

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 912 Session of 2009

INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND WOZNIAK, JUNE 5, 2009

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 10, 2010

AN ACT

1 Amending the act of June 1, 1945 (P.L.1232, No.427), entitled
2 "An act providing for and regulating the appointment,
3 promotion and reduction in rank, suspension and removal of
4 paid operators of fire apparatus in boroughs, incorporated
5 towns and townships of the first class; creating a civil
6 service commission in each borough, incorporated town and
7 township of the first class; defining the duties of such
8 civil service commission; imposing certain duties and
9 expenses on boroughs, incorporated towns and townships of the
10 first class; imposing penalties; and repealing inconsistent
11 laws," further providing for general provisions relating to
12 examinations, for rejection of applicant and hearing, for
13 manner of filling appointments, for probationary period, FOR
14 PROMOTIONS and for physical examinations.



15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 11 of the act of June 1, 1945 (P.L.1232,
18 No.427), entitled "An act providing for and regulating the
19 appointment, promotion and reduction in rank, suspension and
20 removal of paid operators of fire apparatus in boroughs,
21 incorporated towns and townships of the first class; creating a
22 civil service commission in each borough, incorporated town and
23 township of the first class; defining the duties of such civil

1 service commission; imposing certain duties and expenses on
2 boroughs, incorporated towns and townships of the first class;
3 imposing penalties; and repealing inconsistent laws," amended
4 October 17, 1980 (P.L.1078, No.180), is amended to read:

5 Section 11. General Provisions Relating to Examinations.--

6 (a) Each commission shall make rules and regulations to be
7 approved, as provided in section six hereof, providing for the
8 examinations of applicants for positions as fire apparatus
9 operators and for promotion thereof, which rules and regulations
10 shall prescribe the minimum qualifications of all applicants to
11 be examined and passing grades. All examinations for promotions,
12 or positions as fire apparatus operators of any municipality,
13 shall be practical in character and shall relate to such
14 matters, and include such inquiries as will test the merit and
15 fitness of the persons examined to discharge the duties of the
16 employment sought by them.

17 All examinations shall be open to all applicants who have the
18 minimum qualifications required by the rules and regulations.

19 Each applicant for examination shall:

20 (1) be subject to the regulations adopted by the commission
21 [and shall be required to submit to a physical examination
22 either before or after being admitted to the regular examination
23 held by the commission.];

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

27 (3) if made a conditional offer of employment, be given a
28 physical and psychological medical examination in accordance
29 with section nineteen of this act.

30 (b) Public notice of the time and place of every

1 examination, together with the information as to the kind of
2 position or place to be filled, shall be given by publication,
3 once in a newspaper of general circulation in the municipality,
4 or in a newspaper circulating generally in the municipality at
5 least two weeks prior to each examination, and a copy of the
6 notice shall be prominently posted in the office of the
7 commission or other public place.

8 (c) The commission shall post in its office the eligible
9 list containing the names and grades of those who have passed
10 the examination for position.

11 [Under this act, soldiers as defined by the act, approved the
12 fifth day of August, one thousand nine hundred forty-one
13 (Pamphlet Laws, eight hundred seventy-two), who have
14 successfully passed the examination shall be given the
15 additional credits provided for by said act.]

16 Section 2. Sections 13, 14 ~~and 16~~, 16 AND 18 of the act are ←
17 amended to read:

18 Section 13. Rejection of Applicant; Hearing.--(a) The
19 commission may refuse to examine any applicant, or if examined,
20 may refuse to certify, after examination, any person who is
21 found to lack any of the minimum qualifications for examination
22 prescribed in the rules and regulations adopted for the position
23 or employment for which he has applied, or who is physically
24 [disabled and] unfit for the performance of the duties of the
25 position to which he seeks employment, or who is [addicted to
26 the habitual use of intoxicating liquors or drugs,] illegally
27 using a controlled substance, as defined in section 102 of the
28 Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802),
29 or who has been guilty of any crime involving moral turpitude,
30 or of infamous or notoriously disgraceful conduct, or who has

1 been dismissed from public service for delinquency or misconduct
2 in office, or who is affiliated with any group whose policies or
3 activities are subversive to the form of government set forth in
4 the Constitutions and laws of the United States and
5 Pennsylvania.

6 (b) If any applicant or person feels himself aggrieved by
7 the action of the commission in refusing to examine him, or to
8 certify him as eligible after examination, the commission shall,
9 at the request of such person within ten days, appoint a time
10 and place where he may appear personally and by council,
11 whereupon the commission shall then review its refusal to make
12 such examination of certification and take such testimony as may
13 be offered. The decision of the commission shall be final.

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

1 a duly authorized commission meeting, extend the list for up to
2 an additional twelve months. In the absence of a lawful
3 extension by the commission, the list shall expire.

4 (b) Every position or employment, unless filled by
5 promotion, reinstatement or reduction, shall be filled only in
6 the following manner:

7 The appointing officer or body of the municipality shall
8 notify the commission of any vacancy as a fire apparatus
9 operator which is to be filled and shall request the
10 certification of a list of eligibles. The commission shall
11 certify for each existing vacancy from the eligible list, the
12 names of three persons therefrom who have received the highest
13 average in the last preceding examination[, held within a period
14 of one year next preceding the date of the request for such
15 eligibles]. The appointing officer or body shall thereupon, with
16 sole reference to the merits and fitness of the candidates, make
17 [an] a conditional appointment from the three names certified
18 unless he or they make objections to the commission as to one or
19 more of the persons so certified for any reason stated in
20 section thirteen of this act. Should such objections be
21 sustained by the commission, as provided in said section, or if
22 the conditional appointee is determined to be unqualified in
23 accordance with the procedures set forth in section nineteen of
24 this act, the commissioner shall thereupon strike the name of
25 such person from the eligible list and certify the next highest
26 name for each name stricken off. As each subsequent vacancy
27 occurs in the same or another position precisely the same
28 procedure shall be followed.

29 Section 16. Probationary Period.--All original appointments
30 to positions as fire apparatus operators shall be for a

1 probationary period of six months, but during the probationary
2 period an appointee may be dismissed only for a cause specified
3 in section thirteen of this act or because of incapacity for
4 duty due to the use of alcohol or drugs. If at the close of the
5 probationary period the conduct or fitness of the probationer
6 has not been satisfactory to the appointing body or officer, the
7 probationer shall be notified in writing that he will not
8 receive a permanent appointment. Thereupon his appointment shall
9 cease, otherwise, his retention shall be equivalent to a
10 permanent appointment.

11 SECTION 18. PROMOTIONS.--PROMOTIONS SHALL BE BASED ON MERITS ←
12 TO BE ASCERTAINED BY EXAMINATION TO BE PRESCRIBED BY THE
13 COMMISSION. ALL QUESTIONS RELATIVE TO PROMOTIONS SHALL BE
14 PRACTICAL IN CHARACTER AND SUCH AS WILL FAIRLY TEST THE MERIT
15 AND FITNESS OF PERSONS SEEKING PROMOTION. THE APPOINTING OFFICER
16 OR BODY SHALL NOTIFY THE COMMISSION OF A VACANCY IN THE POLICE
17 FORCE WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE
18 CERTIFICATION OF A LIST OF ELIGIBLES. THE COMMISSION SHALL
19 CERTIFY FOR EACH EXISTING VACANCY, FROM THE ELIGIBLE LIST, THE
20 NAMES OF THREE PERSONS ON THE LIST WHO HAVE RECEIVED THE HIGHEST
21 AVERAGE IN THE LAST PRECEDING PROMOTIONAL EXAMINATION HELD
22 WITHIN A PERIOD OF TWO YEARS NEXT PRECEDING THE DATE OF THE
23 REQUEST FOR ELIGIBLES. IF THREE NAMES ARE NOT AVAILABLE, THE
24 COMMISSION SHALL CERTIFY THE NAMES REMAINING ON THE LIST. THE
25 APPOINTING OFFICER OR BODY SHALL THEN, WITH SOLE REFERENCE TO
26 THE MERITS AND FITNESS OF THE CANDIDATES, MAKE AN APPOINTMENT
27 FROM THE NAMES CERTIFIED UNLESS THE APPOINTING OFFICER OR BODY
28 MAKES OBJECTIONS TO THE COMMISSION AS TO ONE OR MORE OF THE
29 PERSONS SO CERTIFIED.

30 THE APPOINTING BODY OR OFFICER SHALL HAVE POWER TO DETERMINE

1 WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A PROMOTION.

2 Section 3. Section 19 the of the act, amended October 17,
3 1980 (P.L.1078, No.180), is amended to read:

4 Section 19. Physical and Psychological Medical

5 Examinations.--[All applicants for examination shall undergo a
6 physical examination as provided in section 11 which shall be
7 conducted under the supervision of a doctor of medicine

8 appointed by the civil service commission. No person shall be
9 eligible for appointment until said doctor certifies that the

10 applicant is free from any bodily or mental defects, deformity,
11 or disease that might incapacitate him from the discharge of the

12 duties of the position desired.](a) An applicant selected from
13 the eligibility list shall receive a conditional offer of

14 employment. The offer of employment shall be conditioned upon
15 the conditional appointee undergoing a physical and

16 psychological medical examination and a determination that the
17 conditional appointee is capable of performing all the essential

18 functions of the position. Physical medical examinations shall
19 be under the direction of a physician or other qualified medical

20 professional. Psychological medical examinations shall be under
21 the direction of a psychiatrist or psychologist.

22 (b) The physician or other qualified medical professional
23 and the psychiatrist or psychologist shall be appointed by

24 council and shall render an opinion as to whether the
25 conditional appointee has a physical or mental condition which

26 calls into question his or her ability to perform all of the
27 essential functions of the position for which he or she was

28 conditionally appointed.

29 (c) If the opinion rendered by the physician, other
30 qualified medical professional, psychiatrist or psychologist

1 calls into question the conditional appointee's ability to
2 perform all essential functions of a position, a person or
3 persons designated by the appointing officer or body shall meet
4 with the conditional appointee for the purpose of having one or
5 more interactive discussions focused on the issue of whether the
6 conditional appointee can, with or without reasonable
7 accommodation, perform all the essential functions of the
8 position.

9 (d) If, at the conclusion of the interactive discussion
10 process, the appointing officer or body determines that the
11 conditional appointee is not qualified, the appointing officer
12 or body shall give written notice to the conditional appointee
13 and the commission.

14 (e) Nothing in this act shall be construed as authorizing
15 physical or psychological medical examinations prior to
16 conditional appointment.

17 (f) As used in this section, the following definitions shall
18 apply:

19 "Medical examination" shall mean an examination, procedure,
20 inquiry or test designed to obtain information about medical
21 history or a physical or mental condition which might disqualify
22 an applicant if it would prevent the applicant from performing,
23 with or without a reasonable accommodation, all of the essential
24 functions of the position.

25 "Physician" shall have the meaning given to it in 1 Pa.C.S. §
26 1991 (relating to definitions).

27 "Qualified medical professional" shall mean an individual, in
28 collaboration with or under the supervision or direction of a
29 physician, as may be required by law, who is licensed:

30 (1) as a physician assistant pursuant to the act of December

1 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act
2 of 1985," or the act of October 5, 1978 (P.L.1109, No.261),
3 known as the "Osteopathic Medical Practice Act"; or
4 (2) as a certified registered nurse practitioner pursuant to
5 the act of May 22, 1951 (P.L.317, No.69), known as "The
6 Professional Nursing Law."

7 Section 4. Nothing contained in the amendment of section 11,
8 13, 14, 16 or 19 of the act shall affect the validity of any
9 civil service appointments made prior to the effective date of
10 this section. NOTHING CONTAINED IN THE AMENDMENT OF SECTION 18 ←
11 OF THE ACT SHALL AFFECT THE VALIDITY OF ANY CIVIL SERVICE
12 PROMOTIONS MADE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

13 Section 5. This act shall take effect immediately.