PRIOR PRINTER'S NO. 1886 PRINTER'S NO. 2064

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1519 Session of 2009

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

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 9, 2009

AN ACT

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

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

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

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

Section 11. General Provisions Relating to Examinations.--

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

All examinations shall be open to all applicants who have the minimum qualifications required by the rules and regulations. Each applicant for examination shall:

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

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

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

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

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

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

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

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

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

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

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

Section 14. Eligibility List and Manner of Filling Appointments.--(a) At the completion of the testing process, including any background, physical agility or other examinations, with the exception of physical and psychological medical examinations pursuant to section nineteen of this act, the commission shall rank the candidates who have satisfied the minimum requirements for appointment on an eligibility list. The eligibility list shall contain the names of individuals eligible for appointment listed from highest to lowest based on their scores on the examinations administered by the commission and any points for which the applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating to veterans' preference). The eligibility list shall be valid for one year from the date the commission ranks all passing applicants, assigns veterans' preference points and formally adopts the eligibility list. The 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. ~~The commission may, at its sole discretion, void an eligibility list at any time for any reason so long as the voiding of the list is not designed to circumvent this act.~~

(b) Every position or employment, 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 as a fire apparatus operator 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 therefrom 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 reason stated in section thirteen 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 nineteen of this act, the commissioner 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.

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

Section 3. Section 19 the of the act, amended October 17, 1980 (P.L.1078, No.180), 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 professional. Psychological medical examinations shall be under the direction of a psychiatrist or psychologist.

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

(c) If the opinion rendered by the medical examiner calls into question the conditional appointee's ability to perform all essential functions of a position, a person or persons designated by the appointing officer or body shall meet with the conditional appointee for the purpose of having one or more interactive discussions focused on the issue of whether the conditional appointee can, with or without reasonable accommodation, perform all the essential functions of the position.

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

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

(f) As used in this section, the term "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.

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

Section 5. This act shall take effect immediately.