

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. H-736)

COMMITTEE AMENDMENT " A " to H.P. 1310, L.D. 1634, Bill,
"AN ACT to Prohibit the Practice of Mandatory Retirement Age."

Amend the Bill by striking out everything after the
enacting clause and inserting in its place the following:

'Sec. 1. 5 MRSA §1001, sub-§27 is enacted to read:

27. Normal retirement age. "Normal retirement age" means the
specified age, the years of service requirement, or any age and
years of service combination at which a member may become eligible
for retirement benefits, which benefits are not subject to a reduc-
tion under section 1121, subsection 3. This subsection shall not
be construed to require the mandatory retirement of a member or to
deny employment to any person based solely on his normal retirement
age.

Sec. 2. 5 MRSA §1006 is enacted to read:

§1006. Mandatory retirement age prohibited

1. Legislative findings and intent. The Legislature finds
that many older Maine citizens are pushed out of the work
force solely because of their age. The Legislature further
finds that many older Maine residents who have been pushed out
of the work force are fully capable of carrying out the duties
and responsibilities required by employment. Finally, the
Legislature finds that many older Maine citizens, because
of their years of experience, can make valuable contributions
to the work force.

It is the intent of the Legislature that discrimination based on age against any person who seeks employment or who is already employed shall not be tolerated. It is further the intent of the Legislature to ensure that any older person who seeks employment or who wishes to continue employment and who is capable of fulfilling the duties and responsibilities of such employment, shall be treated like any other person who seeks or wishes to continue such employment. Finally, it is the clear and unequivocal intent of the Legislature to prohibit employers in both the public and private sector from requiring employees to retire at a specified age, or after completion of a specified number of years of service.

2. Prohibition. No employee, as defined under section 1001, subsection 10, shall be required, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. A state department or public school which employs such employees may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment should be terminated. These criteria and standards shall be consistent for all employees in the same or similar job classifications and shall be applied fairly to all employees regardless of age.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in section 1001, subsection 27, provided that normal retirement age and the accrual or awarding of pension or retirement benefits shall not be used in any way to require the retirement of an employee or to deny employment to a person.

Sec. 3. 5 MRSA §1092, sub-§15 is enacted to read:

15. Mandatory retirement age prohibited. Any participating local district shall be governed by section 1006, the provisions of which prohibit the use of a mandatory retirement age.

Sec. 4. 5 MRSA §1121, sub-§1, ¶B, as last amended by PL 1975, c. 766, §4, is repealed.

Sec. 5.5 MRSA §1121, sub-§1, ¶C, first ¶, first sentence, as repealed and replaced by PL 1975, c. 770, §23, is amended to read:

Any member of the State Police who became a member of that department subsequent to July 9, 1943 may retire upon completion of 20 years of creditable service as a state police officer, ~~but must retire upon attainment of age 55, except that any member who is a state police officer on January 1, 1967 and who will not have 20 years of creditable service at the time age 55 is attained may continue in that service until 20 years is attained and forthwith shall be retired.~~

Sec. 6. 5 MRSA §1121, sub-§1, ¶C, first ¶, 3rd sentence, as repealed and replaced by PL 1975, c. 770, §23, is repealed as follows:

~~Notwithstanding anything to the contrary, a state police officer appointed as the chief, deputy chief or as Commissioner of Public Safety shall be permitted to continue in such position beyond attained age 55 or after completion of 20 years of creditable service until the end of the term for which he was appointed and the Commissioner of Public Safety may be appointed or reappointed, regardless of attained age or length of creditable service.~~

Sec. 7. 5 MRSA §1121, sub-§1, ¶D, first ¶, as last amended by PL 1975, c. 622, §44, is repealed and the following enacted in its place:

Any law enforcement officer in the Department of Inland Fisheries and Wildlife and any law enforcement officer in the Department of Marine Resources may retire upon completion of 20 years of creditable service as a law enforcement officer in the Department of Inland Fisheries and Wildlife or a law enforcement officer in the Department of Marine Resources. Military service credits, as allowed under section 1094, shall not be considered as part of the creditable service as a law enforcement officer under this section, but any military service creditable under section 1091 shall be considered to be part of the creditable service necessary for the 20 years as a law enforcement officer, provided that he was a law enforcement officer in either of these departments at the time of entrance into such military service and upon separation from military service again became a law enforcement officer in either of these departments. The total amount of the service retirement allowance of a law enforcement officer retired in accordance with this paragraph,

shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in determining eligibility for retirement under this paragraph.

Sec. 8. 5 MRSA §1121, sub-§1, ¶E, as last amended by PL 1975, c. 622, §46, is repealed and the following enacted in its place:

E.

Any forest ranger in the Department of Conservation may retire at attained age 50 or upon completion of 25 years of total creditable service as a forest ranger in this department, whichever is later. The total amount of the service retirement allowance of a forest ranger in this department, retired in accordance with this paragraph, shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

Sec. 9. 5 MRSA §1121, sub-§4, ¶B, as repealed and replaced by PL 1977, c. 78, §15, is repealed.

Sec. 10. 5 MRSA §1121, sub-§4, ¶D, first sentence, as repealed and replaced by PL 1975, c. 622, §50, is repealed and the following enacted in its place:

Any member who is a liquor inspector, including the chief inspector and who has completed at least 25 years of creditable service in his respective capacity, may retire at age 55 on a service retirement allowance, which shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

Sec. 11. 5 MRSA §1121, sub-§4, ¶F, as repealed and replaced by PL 1975, c. 622, §50-A, is repealed and the following enacted in its place:

F. Any member who is the warden or deputy warden of the Maine State Prison, or any officer or employee of the Maine State Prison employed as a guard, or engaged in any management of prisoners, or as the supervising officers of any such guards or employees, and in any case, who has at least 20 years of creditable service in his respective capacity, or cumulatively in any combination of such prison employment capacities may retire at age 50 on a service retirement allowance, which shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

Sec. 12. 5 MRSA §1122, sub-§1, first sentence, as repealed and replaced by PL 1975, c. 622, §54, is repealed and the following enacted in its place:

Any member who, while in service and prior to attaining age 60 or reaching the normal retirement age for a particular group of employees, if earlier, has become mentally or physically incapacitated to such an extent that it is impossible for him to perform the duties of his employment position, may, if such incapacity can be expected to be permanent, retire on a disability retirement allowance upon written application to the executive director and approval of the application by the executive director.

Sec. 13. 5 MRSA §1122, sub-§3, ¶A, as repealed and replaced by PL 1975, c. 622, §54, is amended to read:

A. The disability retirement allowance of a beneficiary shall cease ~~upon the attainment of his mandatory retirement age, without extensions, or prior thereto~~ whenever the service retirement allowance of the beneficiary would equal or exceed the amount of his disability retirement allowance.

Sec. 14. 5 MRSA §4573, sub-§1, as enacted by PL 1971, c. 501, §1, is amended to read:

It shall not be unlawful employment discrimination:

1. Age. To discriminate on account of age, so as to:

~~A. Termination. Terminate employment in compliance with the terms or conditions of any bona fide retirement or pension plan; or~~

B. Retirement plan. Observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, provided that the observation of such terms or conditions shall not result in the denial or termination of employment.

C. Insurance plan. Comply with the terms or conditions of any bona fide group or employee insurance plan, provided that the compliance with such terms or conditions shall not result in the denial or termination of employment; or

D. Child labor laws. To comply with the state or federal laws relating to the employment of minors.'

Sec. 15. 20 MRSA §161, sub-§5, 2nd sentence, as amended by PL 1975, c. 723, §1, is repealed and the following enacted in its place:

After a probationary period of not to exceed 2 years, subsequent contracts of duly certified teachers shall be for not less than 2 years. Unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for one year and similarly in subsequent years although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties.

Sec. 16. 20 MRSA §161, sub-§5, 4th and 5th sentences, as enacted by PL 1973, c. 454, §1, are repealed.

Sec. 17. 26 MRSA §594 is enacted to read:

§594. Mandatory retirement age prohibited.

1. ← Legislative findings and intent. The Legislature finds that many older Maine citizens are pushed out of the work force solely because of their age. The Legislature further finds that many older Maine residents who have been pushed out of the work force are fully capable of carrying out the duties and responsibilities required by employment. Finally, the Legislature finds that many older Maine citizens, because of their years of experience, can make valuable contributions to the work force.

It is the intent of the Legislature that discrimination based on age against any person who seeks employment or who is already employed shall not be tolerated. It is further the intent of the Legislature to ensure that any older person who seeks employment or who wishes to continue employment and who is capable of fulfilling the duties and responsibilities of such employment, shall be treated like any other person who seeks or wishes to continue such employment. Finally, it is the clear and unequivocal intent of the Legislature to prohibit employers in both the public and private sector from requiring employees to retire at a specified age or after completion of a specified number of years of service.

2. Prohibition. No employee, as defined in section 591, subsection 1, shall be required, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. An employer, as defined in section 591, subsection 2, may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment should be terminated. These criteria and standards shall be consistent for all employees in the same or similar job classifications and shall be applied fairly to all employees regardless of age.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age" as defined in the Federal Employee Retirement Income Security Act of 1974, as amended, in computing pension or retirement benefits, provided that normal

retirement age and the accrual or awarding of pension or retirement benefits, shall not be used in any way to require the retirement of an employee or to deny employment to a person.

5. Federal requirements. This section shall not be construed to effect or limit any power or duty relating to pension or retirement plans which the United States Government reserves to itself.

Sec. 18. 30 MRS §8 is enacted to read:

§ 8. Mandatory retirement age prohibited

No county or county officer shall adopt any rule or regulation or take any action which requires a county employee, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service. All of the provisions of section 2157 relating to the prohibition of mandatory retirement of municipal employees shall also apply and prohibit the mandatory retirement of county employees.

Sec. 19. 30 MRS §2157 is enacted to read:

§2157. Mandatory retirement age prohibited

1. Legislative findings and intent. The legislative findings and intent for this section are the same as the findings and intent specified in Title 5, section 1006, subsection 1.

2. Prohibition. No municipality shall enact any ordinance or adopt any rule or regulation which requires a municipal employee as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. A municipality may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment or municipal employees should be terminated. These criteria and standards shall be consistent for all employees in the same or similar job classifications and shall be applied fairly to all employees regardless of age.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in the Federal Employee Retirement Income Security Act of 1974, as amended, in computing pension or retirement benefits, provided that normal retirement age and the accrual or awarding of pension or retirement benefits shall not be used in any way to require the retirement of an employee or to deny employment to a person.

5. Federal requirements. This section shall not be construed to effect or limit any power or duty relating to pension or retirement plans which the United States Government reserves to itself.

Sec. 20. Effective dates; compliance. Sections 1 to 13, 15 and 16 of this Act shall become effective July 1, 1978.

Sections 14, 17, 18 and 19 of this Act shall become effective 90 days after the adjournment of the Legislature. Any employer who, as a result of sections 14, 17, 18 and 19, is required to amend an existing employee retirement, pension or insurance plan, shall complete any such amendment prior to January 1, 1980. However, if such amendment needs to be made through the renegotiation of a collective bargaining contract and if such contract is not scheduled for renegotiation

prior to January 1, 1980, then such amendment shall be made during the next scheduled renegotiation.'

Statement of Fact

1. Combination of bills. Several bills relating to the mandatory retirement age have been sponsored during this legislative session. This amendment from the Human Resources Committee both modifies and combines into one package the provisions of not only LD 1634, but also LD 421 ("AN ACT to Provide for Continued Employment After Age 65") and LD 200 ("AN ACT to Amend the Maine Human Rights Act").

LD 421, which was referred from the Labor Committee to the Human Resources Committee, provides for extensions in service beyond a mandatory retirement age for members of the Maine State Retirement System. In sections 1 through 13 of the amendment, the Human Resources Committee decided to address the issue of the employment of older persons by removing the mandatory retirement age for all State employees, including the State Police, Fish and Game Wardens, forest rangers, liquor inspectors, and state prison officers and employees.

LD 200, which was before the State Government Committee, repeals the provision in the Maine Human Rights Act which allows age discrimination, including the termination of employment, when such discrimination results from observing the terms of bona fide employee benefit plans. The Human Resources Committee decided to incorporate

part of LD 200 into its amendment of LD 1634. Section 14 of this amendment permits the observation of terms of bona fide plans, so long as these terms do not result in the denial or termination of employment. The purpose of section 14 is to clarify that specified ages can be used to compute employee benefits under bona fide pension, retirement or insurance plans.

2. Groups affected. LD 1634 prohibits the use of a mandatory retirement age by employers in the private sector. This amendment broadens this prohibition to apply to the public sector as well.

The prohibition of the mandatory retirement age for various groups is included in the following sections of the amendment:

<u>Sections</u>	<u>Groups affected</u>
Section 2, Section 4	all state employees and other members of the Me. St. Ret. Syst
Section 3	municipal or county employees who are members of the Maine State Retirement System
Section 5, Section 6	state police
Section 7	law enforcement officers of the Department of Fisheries and Wildlife
Section 8	forest rangers of the Department of Conservation
Section 9	state airplane pilots, members of fire and police departments
Section 10	liquor inspectors

- Section 11 wardens, deputy warden, officers, guards of the Maine State Prison
- Section 17 all employees in the private sector
- Section 18 county employees
- Section 19 municipal employees

3. Normal retirement age. The amendment carefully defines the term "normal retirement age" in order to clarify that this legislation in no way prohibits a pension plan- either public or private - from including age specifications for the purpose of computing employee benefits. For example, a plan may specify an age at which an employee can become eligible for employee retirement or pension benefits.

Section 1 of the amendment defines "normal retirement age" for the purposes of pension plans for state employees.

With respect to the pension plans for both private and municipal employees "normal retirement age" is defined (in sections 17 and 19) by referencing the definition in the federal Employee Retirement Income Security Act of 1974, in order to ensure that Maine state law will not be in conflict with this federal law.

4. Criteria and standards. Sections 1, 17 and 19 of the amendment provide that public and private employers may establish criteria and standards for evaluating job performance for the purpose of determining when employment should be terminated. Employers are required to apply these criteria and standards fairly to employees regardless of age. The purpose of these provisions is to replace the standard of an arbitrarily specified age for determining the termination of employment with age-neutral standards that are based on job performance.

5. Effective date, compliance. The provisions of this amendment which affect state employees and other members of the Maine State Retirement System do not go into effect until July 1, 1978. The provisions which affect the private sector do not have to be complied with until January 1, 1980. In the case of collective bargaining contracts, changes required as a result of this amendment need not be made until the next scheduled renegotiation.

Reported by the Committee on Human Resources.

Reproduced and distributed under the direction of the Clerk of the House.
/20/77

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