



**House
Legislative
Analysis
Section**

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BAR MANDATORY RETIREMENT

Senate Bill 23 (Substitute H-1)
First Analysis (12-7-88)

RECEIVED

JAN 18 1989

Sponsor: Senator Jackie Vaughn III Mich. State Law Library
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

The federal Age Discrimination in Employment Act was amended in 1986 to prohibit mandatory retirement based on age for all but a few selected groups, and eliminate the previously-existing ceiling of 70 years as the age at which a person could be required to retire. In general, the federal law's prohibition does not apply to employers with fewer than 20 employees, to certain highly-placed executives, or, through 1993, to tenured professors or state or local police, firefighters, or prison guards. State statute could, however, be amended to ban age-based mandatory retirement for all but employees for whom federal law established a mandatory retirement age (such as airplane pilots, air traffic controllers, and federal law enforcement officers and firefighters), and judges, who under the Michigan Constitution may not be elected or appointed to office after attaining 70 years of age. Many believe that age alone is not a valid indicator of a person's abilities, and that people, in the workplace as elsewhere, should be judged individually. To this end, it has been suggested that Michigan law be amended to prohibit the forced retirement based on age.

THE CONTENT OF THE BILL:

The bill would amend the Elliott-Larsen Civil Rights Act to prohibit an employer from requiring an employee to retire from employment on the basis of the employee's age. However, the bill would not prevent the state or a political subdivision from imposing a mandatory retirement age for police or firefighters. Neither would the bill prohibit compulsory retirement of any employee who was at least 65 years old and who, for the two-year period immediately before retirement, was employed in an executive or policy-making position, if the employee was entitled to immediate nonforfeitable annual retirement benefits totalling at least \$44,000.

(Note: the bill would not affect a section of the act which contains a provision, analogous to a provision in federal law, that allows an employer to apply to the civil rights commission for exemption establishing age as a "bona fide occupational qualification" reasonably necessary to the normal operation of the business or enterprise.)

MCL 37.2202

HOUSE COMMITTEE ACTION:

The House Judiciary committee adopted a substitute that differs from the Senate-passed bill primarily in establishing an exemption for highly-placed executives. The committee substitute is identical to the House-passed version of House Bill 5500 except for that exemption.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (12-6-88)

ARGUMENTS:

For:

Aging and the loss of youthful capabilities is a process that varies from individual to individual. To force a person to leave employment is to deny that person his or her individuality and to deprive him or her of an important element in the sense of self-worth. More to the point, age-based mandatory retirement is discriminatory. The standard for employment should be a person's ability and competency, not a person's age, anymore than it should be a person's race or gender.

Against:

Bars to compulsory retirement can hamper the management of a small business to a degree that would not occur in a larger firm. The needs of a small business for flexibility and of the state for a good reputation in business circles are such that the bill should do as federal law does and create an exemption for small businesses.

Response: Employees of smaller firms are likely to have smaller pensions, and thus may need to continue working. A person who does not perform his or her job properly can be discharged; a good worker should not be fired simply because he or she has the misfortune to work for someone with fewer than 20 employees.

Against:

The bill should not create a special exemption for police and firefighters, who are as deserving of protection from age discrimination as anyone else. A public agency employing police or firefighters could, if it was convinced that an age limit was a "bona fide occupational qualification," do as other employers may do and seek an exemption from the civil rights commission. Employers also can develop and use appropriate competency tests, such as physical tests and examinations for employees whose duties require strength, speed, or endurance.

Response: The bill would correctly follow the federal lead and allow mandatory retirement ages to be set for police and firefighters. Those occupations are too important and too dependent on physical strength to risk having the workforce include employees who cannot meet the demands of the job and adequately protect the public, themselves, or their partners. To develop physical standards for these occupations is no easy matter; what is easily quantifiable—such as numbers of push-ups—is also easily challengeable in court as something that is not a part of one's duties. The law should retain a presumption of physical deterioration by a certain age, rather than have it demonstrated individually by an officer's failure to perform in a risky situation.

POSITIONS:

The Area Agencies on Aging Association supports the bill. (12-6-88)

The Michigan Trial Lawyers Association supports the concept of prohibiting the mandatory retirement of an

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employee based on age, and does not oppose the substitute, despite its proposed exemptions. (12-6-88)

The Michigan Retailers Association opposes the bill. (12-6-88)