

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 11 of section 50 of the civil service law, as
2 added by chapter 445 of the laws of 1991, is amended to read as follows:
3 11. Unlawful acts in respect to examinations administered pursuant to
4 this chapter. A person who shall:
5 (a) Impersonate, or attempt to or offer to impersonate, another person
6 in taking an examination held pursuant to this chapter; or
7 (b) Take, or attempt to take or offer to take such an examination in
8 the name of any other person; or
9 (c) Procure or attempt to procure any other person to falsely imperso-
10 nate him or her or to take, or attempt to take or offer to take, any
11 such examination in his or her name; or
12 (d) Have in his or her possession any questions or answers relating to
13 any such examination, or copies of such questions or answers, unless
14 such possession is duly authorized by the appropriate authorities; or
15 (e) Sell or offer to sell questions or answers prepared for use in any
16 such examination; or
17 (f) Use in any such examination any questions or answers secured prior
18 to the administration of the examination or secure the questions or
19 secure or prepare the answers to the examination questions prior to the
20 administration of the examination, unless duly authorized to do so by
21 the appropriate authorities; or
22 (g) Disclose or transmit to any person the questions or answers to
23 such examination prior to its administration, or destroy, falsify or
24 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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1 authorities to whom such records are required to be transmitted in
2 accordance with this chapter, unless duly authorized to do so by the
3 appropriate authorities; OR

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

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

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

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

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

22 12. IN ADDITION TO THE PENALTY PRESCRIBED IN SUBDIVISION ELEVEN OF
23 THIS SECTION: (A) WHERE THE DEPARTMENT FINDS THAT AN OFFICER OR EMPLOYEE
24 HAS VIOLATED SUBDIVISION ELEVEN OF THIS SECTION, OR A RULE OR REGULATION
25 PROMULGATED THEREUNDER, THE DEPARTMENT MAY BY AN ORDER WHICH SHALL
26 DESCRIBE PARTICULARLY THE NATURE OF THE VIOLATION AND PROVIDE AN OPPOR-
27 TUNITY TO BE HEARD THEREON, ASSESS THE OFFICER OR EMPLOYEE A CIVIL
28 PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR SUCH VIOLATION. SUCH
29 PENALTY SHALL BE PAID TO THE DEPARTMENT FOR DEPOSIT IN THE TREASURY OF
30 THE STATE. IN ASSESSING THE AMOUNT OF THE PENALTY, THE DEPARTMENT SHALL
31 GIVE DUE CONSIDERATION TO THE PARTICULAR CIRCUMSTANCES OF THE VIOLATION
32 INCLUDING BUT NOT LIMITED TO WHETHER THE VIOLATION WAS KNOWING, INTEN-
33 TIONAL AND/OR WILLFUL, WHETHER THE VIOLATION WAS DONE ALONE OR IN COOP-
34 ERATION WITH OTHERS, THE HISTORY OF PREVIOUS VIOLATIONS, ANY ATTEMPT TO
35 HIDE THE VIOLATION AND THE GRAVITY OF THE VIOLATION.

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

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

51 S 3. This act shall take effect immediately.