

**Bill No. 56 of 2008**

THE EMPLOYEES' STATE INSURANCE (AMENDMENT) BILL, 2008

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BILL

*further to amend the Employees' State Insurance Act, 1948.*

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employees' State Insurance (Amendment) Act, 2008. Short title and commencement.

(2) It shall be deemed to have come into force on the 3rd day of July, 2008.

34 of 1948. 2. In the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Substitution of new Chapter for Chapter VA.  
5 Act), for Chapter VA, the following Chapter shall be substituted, namely:—

'CHAPTER VA

SCHEME FOR OTHER BENEFICIARIES

73A. In this Chapter,— Definitions.

10 (a) "other beneficiaries" means persons other than the person insured under this Act;

(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;

(c) "underutilised hospital" means any hospital not fully utilised by the persons insured under this Act;

(d) “user charges” means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

Power to frame Scheme.

73B. Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families providing medical facility in any hospital established by the Corporation in any area which is underutilised hospital on payment of user charges. 5

Collection of user charges.

73C. The user charges collected from the other beneficiaries shall be deemed to be contribution and shall form part of the Employees’ State Insurance Fund.

Scheme for other beneficiaries.

73D. The Scheme may provide for all or any of the following matters, namely:— 10

(i) the other beneficiaries who may be covered under this Scheme;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation; 15

(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

Power to amend Scheme.

73E. The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme. 20

Laying of Scheme framed under this Chapter.

73F. Every Scheme framed under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.’ 25

Repeal and saving.

3. (1) The Employees’ State Insurance (Amendment) Ordinance, 2008, is hereby repealed. 30 Ord. 7 of 2008.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the Principal Act, as amended by this Act.

## STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948 is a social security legislation that provides for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

2. The Rashtriya Swasthya Bima Yojana Scheme has already become operational with effect from 1.4.2008. The Scheme has picked up momentum. Almost all the States have agreed to implement the Scheme and a majority of them have already advertised for the implementation of the same. More than 1.25 lakh smart cards have been issued by 15.6.2008. This number at present has risen to over 2 lakhs. Some recipients of these cards have already been assisted by way of hospitalisation. It is, therefore, considered essential and urgent to enable Employees' State Insurance Corporation to participate in the Scheme with immediate effect. By providing health services to the unorganised sector workers under the Rashtriya Swasthya Bima Yojana Scheme, both the unorganised sector workers and the Employees' State Insurance Corporation will benefit by the Employees' State Insurance Corporation making available its vast network of hospitals for providing medical care on user charges, wherever the same are underutilised. In view of the urgency as pointed out above, the Employees' State Insurance (Amendment) Ordinance, 2008 was promulgated on the 3rd July, 2008.

3. The salient features of the said Ordinance are as follows:—

(i) it empowers the Central Government to frame Schemes for any other person who is not insured under the Employees' State Insurance Act, 1948 also to avail the medical facility in the Employees' State Insurance run hospitals;

(ii) the facilities to other persons shall be given in the underutilised hospitals which are not fully utilised by the Employees' State Insurance beneficiaries;

(iii) for availing medical facilities, the other persons shall pay the charges as may be notified by the Corporation in consultation with the Central Government from time to time;

(iv) the Scheme shall provide the time and manner in which the medical facilities may be availed by other beneficiaries. It shall also provide for the form in which the beneficiary shall furnish particulars about himself and his family members whenever required by the Corporation.

4. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

OSCAR FERNANDES.

*The 29th September, 2008.*

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to substitute Chapter VA so as to empower the Central Government to frame a Scheme for other beneficiaries and the members of their families providing medical facility in hospital established by the Corporation in any area which is underutilised on payment of user charges.

2. The Scheme may provide for all or any of the following matters, namely:—

(i) the other beneficiaries who may be covered under this Scheme;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;

(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

3. The matters in respect of which the Scheme may be framed are of administrative and procedural details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE EMPLOYEES' STATE INSURANCE ACT, 1948

(34 OF 1948)

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CHAPTER VA

TRANSITORY PROVISIONS

**73A.** (1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employer's special contribution) as the rate specified under sub-section (3). Employer's special contribution.

(2) The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter IV.

(3) The employer's special contribution shall consist of such percentage, not exceeding five per cent. of the total wage bill of the employer, as the Central Government may, by notification in the Official Gazette, specify from time to time :

Provided that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months' notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied :

Provided further that the employer's special contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any areas in which the provisions of the said Chapters are not in force.

(4) The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid of the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Office Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

*Explanation.*— "Total wage bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

**73B.** (1) If any question of dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question of dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf. Special tribunals for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court.

(2) The provisions of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

**73C.** The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV in respect of that employee for that week had been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto. Benefits under Chapter V to depend upon employee's contribution.

*Explanation.*— In the case of an exempted employee, the employer’s contribution shall be deemed to have been paid for a week if the Corporation is satisfied that during that week the employer’s contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

Mode of recovery of employer’s special contribution.

**73D.** The employer’s special contribution payable under this Chapter may be recovered as if it were an arrear of land-revenue.

Power to call for additional information or return.

**73E.** Without prejudice to the other provisions contained in this Act the Corporation may, for the purpose of determining whether the employer’s special contribution is payable under this Chapter or for determining the amount thereof, by general or special order, require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

Power to exempt to be exercised by Central Government alone in respect of employer’s special contributions.

**73F.** Notwithstanding anything contained in this Act, the Central Government may, having regard to the size or location of, or the nature of the industry carried on in, any factory or establishment or class of factories of establishments, exempt the factory or establishment or class of factories or establishments from the payment of the employer’s special contribution under this Chapter and nothing contained in sections 87 to 91 inclusive shall be deemed to authorise any State Government to grant any such exemption.

Application of certain provisions of this Act to employer’s special contribution.

**73G.** Save as otherwise expressly provided in this Chapter, the provisions of Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer’s special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer’s contribution if this Chapter were not in force and the employer’s contribution had been payable under this Act.

**73H.** [*Power to remove difficulties.*] *Rep. by the Employees’ State Insurance (Amendment) Act, 1966 (44 of 1966), s. 31 (w.e.f. 17-6-1976).*

Duration of Chapter VA.

**73-I.** The Central Government may, by notification in the Official Gazette, direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from the date of the notification :

Provided that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897, shall apply as if the provisions of this Chapter had then been repealed by a Central Act.

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**BILL**

further to amend the Employees' State Insurance Act, 1948.

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*(Shri Oscar Fernandes, Minister of State for Labour and Employment)*