

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 912 Session of  
2009INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND  
WOZNIAK, JUNE 5, 2009SENATOR EICHELBERGER, LOCAL GOVERNMENT, AS AMENDED, JUNE 30,  
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

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 of the act are amended to  
17 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. The  
4 commission may, at its sole discretion, void an eligibility list  
5 at any time for any reason so long as the voiding of the list is  
6 not designed to circumvent this act.

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

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

1 procedure shall be followed.

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

14 Section 3. Section 19 the of the act, amended October 17,  
15 1980 (P.L.1078, No.180), is amended to read:

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

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

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

11 (c) If the opinion rendered by the medical examiner calls  
12 into question the conditional appointee's ability to perform all  
13 essential functions of a position, a person or persons  
14 designated by the appointing officer or body shall meet with the  
15 conditional appointee for the purpose of having one or more  
16 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 term "medical examination"  
29 shall mean an examination, procedure, inquiry or test designed  
30 to obtain information about medical history or a physical or

1 mental condition which might disqualify an applicant if it would  
2 prevent the applicant from performing, with or without a  
3 reasonable accommodation, all of the essential functions of the  
4 position.

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

9       Section 5. This act shall take effect immediately.