

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 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  
10 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.

LBD12068-02-9

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.