

Skill Development Promotion Act, B.E. 2545 (2002)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on 22nd Day of September B.E. 2545

Being the 57th Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that;

Whereas it is expedient to promulgate Skill Development Promotion Act to replace Vocational Training Promotion Act;

Contents of this Act include the limitation of the people's rights and freedom permitted under Article 29, Article 31 and Article 35 of the Thai Constitution;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly as follows:

Section 1

This Act shall be called "Skill Development Promotion Act, B.E. 2545 (2002)"

Section 2

This Act shall be in effect after one hundred and twenty days from date of announcement in the Government Gazette.

Section 3

The Vocational Training Promotion Act, B.E. 2537 (1994) shall be repealed.

Section 4

The ministries, government bureaus, departments, and government agencies are not governed under this Act.

Section 5

In this Act, the following terms shall mean:

"Skill Development" means a process which enables trainees and the working age people to gain access to dexterity, knowledge and ability, career ethics and good working attitude by skill training, establishing skill standards, and other relating activities.

"Skill Training" means the pre-employment training, skill upgrading training and training for job change.

"Pre-employment Training" means skill training prior to employment to enable the workers to work according to the skill standards.

"Skill up-grading Training" means an additional training activity provided by the employer to his employees to enable them to have more and better knowledge and skill.

"Training for the job change" means an additional training activity provided by the employer to his employees to have knowledge and skills in other jobs or trades.

"Curriculum" means subjects, contents and skill training delivery method.

"Training Provider" means an authorized person who arranges a skill training activity in accordance with the curriculum and the details for training as shall be seen appropriate to the registrar under this Act.

"Trainee" means a person who receives training offered by the training provider.

"Training Instructor" means a person who delivers training instruction to the trainee.

"Training Site" means a place where the training provider arranges training activity for the trainee.

"Skill Training Center" means a training center aside from that arranged by the training provider.

"Skill Standards" means technical regulations used to determine the level of expertise and the working attitude of the employees in various trades under this Act.

"Skill Standard Test" means a test used to determine skills, knowledge, abilities and the working attitude of the employee according to the established standards.

"Skill Standard Testing Provider" means an authorized person who arranges the skill standard test under this Act.

"Skill Standard Testing Examiner" means a person who examines the test performed by those requesting for the test.

"Business Operator" means a person who engages in industrial, commercial or other businesses either he is or is not the employer of the trainee.

"Employer" means an employer under the Labor Protection Law.

"Employee" means an employee under the Labor Protection Law.

"Fund" means Skill Development Fund.

"Committee" means Skill Development Promotion Committee.

"Member" means member of Skill Development Promotion Committee.

"Official" means person appointed to act according to this Act.

"Registrar" means the Director General or any person appointed by him.

"Director General" means the Director General of the Department of Skill Development.

"Minister" means the Minister in charge of the execution of this Act.

Section 6

The Minister of Labor and Social Welfare shall be in charge of the execution of this Act and is empowered to appoint the officials to issue Ministerial Regulations, regulations and announcements in accordance with this Act.

Such Ministerial Regulations and regulations announcements shall come into effect upon the date of announcement in the Government Gazette.

Section 7

The Minister has an authority to prescribe trades for skill development promotion according to this Act.

CHAPTER 1

Arrangement for Skill Training

Part 1

Pre-employment Training

Section 8

To obtain the rights and the benefits according to this Act, the pre-employment training provider shall prepare a detailed training program for the trades prescribed by the Minister as per Section 7 and proposed to the registrar for approval. Such program must include:

- (1) curriculum
- (2) place or center for training

- (3) name and qualification of the training instructor.
- (4) period of training.
- (5) list of equipment necessary for training either still in use or to be acquired in the future.
- (6) method and standards used for evaluating the training
- (7) others as to be prescribed by the Committee.

The consideration for approval given by the registrar shall be in accordance with the standard, method and conditions prescribed by the Committee.

Any alteration or amendment to the sub-clause (1), (2), (4), or (6) after these sub-clauses have been approved cannot be made without the consent of the registrar.

Section 9

The qualification of the training instructor must comply with the Committee prescription.

Section 10

The training provider shall prepare the regulations for training in Thai language and must contain at least this information.

- (1) training period
- (2) date and time of training and breaks
- (3) holidays
- (4) leave and rules of taking leave
- (5) allowance during training session
- (6) conditions required for canceling training agreement
- (7) rules for compensation in case of any accident or sickness arising from training
- (8) others as to be prescribed by the Committee.

Section 11

A written agreement must be made by and between the training provider and the trainee and must cover clauses as prescribed by the Committee.

Section 12

The training provider must follow the regulations concerning the protection of trainee as prescribed by the Minister.

Also must prepare and keep record or bio-data of trainee.

Section 13

Upon completion of the training course as per Section 8 (6), the provider shall issue a certificate to the trainee in 15 days from the date of achievement and then notify the registrar.

Section 14

In case the training provider wishes to transfer his business to other person, he would notify the registrar in writing not later than 15 days prior to such transfer and indicate that the transferee wishes or does not wish to continue the pre-employment training activity. In such case both the former and the new providers must jointly sign in an agreement.

In case transferee wishes to take over the pre-employment training activities, the registrar would record down and shall regard the transferee as the registered training provider under Section 8 from the date of transfer with the same rights and duties that the former provider originally had.

If the transferee wants to stop the pre-employment training activities, then the registrar shall arrange and send the trainees who still have unfinished training to another training

provider or to the government training institute in the same trade. In doing so, the former training provider must be responsible for all the remaining training cost.

Section 15

The training provider is not allowed to demand or receive any kind of training fees or remuneration from the trainee.

Section 16

The training provider may arrange for the trainee to receive training at the government educational or training institute or other training institutions accepted by the registrar.

The curriculum and expenses for such training as per Paragraph 1 must be approved by the registrar.

Section 17

If the training provider close down his business or has other reason that he can no longer provide further training activities, he shall send a letter informing the registrar not later than 15 days prior to date of such closure. In case it is Pre-employment training, Paragraph 3 of Section 14 shall be applied to the trainees *mutatis mutandis*, who have not completed their training at the date of such closure. Except that with the consent of the Committee, the former training provider may not be responsible for the remaining training cost.

Section 18

For the benefit of the skill development, the training provider may admit students from schools or universities to receive training with the curriculum of the institutes, of the training provider or of which is jointly prepared by the institute and the provider. In doing so, the provider must submit the prepared curriculum to the registrar prior to the commencement of training session, or except that the curriculum has already been submitted to the registrar. In this case, Sections 11, 12, 13, 15, 33, 34, 35, 36 and 37 shall be applied accordingly *mutatis mutandis*.

Persons sent by the government to attend such training are also covered under Paragraph 1.

Section 19

The establishment of skill training centers must conform to the standard, method, and condition as prescribed by the Committee.

Part 2

Skill up-grading Training and Training for Job Change

Section 20

To obtain the rights and benefits according to this Act, the training provider must submit the curriculum, all related details and list of expenses to be spent in arranging training activities to the registrar for approval.

Action taken for approval by the registrar must be in accordance with the standard, method and conditions as stipulated by the Committee.

In providing training activities as per Paragraph 1, Section 15, Section 16, Section 17 and Section 19 shall be applied *mutatis mutandis*.

Section 21

During the training course, the training provider who is also the employer still has to abide by the law, rules and employment contract.

In case the training activity is held with the request of the employee and in written agreement, the employer may arrange training after the employee's regular working hours or on holidays with wages paid not less than the regular wage rate according to the actual number of hours spent in such training.

CHAPTER 2

Skill Standards

Section 22

To promote skill development, the Committee shall stipulate the National Skill Standards for various trades and present to the Minister for approval.

Following the approval and announcement of skill standards in the Government Gazette, the Department of Skill Development shall arrange a skill standard test in certain trades as per Section 23, or the skill standard testing provider shall conduct such test according to Section 24.

The qualification of applicants, the testing method and issuance of achievement certificates shall be as prescribed by the Committee.

Section 23

The Department of Skill Development shall hold the skill standard test and promote people to participate in such event.

Section 24

Any person wishing to conduct skill standard test can apply for permission to the registrar.

The application for the permit, the permit issuance, the qualification of skill standard examiner, the permit suspension and revocation shall be in accordance with the standard, method and conditions as stipulated by the Committee.

Section 25

In conducting skill standard test, fees shall be collected from the applicants not higher than the rate prescribed by the Committee.

Section 26

Any person requiring his skill standard to be certified may apply to the registrar.

The quest for skill standard certification, skill standard certification, approval of conduction testing for approved skill standards and the issuance of certified letter to a person passing skill test as per Paragraph 1 shall comply with standard, method and conditions prescribed by the Committee.

CHAPTER 3

Skill Development Fund

Section 27

A Fund called "Skill Development Fund" shall be set up in the Department of Skill Development, Ministry of Labor and Social Welfare. The Fund is intended to be used as a revolving fund for all the expenditures involving skill development promotion.

The Fund shall include:

- (1) Fund transferred from the Skill Development Fund set up in the year B.E. 2539 (1996) at the resolution of the cabinet and managed according to the regulations of the Ministry of Labor and Social Welfare.
- (2) Subsidy allocated by the government

- (3) Money contributed by the business operators towards the Fund
- (4) Money and/or property donated to the Fund
- (5) Interest or benefit from the Fund
- (6) Money and/or property which become the property of the Fund, except those listed in sub-clause (1) to (5).

The Fund will not be remitted to Ministry of Finance according to the law governing reserve and budgeting.

The receipt, payment, safe-keeping and management of the Fund shall be in accordance with the regulations prescribed by the Committee with the approval of the Finance Ministry.

The Department of Skill Development shall keep and disburse the Fund according to this Act.

Section 28

The Fund shall be used for the following activities:

- (1) loan granted to trainee involving training activity under this Act.
- (2) training providers, skill standard testing providers and business operators can loan money from the Fund for expenses of providing skill training or skill testing according to this Act.
- (3) aid or support in any activity involving skill development promotion as stipulated by the Committee.
- (4) the Fund management

Lending must be in accordance with the regulations prescribed by the Committee with the approval of the Finance Ministry.

The Committee may allocate the Fund not exceeding five percent of each year fund for managing cost.

Section 29

The business operator engaging in the business where the type, size, number of employees, the proportion of trainees and employees in the area as stipulated by the Minister with the recommendation of the Committee must make contributions towards the Fund at the rate fixed as per Section 30, except in the case the operator is already the training provider under Chapter 1.

Section 30

In collecting the contribution from the business operator under Section 29, the Minister with the recommendation of the Committee has power to prescribe the rate of contributions of not higher than one percent of the wage paid in the year prior to the year the contribution starts, and the procedure of payment.

The minimum and the maximum wage used as the base for calculation of contribution as per paragraph 1 shall be prescribed by the Minister with the recommendation of the Committee.

Section 31

If any business operator fails to make the contribution within time, or has not contributed in full amount according to the prescribed proportion of trainees and employees, the business operator must pay a surcharge at the rate of 1.5 percent per month of the amount of contribution not delivered or of the remaining portion in the next due date. A fraction of a month from date of default, if more than 15 days shall be counted as 1 month, and if less, it shall be disregarded.

In case the Director General has issued an order to the business operator to pay his contribution or surcharge as Paragraph 1, and if he fails to do so, the provisions relating the administrative law shall be applied. In case there is no official to enforce the order for this case, the Department of Skills Development has power to bring it to the Administrative Court to force him for payment of overdue unpaid amount.

Section 32

Within 6 months after end of the fiscal year, the Committee shall submit the balance sheet and the statement of account for the past year which has been audited and certified by the office of the Auditor General to the cabinet.

The Ministry shall submit the balance sheet and the statement of account to the Prime Minister who shall submit further to the House of Representatives and the Senate before announcing in the Government Gazette.

CHAPTER 4

Rights and Benefits of the Training Provider

Section 33

The training provider who arranges skill development training activity in certain trades stipulated by the Minister under Section 7 shall have the following privileges.

- (1) income tax exemption on the percentage of training expenses as prescribed in the Royal Decree according to the Revenue Code.
- (2) assistance granted by the Department of Skill Development in providing the training of training personnel, skill standard testing provider, supervisors and others as well as on curriculum and equipment development.
- (3) Consultation service from the Department of Skill Development involving skill development activities.
- (4) other privileges as shall be granted in Ministerial Regulations.

Section 34

In addition to Section 33, the training provider providing training activities in the skill development center established under Section 19 shall have the following additional privileges.

- (1) exemption on import duty and Value Added Tax (VAT) for tools and machinery brought into the kingdom for training purpose as prescribed in Ministerial Regulations regarding tariff law which will be enacted in the Royal Decree under the Revenue Code.
In this case, a person requesting tax exemption must list items of equipment and machinery which have been granted exemption and submit to the Committee for consideration.
- (2) deductions on utility charges for electricity and pipe water bills in the amount of two times of the training expenses as prescribed in the Royal Decree according to the Revenue Code.
- (3) other privileges as shall be prescribed by the Ministerial Regulation.

Section 35

Application for privileges under Section 33 (2), (3), (4) and Section 34 (4) must be submitted to the registrar in accordance with the standard, method and conditions prescribed by the Committee.

Section 36

Under the immigration law, the training provider may bring in foreign experts, instructors, their spouses and dependents. The number of experts and the conditions as well as period of stay shall be decided by the Committee. However, the length of their stay must not beyond the permitted time according to the immigration law.

Section 37

The training provider is excluded from the law governing private schools.

CHAPTER 5

Skill Development Promotion Committee

Section 38

There shall be a Skill Development Promotion Committee comprising the Permanent Secretary of the Ministry of Labor and Social Welfare as Chairman, the representatives of Finance Ministry, the Science, Technology and Environment Ministry, the Education Ministry, the Industrial Ministry, the Budget Bureau, the Board of Investment, the Tourism Authority of Thailand, Thai Chamber of Commerce, the Industrial Federation of Thailand, the Thai Bankers Association, the Travel Industrial Council of Thailand as Members and four other members appointed by the Prime Minister of which two are experts, and other two are representatives of employers and employees. The Director General of the Department of Skill Development shall be a member and secretary.

The Committee is authorized to appoint the official of the Department of Skill Development to act as the assistant secretary.

The Committee members of two experts appointed by the Minister are skill development experts with at least 10 years experience.

Committee members representing employers and employees shall be appointed by the Minister in accordance with the standard, and method prescribed in the Ministerial of the Ministry of Labor and Social Welfare.

Section 39

The Committee shall have the following authority:

- (1) propose to the Minister the policy regarding skill development activities and skill development fund.
- (2) propose and give advice to the Minister in issuing Ministerial Regulations, regulations, or announcement according to this Act.
- (3) issue regulations or announcements for the execution of this Act.
- (4) provide national skill standards for various trades mentioned in Section 22.
- (5) set up criteria for skill development promotion.
- (6) promote the business operator to employ those who have passed skill standard test to work in their trade according to the type, size and job characteristic as prescribed by the Committee.
- (7) promote the establishment of skill training centers and skill standard test centers.
- (8) promote skill contest events.
- (9) promote the coordination between the government and private sectors involving skill development and the common use of resources.
- (10) Follow up the result of skill development activities.

- (11) consider and investigate an appeal to revoke the permit of training provider as per paragraph 2 of and Section 48 an order to suspension or withdraw the permit of skill standard testing provider as per Paragraph 2 of Section 49.
- (12) perform other duties as prescribed in this Act or in other law written specifically to be the Committee's duties.
- (13) perform other duties as assigned by the Minister.

Section 40

The Committee members appointed shall remain in office for two years term.

The terminated members may be re-appointed to the Committee for another term.

Section 41

In addition to vacating office at the end of term, members appointed by the Minister shall vacate the office upon following cases.

- (1) death
- (2) resignation
- (3) being removed by the Minister for malfeasance and tarnished conduct
- (4) incompetence or quasi-incompetence
- (5) bankruptcy
- (6) imprisonment by the court's final verdict except in careless or light penalty

Upon termination before the term of office ends, the Minister may appoint a new member to replace the vacant post. In this case, the new Committee member shall hold the office for the remaining term left by the former members.

Section 42

Quorum for the Committee's meeting must have not less than half of the entire number of the Committee's members.

The Committee meeting shall be chaired by the chairman of the Committee, when he is not present or cannot proceed the meeting, the attending members shall elect one member to chair the meeting.

The resolution of the meeting shall be decided by the majority.

One member has one vote. In case of an equality of votes, the deciding vote shall be from the chairman of the meeting.

Section 43

The Committee shall appoint sub-committees to work as directed by the Committee.

The meeting of the sub-committee shall be as outlined in Section 42.

Section 44

The Department of Skill Development shall be the administration unit of the Committee and shall follow up any person who gets the privileges from this Act to strictly follow the Act and then report to the Committee.

CHAPTER 6

The Registrar and the Officials

Section 45

The registrar and the officials shall be empowered to:

- (1) issue a letter inviting training providers, instructors, trainees, skill standard testing provider, skill standard testing examiner, and business operators or

persons involved to give statement or issue an order to them to submit document or other supporting document for consideration.

- (2) enter the training site, centers or enterprises during working hours to inspect and give advice to the training provider, skill standard testing provider or the business operator to perform according to this Act.

Section 46

In performing the duty under Section 45 (2), the registrar or the officials may request the training provider or the business operator or persons involved to facilitate their visits as appropriate.

Section 47

In performing the duty, the registrar and the officials must show their identity cards which must conform to the format prescribed by the Minister.

CHAPTER 7

Revocation of the status of training provider, the suspension and the revocation of permit

Section 48

In case the provider violates or fails to follow this Act or Ministerial Regulation, Regulation or announcement, issued under this Act, the registrar shall have a written notice to the provider for correction within time specified.

If failure to do so or not take a remedy action within a period given in the paragraph 1, the registrar have authority to revoke the status of the training provider.

Such the notice of the revocation shall be made in writing and deliver to that provider. If he cannot be located or if he refuses to receive the notice, such notice shall be posted in an open place easy to be seen at the training site or training center as the case may be. In doing so, it shall be assumed that the provider had already received the notice from the date of posting it. Except in the case the provider cannot be located, then it shall be regarded as having received the notice after fifteen days from date of posting the notice.

In case of the revocation as described in paragraph 2, if it is Pre-employment training Paragraph 3 of Section 14 shall be applied to the trainees having not completed their training, *Mutatis Mutandis*.

Section 49

If the skill standard training provider fails to comply with the provisions given in this Act, or Ministerial Regulation, regulation or announcement, issued under this Act, the registrar shall order the provider to abide by the law or to correct within time specified.

If the provider still ignores to do so as in Paragraph 1, then the registrar shall suspend or withdraw his permit as the case may be.

The order to suspend or withdraw the permit shall be in written notice, if the provider cannot be located or refuses to accept, such order shall be posted up in an open place and can be seen clearly at the training site or centers and shall assume that the provider has had known such notice. Except when the provider cannot be located, then it shall be assumed that the provider has received the order after 15 days from date of posting the notice.

During suspension or revocation of permit, the provider must not be allowed to engage in any training activity.

CHAPTER 8

Appeal

Section 50

The provider whose permit is withdrawn as Section 48 has the right to appeal to the Committee within 15 days from the 20 date of receiving the notice. The Committee shall notify the result of decision in 30 days from the date of accepting the appeal.

Decision of the Committee shall be final.

During the time of appeal, it shall be assumed that the person making the appeal still has the rights and benefits under this Act until the appeal is turned down.

Failure to appeal within time specified in Paragraph 1 or if the Committee acquits the case, the rights and benefits under this Act shall be ceased from date of withdrawal notice issued by the registrar or from the date of acquittal issued by the Committee as the case may be.

Section 51

Skill standard testing provider whose permit has been suspended or withdrawn under Section 49 has the right to appeal to the Committee within 15 days from the date of receiving the notice. The Committee shall notify the result of decision in 30 days from the date of receiving appeal.

The verdict of the Committee shall be final.

Section 52

The appeal and the decision of the appeal shall be in accordance with the regulation stipulated by the Committee.

CHAPTER 9

Penalty

Section 53

Any person refuses to give information or refuses to abide by the order of the registrar or of the officials, obstruct or does not facilitate to the registrar or to the officials who are performing their duty under Section 45 or 46 shall be fined not more than Bath 5,000.

Transitory Provisions

Section 54

The training provider under Vocational Training Promotion Act, B.E. 2537 shall be the Provider under this Act.

Section 55

The Vocational Training Promotion Committee who still remains in position under B.E. 2537 Act shall be the Skill Training Promotion Committee under the new Act until the new Committee is appointed under this Act.

Section 56

Ministerial Regulations, regulations or announcement issued under Vocational Training Promotion Act, B.E. 2537 and still in force, shall be still effective if they do not oppose to

this Act, until the Ministerial Regulation, other regulations or announcement according to this Act shall be issued and come into force.

Countersigned by

Pol. Lt. Col. Thaksin Shinawatra

Prime Minister

Note: Reason to enact this Act is that the old Vocational Training Promotion Act, B.E. 2537 was unsuitable for the present skill training development situation. Therefore, in order to promote skill development activity efficiently and suitably, it is appropriate to revise the Act that shall include encouragement of the employer or the business operator to participate more in skill development activities and setting up the skill development fund.

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