FRACTION THEREOF FOR EVERY YEAR OF CONTINUING  
7 VIOLATION TO BOTH THE FOREIGN NATIONAL FOUND  
8 WORKING WITHOUT VALID EMPLOYMENT PERMIT AND TO  
9 THE EMPLOYER.  
10

11 **SEC. 5.** Article 42 of the Labor Code is hereby amended to read as follows:  
12

13 ARTICLE 42. Submission of List. – Any employer employing non-  
14 resident foreign nationals [on the effective date of this Code] shall  
15 submit a list of such nationals to the REGIONAL DIRECTOR OF  
16 THE DEPARTMENT OF LABOR AND EMPLOYMENT WHICH  
17 HAS JURISDICTION ON THE EMPLOYER [Secretary of Labor and  
18 Employment] within 30 days after HIRING, [such date] indicating  
19 their names, citizenship, foreign and local addresses, nature of  
20 employment and status of stay in the country. [The Secretary of  
21 Labor and Employment shall then determine if they are entitled to  
22 an employment permit.]  
23

24 **SEC. 6. Implementing Rules and Regulations.** – Within ninety (90) days from  
25 the effectivity of this Act, the Secretary of Labor and Employment, in  
26 coordination with concerned agencies and in consultation with the relevant  
27 stakeholders, shall formulate the necessary rules and regulations to implement  
28 the provisions of this Act.  
29

30 **SEC. 7. Repealing Clause.** – All statutory laws, orders and issuances, rules  
31 and regulations and/or parts thereof inconsistent with the provisions of this Act  
32 are hereby repealed or modified accordingly.  
33

34 **SEC. 8. Effectivity.** – This Act shall take effect after fifteen (15) days from the  
35 date of its publication in Official Gazette or in a newspaper of general  
36 circulation.  
37

38 **Approved,**