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SENATE

S. B. No. 767

RECEIVED BY: 

Introduced by Senator FRANCIS G. ESCUDERO

AN ACT
AUTHORIZING THE SOCIAL SECURITY COMMISSION TO CONDONE
PENALTIES ON DELINQUENT CONTRIBUTIONS AND TO DETERMINE THE
MONTHLY SALARY CREDITS, THE SCHEDULE AND RATE OF
CONTRIBUTIONS AND THE RATE OF PENALTY ON DELINQUENT
CONTRIBUTIONS AND UNPAID LOAN AMORTIZATIONS, AMENDING FOR
THE PURPOSE REPUBLIC ACT NO. 1161, AS AMENDED, OTHERWISE KNOWN
AS THE SOCIAL SECURITY LAW

EXPLANATORY NOTE

This bill seeks to provide the Social Security Commission (Commission) the authority to condone penalties on delinquent contributions, to determine the monthly salary credits, the schedule and rate of contributions, benefit increases and the rate of penalty on delinquent contributions and unpaid loan amortizations, thereby further amending Republic Act No. 1161, as amended, otherwise known as the Social Security Law.

The Commission, guided by its fiduciary duty to protect the welfare of SSS members and the fortitude to exercise extraordinary diligence in the care of the SS Fund, is a collegial body where the government, the employers, the workers and the general public are well represented. All the nine (9) members of the Commission are appointed by the President of the Philippines for a term of one year and their performance are appraised and evaluated by the Office of the President through the Governance Commission on GOCCs every year.

The Commission believes that a strong and vibrant social protection system fulfils an emerging country. This proposed measure will enable the Commission and the SSS to realize its mandate and reinforce their commitment for a better SSS in the years to come.

Penalty condonation on delinquent contributions

Under Section 22 (a) of the SS Law, a penalty of three percent (3%) a month is assessed on unremitted contributions. This penalty is burdensome as it continues to accrue from the date the contribution falls due until paid. As a result, the delinquency, if not quickly addressed, can really pile up. For troubled companies that, by and large, do not want to be delinquent in the first place but failed to remit what is due as their employees' contributions to SSS could easily find themselves in arrears.

It is reported that for a big number of billing or demand letters issued against employers-members of the SSS, the amount of contribution-delinquency is computed based on presumptive

delinquency under Section 22(d) of the SS Law, and hence not yet final being subject to reconciliation of records. The Large Account Division of SSS has a collectible of P1,033 Billion as of 26 May 2014 from delinquent employers. P408 Million is accounted for by penalties and P625.9 Million is for contributions that are due. By providing a breathing space, we are actually helping SSS to immediately collect about P625.9 Million overdue SS contributions which would otherwise be difficult to collect. It is not a secret that companies choose not to pay what SSS demands of them because of penalties slapped upon them that have accumulated through the years which, at times, are actually bigger than the principal that should have been paid. This measure provides a strong incentive for those that have been in arrears in the payment of their employees' contributions to immediately settle what is due and overdue, minus the huge burden of dealing with the delinquency penalties. Past SSS condonation experience shows the amount of P3.42 B that was condoned as penalties while enabling the SSS, at the same time, to collect P3.546B from 24,042 delinquent employers which availed of the program. This amount easily beefed up the SS Fund and contributed to its stability and viability.

More importantly, this is a welcome development for the privately employed workers comprising SSS' general membership, the self-employed individuals, financially distressed companies, small and medium businesses, other social enterprises, the contributing members of the informal sector, the farmers and the fisherfolks, the *kasambahays* and their household employers. They can now avail of the privileges of SSS members of good standing, full benefits and loans, which would otherwise not be available, had their delinquent payments remain unsettled.

This is a three-pronged stimulus package that will benefit all stakeholders of the SSS in the light of the recent calamities and economic debacles besieging our country. It is important that the loan privileges of SSS members such as calamity, housing and other loan packages remain available. This can only happen if contribution payments are up to date. The law will help the SSS, the employers and workers.

To foster public accountability, transparency and good governance, Congress is not deprived of its oversight functions because an annual report on the exercise of the proposed power shall be required to be submitted to both Houses, stating therein the following facts and information, among others: names and addresses of employers whose penalty delinquencies have been the subject of compromise or condonation; amount involved; amount compromised or condoned; and the reason/s for the exercise of power to determine that said powers are reasonably exercised and that the SSS is not unduly deprived of revenues.

This new provision is patterned from the GSIS Law (Section 43 of RA No. 8291), the HDMF/Pag-Ibig Law (Section 9 of RA No. 9679) and PhilHealth Law (Section 16 of RA No. 10606) and the National Internal Revenue Code (Section 204, Chapter I, Title VIII of RA No. 8424).

Under the said laws, the statutory powers which the governing boards of GSIS, PhilHealth and HDMF can exercise includes the authority to waive, compromise or release, in whole or in part, any claim, interest or surcharges imposed upon employers regardless of the amount involved, under such valid terms and conditions. The aim is to replicate and/or align the SS Law with the Legislative will of Congress as contained and expressed in its more recent Legislative enactments.

Operational details and accounts management are the province of the Commission and the SSS, the ones entrusted with the mandate of running the affairs of the country's social security system including the exercise of discretion and flexibility in managing its own affairs.

Fixing the monthly salary credits, the schedule and rate of contributions and the rate of penalty on delinquent contributions and unpaid loan amortizations

What is embodied in Section 18 of the SS Law is an outdated schedule of the social security contributions and the monthly I salary credits that have failed to keep pace with the changing times. Amendments to the SS Law last introduced in 1997 (now 17 years old) are no longer reflective of current socio-economic conditions. The minimum monthly salary credit still pegged at P1,000.00 per month is way below the minimum salary/wage in the private sector while the maximum salary credit at P16,000.00 per month is a far cry from existing realities in compensation administration and labor developments.

The SS contribution rate is an altogether different story. Since 1980, the contribution rate was pegged at 8.4 percent for 23 years, until it was increased by one-percent to 9.4 percent in 2003, to 10.4 percent in 2007 and 11 percent in 2014 to avoid fund depletion. The contribution rate of the GSIS stands at 21 per cent. Given this, it is timely that Congress revisit the SS Law and ensure that this provision is responsive to the present-day realities.

Upon the other hand, across-the-board pension increases of eight to fifty percent were granted 24 times (the last one in 2007); and the minimum monthly pension was also increased under the 1997 SS Law Amendment to Php1,200 if with at least 10 Credited Year of Service (CYS) and to Php 2,400 if with at least 20 CYS. These pension increases averaged 15.12 percent per year for the period 1972 to 2007 and were often announced on "special occasions" such as Labor Day in May and the SSS anniversary in September.

It is just unfortunate that while these pension increases averaged 15.12 percent per year for the period 1972 to 2007 the SS contributions was increased only six times from 1960 to 2014. The heavy strain on the SS Fund being exacted by the increasing benefit obligations of the SSS to be paid to its members and their beneficiaries has a dire effect on the fund's long-term viability. To lighten this load, the SSS, at the same time, carefully manage benefit payouts and operating expenses to minimize SSS' unfunded liability. Prudent fiscal management coupled with solid investment strategies are continuously being undertaken as the key drivers toward strengthening the viability of the SS Fund.

SSS initiatives to enlighten more workers on the value of SSS and the importance of the active membership have helped boost contributions collections, which is the lifeblood of the SSS Fund. However, the existing contribution set-up does not ensure that SSS can continuously cover its ballooning unfunded liabilities in the future. To address such concern and be able to cope with this predicament, something must be done about the SSS contribution rates and align the same with industry standards and sound international' practices taking into consideration actuarial calculations, rate of benefits, inflation and, other relevant socioeconomic indicators.

To live up to the Commission's full representative capacity where all the stakeholders and the sectors of the government, the workers, the management and the general public are well represented, the authority to determine and fix from time to time through rules and regulations, the minimum and maximum monthly salary credits, the schedule and the rate of contributions as well as the rate of increase in benefits, without the Presidential approval requirement, is now being proposed.

Corollary to such power is the authority to review and periodically adjust the rate of penalty on due but unremitted contributions and unpaid loan amortizations taking into consideration inflation and other pertinent socio-economic data. This is the logical consequence as this harmonizes the power to condone, compromise or release, in whole or in part, such penalties imposed upon delinquent social security contributions regardless of the amount involved under such valid terms and conditions it may prescribe when the financial position of the employer demonstrates a clear inability to pay the assessed delinquency.

As earlier discussed, the proposed bill is aligned with the GSIS Law, the PhilHealth Charter, the Pag-Ibig Law and the NIRC. The GSIS Law (in Section 43 thereof) expressly vests upon the GSIS Board of Trustees without need of Presidential approval, the power *i)* to fix and periodically review and adjust the rates of interest and other terms and conditions for loans and

credits extended to its members or other persons, *ii*) to determine, fix and impose interest upon unpaid or unremitted premiums and/ or contributions, and *iii*) to do and perform any and all acts necessary, proper or incidental to the attainment of the purposes and objectives of the GSIS Law.

Also, the PhilHealth Corporation has authority pursuant to Section 16 of its Charter to *i*) impose interest and/ or surcharges not exceeding three percent (3%) per month, in case of delay by a public or private employer in the remittance of contributions and *ii*) to compromise, waive or release, in whole or in part, such interest or surcharges imposed upon employers regardless of the amount involved without Presidential approval, notwithstanding the provisions of any law to the contrary.

The Board of Trustees of the HDMF, in the same vein, may waive or suspend the coverage and/ or payment of monthly Pag-Ibig contributions pursuant to Section 9 of the PagIbig Law without securing approval from the President by reasons of nature of employment, condition of business, ability to make contributions and other reasonable considerations.

Similarly, the same statutory powers are also found in the provisions of the RA 8424 granting the BIR Commissioner the authority *i*) to abate and refund or credit taxes and *ii*) to compromise the payment of any internal revenue tax, when (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax and the BIR Evaluation Board in certain instances.

Based on the foregoing, therefore, the proposed SSS Charter Amendments are being put forward for the cause of the 32 million SSS members here and around the world. These reforms were never conceived to be a panacea, but rather a movement towards strengthening this institution.

It is in this context that the early passage of this bill is earnestly sought.

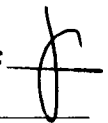


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THE PURPOSE REPUBLIC ACT NO. 1161, AS AMENDED, OTHERWISE KNOWN
AS THE SOCIAL SECURITY LAW

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

1 SECTION 1. Section 4 of Republic Act No. 1161, as amended, otherwise known as
2 the "Social Security Law", is hereby further amended to read as follows:

3 "SEC. 4. Powers and Duties of the Commission and SSS. - (a) The Commission. For
4 the attainment of its main objectives as set forth in Section 2 hereof, the Commission
5 shall have the following powers and duties:

6 "(1) To adopt, amend and rescind, subject to the approval of the President of the
7 Philippines, such rules and regulations as may be necessary to carry out the
8 provisions and purposes of this Act;

9 "(2) To establish a provident fund for the members which will consist of
10 voluntary contributions of employers and/or employees, self-employed and
11 voluntary members and their earnings, for the payment of benefits to such members
12 or their beneficiaries, subject to such rules and regulations as it may promulgate
13 and approved by the President of the Philippines;

14 "(3) To maintain a Provident Fund which consists of contributions made by both
15 the SSS and its officials and employees and their earnings, for the payment of
16 benefits to such officials and employees or their heirs under such terms and
17 conditions as it may prescribe;

18 "(4) To approve restructuring proposals for the payment of due but unremitted
19 contributions and unpaid loan amortizations under such terms and conditions as it
20 may prescribe;

21 "(5) To authorize cooperatives registered with the cooperative development
22 authority or associations registered with the appropriate government agency to act
23 as collecting agents of the SSS with respect to their members: Provided, That the

1 SSS shall accredit the cooperative or association: Provided, further, That the persons
2 authorized to collect are bonded;

3 "(6) To compromise or release, in whole or in part, any interest, penalty or any
4 civil liability to SSS in connection with the investments authorized under Section
5 26, hereof, under such terms and conditions as it may prescribe and approved by the
6 President of the Philippines;[and]

7 **(7) ANY PROVISIONS OF LAW TO THE CONTRARY**
8 **NOTWITHSTANDING, TO CONDONE, COMPROMISE OR RELEASE,**
9 **IN WHOLE OR IN PART, SUCH PENALTIES IMPOSED UPON**
10 **DELINQUENT SOCIAL SECURITY CONTRIBUTIONS REGARDLESS**
11 **OF THE AMOUNT INVOLVED UNDER SUCH VALID TERMS AND**
12 **CONDITIONS IT MAY PRESCRIBE SUCH AS WHEN THE FINANCIAL**
13 **POSITION OF THE EMPLOYER DEMONSTRATES, BY CLEAR AND**
14 **CONVINCING EVIDENCE, INABILITY TO PAY THE ASSESSED**
15 **DELINQUENCY AND THERE IS INDISPUTABLE GOOD FAITH ON**
16 **THE PART OF THE EMPLOYER OF SUCH INABILITY TO PAY.THE**
17 **IMPLEMENTING RULES AND REGULATIONS TO CARRY OUT THIS**
18 **PROVISION SHALL BE ADOPTED AND PROMULGATED BY THE**
19 **COMMISSION NOT LATER THAN NINETY (90) DAYS AFTER THE**
20 **APPROVAL OF THIS ACT.**

21
22 **THE COMMISSION SHALL SUBMIT TO BOTH THE SENATE AND**
23 **THE HOUSE OF REPRESENTATIVES, AN ANNUAL REPORT ON THE**
24 **EXERCISE OF THE POWERS UNDER THIS SECTION, STATING**
25 **THEREIN, AMONG OTHERS, THE FOLLOWING: 1) NAMES AND**
26 **ADDRESSES OF EMPLOYERS WHOSE PENALTY DELINQUENCIES**
27 **HAVE BEEN THE SUBJECT OF COMPROMISE OR CONDONATION;**
28 **2) AMOUNT INVOLVED; 3) AMOUNT COMPROMISED OR**
29 **CONDONED; AND 4) THE REASON/S FOR THE EXERCISE OF POWER**
30 **TO DETERMINE THAT SAID POWERS ARE REASONABLY**
31 **EXERCISED AND THAT THE SSS IS NOT UNDULY DEPRIVED OF**
32 **REVENUES.**

33
34 **(8) TO DETERMINE AND FIX FROM TIME TO TIME THROUGH**
35 **RULES AND REGULATIONS, THE MINIMUM AND MAXIMUM**
36 **MONTHLY SALARY CREDITS, THE SCHEDULE AND THE RATE OF**
37 **CONTRIBUTIONS, THE RATE OF PENALTY ON DUE BUT**
38 **UNREMITTED CONTRIBUTIONS AND UNPAID LOAN**
39 **AMORTIZATIONS TAKING INTO CONSIDERATION ACTUARIAL**
40 **CALCULATIONS, RATE OF BENEFITS, INFLATION AND OTHER**
41 **RELEVANT SOCIO-ECONOMIC DATA; AND**

42 **"[(7)](9)To approve, confirm, pass upon or review any and all actions of the SSS in**
43 **the proper and necessary exercise of its powers and duties hereinafter enumerated.**

44 **"(b) The Social Security System – Subject to the provision of Section four (4),**
45 **paragraph[seven (7) hereof](A), SUB-PARAGRAPH NINE (9) HEREOF, the**
46 **SSS shall have the following powers and duties:**

47 **"(1) To submit annually not later than April 30, a public report to the President of**
48 **the Philippines and to the Congress of the Philippines covering its activities in the**
49 **administration and enforcement of this Act during the preceding year including**

1 information and recommendations on broad policies for the development and
2 perfection of the program of the SSS.

3 "(2) To require the actuary to submit a valuation report on the SSS benefit program
4 every four (4) years, or more frequently as may be necessary, to undertake the
5 necessary actuarial studies and calculations concerning increases in benefits taking
6 into account inflation and the financial stability of the SSS, and to provide for
7 feasible increases in benefits every four (4) years, including the addition of new
8 ones, under such rules and regulations as the Commission may adopt, subject to the
9 approval of the President of the Philippines: Provided, That the actuarial soundness
10 of the reserve fund shall be guaranteed: Provided, further, That such increases in
11 benefits shall not require any increase in the rate of contribution;

12 "(3) To establish offices of the SSS to cover as many provinces, cities and
13 congressional districts, whenever and wherever it may be expedient, necessary and
14 feasible, and to inspect or cause to be inspected periodically such offices;

15 "(4) To enter into agreements or contracts for such service and aid, as may be
16 needed for the proper, efficient and stable administration of the SSS;

17 "(5) To adopt, from time to time, a budget of expenditures including salaries of
18 personnel, against all funds available to the SSS under this Act;

19 "(6) To set up its accounting system and provide the necessary personnel therefor;

20 "(7) To require reports, compilations and analyses of statistical and economic data
21 and to make investigation as may be needed for the proper administration and
22 development of the SSS;

23 "(8) To acquire and dispose of property, real or personal, which may be necessary or
24 expedient for the attainment of the purposes of this Act;

25 "(9) To acquire, receive, or hold, by way of purchase, expropriation or otherwise,
26 public or private property for the purpose of undertaking housing projects
27 preferably for the benefit of low-income members and for the maintenance of
28 hospitals and institutions for the sick, aged and disabled, as well as schools for the
29 members and their immediate families;

30 "(10) To sue and be sued in court; and

31 "(11) To perform such other corporate acts as it may deem appropriate for the
32 proper enforcement of this Act."

33
34 **SECTION 2.** Section 18, paragraph (a) of the Social Security Law is hereby further
35 amended to read as follows:
36

37 "SEC. 18. Employee's Contribution. - (a) Beginning as of the last day of the
38 calendar month when an employee's compulsory coverage takes effect and every
39 month thereafter during his employment, the employer shall deduct and withhold
40 from such employee's monthly salary, wage, compensation or earnings, the
41 employee's contribution in an amount corresponding to his salary, wage,
42 compensation or earnings during the month in accordance with the following
43 schedule] **MONTHLY SALARY CREDITS, THE SCHEDULE AND THE**

