

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

5825--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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 impersonate him or her or to take, or attempt to take or offer to take, any
10 such examination in his or her name; or
11 (d) Have in his or her possession any questions or answers relating to
12 any such examination, or copies of such questions or answers, unless
13 such possession is duly authorized by the appropriate authorities; or
14 (e) Sell or offer to sell questions or answers prepared for use in any
15 such examination; or
16 (f) Use in any such examination any questions or answers secured prior
17 to the administration of the examination or secure the questions or
18 secure or prepare the answers to the examination questions prior to the
19 administration of the examination, unless duly authorized to do so by
20 the appropriate authorities; or
21

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

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1 (g) Disclose or transmit to any person the questions or answers to
2 such examination prior to its administration, or destroy, falsify or
3 conceal the records or results of such examination from the appropriate
4 authorities to whom such records are required to be transmitted in
5 accordance with this chapter, unless duly authorized to do so by the
6 appropriate authorities; OR

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

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

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

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

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

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

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

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

54 S 3. This act shall take effect immediately.