

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 913 Session of
2009INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND
WOZNIAK, JUNE 5, 2009AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 10, 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, FOR PROMOTIONS and for
15 physical 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

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

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

8 (a) Each commission shall make rules and regulations, to be
9 approved as provided in section 6 hereof, providing for the
10 examination of applicants for positions in the police force and
11 for promotions therein, which rules and regulations shall
12 prescribe the minimum qualifications of all applicants to be
13 examined and the passing grades. All examinations for positions
14 or promotions in the police force of any municipality shall be
15 practical in character and shall relate to such matters and
16 include such inquiries as will fairly test the merit and fitness
17 of the persons examined to discharge the duties of the
18 employment sought by them. All examinations shall be open to all
19 applicants who have the minimum qualifications required by the
20 rules and regulations. Each applicant for examination shall:

21 (1) be subject to the regulations adopted by the commission
22 [and shall be required to submit to a physical examination];

23 (2) either before or after [being admitted to the regular
24 examination held by the commission.] 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 19 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 under this act. [Persons, male or
11 female, who served in the military or naval service of the
12 United States during any war in which the United States has
13 been, is now or shall hereafter be engaged, and who have
14 honorable discharges from such service, who have successfully
15 passed the examination, shall be given the additional credits
16 and preference in appointment and promotion provided for by any
17 law of this Commonwealth.]

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

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

1 21 U.S.C. § 802), or who has been guilty of any crime involving
2 moral turpitude or of infamous or notorious disgraceful conduct,
3 or who has been dismissed from public service for delinquency or
4 misconduct in office, or who is affiliated with any group whose
5 policies or activities are subversive to the form of government
6 set forth in the constitutions and laws of the United States and
7 Pennsylvania.

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

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

1 commission may, at its sole discretion before the original
2 expiration date, by a vote of the majority of the commission at
3 a duly authorized commission meeting, extend the list for up to
4 an additional twelve months. In the absence of a lawful
5 extension by the commission, the list shall expire.

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

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

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

21 SECTION 18. PROMOTIONS.--PROMOTIONS SHALL BE BASED ON MERITS
22 TO BE ASCERTAINED BY EXAMINATIONS TO BE PRESCRIBED BY THE
23 COMMISSION. ALL QUESTIONS RELATIVE TO PROMOTIONS SHALL BE
24 PRACTICAL IN CHARACTER AND SUCH AS WILL FAIRLY TEST THE MERIT
25 AND FITNESS OF PERSONS SEEKING PROMOTION. THE APPOINTING OFFICER
26 OR BODY SHALL NOTIFY THE COMMISSION OF A VACANCY IN THE POLICE
27 FORCE WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE
28 CERTIFICATION OF A LIST OF ELIGIBLES. THE COMMISSION SHALL
29 CERTIFY FOR EACH EXISTING VACANCY, FROM THE ELIGIBLE LIST, THE
30 NAMES OF THREE PERSONS ON THE LIST WHO HAVE RECEIVED THE HIGHEST



AVERAGE IN THE LAST PRECEDING PROMOTIONAL EXAMINATION HELD
WITHIN A PERIOD OF TWO YEARS NEXT PRECEDING THE DATE OF THE
REQUEST FOR ELIGIBLES. IF THREE NAMES ARE NOT AVAILABLE, THE
COMMISSION SHALL CERTIFY THE NAMES REMAINING ON THE LIST. THE
APPOINTING OFFICER OR BODY SHALL THEN, WITH SOLE REFERENCE TO
THE MERITS AND FITNESS OF THE CANDIDATES, MAKE AN APPOINTMENT
FROM THE NAMES CERTIFIED UNLESS THE APPOINTING OFFICER OR BODY
MAKES OBJECTIONS TO THE COMMISSION AS TO ONE OR MORE OF THE
PERSONS CERTIFIED.

THE APPOINTING OFFICER OR BODY SHALL HAVE POWER TO DETERMINE
IN EACH INSTANCE WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE
A PROMOTION.

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

Section 19. Physical and Psychological Medical
Examinations.--[All applicants for examination shall undergo a
physical examination as provided in section 11 which shall be
conducted under the supervision of a doctor of medicine
appointed by the civil service commission. No person shall be
eligible for appointment until said doctor certifies that the
applicant is free from any bodily or mental defects, deformity,
or disease that might incapacitate him from the discharge of the
duties of the position desired.] (a) An applicant selected from
the eligibility list shall receive a conditional offer of
employment. The offer of employment shall be conditioned upon
the conditional appointee undergoing a physical and
psychological medical examination and a determination that the
conditional appointee is capable of performing all the essential
functions of the position. Physical medical examinations shall
be under the direction of a physician or other qualified medical

1 professional. Psychological medical examinations shall be under
2 the direction of a psychiatrist or psychologist.

3 (b) The physician or other qualified medical professional
4 and the psychiatrist or psychologist shall be appointed by
5 council and shall render an opinion as to whether the
6 conditional appointee has a physical or mental condition which
7 calls into question his or her ability to perform all of the
8 essential functions of the position for which he or she was
9 conditionally appointed.

10 (c) If the opinion rendered by the physician, other
11 qualified medical professional, psychiatrist or psychologist
12 calls into question the conditional appointee's ability to
13 perform all essential functions of a position, a person or
14 persons designated by the appointing officer or body shall meet
15 with the conditional appointee for the purpose of having one or
16 more interactive discussions focused on the issue of whether the
17 conditional appointee can, with or without reasonable
18 accommodation, perform all the essential functions of the
19 position.

20 (d) If, at the conclusion of the interactive discussion
21 process, the appointing officer or body determines that the
22 conditional appointee is not qualified, the appointing officer
23 or body shall give written notice to the conditional appointee
24 and the commission.

25 (e) Nothing in this act shall be construed as authorizing
26 physical or psychological medical examinations prior to
27 conditional appointment.

28 (f) As used in this section, the following definitions shall
29 apply:

30 "Medical examination" shall mean an examination, procedure,

inquiry or test designed to obtain information about medical history or a physical or mental condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position.

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

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

(1) as a physician assistant pursuant to the act of December 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act of 1985," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act"; or

(2) as a certified registered nurse practitioner pursuant to the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

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

Section 5. This act shall take effect immediately.

