

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 1437



Introduced by Rep. Luis Jose Angel N. Campos, Jr.

EXPLANATORY NOTE

Since the year 2002 when the idea of mandatory insurance coverage of OFWs by private insurers was first proposed, the Department of Labor and Employment (DOLE) had been opposed to it. Some of the reasons for the opposition are summarized below (*taken from the Minutes of the Bicameral Conference Committee meeting on Disagreeing Provisions of the bills which became R.A. No. 10022 held on October 13, 2009, pp. 129 - 159*):

- It is essentially a privatization of social insurance measures (like GSIS, SSS, and OWWA) which idea was still an ongoing and enduring debate, as pointed out by POEA Administrator Hans Cacdac;
- Recruitment/ manning agencies do not have insurable interest to insure OFWs with respect to accidental or natural death and disability;
- The liability insurance severely undermines the concept of Joint Solidary Liability (JSL), which purpose is for the recruitment/manning agencies to carefully select their foreign employers. With the burden passed on to an insurer, there can be the danger of greater tendency for carelessness on the part of the recruiters.

During that October 13, 2009 Bicameral Conference Committee, Admin Cacdac stressed that what DOLE was asking for was "a more comprehensive look, a more omnibus oriented look towards social insurance for OFWs" in the likes of SSS for the private sector and the GSIS for the government workers.

The OFWs and NGOs like CMA and Migrant were likewise resisting the then proposed legislation on compulsory coverage, counter-proposing voluntary coverage instead. They expressed their belief that the obligation of the State to the OFWs is paramount than that of the private sector.

On March 8, 2010, Republic act No. 10022 which amended Republic Act No. 8042, lapsed into law in accordance with Article VI, Section 27 (i) of the Constitution, without the signature of the President Gloria Macapagal-Arroyo.

Six (6) years into the implementation of Sec. 37-A on Compulsory Insurance Coverage of Agency Hired Workers, reports of difficulties in claiming or securing the insured benefits continue to grow. A number of agencies, OFWs and NGOs have voiced out their dissatisfaction over the system after encountering such problems as insurers insisting on more requirements than that provided for by Sec. 37-A; on insisting on paying the benefits to the agencies as the ones who paid for the insurance; on failure to receive the legislated benefits; on delaying the release of the benefit from the reglementary ten (10) days to within thirty (30) days, which is applicable only to the benefit of "money claims

under the subparagraph (f)" of Sec. 37-A. Worse, some insurers wait for the older declaring the final and executory decision of the Labor Arbiter, a requirement solely for the said benefit on "(f) money claims".

The present mandatory insurance system has become a growing pain.

Meanwhile, there has been no change in the policy of the government on placing social insurance programs under its umbrella. Social security and social insurance measures in the form of GSIS for the government employees and SSS for private employees remain under the government.

Indeed the interest and obligation of the government towards all workers are paramount compared to that of any private institution.

The bills stems the growing pains by amending Section 37-A on mandatory insurance coverage, and places it under the paramount obligation of the government , renaming it as Special Social Security for Migrant Workers, *whether agency hired, name hired, directly hired or balik-manggagawa.*

This Special Social Security shall be entrusted to the Overseas Workers Welfare Administration which has been strengthened by its 2016 Charter.

In line with the foregoing the passage of this bill is earnestly sought.


REP. LUIS JOSE ANGEL N. CAMPOS, JR.

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AN ACT ESTABLISHING A SPECIAL SOCIAL SECURITY FOR MIGRANT WORKERS UNDER THE OVERSEAS WORKERS WELFARE ADMINISTRATION, AND PROVIDING APPROPRIATIONS THEREFOR, THEREBY AMENDING SECTION 37-A OF REPUBLIC ACT NO. 8042, AS AMENDED BY REPUBLIC NO. 10022 ON THE COMPULSORY INSURANCE COVERAGE BY PRIVATE INSURERS FOR AGENCY HIRED WORKERS, TO FURTHER STRENGTHEN THE PROMOTION OF THE WELFARE OF THE MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS WORKERS IN DISTRESS, AND FOR OTHER PURPOSES

Section 1. - *Statement of policy.* - As enshrined in the Constitution,

- a) The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare (Sec. 18, Article II)
- b) The State shall afford full protection to labor, local and overseas, organized and unorganized (Section 3, Article XIII)

Section 2. - This law shall be called "Special Social Security for Migrant Workers" of SSS for Migrant Workers.

Section 3. Section 37-A of Republic Act No. 8042, as amended by Republic Act No. 10022, is hereby further amended to read as follows:

"SEC. 37-A. "Special Social Security for Migrant Workers" -

There is hereby created a Special Social Security For Migrant Workers or SSS for Migrant Workers in the Overseas Workers Welfare Administration (OWWA).

- a. Each migrant worker deployed by a recruitment/manning agency, direct hire and rehire or Balik Manggagawa shall be covered by SSS for Migrant Workers which shall be paid to Overseas Workers Welfare Administration (OWWA) at no cost to the said worker. Such SSS for Migrant Workers shall be effective for the duration of the migrant worker's employment and shall cover, at the minimum, the following benefits which shall be paid to the migrant worker or his beneficiary within ten (10) days from the filing of claim:

“(a) Accidental death, with at least Fifteen thousand United States dollars (US\$10,000.00) survivor’s benefit payable to the migrant worker’s beneficiaries;

“(c) Permanent total disablement, with at least Seven thousand five hundred United States dollars (US\$7,500.00) disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two(2) limbs at or above the ankles or wrists; permanent complete paralysis of two (2) limbs; brain injury resulting to incurable imbecility or insanity;

“(d) Repatriation cost of the worker when his/her employment is terminated without any valid cause, including the transport of his or her personal belongings. In case of death, the OWWA shall arrange and pay for the repatriation or return of the worker’s remains. OWWA shall also render any assistance necessary in the transport including, but not limited to, locating a local licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentation, obtaining legal clearances, procuring consular services, providing necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home;

“(e) Subsistence allowance benefit, with at least One hundred United States dollars (US\$100.00) Per month for a maximum of six (6) months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country;

- b. In addition to the above, the SSS for Migrant Workers shall also include the following which shall be paid to the migrant worker within the period specified herein:

“(f) Money claims arising from employer’s liability which may be awarded or given to the worker in a judgment or settlement of his or her case in the NLRC. The protection and indemnity coverage for money claims shall be equivalent to at least three (3) months for every year of the migrant worker’s employment contract, in accordance with the rules of procedure provided herein;

“(g) Compassionate visit. When a migrant worker is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The fund for the SSS for Migrant Worker under the care of OWWA shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker, within ten (10) days from filing of the claim. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements.

“(h) Medical evacuation. When an adequate medical facility is not available proximate to the migrant worker, as determined by the OWWA designated physician and/or a consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be immediately undertaken by OWWA; and

“(i) Medical repatriation. When medically necessary as determined by the attending physician, repatriation under medical supervision to the migrant worker’s residence shall be undertaken by OWWA at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds fourteen (14) days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be provided when necessary.

- c. After paying the cost of the SSS for Migrant Workers to OWWA, the recruitment/manning agency shall provide an authenticated copy of the “Certificate SSSM Coverage” to the migrant worker. In the case of seafarers who are covered by their foreign employers with generous but work-related benefits under their Standard Employment Contracts, the manning agencies shall provide an authenticated copy of the “Certificate SSSM Coverage” to the overseas seafarer. The agency then submits the certificate to POEA as a requirement for the issuance of an Overseas Employment Certificate (OEC) to the migrant worker.

For migrant workers classified as name hires, direct hires, rehires or Balik Manggagawa, they may opt to be covered by this protection and indemnity coverage by requesting their foreign employers to pay for the cost of the protection and indemnity coverage or they may pay for the cost themselves. To protect the rights of these workers, the POEA shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad. Name hires, Direct hires and rehires or Balik Manggagawa may pay for their coverage and be issued the same Certificate.

- d. Any person having a claim upon the Certification issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of this section shall present to OWWA a written notice of claim together with pertinent supporting documents. OWWA shall forthwith ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim.
- e. Any claim arising from accidental death, natural death or disablement under this section shall be paid by OWWA without any contest and without the necessity of providing fault or negligence of any kind on the part of the migrant worker, within ten (10) days as provided above: *Provided*, That the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:
- “(1) Death Certificate – In case of natural or accidental death;
 - “(2) Police or Accident Report – In case of accidental death; and
 - “(3) Medical Certificate – In case of permanent disablement;

"For repatriation under subparagraph (d) hereof, a certification which states the reason/s for the termination of the migrant worker's employment and the need for his or her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office (POLO) located in the receiving country.

"For subsistence allowance benefit under subparagraph (e), the concerned labor attaché or, in his absence, the embassy or consular official shall issue a certification which states the name of the case, the names of the parties and the nature of the cause of action of the migrant worker.

f. For the payment of money claims under subparagraph (f), the following rules shall govern:

"(1) After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, an order shall be released mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days;

"(2) The recruitment/manning agency shall then immediately file a notice of claim with OWWA for the amount of Special Social Security for Migrant Worker benefit, attaching therewith a copy of the decision or compromise agreement;

"(3) Within ten (10) days from the filing of notice of claim, OWWA shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;

"(4) In case OWWA fails to make payment within ten (10) days from the filing of the claim, the recruitment/ manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty (30)-day period, as provided in the first subparagraph hereof;

"(5) If the worker's claim was not settled within the aforesaid thirty (30)-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;

"(6) The provision of SSS for Migrant Worker under this section shall not affect the joint and solidary liability of the foreign employer and the recruitment/manning agency under Section 10;

g. For the benefits under subparagraphs (g) on Compassionate Visit, subparagraph (h) on Medical Evacuation, and subparagraph (I) on Medical Repatriation, the concerned labor attaché or, in his absence, the embassy or consular official shall issue a certification which states the presence of the corresponding conditions for their entitlement. The claim with this required certification shall be enough for the OWWA to pay or shoulder the corresponding benefit within ten (10) days from the date the documented claim is filed.

- h. In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has paid for the cost of the SSS for Migrant Worker or that the said coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.
- i. For migrant workers recruited by the POEA on a government-to-government arrangement, the POEA shall establish the equivalent of a foreign employers SSS for Migrant Worker fund which shall be answerable to the workers' monetary claims arising from breach of contractual obligations.
- j. At the end of every year, the Department of Labor and Employment shall make an assessment of the performance of OWWA in the SSS for Migrant Worker, based upon the report of the NLRC and the POEA on their respective interactions and experiences with the OWWA. The Department of Labor and Employment shall include such assessment in its year-end report to Congress.
- k. For purposes of this section, the Department of Labor and Employment, NLRC and the POEA, in consultation with the recruitment/manning agencies and legitimate non-government organizations advocating the rights and welfare of overseas Filipino workers, shall formulate the necessary implementing rules and regulations.
- l. The foregoing provisions on SSS for Migrant Worker coverage shall be subject to automatic review through the Congressional Oversight Committee immediately after three (3) years from the effectivity of this Act in order to determine its efficacy in favor of the covered overseas Filipino workers and the compliance by recruitment/manning agencies and OWWA, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions.

Section 4. *Establishment of the Office of Special Social Security for Migrant Worker in OWWA.* - For the purpose of this law, the Office of Special Social Security for Migrant Worker is hereby declared established in OWWA

Section 5. *The Duties and obligations/answerability for the Special Social Security for Migrant Worker in OWWA* - The Office of SSS for Migrant Worker in OWWA shall discharge the same duties, obligations and responsibilities and shall have the same answerability as provided under the 2016 OWWA Charter for the management and protection of the OWWA Fund, but with higher degree of culpability in case of any failure to properly discharge duties, obligations and responsibilities as provided by this law and the 2016 Charter of the OWWA.

Section 6. *Implementing rules and Regulations.*- The departments and agencies charged with carrying out the provisions of this Act shall, within ninety (90) days after the effectivity of this Act, formulate the necessary rules and regulations for its effective implementation.

Section 7. *Separability Clause.* - If any portion or provision of this Act is declared void or unconstitutional, the remaining portions or provisions hereof shall not be affected by such declaration.

Section 8. *Repealing Clause.* - All laws, decrees, orders, rules and regulations, other issuances, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 9. *Effectivity Clause.*- This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

Approved,