

Employment of Foreign Workers (Amendment) Bill

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Bill No: 34/1995

Read the first time: 27th September 1995

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Expenditure of Public Money

Employment of Foreign Workers (Amendment) Bill

Bill No. 34/1995

Read the first time on 27th September 1995.

An Act to amend the Employment of Foreign Workers Act (Chapter 91A of the 1991 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Employment of Foreign Workers (Amendment) Act 1995 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Employment of Foreign Workers Act (referred to in this Act as the principal Act) is amended —

- (a) by deleting the definition of “contractor”;
- (b) by inserting, immediately after the definition of “Controller”, the following definition:

““construction works” has the same meaning as in the Construction Industry Development Board Act [Cap. 51] and includes such other works or activities as the Minister may, by notification in the *Gazette*, specify to be construction works;”;

- (c) by deleting the words “, including a contractor,” in the first line of the definition of “employer”;
- (d) by inserting, immediately after the definition of “employment inspector”, the following definition:

““foreigner” means any person who is not a citizen or permanent resident of Singapore;”;

- (e) by deleting the words “a contractor who is carrying out building operations or construction” in the first and second lines of paragraph (b) of the definition of “occupier” and substituting the words “any person who is

carrying out construction or other”;

- (f) by inserting, immediately after paragraph (c) of the definition of “salary”, the following paragraph:

“(ca) any shift allowance, attendance allowance and any other allowance which is variable in nature;”; and

- (g) by deleting the words “or contractor” in the first and second lines of paragraph (d) of the definition of “salary”.

Amendment of section 5

3. Section 5 of the principal Act is amended —

- (a) by inserting, immediately after subsection (3), the following subsections:

“(3A) In any proceedings for an offence under subsection (1), it shall not be a defence for a defendant to prove that he did not know that the worker was a foreigner unless the defendant further proves that he had exercised due diligence to ascertain the nationality of the worker.

(3B) For the purpose of subsection (3A), a defendant shall not be deemed to have exercised due diligence unless he had checked the passport, document of identity or other travel document of the worker.”;

- (b) by deleting paragraph (b) of subsection (4) and substituting the following paragraph:

“(b) on a second or subsequent conviction, be punished —

- (i) in the case of an individual, with imprisonment for a term of not less than one month and not more than one year and shall also be liable to a fine of an amount of not less than 24 months’ levy and not more than 48 months’ levy; and

- (ii) in the case of a body corporate, with a fine of an amount of not less than 48 months’ levy and not more than 96 months’ levy.”;

- (c) by deleting the words “found to be working” in the third line of paragraph (a) of subsection (5) and substituting the words “first employed by the

defendant”;

(d) by deleting subsection (6); and

(e) by deleting subsection (8) and substituting the following subsections:

“(8) For the purpose of subsection (4)(b), all convictions against the same person for the contravention of subsection (1) at one and the same trial shall be deemed to be one conviction.

(9) For the purpose of this section, “employ” means to engage or use the service of any person, whether under a contract of service or otherwise, with or without salary.”.

Repeal and re-enactment of section 6 and new section 6A

4. Section 6 of the principal Act is repealed and the following sections substituted therefor:

“Presumption of employment

6. Where a foreigner is found at any premises, the occupier of the premises shall be presumed, until the contrary is proved, to have employed the foreigner.

Prohibition of foreigner without work permit entering or remaining at work place

6A.—(1) No occupier of a work place who has control of access to the work place shall permit any foreigner without a valid work permit to enter or remain at the work place.

(2) Where a foreigner without a valid work permit is found at any work place, it shall be presumed, until the contrary is proved, that the occupier of the work place —

(a) had control of access to the work place;

(b) had permitted the foreigner to enter or remain at the work place; and

(c) had knowledge that the foreigner did not possess a valid work permit.

(3) The presumptions provided for in subsection (2) shall not be rebutted by proof that a defendant did not know that the person was a foreigner unless the defendant further proves that he had exercised due diligence —

(a) to prevent the foreigner from entering or remaining at the work place;

(b) to ascertain that the person was a citizen or permanent resident of Singapore by checking his passport, document of identity or other

travel documents; or

- (c) to ascertain that the foreigner had at the material time in his possession a valid work permit by checking his original work permit.

(4) For the purposes of subsection (3)(a), a defendant shall not be deemed to have exercised due diligence unless he had taken all reasonable measures to prevent any foreigner without a valid work permit from entering or remaining at the work place, including all the measures prescribed under subsection (5) in respect of the work place.

(5) For the purposes of subsection (4), the Minister may, by notification in the *Gazette*, prescribe the measures that are required to be taken by the occupier of the work place.

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of an amount of not less than 24 months' levy and not more than 48 months' levy or to imprisonment for a term not exceeding one year or to both, and in the case of a second or subsequent conviction, to a fine of an amount of not less than 48 months' levy and not more than 96 months' levy or to imprisonment for a term not exceeding 2 years or to both.

(7) For the purpose of this section —

“levy” means the monthly rate of levy applicable to unskilled foreign workers working at the work place at the date when the foreigner without a valid work permit was found at the work place, and a certificate issued by the Controller and tendered in court shall be prima facie evidence of such rate;

“occupier”, in relation to a work place, means the principal contractor who undertakes any construction works at the work place and includes such other person as the Minister may, by notification in the *Gazette*, specify to be the occupier of the work place;

“principal contractor” means a person who has entered into a contract with an owner, a developer or a lessee of a property or his agent for the purpose of carrying out any construction works, or such other works or activities as the Minister may, by notification in the *Gazette*, specify;

“work place” means any place or premises where works are being carried out and includes any premises within the vicinity of the work place to which the occupier has control of access.