

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 909 Session of  
2009INTRODUCED BY ROBBINS, ERICKSON, EICHELBERGER, STOUT AND  
WOZNIAK, JUNE 5, 2009SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JANUARY  
26, 2010

## AN ACT

1 Amending the act of June 24, 1931 (P.L.1206, No.331), entitled  
2 "An act concerning townships of the first class; amending,  
3 revising, consolidating, and changing the law relating  
4 thereto," further providing for general provisions relating  
5 to examinations, for rejection of applicant and hearing, for  
6 manner of filling appointments, for probation period and for  
7 physical examinations.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 635 of the act of June 24, 1931  
11 (P.L.1206, No.331), known as The First Class Township Code,  
12 reenacted and amended May 27, 1949 (P.L.1955, No.569) and  
13 amended December 4, 1980 (P.L.1101, No.188), is amended to read:

14 Section 635. General Provisions Relating to Examinations.--  
15 (a) The commission shall make rules and regulations to be  
16 approved as provided in section 630 hereof, providing for the  
17 examination of applicants for positions in the police force and  
18 as paid operators of fire apparatus and for promotions, which  
19 rules and regulations shall prescribe the minimum qualifications  
20 of all applicants to be examined and the passing grades. All

1 examinations for positions or promotions shall be practical in  
2 character and shall relate to such matters and include such  
3 inquiries as will fairly test the merit and fitness of the  
4 persons examined to discharge the duties of the employment  
5 sought by them. All examinations shall be open to all applicants  
6 who have the minimum qualifications required by the rules and  
7 regulations. Each applicant for examination shall:

8 (1) be subject to the regulations adopted by the commission  
9 [and shall be required to submit to a physical examination];

10 (2) either before or after being admitted to the regular  
11 examination held by the commission, be required to submit to a  
12 physical fitness or agility examination that is job-related and  
13 consistent with business necessity; and

14 (3) if made a conditional offer of employment, be given a  
15 physical and psychological medical examination in accordance  
16 with section 643 of this act.

17 (b) Public notice of the time and place of every  
18 examination, together with the information as to the kind of  
19 position or place to be filled, shall be given by publication  
20 once in a newspaper of general circulation in the township or in  
21 a newspaper circulating generally in the township at least two  
22 weeks prior to each examination, and a copy of the notice shall  
23 be prominently posted in the office of the commission or other  
24 public place.

25 (c) The commission shall post in its office the eligible  
26 list containing the names and grades of those who have passed  
27 the examination. Persons male or female who served in the  
28 military or naval service of the United States during any war in  
29 which the United States has been, is now, or shall hereafter be  
30 engaged and who have honorable discharges from such service, who

1 have successfully passed the examination, shall be given the  
2 additional credits and preference in appointment and promotion  
3 provided for by law.

4 Section 2. Section 637 of the act, added May 27, 1949  
5 (P.L.1955, No.569), is amended to read:

6 Section 637. Rejection of Applicant; Hearing.--(a) The  
7 commission may refuse to examine or, if examined, may refuse to  
8 certify after examination as eligible, any applicant who is  
9 found to lack any of the minimum qualifications for examination  
10 prescribed in the rules and regulations adopted for the position  
11 or employment for which he has applied, or who is physically  
12 [disabled and] unfit for the performance of the duties of the  
13 position to which he seeks employment, or who is [addicted to  
14 the habitual use of intoxicating liquors or narcotic drugs]  
15 illegally using a controlled substance, as defined in section  
16 102 of the Controlled Substances Act (Public Law 91-513, 21  
17 U.S.C. § 802), or who has been guilty of any crime involving  
18 moral turpitude or of infamous or notoriously disgraceful  
19 conduct, or who has been dismissed from public service for  
20 delinquency or misconduct in office, or who is affiliated with  
21 any group whose politics or activities are subversive to the  
22 form of government set forth in the Constitution and laws of the  
23 United States and Pennsylvania.

24 (b) If any applicant or person feels himself aggrieved by  
25 the action of the commission in refusing to examine him or to  
26 certify him as eligible after examination, the commission shall,  
27 at the request of such person, within ten (10) days appoint a  
28 time and place where he may appear personally and by counsel.  
29 Whereupon, the commission shall then review its refusal to make  
30 such examination or certification and take such testimony as may

1 be offered. The decision of the commission shall be final.

2 Section 3. Section 638 of the act, amended December 14, 1992  
3 (P.L.864, No.136), is amended to read:

4 Section 638. Manner of Filling Appointments.--(a) At the  
5 completion of the testing process, including any background,  
6 physical agility or other examinations, with the exception of  
7 physical and psychological medical examinations pursuant to  
8 section 643 of this act, the commission shall rank the  
9 candidates who have satisfied the minimum requirements for  
10 appointment on an eligibility list. The eligibility list shall  
11 contain the names of individuals eligible for appointment listed  
12 from highest to lowest based on their scores on the examinations  
13 administered by the commission and any points for which the  
14 applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating  
15 to veterans' preference). The eligibility list will be valid for  
16 one year from the date the commission ranks all passing  
17 applicants, assigns veterans' preference points and formally  
18 adopts the eligibility list. The commission may, at its sole  
19 discretion before the original expiration date, by a vote of the  
20 majority of the commission at a duly authorized commission  
21 meeting, extend the list for up to an additional twelve months.  
22 In the absence of a lawful extension by the commission, the list  
23 shall expire.

24 (b) Every position or employment in the police force or as  
25 paid operators of fire apparatus except that of chief of police  
26 or chief of the fire department or equivalent shall be filled  
27 only in the following manner: the township commissioners shall  
28 notify the commission of any vacancy which is to be filled and  
29 shall request the certification of a list of eligibles. The  
30 commission shall certify for each existing vacancy from the

1 eligible list the names of three persons thereon who have  
2 received the highest average. The township commissioners shall,  
3 thereupon, with sole reference to the merits and fitness of the  
4 candidates, make [an] a conditional appointment from the three  
5 names certified unless they make objections to the commission as  
6 to one or more of the persons so certified for any of the  
7 reasons stated in section 637 of this subdivision. Should such  
8 objections be sustained by the commission, as provided in said  
9 section, or if the conditional appointee is determined to be  
10 unqualified in accordance with the procedures set forth in  
11 section 643 of this act, the commission shall thereupon strike  
12 the name of such person from the eligible list and certify the  
13 next highest name for each name stricken off. As each subsequent  
14 vacancy occurs in the same or another position, precisely the  
15 same procedure shall be followed.

16 (c) A vacancy in an existing position in the police force or  
17 as a paid operator of fire apparatus which occurs as a result of  
18 retirement, resignation, disability or death may be filled by  
19 the township commissioners by the reappointment or reinstatement  
20 of a former employe of the police force or fire department who  
21 had previously complied with the provisions of this section. No  
22 examination, other than a physical examination as directed by  
23 the Civil Service Commission, shall be required in a case of  
24 reappointment or reinstatement to the force or department with  
25 which the employe previously served, except at the discretion of  
26 the township commissioners or as otherwise required by law.

27 (d) In the case of a vacancy in the office of chief of  
28 police or chief of the fire department or equivalent official,  
29 the township commissioners may nominate a person to the  
30 commission. It shall thereupon become the duty of the commission

1 to subject such person to a non-competitive examination and if  
2 such person shall be certified by the commission as qualified he  
3 may then be appointed to such position and thereafter shall be  
4 subject to all the provisions of this subdivision.

5 Section 4. Section 640 of the act, amended May 17, 1972  
6 (P.L.293, No.72), is amended to read:

7 Section 640. Probation Period.--All original appointments to  
8 any position in the police force or as paid operators of fire  
9 apparatus shall be for a probationary period of not less than  
10 six months and not more than one year, but during the  
11 probationary period an appointee may be dismissed only for a  
12 cause specified in [subdivision 637 of this subsection.] section  
13 637 of this act or because of incapacity for duty due to the use  
14 of alcohol or drugs. If at the close of a probationary period  
15 the conduct or fitness of the probationer has not been  
16 satisfactory to the township commissioners, the probationer  
17 shall be notified in writing that he will not receive a  
18 permanent appointment. Thereupon, his appointment shall cease;  
19 otherwise, his retention shall be equivalent to a permanent  
20 appointment.

21 Section 5. Section 643 of the act, amended December 4, 1980  
22 (P.L.1101, No.188), is amended to read:

23 Section 643. Physical and Psychological Medical  
24 Examinations.--[All applicants for examination shall undergo a  
25 physical examination as provided in section 635 which shall be  
26 conducted under the supervision of a doctor of medicine  
27 appointed by the commission. No person shall be eligible for  
28 appointment until said doctor certifies that the applicant is  
29 free from any bodily or mental defects, deformity or disease  
30 that might incapacitate him from the discharge of the duties of

1 the position desired.] (a) An applicant selected from the  
2 eligibility list shall receive a conditional offer of  
3 employment. The offer of employment shall be conditioned upon  
4 the conditional employee undergoing a physical and psychological  
5 medical examination and a determination that the conditional  
6 employee is capable of performing all the essential functions of  
7 the position. Physical medical examinations shall be under the  
8 direction of a physician or other qualified medical  
9 professional. Psychological medical examinations shall be under  
10 the direction of a psychiatrist or psychologist.

11 (b) The physician or other qualified medical professional  
12 and the psychiatrist or psychologist shall be appointed by the  
13 township commissioners and shall render an opinion as to whether  
14 the conditional appointee has a physical or mental condition  
15 which calls into question his or her ability to perform all of  
16 the essential functions of the position for which he or she was  
17 conditionally appointed.

18 (c) If the opinion rendered by the ~~medical examiner~~ ←  
19 PHYSICIAN, OTHER QUALIFIED MEDICAL PROFESSIONAL, PSYCHIATRIST OR ←  
20 PSYCHOLOGIST calls into question the conditional appointee's  
21 ability to perform all essential functions of a position, a  
22 person or persons designated by the township commissioners shall  
23 meet with the conditional appointee for the purpose of having  
24 one or more interactive discussions focused on the issue of  
25 whether the conditional appointee can, with or without  
26 reasonable accommodation, perform all the essential functions of  
27 the position.

28 (d) If, at the conclusion of the interactive discussion  
29 process, the township commissioners determine that the  
30 conditional appointee is not qualified, the township

commissioners shall give written notice to the conditional  
appointee and the Civil Service Commission.

(e) Nothing in this act shall be construed as authorizing  
physical or psychological medical examinations prior to  
conditional appointment.

(f) As used in this section, ~~the term "medical"~~ THE FOLLOWING  
DEFINITIONS SHALL APPLY:

"MEDICAL examination" shall mean any examination, procedure,  
inquiry or test designed to obtain information about medical  
history or a physical or mental condition which might disqualify  
an applicant if it would prevent the applicant from performing,  
with or without a reasonable accommodation, all of the essential  
functions of the position.

"PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. §  
1991 (RELATING TO DEFINITIONS).

"QUALIFIED MEDICAL PROFESSIONAL" SHALL MEAN AN INDIVIDUAL, IN  
COLLABORATION WITH OR UNDER THE SUPERVISION OR DIRECTION OF A  
PHYSICIAN, AS MAY BE REQUIRED BY LAW, WHO IS LICENSED:

(1) AS A PHYSICIAN ASSISTANT PURSUANT TO THE ACT OF DECEMBER  
20, 1985 (P.L.457, NO.112), KNOWN AS THE "MEDICAL PRACTICE ACT  
OF 1985," OR THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),  
KNOWN AS THE "OSTEOPATHIC MEDICAL PRACTICE ACT"; OR

(2) AS A CERTIFIED REGISTERED NURSE PRACTITIONER PURSUANT TO  
THE ACT OF MAY 22, 1951 (P.L.317, NO.69), KNOWN AS "THE  
PROFESSIONAL NURSING LAW."

Section 6. Nothing contained in the amendment of sections  
635, 637, 638, 640 and 643 of the act shall affect the validity  
of any civil service appointments made prior to the effective  
date of this section.

Section 7. This act shall take effect immediately.