

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1516 Session of 2009

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

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED, SEPTEMBER 21, 2010

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~~ EXAMINATIONS, FOR
 10 APPLICATIONS, FOR ELIGIBILITY LISTS, FOR VACANCIES AND
 11 PROMOTIONS AND FOR PHYSICAL EXAMINATIONS.



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

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

1 amended to read:

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

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

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

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

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

1 have passed examinations, and shall indicate [thereon such] THE ←
2 appointments [as may be] made from [said] THE lists. ←

3 Section 2. Sections 5 ~~and 6~~, 6 AND 8 of the act are amended ←
4 to read:

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

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

13 Second. His citizenship, age, and the place and date of his
14 birth.

15 Third. His health, and his physical capacity for public
16 service.

17 Fourth. His business and employments and residences for at
18 least three years previous.

19 Fifth. Such other information as may reasonably be required,
20 [touching] REGARDING the applicant's qualifications and fitness ←
21 for the [public service] POSITION. ←

22 ~~Blank~~ (B) BLANK forms for [such] applications shall be ←
23 furnished by the commission, without charge, to all persons
24 requesting the same. The commission may require, in connection
25 with [such] THE application, [such] ALL certificates of ←
26 citizens, physicians or others, having knowledge of the
27 applicant, as [the good of the service may require] DEEMED ←
28 APPROPRIATE. The commission may refuse to examine an applicant,
29 or, after examination, to certify [as eligible, one who is found ←
30 to lack] AN APPLICANT WHO LACKS any of the established ←

1 preliminary requirements for the examination [or], position or ←
2 employments for which [he] THE APPLICANT applies; or who is ←
3 physically [so disabled as to be rendered] unfit for the
4 performances of the duties of the position to which [he] THE ←
5 APPLICANT seeks appointment; or who is [addicted to the habitual
6 use of intoxicating liquors or drugs;] illegally using a
7 controlled substance, as defined in section 102 of the
8 Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802);
9 or who has been convicted of any crime, or whose conduct is
10 infamous or notoriously disgraceful; or who has been dismissed
11 from the public service for delinquency or misconduct; or who
12 has made a false statement of any material fact, or practiced or
13 attempted to practice any deception or fraud in [his] THE ←
14 application, [in his] examination[, or in establishing his] OR ←
15 ESTABLISHMENT OF eligibility; or who refuses to comply with the
16 rules and regulations of the commission.

17 ~~(b) No application will be received if the person applying ←~~
18 ~~is less than eighteen years of age or more than thirty five~~
19 ~~years of age at the date of application: Provided, however, That~~
20 ~~in the event any applicant has formerly served in the fire~~
21 ~~department or as a fire alarm operator or fire box inspector in~~
22 ~~the bureau of electricity of the city to which application is~~
23 ~~made for a period of more than six months, and no charges of~~
24 ~~misconduct or other misfeasance were made against the applicant~~
25 ~~within a period of two years next preceding the date of~~
26 ~~application, and the applicant is a resident of the city, then~~
27 ~~the person shall be eligible for reinstatement, in the~~
28 ~~discretion of the civil service commission, even though the~~
29 ~~applicant is over thirty five years of age. The applicant,~~
30 ~~providing the applicant's former term of service so justifies,~~

1 ~~may be reappointed to the fire department or as a fire alarm~~
2 ~~operator or fire box inspector in the bureau of electricity~~
3 ~~without examination, other than a physical examination in~~
4 ~~accordance with section nine of this act. If the person is~~
5 ~~reinstated, the person shall be the lowest in rank in the~~
6 ~~department next above the probationers of the department.~~

7 (C) (1) NO APPLICATION WILL BE ACCEPTED IF THE PERSON ←
8 APPLYING IS LESS THAN EIGHTEEN YEARS OF AGE OR MORE THAN THIRTY-
9 FIVE YEARS OF AGE AT THE DATE OF APPLICATION. A PERSON WHO IS
10 OVER THIRTY-FIVE YEARS OF AGE SHALL BE ELIGIBLE FOR
11 REINSTATEMENT AT THE DISCRETION OF THE COMMISSION IF ALL OF THE
12 FOLLOWING APPLY:

13 (I) THE APPLICANT HAS FORMERLY SERVED IN THE FIRE DEPARTMENT
14 OR AS A FIRE ALARM OPERATOR OR FIRE BOX INSPECTOR IN THE BUREAU
15 OF ELECTRICITY OF THE CITY TO WHICH APPLICATION HAS BEEN MADE
16 FOR A PERIOD OF MORE THAN SIX MONTHS.

17 (II) NO CHARGES OF MISCONDUCT OR OTHER MISFEASANCE WERE MADE
18 AGAINST THE APPLICANT WITHIN A PERIOD OF MORE THAN TWO YEARS
19 PRECEDING THE DATE OF APPLICATION.

20 (III) THE APPLICANT IS A RESIDENT OF THE CITY.

21 (2) THE APPLICANT, PROVIDING THE APPLICANT'S FORMER TERM OF
22 SERVICE WAS SATISFACTORY, MAY BE REAPPOINTED TO THE FIRE
23 DEPARTMENT OR AS A FIRE ALARM OPERATOR OR FIRE BOX INSPECTOR IN
24 THE BUREAU OF ELECTRICITY WITHOUT EXAMINATION, OTHER THAN A
25 PHYSICAL EXAMINATION REQUIRED UNDER SECTION 9. IF THE PERSON IS
26 REINSTATED, THE PERSON SHALL BE THE LOWEST IN RANK IMMEDIATELY
27 ABOVE THE PROBATIONERS OF THE DEPARTMENT.

28 ~~(e)~~ (D) If any applicant [feels himself] IS aggrieved by ←
29 [the action] REFUSAL of the commission [in refusing] to examine ←
30 [him, or, after an examination, to certify him as an] OR CERTIFY ←

1 THE APPLICANT AS eligible, as provided in this section, the
2 commission shall, at the request of [such] THE applicant, ←
3 appoint a time and place for a public hearing, at which time
4 [such] THE applicant may appear, [by himself or counsel, or ←
5 both] WITH OR WITHOUT COUNSEL, and the commission shall [then] ←
6 TAKE TESTIMONY AND review its refusal to [make such] PROVIDE ←
7 examination or certification[, and testimony shall be taken]. ←
8 The commission shall subpoena, at the expense of the applicant,
9 any competent witnesses requested by [him. After such review] ←
10 THE APPLICANT. FOLLOWING THE PUBLIC HEARING, the commission
11 shall file the testimony taken in its records, and shall again
12 make a decision, which decision shall be final.

13 Section 6. (a) At the completion of the testing process,
14 including any background, physical agility or other
15 examinations, with the exception of physical and psychological
16 medical examinations pursuant to section nine of this act, the
17 civil service commission shall rank the candidates who have
18 satisfied the minimum requirements for appointment on an
19 eligibility list. The eligibility list shall contain the names
20 of individuals eligible for appointment listed from highest to
21 lowest based on their scores on the examinations administered by
22 the commission and any points for which the applicant was
23 entitled by virtue of 51 Pa.C.S. Ch. 71 (relating to veterans'
24 preference). The eligibility list will be valid for one year
25 from the date the commission ranks all passing applicants,
26 assigns veterans' preference points and formally adopts the
27 eligibility list. The commission may, at its sole discretion
28 before the original expiration date, by a vote of the majority
29 of the commission at a duly authorized commission meeting,
30 extend the list for up to an additional twelve months. In the

1 absence of a lawful extension by the commission, the list shall
2 expire.

3 (b) Every position or employment, unless filled by
4 promotion, reinstatement, or reduction, shall be filled only in
5 the following manner: The appointing officer shall notify the
6 civil service commission of any vacancy in the service which he
7 desires to fill, and shall request the certification of
8 [eligibles] AN ELIGIBILITY LIST. The commission shall forthwith ←
9 certify[, from the appropriate eligible list,] the names of the ←
10 three persons [thereon] who received the highest averages at the ←
11 last preceding examination [held under the provisions of this ←
12 act]. The appointing officer shall, [thereupon,] with sole ←
13 reference to the relative merit and fitness of the candidates,
14 make [an] a conditional appointment from the three names [so] ←
15 certified ON THE ELIGIBILITY LIST. If the appointing officer ←
16 makes objection to the commission to one or more of the persons
17 named for any of the reasons stated in section five of this act,
18 and if such objections are sustained by the commission, or if a
19 conditional appointee is determined to be unqualified in
20 accordance with the procedures set forth in section nine of this
21 act, the commission shall [thereupon] strike the name of [such] ←
22 THE person from the [eligible] ELIGIBILITY list, and certify the ←
23 next highest name for each person so stricken off. If any name
24 shall be three times rejected for the same or another position,
25 [such] THE name shall be stricken from the list. When there are ←
26 a number of positions of the same kind to be filled at the same
27 time, each appointment shall be made separately and in
28 accordance with the foregoing provisions.

29 SECTION 8. VACANCIES IN POSITIONS IN THE FIRE DEPARTMENT AND ←
30 AS FIRE ALARM OPERATORS AND FIRE BOX INSPECTORS IN THE BUREAU OF

1 ELECTRICITY SHALL BE FILLED, SO FAR AS PRACTICABLE, BY
2 PROMOTIONS FROM AMONG PERSONS HOLDING POSITIONS IN THE NEXT
3 LOWER GRADE IN THE DEPARTMENT. PROMOTIONS SHALL BE BASED UPON
4 MERIT, TO BE ASCERTAINED BY TESTS TO BE PROVIDED BY THE CIVIL
5 SERVICE COMMISSION[, AND UPON THE SUPERIOR QUALIFICATIONS OF THE
6 PERSONS PROMOTED, AS SHOWN BY HIS PREVIOUS SERVICE AND
7 EXPERIENCE: PROVIDED, HOWEVER, THAT NO PERSON]. THE APPOINTING
8 OFFICER SHALL NOTIFY THE COMMISSION OF A VACANCY IN THE POSITION
9 WHICH THE APPOINTING OFFICER DESIRES TO FILL BY PROMOTION AND
10 SHALL REQUEST THE CERTIFICATION OF AN ELIGIBILITY LIST. THE
11 COMMISSION SHALL CERTIFY FOR EACH VACANCY THE NAMES OF THE THREE
12 PERSONS ON THE ELIGIBILITY LIST WHO HAVE RECEIVED THE HIGHEST
13 AVERAGE IN THE LAST PROMOTIONAL EXAMINATION HELD WITHIN A PERIOD
14 OF TWO YEARS PRECEDING THE DATE OF THE REQUEST FOR THE
15 ELIGIBILITY LIST. IF THREE NAMES ARE NOT AVAILABLE, THE
16 COMMISSION SHALL CERTIFY THE NAMES REMAINING ON THE ELIGIBILITY
17 LIST. THE APPOINTING OFFICER SHALL MAKE AN APPOINTMENT FROM THE
18 NAMES CERTIFIED BASED SOLELY ON THE MERITS AND FITNESS OF THE
19 CANDIDATE UNLESS THE APPOINTING OFFICER MAKES OBJECTIONS TO THE
20 COMMISSION REGARDING ANY PERSON ON THE ELIGIBILITY LIST FOR ANY
21 REASON PROVIDED UNDER SECTION 5. NO PERSON, HOWEVER, SHALL BE
22 ELIGIBLE FOR PROMOTION FROM THE LOWER GRADE TO THE NEXT HIGHER
23 GRADE UNTIL SUCH PERSON SHALL HAVE COMPLETED AT LEAST TWO YEARS
24 SERVICE IN THE NEXT LOWER GRADE IN THE DEPARTMENT. THE
25 COMMISSION SHALL HAVE THE POWER TO DETERMINE IN EACH INSTANCE
26 WHETHER AN INCREASE IN SALARY CONSTITUTES A PROMOTION.

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

29 Section 9. [All applicants for any position in the fire
30 department and as fire alarm operators and fire box inspectors

1 in the bureau of electricity shall undergo a physical
2 examination, which shall be conducted under the supervision of
3 the physician member of the civil service commission, or if
4 there be none, then by a physician appointed by the civil
5 service commission. Said examiner shall certify that an
6 applicant is free from any bodily or mental defects, deformity
7 or diseases that might incapacitate him from the performance of
8 the duties of the position desired before said applicant shall
9 be permitted to take further examinations. No application will
10 be received if the person applying is less than eighteen years
11 of age or more than thirty-five years of age at the date of his
12 application: Provided, however, That in event any applicant has
13 formerly served in the fire department or as a fire alarm
14 operator or fire box inspector in the bureau of electricity of
15 the city to which he makes application for a period of more than
16 six months, and no charges of misconduct or other misfeasance
17 were made against such applicant within a period of two years
18 next preceding the date of his application, and is a resident of
19 the city, then such person shall be eligible for reinstatement,
20 in the discretion of the civil service commission, even though
21 such applicant shall be over the age of thirty-five years. Such
22 applicant, providing his former term of service so justifies,
23 may be reappointed to the fire department or as a fire alarm
24 operator or fire box inspector in the bureau of electricity
25 without examination, other than a physical examination. If such
26 person is reinstated, he shall be the lowest in rank in the
27 department next above the probationers of the department.] (a)
28 An applicant selected from the eligibility list shall receive a
29 conditional offer of employment. The offer of employment shall
30 be conditioned upon the applicant undergoing a physical and, if

1 required by the rules and regulations of the commission, a
2 psychological medical examination, and a determination by the
3 commission that the applicant is capable of performing all the
4 essential functions of the position. Physical medical
5 examinations shall be under the direction of a physician or
6 other qualified medical professional. Psychological medical
7 examinations shall be under the direction of a psychiatrist or
8 psychologist.

9 (b) The physician or other qualified medical professional
10 and the psychiatrist or psychologist shall be appointed by the
11 council and shall render an opinion as to whether the
12 conditional appointee has a physical or mental condition which
13 calls into question ~~his or her~~ THE PERSON'S ability to perform ←
14 all of the essential functions of the position for which ~~he or~~ ←
15 ~~she~~ THE PERSON was conditionally appointed. ←

16 (c) If the opinion rendered by the ~~medical examiner~~ ←
17 PHYSICIAN, OTHER QUALIFIED MEDICAL PROFESSIONAL, PSYCHIATRIST OR ←
18 PSYCHOLOGIST calls into question the conditional appointee's
19 ability to perform all essential functions of a position, a
20 person ~~or persons~~ designated by the appointing officer shall ←
21 meet with the conditional appointee for the purpose of having
22 one or more interactive discussions ~~focused on the issue of ON~~ ←
23 whether the conditional appointee can, with or without
24 reasonable accommodation, perform all the essential functions of
25 the position.

26 (d) If, at the conclusion of the interactive discussion
27 ~~process~~ UNDER SUBSECTION (C), the appointing officer determines ←
28 that the conditional appointee is not qualified, the appointing
29 officer shall give written notice to the conditional appointee
30 and the board.

1 (e) Nothing in this act shall be construed as authorizing TO ←
2 AUTHORIZE physical or psychological medical examinations prior
3 to conditional appointment.

4 (f) As used in this section, the term "medical THE FOLLOWING ←
5 DEFINITIONS SHALL APPLY:

6 "MEDICAL examination" shall mean any examination, procedure,
7 inquiry or test designed to obtain information about medical
8 history or a physical or mental condition which might disqualify
9 an applicant if it would prevent the applicant from performing,
10 with or without a reasonable accommodation, all of the essential
11 functions of the position.

12 "PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. § ←
13 1991 (RELATING TO DEFINITIONS).

14 "QUALIFIED MEDICAL PROFESSIONAL" SHALL MEAN AN INDIVIDUAL, IN
15 COLLABORATION WITH OR UNDER THE SUPERVISION OR DIRECTION OF A
16 PHYSICIAN, AS MAY BE REQUIRED BY LAW, WHO IS LICENSED:

17 (1) AS A PHYSICIAN ASSISTANT PURSUANT TO THE ACT OF DECEMBER
18 20, 1985 (P.L.457, NO.112), KNOWN AS THE "MEDICAL PRACTICE ACT
19 OF 1985," OR THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
20 KNOWN AS THE "OSTEOPATHIC MEDICAL PRACTICE ACT"; OR

21 (2) AS A CERTIFIED REGISTERED NURSE PRACTITIONER PURSUANT TO
22 THE ACT OF MAY 22, 1951 (P.L.317, NO.69), KNOWN AS "THE
23 PROFESSIONAL NURSING LAW.

24 Section 4. Nothing contained in this act shall affect the
25 validity of any civil service appointments OR PROMOTIONS made ←
26 prior to the effective date of this section.

27 Section 5. This act shall take effect immediately.