

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1518 Session of 2009

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

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

AN ACT

1 Amending the act of June 5, 1941 (P.L.84, No.45), entitled "An
2 act providing for and regulating the appointment, promotion
3 and reduction in rank, suspension and removal of paid members
4 of the police force in boroughs, incorporated towns and
5 townships of the first class maintaining a police force of
6 not less than three members; creating a civil service
7 commission in each borough, incorporated town and township of
8 the first class; defining the duties of such civil service
9 commission; imposing certain duties and expense on boroughs,
10 incorporated towns and townships of the first class; imposing
11 penalties, and repealing inconsistent laws," further
12 providing for general provisions relating to examinations,
13 for rejection of applicant and hearing, for manner of filling
14 appointments, for probationary period, FOR PROMOTIONS and for
15 physical examinations.



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

18 Section 1. Section 11 of the act of June 5, 1941 (P.L.84,
19 No.45), entitled "An act providing for and regulating the
20 appointment, promotion and reduction in rank, suspension and
21 removal of paid members of the police force in boroughs,
22 incorporated towns and townships of the first class maintaining
23 a police force of not less than three members; creating a civil

1 service commission in each borough, incorporated town and
2 township of the first class; defining the duties of such civil
3 service commission; imposing certain duties and expense on
4 boroughs, incorporated towns and townships of the first class;
5 imposing penalties, and repealing inconsistent laws," amended
6 October 17, 1980 (P.L.1080, No.181), is amended to read:

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

8 (a) Each commission shall make rules and regulations, to be
9 approved as provided in section 6 hereof, providing for the
10 examination of applicants for positions in the police force and
11 for promotions therein, which rules and regulations shall
12 prescribe the minimum qualifications of all applicants to be
13 examined and the passing grades. All examinations for positions
14 or promotions in the police force of any municipality shall be
15 practical in character and shall relate to such matters and
16 include such inquiries as will fairly test the merit and fitness
17 of the persons examined to discharge the duties of the
18 employment sought by them. All examinations shall be open to all
19 applicants who have the minimum qualifications required by the
20 rules and regulations. Each applicant for examination shall:

21 (1) be subject to the regulations adopted by the commission
22 [and shall be required to submit to a physical examination];

23 (2) either before or after [being admitted to the regular
24 examination held by the commission.] 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 19 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 ELIGIBILITY list containing the names and grades of those who
10 have passed the examination for A position under this act. ←

11 [Persons, male or female, who served in the military or naval
12 service of the United States during any war in which the United
13 States has been, is now or shall hereafter be engaged, and who
14 have honorable discharges from such service, who have
15 successfully passed the examination, shall be given the
16 additional credits and preference in appointment and promotion
17 provided for by any law of this Commonwealth.]

18 Section 2. Sections 13, 14 ~~and 16~~, 16 AND 18 of the act are ←
19 amended to read:

20 Section 13. Rejection of Applicant; Hearing.--(a) The
21 commission may refuse to examine any applicant, or, if examined,
22 may refuse to certify after examination as eligible anyone who
23 is found to lack any of the minimum qualifications for
24 examination prescribed in the rules and regulations adopted for
25 the position or employment for which he has applied, or who is
26 physically [disabled and] unfit for the performance of the
27 duties of the position to which he seeks employment, or [who is
28 addicted to the habitual use of intoxicating liquors or drugs]
29 who is illegally using a controlled substance, as defined in
30 section 102 of the Controlled Substances Act (Public Law 91-513,

1 21 U.S.C. § 802), or who has been guilty of any crime involving
2 moral turpitude or of infamous or notorious disgraceful conduct,
3 or who has been dismissed from public service for delinquency or
4 misconduct in office, or who is affiliated with any group whose
5 policies or activities are subversive to the form of government
6 set forth in the constitutions and laws of the United States and
7 Pennsylvania.

8 (b) If any applicant or person [feels himself] IS aggrieved ←
9 by [the action] REFUSAL of the commission [in refusing] to ←
10 examine [him or to certify him] OR CERTIFY THE APPLICANT as ←
11 eligible after examination, the commission shall, at the request ←
12 of [such person] THE APPLICANT, within ten (10) days, appoint a ←
13 time and place [where he may appear personally and by counsel, ←
14 whereupon] FOR A PUBLIC HEARING, WITH OR WITHOUT COUNSEL, AT ←
15 WHICH TIME the commission shall [then] TAKE TESTIMONY AND review ←
16 its refusal to [make such] PROVIDE examination or certification ←
17 [and take such testimony as may be offered]. The decision of the ←
18 commission shall be final.

19 Section 14. Eligibility List and Manner of Filling
20 Appointments.--(a) At the completion of the testing process,
21 including any background, physical agility or other
22 examinations, with the exception of physical and psychological
23 medical examinations pursuant to section 19 of this act, the
24 commission shall rank the candidates who have satisfied the
25 minimum requirements for appointment on an eligibility list. The
26 eligibility list shall contain the names of individuals eligible
27 for appointment listed from highest to lowest based on their
28 scores on the examinations administered by the commission and
29 any points for which the applicant was entitled by virtue of 51
30 Pa.C.S. Ch. 71 (relating to veterans' preference). The

1 eligibility list shall be valid for one year from the date the
2 commission ranks all passing applicants, assigns veterans'
3 preference points and formally adopts the eligibility list. The ←
4 commission may, at its sole discretion before the original
5 expiration date, by a vote of the majority of the commission at
6 a duly authorized commission meeting, extend the ←
7 PRIOR TO EXPIRATION OF THE ONE-YEAR PERIOD, THE COMMISSION MAY EXTEND THE
8 VALIDITY OF THE ELIGIBILITY list for up to an additional twelve
9 months BY A MAJORITY VOTE OF THE COMMISSION AT A DULY AUTHORIZED ←
10 COMMISSION MEETING. In the absence of a lawful extension by the
11 commission, the list shall expire ←
12 AT THE END OF THE ORIGINAL
13 ONE-YEAR PERIOD. ←

13 (b) Every position or employment, except that of chief of
14 police or equivalent official, unless filled by promotion,
15 reinstatement or reduction shall be filled only in the following
16 manner: the appointing officer or body of the municipality shall
17 notify the commission of any vacancy in the police force which
18 is to be filled and shall request the certification of [a list ←
19 of eligibles] AN ELIGIBILITY LIST. The commission shall certify ←
20 [for each existing vacancy from the eligible list] the names of ←
21 THE three persons [thereon] ON THE ELIGIBILITY LIST who have ←
22 received the highest average in the last preceding examination
23 [held within a period of one year next preceding the date of the
24 request for such eligibles] FOR EACH VACANCY. The appointing ←
25 officer or body shall [thereupon with sole reference to the ←
26 merits and fitness of the candidates] make [an] a conditional ←
27 appointment from the three names certified, BASED SOLELY ON THE ←
28 MERITS AND FITNESS OF THE CANDIDATES, unless [he or they make ←
29 objections] THE APPOINTING OFFICER OR BODY MAKES AN OBJECTION to ←
30 the commission [as to] REGARDING one or more of the persons [so ←

1 certified] ON THE ELIGIBILITY LIST for any of the reasons ←
2 [stated in] PROVIDED UNDER section 13 of this act. Should [such ←
3 objections] AN OBJECTION be sustained by the commission as ←
4 provided in [said] section 13 OF THIS ACT, or if the conditional ←
5 appointee is determined to be unqualified in accordance with the
6 procedures set forth in section 19 of this act, the commission
7 shall [thereupon] strike the name of [such] THE person from the ←
8 [eligible] ELIGIBILITY list and certify the next highest name ←
9 for each name stricken [off] FROM THE ELIGIBILITY LIST. As each ←
10 subsequent vacancy occurs in the same or another position
11 precisely the same procedure shall be followed.

12 (c) In the case of a vacancy in the office of chief of
13 police or equivalent official the appointive power may nominate
14 a person to the commission. It shall thereupon become the duty
15 of the commission to subject such person to a noncompetitive
16 examination, and, if such person shall be certified by the
17 commission as qualified, he may then be appointed to such
18 position and thereafter shall be subject to all the provisions
19 of this act.

20 Section 16. Probationary Period.--All original appointments
21 to any position in the police force shall be for a probationary
22 period of six months, but during the probationary period an
23 appointee may be dismissed only for a cause specified in section
24 13 of this act or because of incapacity for duty due to the use
25 of alcohol or drugs. If at the close of a probationary period
26 the conduct or fitness of the probationer has not been
27 satisfactory to the appointing officer or body the probationer
28 shall be notified in writing that he will not receive a
29 permanent appointment[. Thereupon his], AND THE appointment ←
30 shall cease[; otherwise]. IF THE PROBATIONER IS NOT NOTIFIED OR ←

1 DISMISSED IN ACCORDANCE WITH THIS SECTION, his retention shall
2 be equivalent to a permanent appointment.

3 SECTION 18. PROMOTIONS.--PROMOTIONS SHALL BE BASED ON MERITS ←
4 TO BE ASCERTAINED BY EXAMINATIONS TO BE PRESCRIBED BY THE
5 COMMISSION. ALL QUESTIONS RELATIVE TO PROMOTIONS SHALL BE
6 PRACTICAL IN CHARACTER AND SUCH AS WILL FAIRLY TEST THE MERIT
7 AND FITNESS OF PERSONS SEEKING PROMOTION. THE APPOINTING OFFICER
8 OR BODY SHALL NOTIFY THE COMMISSION OF A VACANCY IN THE POLICE
9 FORCE WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE
10 CERTIFICATION OF AN ELIGIBILITY LIST. THE COMMISSION SHALL
11 CERTIFY FOR EACH EXISTING VACANCY THE NAMES OF THREE PERSONS ON
12 THE ELIGIBILITY LIST WHO HAVE RECEIVED THE HIGHEST AVERAGE IN
13 THE LAST PRECEDING PROMOTIONAL EXAMINATION HELD WITHIN A PERIOD
14 OF TWO YEARS NEXT PRECEDING THE DATE OF THE REQUEST FOR THE
15 ELIGIBILITY LIST FOR EACH VACANCY. IF THREE NAMES ARE NOT
16 AVAILABLE, THE COMMISSION SHALL CERTIFY THE NAMES REMAINING ON
17 THE ELIGIBILITY LIST. THE APPOINTING OFFICER OR BODY SHALL MAKE
18 AN APPOINTMENT FROM THE NAMES CERTIFIED BASED SOLELY ON THE
19 MERITS AND FITNESS OF THE CANDIDATES UNLESS THE APPOINTING
20 OFFICER OR BODY MAKES OBJECTIONS TO THE COMMISSION REGARDING ONE
21 OR MORE OF THE PERSONS CERTIFIED FOR ANY REASON PROVIDED IN
22 SECTION 13 OF THIS ACT.

23 THE APPOINTING OFFICER OR BODY SHALL HAVE POWER TO DETERMINE
24 IN EACH INSTANCE WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE
25 A PROMOTION.

26 Section 3. Section 19 of the act, amended October 17, 1980
27 (P.L.1080, No.181), is amended to read:

28 Section 19. Physical and Psychological Medical
29 Examinations.--[All applicants for examination shall undergo a
30 physical examination as provided in section 11 which shall be

1 conducted under the supervision of a doctor of medicine
2 appointed by the civil service commission. No person shall be
3 eligible for appointment until said doctor certifies that the
4 applicant is free from any bodily or mental defects, deformity,
5 or disease that might incapacitate him from the discharge of the
6 duties of the position desired.] (a) An applicant selected from
7 the eligibility list shall receive a conditional offer of
8 employment. The offer of employment shall be conditioned upon
9 the conditional appointee undergoing a physical and
10 psychological medical examination and a determination that the
11 conditional appointee is capable of performing all the essential
12 functions of the position. Physical medical examinations shall
13 be under the direction of a physician or other qualified medical
14 professional. Psychological medical examinations shall be under
15 the direction of a psychiatrist or psychologist.

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

23 (c) If the opinion rendered by the ~~medical examiner~~ ←
24 PHYSICIAN, OTHER QUALIFIED MEDICAL PROFESSIONAL, PSYCHIATRIST OR ←
25 PSYCHOLOGIST calls into question the conditional appointee's
26 ability to perform all essential functions of a position, a
27 person ~~or persons~~ designated by the appointing officer or body ←
28 shall meet with the conditional appointee for the purpose of
29 having one or more interactive discussions ~~focused on the issue~~ ←
30 ~~of~~ ON whether the conditional appointee can, with or without ←

1 reasonable accommodation, perform all the essential functions of
2 the position.

3 (d) If, at the conclusion of the interactive discussion
4 ~~process~~ UNDER SUBSECTION (C), the appointing officer or body ←
5 determines that the conditional appointee is not qualified, the
6 appointing officer or body shall give written notice to the
7 conditional appointee and the commission.

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

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

13 "MEDICAL examination" shall mean an examination, procedure,
14 inquiry or test designed to obtain information about medical
15 history or a physical or mental condition which might disqualify
16 an applicant if it would prevent the applicant from performing,
17 with or without a reasonable accommodation, all of the essential
18 functions of the position.

19 "PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. § ←
20 1991 (RELATING TO DEFINITIONS).

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

24 (1) AS A PHYSICIAN ASSISTANT PURSUANT TO THE ACT OF DECEMBER
25 20, 1985 (P.L.457, NO.112), KNOWN AS THE "MEDICAL PRACTICE ACT
26 OF 1985," OR THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
27 KNOWN AS THE "OSTEOPATHIC MEDICAL PRACTICE ACT"; OR

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

1 Section 4. Nothing contained in the amendment of section 11,
2 13, 14, 16, 18 or 19 of the act shall affect the validity of any ←
3 civil service ~~appointment~~ APPOINTMENTS OR PROMOTIONS made prior ←
4 to the effective date of this section.

5 Section 5. This act shall take effect immediately.