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BILL ANALYSIS

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Senate Bill 23 (Substitute S-2 as reported)

Sponsor: Senator Jackie Vaughn III

Committee: Judiciary

Date Completed: 11-30-88

RATIONALE

The Elliot-Larsen Civil Rights Act prohibits an employer from failing or refusing to hire, recruit, discharge, or "otherwise discriminate against an individual" based on religion, race, color, national origin, age, sex, height, weight, or marital status. The Act does not specifically prohibit mandatory retirement policies, however. Some people feel that mandatory retirement should be prohibited, except in certain cases where advanced age may affect an employee's ability to perform his or her job adequately.

CONTENT

The bill would amend the Elliot-Larsen Civil Rights Act to prohibit an employer from requiring or permitting the involuntary retirement of an individual because of religion, race, color, national origin, age, sex, height, weight, or marital status, except as provided in the Federal Age Discrimination in Employment Act, which exempts police officers, fire fighters, and tenured employees of higher education institutions from the Act's compulsory retirement prohibition. The bill specifies that it would not prevent the State or its political subdivisions from imposing a mandatory retirement age for police officers or fire fighters.

The bill also would delete a provision which states that the Act "shall not be construed to prohibit the establishment or implementation of a bona fide retirement policy or system which is not a subterfuge to evade the purposes of the section" of the Act prohibiting employment discrimination.

MCL 37.2202

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and on local governments. There could be a marginal cost in retaining a senior employee in terms of current salary and long-term retirement and health care benefits over replacing the senior employee with a more junior one. There are no estimates as to the number of persons who would wish to remain employed past age 65 or 70, for example. Marginal cost or productivity analyses would vary by the specific situation.

ARGUMENTS**Supporting Argument**

Although the Elliot-Larsen Civil Rights Act prohibits an employer from failing or refusing to hire, recruit, or discharge individuals based on age, sex, race, religion, national origin, marital status, height, or weight, it does not specifically prohibit forced retirement based on those

factors. The bill would correct this inconsistency by specifically prohibiting an employer from requiring or permitting an employee's involuntary requirement based on those factors. At the same time, it stands to reason that advanced age likely could deter those employed in some occupations from adequate effectiveness. Like the Federal law, the bill would recognize this reality, by allowing mandatory retirement based on age for police officers, fire fighters, and tenured employees of institutions of higher education.

Opposing Argument

Although it may be appropriate for mandatory retirement based on age to be allowed for police officers and fire fighters, it should not be permitted in the case of tenured faculty. Several other states reportedly prohibit mandatory retirement policies for college and university faculty and have suffered no negative effects from that policy.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

S.B. 23 (11-30-88)