

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1515 Session of 2009

INTRODUCED BY ROSS, KESSLER, GRUCELA, GINGRICH, FREEMAN AND CALTAGIRONE, MAY 26, 2009

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED, SEPTEMBER 21, 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, FOR
7 PROMOTIONS and for 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

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

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

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

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

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

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



1 engaged and who have honorable discharges from such service, who
2 have successfully passed the examination, shall be given the
3 additional credits and preference in appointment and promotion
4 provided for by law.] ←

5 Section 2. Section 637 of the act 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] IS aggrieved ←
25 by [the action] REFUSAL of the commission [in refusing] to ←
26 examine [him or to certify him] OR CERTIFY THE APPLICANT as ←
27 eligible after examination, the commission shall, at the request
28 of [such person] THE APPLICANT, within ten (10) days appoint a ←
29 time and place [where he may appear personally and by counsel. ←
30 Whereupon,] FOR A PUBLIC HEARING, WITH OR WITHOUT COUNSEL, AT ←

1 WHICH TIME the commission shall [then] TAKE TESTIMONY AND review ←
2 its refusal to [make such] PROVIDE examination or certification ←
3 [and take such testimony as may be offered]. The decision of the ←
4 commission shall be final.

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

7 Section 638. ELIGIBILITY LIST AND Manner of Filling ←

8 Appointments.--(a) At the completion of the testing process,
9 including any background, physical agility or other

10 examinations, with the exception of physical and psychological
11 medical examinations pursuant to section 643 of this act, the

12 commission shall rank the candidates who have satisfied the
13 minimum requirements for appointment on an eligibility list. The

14 eligibility list shall contain the names of individuals eligible
15 for appointment listed from highest to lowest based on their

16 scores on the examinations administered by the commission and
17 any points for which the applicant was entitled by virtue of 51

18 Pa.C.S. Ch. 71 (relating to veterans' preference). The
19 eligibility list will be valid for one year from the date the

20 commission ranks all passing applicants, assigns veterans' ←
21 preference points and formally adopts the eligibility list. The ←

22 commission may, at its sole discretion before the original
23 expiration date, by a vote of the majority of the commission at

24 a duly authorized commission meeting, extend the PRIOR TO ←
25 EXPIRATION OF THE ONE-YEAR PERIOD, THE COMMISSION MAY EXTEND THE

26 VALIDITY OF THE ELIGIBILITY list for up to an additional twelve
27 months BY A MAJORITY VOTE OF THE COMMISSION AT A DULY AUTHORIZED ←

28 COMMISSION MEETING. In the absence of a lawful extension by the
29 commission, the list shall expire.

30 (b) Every position or employment in the police force or as

1 paid operators of fire apparatus except that of chief of police
2 or chief of the fire department or equivalent shall be filled
3 only in the following manner: the township commissioners shall
4 notify the commission of any vacancy which is to be filled and
5 shall request the certification of [a list of eligibles] AN ←
6 ELIGIBILITY LIST. The commission shall certify for each existing
7 vacancy from the [eligible] ELIGIBILITY list the names of THE ←
8 three persons [thereon] who have received the highest average. ←
9 The township commissioners shall[, thereupon, with sole ←
10 reference to the merits and fitness of the candidates,] make ←
11 [an] a conditional appointment from the three names certified
12 [unless they] BASED SOLELY ON THE MERITS AND FITNESS OF THE ←
13 CANDIDATES, UNLESS THE TOWNSHIP COMMISSIONERS make objections to
14 the commission [as to] REGARDING one or more of the [persons so] ←
15 certified PERSONS for any of the reasons stated in section 637 ←
16 of this subdivision. Should such objections be sustained by the
17 commission, as provided in [said] section 637, or if the ←
18 conditional appointee is determined to be unqualified in
19 accordance with the procedures set forth in section 643 of this
20 act, the commission shall [thereupon] strike the name of [such] ←
21 THE person from the [eligible] ELIGIBILITY list and certify the ←
22 next highest name for each name stricken [off] FROM THE ←
23 ELIGIBILITY LIST. As each subsequent vacancy occurs in the same
24 or another position, precisely the same procedure shall be
25 followed.

26 (c) A vacancy in an existing position in the police force or
27 as a paid operator of fire apparatus which occurs as a result of
28 retirement, resignation, disability or death may be filled by
29 the township commissioners by the reappointment or reinstatement
30 of a former employe of the police force or fire department who

1 had previously complied with the provisions of this section. No
2 examination, other than a physical examination as directed by
3 the Civil Service Commission, shall be required in a case of
4 reappointment or reinstatement to the force or department with
5 which the employe previously served, except at the discretion of
6 the township commissioners or as otherwise required by law.

7 (d) In the case of a vacancy in the office of chief of
8 police or chief of the fire department or equivalent official,
9 the township commissioners may nominate a person to the
10 commission. It shall thereupon become the duty of the commission
11 to subject [such] THE person to a non-competitive examination ←
12 and if [such] THE person shall be certified by the commission as ←
13 qualified he may then be appointed to [such] THE position and ←
14 thereafter shall be subject to all the provisions of this
15 subdivision.

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

18 Section 640. Probation Period.--All original appointments to
19 any position in the police force or as paid operators of fire
20 apparatus shall be for a probationary period of not less than
21 six months and not more than one year, but during the
22 probationary period an appointee may be dismissed only for a
23 cause specified in [subdivision 637 of this subsection.] section
24 637 of this act or because of incapacity for duty due to the use
25 of alcohol or drugs. If at the close of a probationary period
26 the conduct or fitness of the probationer has not been
27 satisfactory to the township commissioners, the probationer
28 shall be notified in writing that he will not receive a
29 permanent appointment[. Thereupon, his], AND THE appointment ←
30 shall cease[; otherwise,]. IF THE PROBATIONER IS NOT NOTIFIED OR ←

1 DISMISSED IN ACCORDANCE WITH THIS SECTION, his retention shall
2 be equivalent to a permanent appointment.

3 SECTION 5. SECTION 642 OF THE ACT, ADDED MAY 27, 1949 ←
4 (P.L.1955, NO.569), IS AMENDED TO READ:

5 SECTION 642. PROMOTIONS.--PROMOTIONS IN THE POLICE FORCE OR
6 FIRE DEPARTMENT SHALL BE BASED ON MERITS TO BE ASCERTAINED BY
7 EXAMINATIONS TO BE PRESCRIBED BY THE COMMISSION. ALL QUESTIONS,
8 RELATIVE TO PROMOTIONS SHALL BE PRACTICAL IN CHARACTER AND SUCH
9 AS WILL FAIRLY TEST THE MERIT AND FITNESS OF PERSONS SEEKING
10 PROMOTION. THE TOWNSHIP COMMISSIONERS SHALL NOTIFY THE
11 COMMISSION OF A VACANCY ON THE POLICE FORCE OR FIRE DEPARTMENT
12 WHICH IS TO BE FILLED BY PROMOTION AND SHALL REQUEST THE
13 CERTIFICATION OF AN ELIGIBILITY LIST. THE COMMISSION SHALL
14 CERTIFY FOR EACH VACANCY THE NAMES OF THE THREE PERSONS ON THE
15 ELIGIBILITY LIST WHO HAVE RECEIVED THE HIGHEST AVERAGE IN THE
16 LAST PROMOTION EXAMINATION HELD WITHIN A PERIOD OF TWO YEARS
17 PRECEDING THE DATE OF THE REQUEST FOR THE ELIGIBILITY LIST. IF
18 THREE NAMES ARE NOT AVAILABLE, THE COMMISSION SHALL CERTIFY THE
19 NAMES REMAINING ON THE ELIGIBILITY LIST. THE TOWNSHIP
20 COMMISSIONERS SHALL MAKE AN APPOINTMENT FROM THE NAMES CERTIFIED
21 BASED SOLELY ON THE MERITS AND FITNESS OF THE CANDIDATE UNLESS
22 THE TOWNSHIP COMMISSIONERS MAKE OBJECTIONS TO THE COMMISSION
23 REGARDING ANY PERSON ON THE ELIGIBILITY LIST FOR ANY REASON
24 PROVIDED UNDER SECTION 637.

25 THE TOWNSHIP COMMISSIONERS SHALL HAVE POWER TO DETERMINE IN
26 EACH INSTANCE WHETHER AN INCREASE IN SALARY SHALL CONSTITUTE A
27 PROMOTION.

28 Section 5 6. Section 643 of the act, amended December 4, ←
29 1980 (P.L.1101, No.188), is amended to read:

30 Section 643. Physical and Psychological Medical

1 Examinations.--[All applicants for examination shall undergo a
2 physical examination as provided in section 635 which shall be
3 conducted under the supervision of a doctor of medicine
4 appointed by the commission. No person shall be eligible for
5 appointment until said doctor certifies that the applicant is
6 free from any bodily or mental defects, deformity or disease
7 that might incapacitate him from the discharge of the duties of
8 the position desired.] (a) An applicant selected from the
9 eligibility list shall receive a conditional offer of
10 employment. The offer of employment shall be conditioned upon
11 the conditional employee undergoing a physical and psychological
12 medical examination and a determination that the conditional
13 employee is capable of performing all the essential functions of
14 the position. Physical medical examinations shall be under the
15 direction of a physician or other qualified medical
16 professional. Psychological medical examinations shall be under
17 the direction of a psychiatrist or psychologist.

18 (b) The physician or other qualified medical professional
19 and the psychiatrist or psychologist shall be appointed by the
20 township commissioners and shall render an opinion as to whether
21 the conditional appointee has a physical or mental condition
22 which calls into question ~~his or her~~ THE PERSON'S ability to ←
23 perform all of the essential functions of the position for which
24 ~~he or she~~ THE PERSON was conditionally appointed. ←

25 (c) If the opinion rendered by the ~~medical examiner~~ ←
26 PHYSICIAN, OTHER QUALIFIED MEDICAL PROFESSIONAL, PSYCHIATRIST OR ←
27 PSYCHOLOGIST calls into question the conditional appointee's
28 ability to perform all essential functions of a position, a
29 person ~~or persons~~ designated by the township commissioners shall ←
30 meet with the conditional appointee for the purpose of having

1 one or more interactive discussions ~~focused on the issue of~~ ON ←
2 whether the conditional appointee can, with or without
3 reasonable accommodation, perform all the essential functions of
4 the position.

5 (d) If, at the conclusion of the interactive discussion
6 ~~process~~ UNDER SUBSECTION (C), the township commissioners ←
7 determine that the conditional appointee is not qualified, the
8 township commissioners shall give written notice to the
9 conditional appointee and the Civil Service Commission.

10 (e) Nothing in this act shall be construed ~~as authorizing~~ TO ←
11 AUTHORIZE physical or psychological medical examinations prior
12 to conditional appointment.

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

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

21 "PHYSICIAN" SHALL HAVE THE MEANING GIVEN TO IT IN 1 PA.C.S. § ←
22 1991 (RELATING TO DEFINITIONS).

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

26 (1) AS A PHYSICIAN ASSISTANT PURSUANT TO THE ACT OF DECEMBER
27 20, 1985 (P.L.457, NO.112), KNOWN AS THE "MEDICAL PRACTICE ACT
28 OF 1985," OR THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261),
29 KNOWN AS THE "OSTEOPATHIC MEDICAL PRACTICE ACT"; OR

30 (2) AS A CERTIFIED REGISTERED NURSE PRACTITIONER PURSUANT TO

1 THE ACT OF MAY 22, 1951 (P.L.317, NO.69), KNOWN AS "THE
2 PROFESSIONAL NURSING LAW."

3 Section 6 7. Nothing contained in the amendment of sections ←
4 635, 637, 638, 640, 642 and 643 of the act shall affect the ←
5 validity of any civil services appointments OR PROMOTIONS made ←
6 prior to the effective date of this section.

7 Section 7 8. This act shall take effect immediately. ←