

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 913 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 June 5, 1941 (P.L.84, No.45), entitled "An
2 act providing for and regulating the appointment, promotion
3 and reduction in rank, suspension and removal of paid members
4 of the police force in boroughs, incorporated towns and
5 townships of the first class maintaining a police force of
6 not less than three members; creating a civil service
7 commission in each borough, incorporated town and township of
8 the first class; defining the duties of such civil service
9 commission; imposing certain duties and expense on boroughs,
10 incorporated towns and townships of the first class; imposing
11 penalties, and repealing inconsistent laws," further
12 providing for general provisions relating to examinations,
13 for rejection of applicant and hearing, for manner of filling
14 appointments, for probationary period and for physical
15 examinations.

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

18 Section 1. Section 11 of the act of June 5, 1941 (P.L.84,
19 No.45), entitled "An act providing for and regulating the
20 appointment, promotion and reduction in rank, suspension and
21 removal of paid members of the police force in boroughs,
22 incorporated towns and townships of the first class maintaining
23 a police force of not less than three members; creating a civil
24 service commission in each borough, incorporated town and

1 township of the first class; defining the duties of such civil
2 service commission; imposing certain duties and expense on
3 boroughs, incorporated towns and townships of the first class;
4 imposing penalties, and repealing inconsistent laws," amended
5 October 17, 1980 (P.L.1080, No.181), is amended to read:

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

7 (a) Each commission shall make rules and regulations, to be
8 approved as provided in section 6 hereof, providing for the
9 examination of applicants for positions in the police force and
10 for promotions therein, which rules and regulations shall
11 prescribe the minimum qualifications of all applicants to be
12 examined and the passing grades. All examinations for positions
13 or promotions in the police force of any municipality shall be
14 practical in character and shall relate to such matters and
15 include such inquiries as will fairly test the merit and fitness
16 of the persons examined to discharge the duties of the
17 employment sought by them. All examinations shall be open to all
18 applicants who have the minimum qualifications required by the
19 rules and regulations. 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 (2) either before or after [being admitted to the regular
23 examination held by the commission.] the written examination, be
24 required to submit to a physical fitness or agility examination
25 that is job-related and consistent with business necessity; and

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

29 (b) Public notice of the time and place of every
30 examination, together with the information as to the kind of

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

7 (c) The commission shall post in its office the eligible
8 list containing the names and grades of those who have passed
9 the examination for position under this act. [Persons, male or
10 female, who served in the military or naval service of the
11 United States during any war in which the United States has
12 been, is now or shall hereafter be engaged, and who have
13 honorable discharges from such service, who have successfully
14 passed the examination, shall be given the additional credits
15 and preference in appointment and promotion provided for by any
16 law of this Commonwealth.]

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

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

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

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

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

expiration date, by a vote of the majority of the commission at
a duly authorized commission meeting, extend the list for up to
an additional twelve months. In the absence of a lawful
extension by the commission, the list shall expire.

(b) Every position or employment, except that of chief of
police or equivalent official, unless filled by promotion,
reinstatement or reduction shall be filled only in the following
manner: the appointing officer or body of the municipality shall
notify the commission of any vacancy in the police force which
is to be filled and shall request the certification of a list of
eligibles. The commission shall certify for each existing
vacancy from the eligible list the names of three persons
thereon who have received the highest average in the last
preceding examination [held within a period of one year next
preceding the date of the request for such eligibles]. The
appointing officer or body shall thereupon with sole reference
to the merits and fitness of the candidates make [an] a
conditional appointment from the three names certified unless he
or they make objections to the commission as to one or more of
the persons so certified for any of the reasons stated in
section 13 of this act. Should such objections be sustained by
the commission as provided in said section, or if the
conditional appointee is determined to be unqualified in
accordance with the procedures set forth in section 19 of this
act, the commission shall thereupon strike the name of such
person from the eligible list and certify the next highest name
for each name stricken off. As each subsequent vacancy occurs in
the same or another position precisely the same procedure shall
be followed.

(c) In the case of a vacancy in the office of chief of

1 police or equivalent official the appointive power may nominate
2 a person to the commission. It shall thereupon become the duty
3 of the commission to subject such person to a noncompetitive
4 examination, and, if such person shall be certified by the
5 commission as qualified, he may then be appointed to such
6 position and thereafter shall be subject to all the provisions
7 of this act.

8 Section 16. Probationary Period.--All original appointments
9 to any position in the police force shall be for a probationary
10 period of six months, but during the probationary period an
11 appointee may be dismissed only for a cause specified in section
12 13 of this act or because of incapacity for duty due to the use
13 of alcohol or drugs. If at the close of a probationary period
14 the conduct or fitness of the probationer has not been
15 satisfactory to the appointing officer or body the probationer
16 shall be notified in writing that he will not receive a
17 permanent appointment. Thereupon his appointment shall cease;
18 otherwise his retention shall be equivalent to a permanent
19 appointment.

20 Section 3. Section 19 of the act, amended October 17, 1980
21 (P.L.1078, No.181), is amended to read:

22 Section 19. Physical and Psychological Medical
23 Examinations.--[All applicants for examination shall undergo a
24 physical examination as provided in section 11 which shall be
25 conducted under the supervision of a doctor of medicine
26 appointed by the civil service commission. No person shall be
27 eligible for appointment until said doctor certifies that the
28 applicant is free from any bodily or mental defects, deformity,
29 or disease that might incapacitate him from the discharge of the
30 duties of the position desired.] (a) An applicant selected from

1 the eligibility list shall receive a conditional offer of
2 employment. The offer of employment shall be conditioned upon
3 the conditional appointee undergoing a physical and
4 psychological medical examination and a determination that the
5 conditional appointee is capable of performing all the essential
6 functions of the position. Physical medical examinations shall
7 be under the direction of a physician or other qualified medical
8 professional. Psychological medical examinations shall be under
9 the direction of a psychiatrist or psychologist.

10 (b) The physician or other qualified medical professional
11 and the psychiatrist or psychologist shall be appointed by
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 or body
22 shall meet with the conditional appointee for the purpose of
23 having one or more interactive discussions focused on the issue
24 of 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 or body determines that the
29 conditional appointee is not qualified, the appointing officer
30 or body shall give written notice to the conditional appointee

1 and the commission.

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

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

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

13 "PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. § ←
14 1991 (RELATING TO DEFINITIONS).

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

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

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

25 Section 4. Nothing contained in the amendment of section 11,
26 13, 14, 16 or 19 of this act shall affect the validity of any
27 civil service appointment made prior to the effective date of
28 this section.

29 Section 5. This act shall take effect immediately.