S T A T E O F N E W Y O R K

9011

2009-2010 Regular Sessions

I N A S S E M B L Y

June 19, 2009

Introduced by M. of A. ABBATE -- (at request of the Governor) -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to unlawful acts in respect to examinations and establishing a civil penalty for violations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 11 of section 50 of the civil service law, as added by chapter 445 of the laws of 1991, is amended to read as follows:

11. Unlawful acts in respect to examinations administered pursuant to this chapter. A person who shall:

(a) Impersonate, or attempt to or offer to impersonate, another person in taking an examination held pursuant to this chapter; or

(b) Take, or attempt to take or offer to take such an examination in the name of any other person; or

(c) Procure or attempt to procure any other person to falsely impersonate him or her or to take, or attempt to take or offer to take, any such examination in his or her name; or

(d) Have in his or her possession any questions or answers relating to any such examination, or copies of such questions or answers, unless such possession is duly authorized by the appropriate authorities; or

(e) Sell or offer to sell questions or answers prepared for use in any such examination; or

(f) Use in any such examination any questions or answers secured prior to the administration of the examination or secure the questions or secure or prepare the answers to the examination questions prior to the administration of the examination, unless duly authorized to do so by the appropriate authorities; or

(g) Disclose or transmit to any person the questions or answers to such examination prior to its administration, or destroy, falsify or conceal the records or results of such examination from the appropriate

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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authorities to whom such records are required to be transmitted in accordance with this chapter, unless duly authorized to do so by the appropriate authorities; OR

(H) DEVELOP OR INDUCE OR ATTEMPT TO INDUCE ANY OTHER OFFICER OR EMPLOYEE TO DEVELOP A PROFILE FOR A POSITION-SPECIFIC EXAMINATION BASED SOLELY ON HIS OR HER EDUCATION OR EXPERIENCE OR THE EDUCATION AND EXPERIENCE OF ANY KNOWN CANDIDATE OR CANDIDATES; OR

(I) SUBMIT A FALSE CERTIFICATION, WHERE SUCH CERTIFICATION IS REQUIRED BY THE DEPARTMENT; OR

(J) OBTAIN OR ATTEMPT TO OBTAIN OR AID OR ABET BY ANY MANIPULATIVE OR DECEPTIVE DEVICE AN APPOINTMENT OR PROMOTION FOR ANY PERSON TO WHICH HE OR SHE IS NOT ENTITLED UNDER THIS CHAPTER;

shall be guilty of a class A misdemeanor punishable by a sentence of imprisonment of six months or a fine of one thousand dollars, or both. Additionally, a person who is found by the state civil service department or municipal commission to have violated this section shall be disqualified from appointment to the position for which the examination is being held and may be disqualified from being a candidate for any civil service examination for a period of five years.

S 2. Section 50 of the civil service law is amended by adding a new subdivision 12 to read as follows:

12. IN ADDITION TO THE PENALTY PRESCRIBED IN SUBDIVISION ELEVEN OF THIS SECTION: (A) WHERE THE DEPARTMENT FINDS THAT AN OFFICER OR EMPLOYEE HAS VIOLATED SUBDIVISION ELEVEN OF THIS SECTION, OR A RULE OR REGULATION PROMULGATED THEREUNDER, THE DEPARTMENT MAY BY AN ORDER WHICH SHALL DESCRIBE PARTICULARLY THE NATURE OF THE VIOLATION AND PROVIDE AN OPPORTUNITY TO BE HEARD THEREON, ASSESS THE OFFICER OR EMPLOYEE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR SUCH VIOLATION. SUCH PENALTY SHALL BE PAID TO THE DEPARTMENT FOR DEPOSIT IN THE TREASURY OF THE STATE. IN ASSESSING THE AMOUNT OF THE PENALTY, THE DEPARTMENT SHALL GIVE DUE CONSIDERATION TO THE PARTICULAR CIRCUMSTANCES OF THE VIOLATION INCLUDING BUT NOT LIMITED TO WHETHER THE VIOLATION WAS KNOWING, INTENTIONAL AND/OR WILLFUL, WHETHER THE VIOLATION WAS DONE ALONE OR IN COOPERATION WITH OTHERS, THE HISTORY OF PREVIOUS VIOLATIONS, ANY ATTEMPT TO HIDE THE VIOLATION AND THE GRAVITY OF THE VIOLATION.

(B) ANY ORDER ISSUED UNDER PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE DEEMED A FINAL ORDER OF THE DEPARTMENT AND NOT SUBJECT TO REVIEW BY ANY COURT OR AGENCY UNLESS THE OFFICER OR EMPLOYEE FILES A TIMELY PETITION WITH THE COMMISSION FOR A REVIEW OF THE ORDER, PURSUANT TO SUBDIVISION FIVE OF SECTION SIX OF THIS CHAPTER.

(C) PROVIDED THAT NO PROCEEDING FOR ADMINISTRATIVE OR JUDICIAL REVIEW SHALL THEN BE PENDING AND THE TIME FOR INITIATION OF SUCH PROCEEDING SHALL HAVE EXPIRED, THE DEPARTMENT MAY FILE WITH THE COUNTY CLERK OF THE COUNTY WHERE THE OFFICER OR EMPLOYEE RESIDES THE ORDER OF THE DEPARTMENT CONTAINING THE AMOUNT OF THE CIVIL PENALTY. THE FILING OF SUCH ORDER SHALL HAVE THE FULL FORCE AND EFFECT OF A JUDGMENT DULY DOCKETED IN THE OFFICE OF SUCH CLERK. THE ORDER MAY BE ENFORCED BY AND IN THE NAME OF THE DEPARTMENT IN THE SAME MANNER, AND WITH LIKE EFFECT, AS THAT PRESCRIBED BY THE CIVIL PRACTICE LAW AND RULES FOR THE ENFORCEMENT OF A MONEY JUDGMENT.

S 3. This act shall take effect immediately.