

Health Promotion Foundation Act, B.E. 2544 (2001)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 27th Day of October, B.E. 2544

Being the 56th Year of the Present Reign;

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

Whereas it is expedient to have a law on the Health Promotion Foundation;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29 in conjunction with Section 31 and Section 48 of the Constitution of the Kingdom of Thailand so permit by virtue of the provisions of the law;

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

Section 1

This Act is called the "Health Promotion Foundation Act, B.E. 2544 (2001)".

Section 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

In this Act:

"alcoholic beverages" means alcoholic beverages under the law on alcoholic beverages;

"tobacco" means tobacco under the law on tobacco;

"tax" means taxes under the law on alcoholic beverages and tobacco stamp duties under the law on tobacco;

"health promotion" means any act which is aimed at the fostering of a person's physical, mental and social conditions by means of supporting personal behaviors, social conditions and environments conducive to physical strength, a firm mental condition, a long life and a good quality of life;

"Foundation" means the Health Promotion Foundation;

"Committee" means the Committee of the Health Promotion Foundation;

"Performance Appraisal Committee" means the Performance Appraisal Committee for the Foundation's performance;

"Manager" means the General Manager of the Health Promotion Foundation;

"Ministers" mean the Ministers having charge and control of the execution of this Act.

Section 4

The Prime Minister, Minister of Finance, and Minister of Public Health shall have charge and control of the execution of this Act.

CHAPTER I

Establishment of the Foundation

Section 5

There shall be established a Foundation called the "Health Promotion Foundation".

The Foundation shall be a juristic person having the following objectives:

- (1) to promote and encourage health promotion in the population of all ages in accordance with the national health policy;
- (2) to create awareness of hazardous behavior from the consumption of alcoholic beverages, tobacco or other health-deteriorating substances and to create belief in health promotion amongst people of all classes;
- (3) to support campaigns for the reduction in the consumption of alcoholic beverages, tobacco and other health-deteriorating substances, and create public awareness of the relevant legal provisions;
- (4) to conduct studies and research, or encourage the conduct of the study and research, training or organization of meetings with regard to health promotion;
- (5) to develop the ability of a community in fostering health promotion by the community or private organizations, public-benefit organizations, Government Agencies, State enterprises or other State Agencies;
- (6) to support campaigns for health promotion by various activities as a means by which members of the public can improve their health, spend spare time fruitfully and reduce their consumption of alcoholic beverages, tobacco and other health-deteriorating substances.

Section 6

The Foundation shall consist of the following money and property:

- (1) Foundation levy collected under Section 11;
- (2) money and property received and transferred under Section 43;
- (3) Government subsidy;
- (4) subsidies from the private sector or other organizations, including foreign sources or international organizations and money and property donated to it;
- (5) fees, maintenance charges, remuneration, service charges or incomes from its operation;
- (6) fruits of the money or income accruing from the properties of the Foundation.

Section 7

The activities of the Foundation are not subject to the law on labor protection, law on labor relations, law on State enterprise labor relations, law on social insurance and law on monetary compensation, but the Manager, officials and employees of the foundation shall receive remuneration of not less than that prescribed by the law on labor protection, law on social insurance and law on monetary compensation.

Section 8

The Foundation shall have its principal office in Bangkok Metropolis or in a province prescribed by the Minister by a publication in the Government Gazette.

Section 9

The Foundation shall have the power to carry out various activities within the boundaries of its objectives under Section 5 and such powers shall include:

- (1) to have ownership, possessor rights and real rights;
- (2) to create any rights or enter into any juristic acts or both within and outside the Kingdom;

- (3) to seek benefits from properties of the Foundation;
- (4) to disseminate and publicize information in order to campaign and raise public awareness of the dangers from the consumption of alcoholic beverages, tobacco or other health-deteriorating substances, and of health promotion to the extent of disseminating and providing information on the relevant laws;
- (5) to do any other act necessary for or in furtherance of the attainment of the objectives of the Foundation.

Section 10

The Foundation has the status of a State Agency, which is not a Government Agency or State enterprise under the law on budgetary procedure, and the incomes of the Foundation are not to be remitted as national revenues.

Section 11

The Foundation shall have the power to arrange for the collection of Foundation levy from persons under the duty to pay taxes under the law on alcoholic beverages and the law on tobacco at a rate of two percent of the tax collected from alcoholic beverages and tobacco under the law on alcoholic beverages and the law on tobacco.

In calculating the Foundation levy at the rate prescribed in paragraph one, any fraction of one satang shall be disregarded.

Section 12

For the benefit of collecting and remitting Foundation levy:

- (1) the Excise Department and Customs Department shall be the bodies carrying out the invoicing of Foundation levy for remission as revenues of the Foundation without having to remit to the Ministry of Finance as national revenues, and this shall be in accordance with the regulations prescribed by the Finance Minister;
- (2) the Foundation levy shall be deemed to be a tax, but shall not be included in the calculation as a value of tax.

Section 13

Persons under a duty to pay taxes under the law on alcoholic beverages and law on tobacco shall have the duty to remit Foundation levy at the rate prescribed under Section 11 together with the payment of taxes in accordance with the regulations prescribed by the Finance Minister.

Section 14

In the case where a person under the duty to pay taxes under the law on alcoholic beverages and the law on tobacco has received an exemption or a tax refund, there shall also be an exemption from or refund of the Foundation levy in accordance with the regulations prescribed by the Finance Minister.

Section 15

In the case where a person under the duty to remit Foundation levy fails to remit the Foundation levy or remits after the prescribed time period, or remits the Foundation levy at an amount insufficient of that required, not only will there be an offence under this Act, but there shall also be an additional payment at the rate of two percent per month on the amount of money un-remitted or remitted after the prescribed time period or the amount that remains to be remitted, as the case may be, calculated from the date due for remission to the date of remission of the Foundation levy, but the additional money calculated shall not exceed the amount of the Foundation levy and this additional sum of money shall also be deemed to be a Foundation levy.

In calculating the time period under paragraph one, a fraction of one month shall be counted as if it were one month.

Section 16

The Foundation shall have the power to expend money from the Foundation in accordance with the rules and procedures prescribed by the Committee as the following expenditures:

- (1) expenditures in the operation of the Foundation;
- (2) expenditures in the conduct of activities under Section 5 and Section 9;
- (3) other expenditures in accordance with the rules prescribed by the Committee.

CHAPTER II

Management of the Foundation's Affairs

Section 17

There shall be a Committee called the "Committee of the Health Promotion Foundation," consisting of:

- (1) the Prime Minister as Chairman;
- (2) the Public Health Minister as the First Vice-Chairman;
- (3) a qualified person appointed by the Council of Ministers from persons with qualifications under (5) as the Second Vice-Chairman;
- (4) members *ex officio*, viz, a representative of the Office of the National Economic and Social Development Board, representative of the Office of the Permanent Secretary to the Prime Minister's Office, representative of the Ministry of Finance, representative of the Ministry of Transport and Communication, representative of the Ministry of the Interior, representative of the Ministry of Labor and Social Welfare, representative of the Ministry of Education, representative of the Ministry of Public Health and representative of the Ministry of University Affairs;
- (5) eight qualified members appointed by the Council of Ministers from persons selected from those with knowledge, ability and experiences in the fields of health promotion, community development, mass communication, education, sports, art and culture, law or administration, provided that of this number, at least half of whom from persons in the private sector.

The Manager shall be a member and secretary, and the Manager shall appoint an official of the Foundation as assistant secretary.

The selection of qualified members shall be in accordance with the rules, procedures and conditions prescribed by the Committee.

Section 18

Qualified members must have the qualifications and must not have the prohibited qualities as follows:

- (1) being of Thai nationality;
- (2) being of more than seventy years of age;
- (3) not being a bankrupt, an incompetent or quasi-incompetent person;
- (4) not having been sentenced to imprisonment by a final judgment except for an offence committed through negligence or a petty offence;
- (5) not being a holder of a political position, a member of a local assembly, a local administrator, an executive member or holder of a position with responsibility in the administration of a political party, a counselor of a political party or an official of a political party;

- (6) not being a person with behavior in conflict or inconsistent with the objectives of the Foundation under Section 5;
- (7) not being a person having an interest in the activities conducted with the Foundation, or in activities in conflict or inconsistent with the objectives of the Foundation, regardless of whether it was direct or indirect, with the exception of persons who carry out activities for the benefit of the public and do not seek for profit.

Section 19

The qualified members shall hold office for a term of three years.

In the case where a qualified member vacates office before the expiration of the term, there shall be an appointment of another qualified member to fill the vacancy, except where there are less than ninety days remaining in the term of office, and the person appointed to fill the vacancy shall be in office for the remaining term of the qualified members already appointed.

At the expiration of the term under paragraph one, if the new qualified members have not yet been appointed, the qualified members having vacated office at the expiration of the term shall remain in office for continuing the performance of work until the newly appointed qualified members take office.

The out-going qualified members may be re-appointed.

Section 20

In addition to the vacation of office at the expiration of the term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being removed by the Council of Ministers by reason of neglect of duties, improper behavior, or lack of proficiency;
- (4) being disqualified or being under any of the prohibitions under Section 18.

Section 21

The Committee has the powers and duties to control and supervise the operation of the Foundation for the attainment of the objectives prescribed by Section 5. Such powers include:

- (1) to determine administration policies and approve an action plan for the Foundation;
- (2) to approve an annual action plan, an annual financial plan as well as an annual budget for the office;
- (3) to prescribe rules and procedures for the appropriation of money to be expended as subsidies to a variety of activities;
- (4) to raise funds;
- (5) to supervise the performance and administration of general affairs and to issue rules or regulations of the Foundation in the following matters:
 - (a) the work organization of the Foundation's office and the scope of duties of each respective Section of work;
 - (b) the qualifications and prohibitions required of the Manager and the rules for the selection of the Manager;
 - (c) the prescription of positions and the qualifications required for the positions of officials and employees of the Foundation;

- (d) the prescription of scale of salaries, wages and other remuneration of officials and employees of the Foundation;
- (e) the selection, recruitment, appointment, removal, disciplines and disciplinary penalties, vacation of office, filing of a complaint and making of an appeal against the punishment of officials and employees, including procedures and conditions for the employment of employees;
- (f) the administration and management of finance, procurement and property of the Foundation, including the accounting and deletion of property from an account;
- (g) the provision of welfare and other fringe benefits to officials and employees;
- (h) the scope of powers and duties, and rules relating to the performance of duties, of an internal auditor.

Section 22

At a meeting of the Committee, the presence of at least one-half of the total number of members is required to constitute a quorum.

At a meeting of the Committee, if the Chairman is not present or is unable to perform duties, the First Vice-Chairman shall preside over the meeting. If the First Vice-Chairman is not present or is unable to perform duties, the Second Vice-Chairman shall preside over the meeting. If the Second Vice-Chairman is not present or is unable to perform duties, the members present shall elect one amongst themselves to preside over the meeting.

In the performance of duties, if any member is directly or indirectly interested in the matter to be considered by the Committee, that member shall disclose it at the meeting, and the meeting shall consider whether that member should be present at the meeting and have a vote in the matter, in accordance with the rules prescribed by the Committee.

The decision of the meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the presiding Chairman shall have an additional vote as a casting vote.

Section 23

The Committee has the power to appoint qualified persons with a specialization as advisors to the Committee and has the power to appoint a sub-committee for considering or performing any particular act as entrusted by the Committee.

At a meeting of the sub-committee, Section 22 shall apply *mutatis mutandis*.

Section 24

The Chairman, members, advisor to the Committee and members of a sub-committee shall receive a meeting allowance or other remuneration in accordance with the rules prescribed by the Council of Ministers.

Section 25

The Foundation shall have one General Manager appointed by the Committee.

The Manager must be a person able to work for the Foundation on a full-time basis, and must have the qualifications and must not be under the prohibitions as follows:

- (1) being of Thai nationality;
- (2) being of not more than sixty years of age on the date of appointment;
- (3) being a person with knowledge, ability and experiences suitable to the affairs of the Foundation;
- (4) not being under any of the prohibitions under Section 18 (3), (4), (5), (6) or (7).

Section 26

The Manager shall hold office for a term of four years, and may be re-appointed, but must also have the qualifications and must not be under the prohibitions under Section 25 on the date of re-appointment, but may not serve for more than two consecutive terms.

Section 27

In addition to the vacation of office at the expiration of the term, the Manager vacates office upon:

- (1) death;
- (2) resignation;
- (3) occurrence of an event stipulated in an agreement between the Committee and the Manager;
- (4) being removed by the Committee by reason of neglect of duties, improper behavior, or lack of proficiency;
- (5) being disqualified or having any of the prohibition under Section 25.

The resolution of the Committee for the removal of the Manager from office under (4) shall be passed with the supporting votes of not less than two-thirds of the number of existing members, exclusive of the Manager.

Section 28

The Manager shall have the following powers and duties:

- (1) to administer the affairs of the Foundation for compliance with the law and the objectives of the Foundation;
- (2) to study, analyze and appraise the Foundation's performance , including the submission of targets, action plans, projects, the annual action plan of the Foundation, and the financial plan and annual budget to the Committee;
- (3) to prepare a report and accounting matters of the Foundation, and to submit an annual performance report;
- (4) to supervise the work performed by officials and employees of the Foundation for compliance with the regulations;
- (5) to perform any other duties as entrusted by the Committee.

Section 29

The Manager must be accountable to the Committee for the administration of the affairs of the Foundation.

The Manager shall represent the Foundation in acts *vis-a-vis* third persons. For this purpose, the Manager may delegate his or her power to any person to perform any particular act on the Manager's behalf, in accordance with the regulation prescribed by the Committee.

Section 30

The Committee shall determine the salary-scale or other benefits of the Manager.

Section 31

Officials and employees of the Foundation must have the qualifications and must not be under the prohibitions as follows:

- (1) being of Thai nationality;
- (2) being of not less than eighteen years of age and not more than sixty years of age;
- (3) being able to work for the Foundation on a full-time basis;

- (4) having the qualifications or experiences suitable to the objectives as well as the powers and duties of the Foundation;
- (5) not being a Government official or an employee of a Government agency, an official or employee of a State enterprise or other State agencies or an official or employee of a local government organization;
- (6) not holding any position in a partnership, company or organization carrying out a business in conflict or inconsistent with the objectives of the Foundation;
- (7) not being under any of the prohibitions under Section 18 (3), (4), (5), (6) or (7).

Section 32

An official or employee vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any of the prohibitions under Section 31;
- (4) being removed by reason of failing a work appraisal;
- (5) being removed or dismissed by reason of disciplinary breach.

The cases of (4) and (5) shall be in accordance with the rules and procedure prescribed by the Committee.

Section 33

The accounting of the Foundation shall be conducted by reference to international practice and in accordance with the forms and rules prescribed by the Committee.

Section 34

There shall be an internal audit with respect to the finance, accounting and procurement of the Foundation, with a corresponding audit report for submission to the Committee, at least once a year.

For the purpose of the internal audit, there shall be an official of the Foundation acting as an internal auditor with direct answerability to the Committee, in accordance with the regulations prescribed by the Committee.

Section 35

The Foundation shall prepare a financial statement, which must include at least a balance sheet and an operation account to be submitted to the auditor within one hundred and twenty days as from the end of each accounting year.

At an interval of every year, the Office of the State Audit or an outsider appointed by the Committee with the approval of the Office of the State Audit shall be the auditor and appraise dispositions of money and property of the Foundation. In this instance, opinions shall be analytically presented as to the extent to which such dispositions have corresponded to the objectives, proceeded in an economical fashion and met the targets. An audit report shall subsequently be prepared and submitted to the Committee.

For these purposes, the auditor shall have the powers to inspect all account books of the Foundation, inquire the Manager, internal auditor, officials and employees of the Foundation and instruct such persons to furnish that additional account books, documents, and evidence of the Foundation as is necessary.

Section 36

The Foundation shall prepare an annual report for submission to the Minister, the House of Representatives and the Senate for consideration within one hundred and eighty days as from the end of the accounting year. This report shall state the work of the Foundation in the past year together with the financial statement and auditor's report.

CHAPTER III
Performance Appraisal of the Foundation

Section 37

There shall be seven members of the Performance Appraisal Committee for the Foundation, consisting of a Chairman and six qualified members appointed by the Council of Ministers by the advice of the Finance Minister from those with knowledge, ability and experiences in the fields of finance, health promotion and performance appraisal. Of this number, there shall be at least two persons who specialize in performance appraisal.

The Performance Appraisal Committee shall appoint a person, as it deems suitable, to act as a secretary.

Section 18, Section 19, Section 20, Section 22 and Section 24 shall apply to the Performance Appraisal Committee and the conduct of Performance Appraisal Committee meetings *mutatis mutandis*.

Section 38

The Performance Appraisal Committee has the powers and duties as follows:

- (1) to appraise the Foundation's policies and activities ;
- (2) to monitor, inspect and appraise the performance of the Foundation;
- (3) to report the performance, with its suggestions, to the Committee in an interval of every year.

The Performance Appraisal Committee shall have the power to require any person to furnish documents or evidence related to the Foundation, or summon any person to make a statement of facts to form part of its consideration in the appraisal.

Section 39

In the performance of duties under this Act, the Performance Appraisal Committee may appoint a sub-committee to consider and submit opinions in any subject, or delegate the performance of any matter as it deems suitable.

CHAPTER IV
Penalties

Section 40

Any person under the duty to remit Foundation levy who does not remit the Foundation levy or remits an insufficient amount of that required shall be liable to imprisonment of not exceeding one year or a fine of five times to twenty times the amount of Foundation levy that has to be remitted, or both.

Section 41

In the case where an offender liable to a penalty under this Act is a juristic person, the managing director, manager or any person responsible for the operation of that juristic person shall also be liable to the penalty provided for that offence, except where it can be proven that the act was committed without his or her knowledge or consent.

Section 42

Of the various offences under this Act, the Director-General of the Excise Department or a person delegated by the Director-General of the Excise Department shall have the power to make a settlement. The provisions in relation to the settlement of cases under the law

on alcoholic beverages and law on tobacco shall apply to the settlement of cases under this Act *mutatis mutandis*.

Transitory Provisions

Section 43

Upon the establishment of the Foundation under this Act, the operations under the objectives of the Health Promotion Foundation pursuant to the Royal Decree Establishing the Health Promotion Foundation shall be deemed to have been terminated, and the Minister in charge and control of that Royal Decree shall proceed under Section 44 (2) of the Public Organization Act, B.E. 2542 (1999) in announcing the cessation of the Health Promotion Foundation's operations in the Government Gazette.

The businesses, properties, rights, debts, budget, incomes, revenue and work performers of the Health Promotion Foundation established pursuant to the Royal Decree Establishing the Health Promotion Foundation, B.E. 2543 (2000) shall be assigned to the Health Promotion Foundation under this Act.

Section 44

The Manager of the Health Promotion Foundation under the Royal Decree Establishing the Health Promotion Foundation, B.E. 2543 (2000) who holds office at the date which this Act comes into force shall provisionally perform duties as a Manager under this Act until the appointment of a Manager under this Act, provided that this does not exceed one hundred and twenty days from the date at which this Act comes into force.

Section 45

In the initial period, the Committee shall consist of members under Sections 17 (1), (2) and (4) and the person performing the duties of a Manager under Section 44 shall be a member and secretary, to perform the duties of the Committee under this Act until the appointment of qualified members under Sections 17 (3) and (5), provided that this does not exceed ninety days from the date at which this Act comes into force.

In conducting the appointment of qualified members under paragraph one, the members under Sections 17 (1), (2) and (4) shall prescribe the rules, procedures and conditions in the selection of qualified members to be nominated to the Council of Ministers for further appointment.

Countersigned by

Pol. Lt. Col. Thaksin Shinawatra

Prime Minister

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