

5825

2009-2010 Regular Sessions

I N S E N A T E

June 8, 2009

Introduced by Sen. SAVINO -- (at request of the Governor) -- read twice
and ordered printed, and when printed to be committed to the Committee
on Rules

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

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

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1 conceal the records or results of such examination from the appropriate
2 authorities to whom such records are required to be transmitted in
3 accordance with this chapter, unless duly authorized to do so by the
4 appropriate authorities; OR

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

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

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

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

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

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

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

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

52 S 3. This act shall take effect immediately.