

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1519 Session of
2009

INTRODUCED BY MILLARD, GINGRICH, FREEMAN, KESSLER, GRUCELA AND
ROSS, MAY 26, 2009

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MAY 26, 2009

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 and
14 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
24 service commission; imposing certain duties and expenses on

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

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

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

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

18 Each applicant for examination shall:

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

23 (2) either before or after 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 nineteen 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.

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

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

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

1 in office, or who is affiliated with any group whose policies or
2 activities are subversive to the form of government set forth in
3 the Constitutions and laws of the United States and
4 Pennsylvania.

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

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

1 an additional twelve months. In the absence of a lawful
2 extension by the commission, the list shall expire. The
3 commission may, at its sole discretion, void an eligibility list
4 at any time for any reason so long as the voiding of the list is
5 not designed to circumvent this act.

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

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

1 Section 16. Probationary Period.--All original appointments
2 to positions as fire apparatus operators shall be for a
3 probationary period of six months, but during the probationary
4 period an appointee may be dismissed only for a cause specified
5 in section thirteen of this act or because of incapacity for
6 duty due to the use of alcohol or drugs. If at the close of the
7 probationary period the conduct or fitness of the probationer
8 has not been satisfactory to the appointing body or officer, the
9 probationer shall be notified in writing that he will not
10 receive a permanent appointment. Thereupon his appointment shall
11 cease, otherwise, his retention shall be equivalent to a
12 permanent appointment.

13 Section 3. Section 19 the of the act, amended October 17,
14 1980 (P.L.1078, No.180), is amended to read:

15 Section 19. Physical and Psychological Medical
16 Examinations.--[All applicants for examination shall undergo a
17 physical examination as provided in section 11 which shall be
18 conducted under the supervision of a doctor of medicine
19 appointed by the civil service commission. No person shall be
20 eligible for appointment until said doctor certifies that the
21 applicant is free from any bodily or mental defects, deformity,
22 or disease that might incapacitate him from the discharge of the
23 duties of the position desired.](a) An applicant selected from
24 the eligibility list shall receive a conditional offer of
25 employment. The offer of employment shall be conditioned upon
26 the conditional appointee undergoing a physical and
27 psychological medical examination and a determination that the
28 conditional appointee is capable of performing all the essential
29 functions of the position. Physical medical examinations shall
30 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 medical examiner calls
11 into question the conditional appointee's ability to perform all
12 essential functions of a position, a person or persons
13 designated by the appointing officer or body shall meet with the
14 conditional appointee for the purpose of having one or more
15 interactive discussions focused on the issue of whether the
16 conditional appointee can, with or without reasonable
17 accommodation, perform all the essential functions of the
18 position.

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

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

27 (f) As used in this section, the term "medical examination"
28 shall mean an examination, procedure, inquiry or test designed
29 to obtain information about medical history or a physical or
30 mental condition which might disqualify an applicant if it would

1 prevent the applicant from performing, with or without a
2 reasonable accommodation, all of the essential functions of the
3 position.

4 Section 4. Nothing contained in the amendment of section 11,
5 13, 14, 16 or 19 of the act shall affect the validity of any
6 civil service appointments made prior to the effective date of
7 this section.

8 Section 5. This act shall take effect immediately.