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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1368** Session of  
2008

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INTRODUCED BY ROBBINS, ERICKSON, REGOLA, STOUT AND WOZNIAK,  
APRIL 11, 2008

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AS AMENDED ON THIRD CONSIDERATION, JUNE 16, 2008

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AN ACT

1 Amending the act of May 31, 1933, (P.L.1108, No.272), entitled,  
2 as amended, "An act providing for the appointment, promotion,  
3 reduction, removal and reinstatement of paid officers,  
4 firemen and employes of fire departments and of fire alarm  
5 operators and fire box inspectors in the bureaus of  
6 electricity in cities of the third class; defining the powers  
7 and duties of civil service commissions for such purposes;  
8 and fixing penalties," further providing for civil service  
9 examinations and eligibility lists.

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

12 Section 1. Section 4 of the act of May 31, 1933 (P.L.1108,  
13 No.272), entitled, as amended "An act providing for the  
14 appointment, promotion, reduction, removal and reinstatement of  
15 paid officers, firemen and employes of fire departments and of  
16 fire alarm operators and fire box inspectors in the bureaus of  
17 electricity in cities of the third class; defining the powers  
18 and duties of civil service commissions for such purposes; and  
19 fixing penalties," amended July 17, 2003 (P.L.29, No.13), is  
20 amended to read:

21 Section 4. (a) All examinations for positions or promotions

1 shall be practical in their character, and shall relate to such  
2 matters, and include such inquiries, as will fairly and fully  
3 test the comparative merit and fitness of the persons examined  
4 to discharge the duties of the employment sought by them. All  
5 examinations shall be open to all applicants who have fulfilled  
6 the preliminary requirements required by this act without regard  
7 to any applicant's place of residence at or prior to the date of  
8 application. All applicants for any position in the fire  
9 department and as fire alarm operators and fire box inspectors  
10 in the bureau of electricity shall[, ]:

11 (1) be subject to regulations adopted by the civil service  
12 commission[, be required to submit to a physical examination  
13 before being admitted to the regular examinations held by the  
14 commission.];

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

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

21 (b) Adequate public notice of the time and place of every  
22 examination held under the provisions of this act, together with  
23 information as to the kind of position or place to be filled,  
24 shall be given at least one week prior to such examinations. The  
25 commission shall adopt reasonable regulations for permitting the  
26 presence of representatives of the press at the examinations.  
27 The commission shall post, in a public place at its office, the  
28 eligible lists, containing the names and grades of those who  
29 have passed examinations, and shall indicate thereon such  
30 appointments as may be made from said lists.

1 Section 2. Sections 5 and 6 of the act are amended to read:

2 Section 5. (a) The civil service commission in each city  
3 shall require persons applying for admission to any examination  
4 provided for under this act, or under the rules and regulations  
5 of the said commission, to file in its office, within a  
6 reasonable time prior to the proposed examination, a formal  
7 application, in which the applicant shall state under oath or  
8 affirmation---

9 First. His full name, residence, and post office address.

10 Second. His citizenship, age, and the place and date of his  
11 birth.

12 Third. His health, and his physical capacity for public  
13 service.

14 Fourth. His business and employments and residences for at  
15 least three years previous.

16 Fifth. Such other information as may reasonably be required,  
17 touching the applicant's qualifications and fitness for the  
18 public service.

19 Blank forms for such applications shall be furnished by the  
20 commission, without charge, to all persons requesting the same.  
21 The commission may require, in connection with such application,  
22 such certificates of citizens, physicians or others, having  
23 knowledge of the applicant, as the good of the service may  
24 require. The commission may refuse to examine an applicant, or,  
25 after examination, to certify as eligible, one who is found to  
26 lack any of the established preliminary requirements for the  
27 examination or position or employments for which he applies; or  
28 who is physically [so disabled as to be rendered] unfit for the  
29 performances of the duties of the position to which he seeks  
30 appointment; or who is [addicted to the habitual use of

1 intoxicating liquors or drugs;] ~~currently addicted to and~~  
2 illegally using a controlled substance, as defined in section  
3 102 of the Controlled Substances Act (Public Law 91-513, 21  
4 U.S.C. § 802); or who has been convicted of any crime, or whose  
5 conduct is infamous or notoriously disgraceful; or who has been  
6 dismissed from the public service for delinquency or misconduct;  
7 or who has made a false statement of any material fact, or  
8 practiced or attempted to practice any deception or fraud in his  
9 application, in his examination, or in establishing his  
10 eligibility; or who refuses to comply with the rules and  
11 regulations of the commission.

12 (b) No application will be received if the person applying  
13 is less than eighteen years of age or more than thirty-five  
14 years of age at the date of application: Provided, however, That  
15 in the event any applicant has formerly served in the fire  
16 department or as a fire alarm operator or fire box inspector in  
17 the bureau of electricity of the city to which application is  
18 made for a period of more than six months, and no charges of  
19 misconduct or other misfeasance were made against the applicant  
20 within a period of two years next preceding the date of  
21 application, and the applicant is a resident of the city, then  
22 the person shall be eligible for reinstatement, in the  
23 discretion of the civil service commission, even though the  
24 applicant is over thirty-five years of age. The applicant,  
25 providing the applicant's former term of service so justifies,  
26 may be reappointed to the fire department or as a fire alarm  
27 operator or fire box inspector in the bureau of electricity  
28 without examination, other than a physical examination in  
29 accordance with section nine of this act. If the person is  
30 reinstated, the person shall be the lowest in rank in the

1 department next above the probationers of the department.

2 (c) If any applicant feels himself aggrieved by the action  
3 of the commission in refusing to examine him, or, after an  
4 examination, to certify him as an eligible, as provided in this  
5 section, the commission shall, at the request of such applicant,  
6 appoint a time and place for a public hearing, at which time  
7 such applicant may appear, by himself or counsel, or both, and  
8 the commission shall then review its refusal to make such  
9 examination or certification, and testimony shall be taken. The  
10 commission shall subpoena, at the expense of the applicant, any  
11 competent witnesses requested by him. After such review, the  
12 commission shall file the testimony taken in its records, and  
13 shall again make a decision, which decision shall be final.

14 Section 6. (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 nine of this act, the  
18 civil service commission shall rank the candidates who have  
19 satisfied the minimum requirements for appointment on an  
20 eligibility list. The eligibility list shall contain the names  
21 of individuals eligible for appointment listed from highest to  
22 lowest based on their scores on the examinations administered by  
23 the commission and any points for which the applicant was  
24 entitled by virtue of 51 Pa.C.S. Ch. 71 (relating to veterans'  
25 preference). The eligibility list will be valid for one year  
26 from the date the commission ranks all passing applicants,  
27 assigns veterans' preference points and formally adopts the  
28 eligibility list. The commission may, at its sole discretion  
29 before the original expiration date, by a vote of the majority  
30 of the commission at a duly authorized commission meeting,

1 extend the list for up to an additional twelve months. In the  
2 absence of a lawful extension by the commission, the list shall  
3 expire. The commission may, at its sole discretion, void an  
4 eligibility list at any time for any reason so long as the  
5 voiding of the list is 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: The appointing officer shall notify the  
9 civil service commission of any vacancy in the service which he  
10 desires to fill, and shall request the certification of  
11 eligibles. The commission shall forthwith certify, from the  
12 appropriate eligible list, the names of the three persons  
13 thereon who received the highest averages at the last preceding  
14 examination held under the provisions of this act. The  
15 appointing officer shall, thereupon, with sole reference to the  
16 relative merit and fitness of the candidates, make an  
17 appointment from the three names so certified. If the appointing  
18 officer makes objection to the commission to one or more of the  
19 persons named for any of the reasons stated in section five of  
20 this act, or because of incapacity for duty because of current <—  
21 addiction to the habitual DUE TO THE use of alcohol or drugs, <—  
22 and if such objections are sustained by the commission, the  
23 commission shall thereupon strike the name of such person from  
24 the eligible list, and certify the next highest name for each  
25 person so stricken off. If any name shall be three times  
26 rejected for the same or another position, such name shall be  
27 stricken from the list. When there are a number of positions of  
28 the same kind to be filled at the same time, each appointment  
29 shall be made separately and in accordance with the foregoing  
30 provisions.

1 Section 3. Section 9 of the act, amended June 16, 1972  
2 (P.L.427, No.125), is amended to read:

3 Section 9. [All applicants] An appointee selected from an  
4 eligibility list in accordance with section six of this act for  
5 any position in the fire department and as fire alarm operators  
6 and fire box inspectors in the bureau of electricity shall  
7 [undergo a physical] receive a conditional offer of employment.  
8 The offer of employment shall be conditioned upon the appointee  
9 successfully completing a physical medical examination, which  
10 shall be conducted under the supervision of the physician member  
11 of the civil service commission, or [if there be none, then] by  
12 a physician appointed by the civil service commission. If  
13 required by the rules and regulations of the commission, the  
14 offer of employment may also be conditioned on the successful  
15 completion of a psychological medical examination conducted  
16 under the supervision of a psychologist or psychiatrist  
17 appointed by the commission. [Said examiner] The examiners shall  
18 certify that an applicant is free from any bodily or mental  
19 defects, deformity or diseases that might incapacitate him from  
20 the performance of the duties of the position desired. [before  
21 said applicant shall be permitted to take further examinations.  
22 No application will be received if the person applying is less  
23 than eighteen years of age or more than thirty-five years of age  
24 at the date of his application: Provided, however, That in event  
25 any applicant has formerly served in the fire department or as a  
26 fire alarm operator or fire box inspector in the bureau of  
27 electricity of the city to which he makes application for a  
28 period of more than six months, and no charges of misconduct or  
29 other misfeasance were made against such applicant within a  
30 period of two years next preceding the date of his application,

1 and is a resident of the city, then such person shall be  
2 eligible for reinstatement, in the discretion of the civil  
3 service commission, even though such applicant shall be over the  
4 age of thirty-five years. Such applicant, providing his former  
5 term of service so justifies, may be reappointed to the fire  
6 department or as a fire alarm operator or fire box inspector in  
7 the bureau of electricity without examination, other than a  
8 physical examination. If such person is reinstated, he shall be  
9 the lowest in rank in the department next above the probationers  
10 of the department.] For purposes of this section, the term  
11 "medical examination" shall mean any examination, procedure,  
12 inquiry or test designed to obtain information about medical  
13 history or a physical or mental defect or impairment. Nothing in  
14 this section shall preclude rules and regulations requiring  
15 physical fitness or agility examinations of applicants that are  
16 job-related and consistent with business necessity, either  
17 before or after being admitted to the regular examination held  
18 by the commission.

19 Section 4. Nothing contained in this act shall affect the  
20 validity of any civil services appointments made prior to the  
21 effective date of this section.

22 Section 5. This act shall take effect immediately.