

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 911 Session of
2009INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND
WOZNIAK, JUNE 5, 2009SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JANUARY
26, 2010

AN ACT

1 Amending the act of May 31, 1933 (P.L.1108, No.272), entitled,
2 as amended, "An act providing for the appointment, promotion,
3 reduction, removal and reinstatement of paid officers,
4 firemen and employes of fire departments and of fire alarm
5 operators and fire box inspectors in the bureaus of
6 electricity in cities of the third class; defining the powers
7 and duties of civil service commissions for such purposes;
8 and fixing penalties," further providing for civil service
9 examinations and eligibility lists.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 4 of the act of May 31, 1933 (P.L.1108,
13 No.272), entitled, as amended "An act providing for the
14 appointment, promotion, reduction, removal and reinstatement of
15 paid officers, firemen and employes of fire departments and of
16 fire alarm operators and fire box inspectors in the bureaus of
17 electricity in cities of the third class; defining the powers
18 and duties of civil service commissions for such purposes; and
19 fixing penalties," amended July 17, 2003 (P.L.29, No.13), is
20 amended to read:

21 Section 4. (a) All examinations for positions or promotions

1 shall be practical in their character, and shall relate to such
2 matters, and include such inquiries, as will fairly and fully
3 test the comparative merit and fitness of the persons examined
4 to discharge the duties of the employment sought by them. All
5 examinations shall be open to all applicants who have fulfilled
6 the preliminary requirements required by this act without regard
7 to any applicant's place of residence at or prior to the date of
8 application. All applicants for any position in the fire
9 department and as fire alarm operators and fire box inspectors
10 in the bureau of electricity shall[,];

11 (1) be subject to regulations adopted by the civil service
12 commission[, be required to submit to a physical examination
13 before being admitted to the regular examinations held by the
14 commission.];

15 (2) either before or after the written examination, be
16 required to submit to a physical fitness or agility examination
17 that is job-related and consistent with business necessity; and

18 (3) if made a conditional offer of employment, be given a
19 physical and psychological medical examination in accordance
20 with section nine of this act.

21 (b) Adequate public notice of the time and place of every
22 examination held under the provisions of this act, together with
23 information as to the kind of position or place to be filled,
24 shall be given at least one week prior to such examinations. The
25 commission shall adopt reasonable regulations for permitting the
26 presence of representatives of the press at the examinations.
27 The commission shall post, in a public place at its office, the
28 eligible lists, containing the names and grades of those who
29 have passed examinations, and shall indicate thereon such
30 appointments as may be made from said lists.

1 Section 2. Sections 5 and 6 of the act are amended to read:

2 Section 5. (a) The civil service commission in each city
3 shall require persons applying for admission to any examination
4 provided for under this act, or under the rules and regulations
5 of the said commission, to file in its office, within a
6 reasonable time prior to the proposed examination, a formal
7 application, in which the applicant shall state under oath or
8 affirmation---

9 First. His full name, residence, and post office address.

10 Second. His citizenship, age, and the place and date of his
11 birth.

12 Third. His health, and his physical capacity for public
13 service.

14 Fourth. His business and employments and residences for at
15 least three years previous.

16 Fifth. Such other information as may reasonably be required,
17 touching the applicant's qualifications and fitness for the
18 public service.

19 Blank forms for such applications shall be furnished by the
20 commission, without charge, to all persons requesting the same.
21 The commission may require, in connection with such application,
22 such certificates of citizens, physicians or others, having
23 knowledge of the applicant, as the good of the service may
24 require. The commission may refuse to examine an applicant, or,
25 after examination, to certify as eligible, one who is found to
26 lack any of the established preliminary requirements for the
27 examination or position or employments for which he applies; or
28 who is physically [so disabled as to be rendered] unfit for the
29 performances of the duties of the position to which he seeks
30 appointment; or who is [addicted to the habitual use of

1 intoxicating liquors or drugs;] illegally using a controlled
2 substance, as defined in section 102 of the Controlled
3 Substances Act (Public Law 91-513, 21 U.S.C. § 802); or who has
4 been convicted of any crime, or whose conduct is infamous or
5 notoriously disgraceful; or who has been dismissed from the
6 public service for delinquency or misconduct; or who has made a
7 false statement of any material fact, or practiced or attempted
8 to practice any deception or fraud in his application, in his
9 examination, or in establishing his eligibility; or who refuses
10 to comply with the rules and regulations of the commission.

11 (b) No application will be received if the person applying
12 is less than eighteen years of age or more than thirty-five
13 years of age at the date of application: Provided, however, That
14 in the event any applicant has formerly served in the fire
15 department or as a fire alarm operator or fire box inspector in
16 the bureau of electricity of the city to which application is
17 made for a period of more than six months, and no charges of
18 misconduct or other misfeasance were made against the applicant
19 within a period of two years next preceding the date of
20 application, and the applicant is a resident of the city, then
21 the person shall be eligible for reinstatement, in the
22 discretion of the civil service commission, even though the
23 applicant is over thirty-five years of age. The applicant,
24 providing the applicant's former term of service so justifies,
25 may be reappointed to the fire department or as a fire alarm
26 operator or fire box inspector in the bureau of electricity
27 without examination, other than a physical examination in
28 accordance with section nine of this act. If the person is
29 reinstated, the person shall be the lowest in rank in the
30 department next above the probationers of the department.

1 (c) If any applicant feels himself aggrieved by the action
2 of the commission in refusing to examine him, or, after an
3 examination, to certify him as an eligible, as provided in this
4 section, the commission shall, at the request of such applicant,
5 appoint a time and place for a public hearing, at which time
6 such applicant may appear, by himself or counsel, or both, and
7 the commission shall then review its refusal to make such
8 examination or certification, and testimony shall be taken. The
9 commission shall subpoena, at the expense of the applicant, any
10 competent witnesses requested by him. After such review, the
11 commission shall file the testimony taken in its records, and
12 shall again make a decision, which decision shall be final.

13 Section 6. (a) At the completion of the testing process,
14 including any background, physical agility or other
15 examinations, with the exception of physical and psychological
16 medical examinations pursuant to section nine of this act, the
17 civil service commission shall rank the candidates who have
18 satisfied the minimum requirements for appointment on an
19 eligibility list. The eligibility list shall contain the names
20 of individuals eligible for appointment listed from highest to
21 lowest based on their scores on the examinations administered by
22 the commission and any points for which the applicant was
23 entitled by virtue of 51 Pa.C.S. Ch. 71 (relating to veterans'
24 preference). The eligibility list will be valid for one year
25 from the date the commission ranks all passing applicants,
26 assigns veterans' preference points and formally adopts the
27 eligibility list. The commission may, at its sole discretion
28 before the original expiration date, by a vote of the majority
29 of the commission at a duly authorized commission meeting,
30 extend the list for up to an additional twelve months. In the

1 absence of a lawful extension by the commission, the list shall
2 expire.

3 **(b)** Every position or employment, unless filled by
4 promotion, reinstatement, or reduction, shall be filled only in
5 the following manner: The appointing officer shall notify the
6 civil service commission of any vacancy in the service which he
7 desires to fill, and shall request the certification of
8 eligibles. The commission shall forthwith certify, from the
9 appropriate eligible list, the names of the three persons
10 thereon who received the highest averages at the last preceding
11 examination held under the provisions of this act. The
12 appointing officer shall, thereupon, with sole reference to the
13 relative merit and fitness of the candidates, make [an] a
14 conditional appointment from the three names so certified. If
15 the appointing officer makes objection to the commission to one
16 or more of the persons named for any of the reasons stated in
17 section five of this act, and if such objections are sustained
18 by the commission, or if a conditional appointee is determined
19 to be unqualified in accordance with the procedures set forth in
20 section 9 of this act, the commission shall thereupon strike the
21 name of such person from the eligible list, and certify the next
22 highest name for each person so stricken off. If any name shall
23 be three times rejected for the same or another position, such
24 name shall be stricken from the list. When there are a number of
25 positions of the same kind to be filled at the same time, each
26 appointment shall be made separately and in accordance with the
27 foregoing provisions.

28 Section 3. Section 9 of the act, amended June 16, 1972
29 (P.L.427, No.125), is amended to read:

30 Section 9. [All applicants for any position in the fire

1 department and as fire alarm operators and fire box inspectors
2 in the bureau of electricity shall undergo a physical
3 examination, which shall be conducted under the supervision of
4 the physician member of the civil service commission, or if
5 there be none, then by a physician appointed by the civil
6 service commission. Said examiner shall certify that an
7 applicant is free from any bodily or mental defects, deformity
8 or diseases that might incapacitate him from the performance of
9 the duties of the position desired before said applicant shall
10 be permitted to take further examinations. No application will
11 be received if the person applying is less than eighteen years
12 of age or more than thirty-five years of age at the date of his
13 application: Provided, however, That in event any applicant has
14 formerly served in the fire department or as a fire alarm
15 operator or fire box inspector in the bureau of electricity of
16 the city to which he makes application for a period of more than
17 six months, and no charges of misconduct or other misfeasance
18 were made against such applicant within a period of two years
19 next preceding the date of his application, and is a resident of
20 the city, then such person shall be eligible for reinstatement,
21 in the discretion of the civil service commission, even though
22 such applicant shall be over the age of thirty-five years. Such
23 applicant, providing his former term of service so justifies,
24 may be reappointed to the fire department or as a fire alarm
25 operator or fire box inspector in the bureau of electricity
26 without examination, other than a physical examination. If such
27 person is reinstated, he shall be the lowest in rank in the
28 department next above the probationers of the department.] (a)
29 An applicant selected from the eligibility list shall receive a
30 conditional offer of employment. The offer of employment shall

1 be conditioned upon the applicant undergoing a physical and, if
2 required by the rules and regulations of the commission, a
3 psychological medical examination, and a determination by the
4 commission that the applicant is capable of performing all the
5 essential functions of the position. Physical medical
6 examinations shall be under the direction of a physician or
7 other qualified medical professional. Psychological medical
8 examinations shall be under the direction of a psychiatrist or
9 psychologist.

10 (b) The physician or other qualified medical professional
11 and the psychiatrist or psychologist shall be appointed by the
12 council and shall render an opinion as to whether the
13 conditional appointee has a physical or mental condition which
14 calls into question his or her ability to perform all of the
15 essential functions of the position for which he or she was
16 conditionally appointed.

17 (c) If the opinion rendered by the ~~medical examiner~~ ←
18 PHYSICIAN, OTHER QUALIFIED MEDICAL PROFESSIONAL, PSYCHIATRIST OR ←
19 PSYCHOLOGIST calls into question the conditional appointee's
20 ability to perform all essential functions of a position, a
21 person or persons designated by the appointing officer shall
22 meet with the conditional appointee for the purpose of having
23 one or more interactive discussions focused on the issue of
24 whether the conditional appointee can, with or without
25 reasonable accommodation, perform all the essential functions of
26 the position.

27 (d) If, at the conclusion of the interactive discussion
28 process, the appointing officer determines that the conditional
29 appointee is not qualified, the appointing officer shall give
30 written notice to the conditional appointee and the board.

1 (e) Nothing in this act shall be construed as authorizing
2 physical or psychological medical examinations prior to
3 conditional appointment.

4 (f) As used in this section, ~~the term "medical"~~ THE FOLLOWING ←
5 DEFINITIONS SHALL APPLY:

6 "MEDICAL examination" shall mean any examination, procedure,
7 inquiry or test designed to obtain information about medical
8 history or a physical or mental condition which might disqualify
9 an applicant if it would prevent the applicant from performing,
10 with or without a reasonable accommodation, all of the essential
11 functions of the position.

12 "PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. § ←
13 1991 (RELATING TO DEFINITIONS).

14 "QUALIFIED MEDICAL PROFESSIONAL" SHALL MEAN AN INDIVIDUAL, IN
15 COLLABORATION WITH OR UNDER THE SUPERVISION OR DIRECTION OF A
16 PHYSICIAN, AS MAY BE REQUIRED BY LAW, WHO IS LICENSED:

17 (1) AS A PHYSICIAN ASSISTANT PURSUANT TO THE ACT OF DECEMBER
18 20, 1985 (P.L.457, NO.112), KNOWN AS THE "MEDICAL PRACTICE ACT
19 OF 1985," OR THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
20 KNOWN AS THE "OSTEOPATHIC MEDICAL PRACTICE ACT"; OR

21 (2) AS A CERTIFIED REGISTERED NURSE PRACTITIONER PURSUANT TO
22 THE ACT OF MAY 22, 1951 (P.L.317, NO.69), KNOWN AS "THE
23 PROFESSIONAL NURSING LAW."

24 Section 4. Nothing contained in this act shall affect the
25 validity of any civil service appointments made prior to the
26 effective date of this section.

27 Section 5. This act shall take effect immediately.