

10:3-1 et al
LEGISLATIVE HISTORY CHECKLIST

NJSA: 10:3-1 et al

(Retirement-Compulsory-
due to age-prohibit)

LAWS OF: 1985

CHAPTER: 73

Bill No: A1042

Sponsor(s): Schwartz and others

Date Introduced: January 23, 1984

Committee: Assembly: /////

Senate: State Government, Federal & Interstate
Relations & Veterans Affairs

Amended during passage: Yes
according to Governor's recommendations

Amendments denoted by
asterisks

Date of Passage: Assembly: Feb. 6, 1984 Re-enacted 2-4-84

Senate: Dec. 6, 1984 Re-enacted 2-28-84

Date of Approval: March 11, 1985

Following statements are attached if available:

Sponsor statement: Yes

Attached: Senate amendments,
adopted 10-22-84 and H-29-84
(with statements).

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: Yes

Hearings: No

974.90 Governor's Conference on Aging (1981: Trenton State College)
044 Governor's Conference on Aging, March 24, 1981.
1981 Trenton, 1981.
(see pp. 67-71, 197-201, 269-273)
(over)

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974.90
044
1981a

Governor's Conference on Aging (1981: Trenton State College)
Report and recommendations: toward an aging policy, today,
tomorrow, together. March 24, 1981.

974.90
044
1982

Aging: the New Jersey agenda for the 80's: a statewide
Conference on aging, Trenton State College, June 22, 1982.
(pp. 25-26)

CORRECTED COPY
[THIRD OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1042

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1984

By Assemblymen SCHWARTZ, KARCHER, PATERO, KERN,
Assemblywoman MUHLER, Assemblymen KAVANAUGH,
OTLOWSKI, PATERNITI, PELLECCCHIA, HERMAN, PAN-
KOK, FORTUNATO, RILEY, GORMAN, McENROE, MAZUR,
Assemblywomen PERUN, KALIK, Assemblymen PELLY,
DORIA, MARSELLA, GIRGENTI, HOLLENBECK, VISOT-
CKY, ZANGARI, BAER, BRYANT, THOMPSON, FLYNN,
BOCCHINI, CHARLES, CHINNICI, ROCCO, NAPLES and
WEIDEL

AN ACT concerning mandatory retirement age, amending P. L.
1938, c. 295 and P. L. 1962, c. 37 and amending and supplementing
P. L. 1945, c. 169.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 1 of P. L. 1938, c. 295 (C. 10:3-1) is amended to read
2 as follows:

3 1. In the selection of persons for employment in the service of
4 the State, or of any county or municipality thereof, no appointing
5 officer shall discriminate against any such applicant because such
6 applicant has attained the age of at least 40 years, at the time of
7 his said application for employment[; provided, that this act shall
8 not apply to appointments to police and fire departments or to the
9 positions of court attendant, process server, and prison or reforma-
10 tory officer or guard in houses of detention, jails, county farms,
11 and penal institutions]. *Any provisions of law, executive order,*
12 *rule or regulation to the contrary notwithstanding, no person other*
13 *than a justice of the Supreme Court or a judge of the Superior*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendments adopted February 6, 1984.

**—Senate committee amendments adopted June 18, 1984.

***—Senate amendments adopted October 22, 1984.

****—Senate amendment adopted November 19, 1984.

*****—Senate amendments adopted November 29, 1984.

*****—Assembly amendments adopted in accordance with Governor's recom-
mendations January 28, 1985.

14 Court pursuant to Article VI, Section VI, paragraph 3 of the Con-
 15 stitution of the State of New Jersey, **or a judge of the Tax
 16 Court** or a member of the Division of State Police, employed in
 17 the service of the State, or of any county or municipality thereof,
 18 **or a member of a ***police or*** fire department employed in
 19 the service of the State or of any county or municipality thereof,**
 20 shall be required to retire upon the attainment of a particular age
 21 unless the public employer can show that the retirement age bears
 22 a manifest relationship to the employment in question or that the
 23 person in the service of the State, or of any county or municipality
 24 thereof is unable to adequately perform his duties. *****[Any
 25 violation of this act shall be a [misdemeanor] crime of the fourth
 26 degree and the violator punished accordingly.]***** ***** A
 27 contract of tenure or similar arrangement providing for tenure
 28 shall not bar a public employer from showing that a retirement age
 29 bears a manifest relationship to the employment in question or that
 30 the person in the service of the State, or of any county or munici-
 31 pality thereof, is unable to adequately perform his duties. A person
 32 in the employ of the State, or of any county or municipality thereof,
 33 who is required to retire upon the attainment of a particular age in
 34 violation of this section shall be entitled to reinstatement with back
 35 pay and interest.*****

1 2. Section 8 of P. L. 1962, c. 37 (C. 10:5-2.1) is amended to
 2 read as follows:

3 8. Nothing contained in this act or in [the act to which this is a
 4 supplement] P. L. 1945, c. 169 (C. 10:5-1 et seq.) shall be construed
 5 to require or authorize any act prohibited by law, nor to conflict
 6 with the provisions of chapter 2 (child labor) of Title 34 of the
 7 Revised Statutes, nor to require the employment of any person
 8 under the age of 18, nor to prohibit the establishment and mainte-
 9 nance of bona fide occupational qualifications or the establishment
 10 and maintenance of apprenticeship requirements based upon a
 11 reasonable minimum age nor to prevent the termination or change
 12 of the employment of any person who in the opinion of the em-
 13 ployer, reasonably arrived at, is unable to perform adequately the
 14 duties of employment, nor to preclude discrimination among indi-
 15 viduals on the basis of competence, performance, conduct or any
 16 other reasonable standard, nor to interfere with the operation of
 17 the terms or conditions and administration of any bona fide retire-
 18 ment, pension, employee benefit or insurance plan or program
 19 including any State or locally administered public retirement sys-
 20 tem, provided that the provisions of those plans or programs are
 21 not used to establish an age for mandatory retirement.

1 3. Section 11 of P. L. 1945, c. 169 (C. 10:5-12) is amended to
2 read as follows:

3 11. It shall be unlawful employment practice, or, as the case may
4 be, an unlawful discrimination:

5 a. For an employer, because of the race, creed, color, national
6 origin, ancestry, age, marital status, sex or atypical hereditary
7 cellular or blood trait of any individual, or because of the liability
8 for service in the Armed Forces of the United States or the na-
9 tionality of any individual, to refuse to hire or employ or to bar
10 or to discharge or *require to retire, unless justified by lawful con-*
11 *siderations other than age*, from employment such individual or
12 to discriminate against such individual in compensation or in terms,
13 conditions or privileges of employment; provided, however, it shall
14 not be an unlawful employment practice to refuse to accept for
15 employment an applicant who has received a notice of induction
16 or orders to report for active duty in the armed forces; provided
17 further that nothing herein contained shall be construed to bar an
18 employer from refusing to accept for employment any person on
19 the basis of sex in those certain circumstances where sex is a bona
20 fide occupational qualification, reasonably necessary to the normal
21 operation of the particular business or enterprise; *provided*
22 *further that nothing herein contained shall be construed to bar*
22A *an employer from refusing to accept for employment or to pro-*
22B *mote any person over 70 years of age*; provided further that it
23 shall not be an unlawful employment practice for a club exclusively
24 social or fraternal to use club membership as a uniform qualification
25 for employment, or for a religious association or organization to
26 utilize religious affiliation as a uniform qualification in the employ-
27 ment of clergy, religious teachers or other employees engaged in
28 the religious activities of the association or organization, or in
29 following the tenets of its religion in establishing and utilizing
30 criteria for employment of an employee, *provided further, that it*
31 *shall not be an unlawful employment practice to require the retire-*
32 *ment of any employee who, for the two-year period immediately*
33 *before retirement, is employed in a bona fide executive or a high*
33A *policy-making position, if that employee is entitled to an immediate*
33B *non-forfeitable annual retirement benefit from a pension, profit*
33C *sharing, savings or deferred retirement plan, or any combination*
33D *of those plans, of the employer of that employee which equals, in*
33E *the aggregate at least ****[\$27,000.00]**** *****[****\$44,000.00*
33F *****]***** *****\$27,000.00******; and provided further that an
33G employer may restrict employment to citizens of the United States

33H where such restriction is required by federal law or is otherwise
33I necessary to protect the national interest.

33J ******For the purposes of this subsection, a "bona fide execu-*
33K *tive" is a top level employee who exercises substantial executive*
33L *authority over a significant number of employees and a large*
33M *volume of business. A "high policy-making position" is a position*
33N *in which a person plays a significant role in developing policy and*
33O *in recommending the implementation thereof.******

34 b. For a labor organization, because of the race, creed, color,
35 national origin, ancestry, age, marital status or sex of any
36 individual, or because of the liability for service in the Armed
37 Forces of the United States or nationality of any individual, to
38 exclude or to expel from its membership such individual or to
39 discriminate in any way against any of its members, against any
40 applicant for, or individual included in, any apprentice or other
41 training program or against any employer or any individual em-
42 ployed by an employer; provided, however, that nothing herein
43 contained shall be construed to bar a labor organization from ex-
44 cluding from its apprentice or other training programs any person
45 on the basis of sex in those certain circumstances where sex is a
46 bona fide occupational qualification reasonably necessary to the
47 normal operation of the particular apprentice or other training
48 program.

49 c. For any employer or employment agency to print or circulate
50 or cause to be printed or circulated any statement, advertisement
51 or publication, or to use any form of application for employment,
52 or to make an inquiry in connection with prospective employment,
53 which expresses, directly or indirectly, any limitation, specification
54 or discrimination as to race, creed, color, national origin, ancestry,
55 age, marital status or sex or liability of any applicant for employ-
56 ment for service in the Armed Forces of the United States, or any
57 intent to make any such limitation, specification or discrimination,
58 unless based upon a bona fide occupational qualification.

59 d. For any person to take reprisals against any person because
60 he has opposed and practices or acts forbidden under this act or
61 because he has filed a complaint, testified or assisted in any pro-
62 ceeding under this act.

63 e. For any person, whether an employer or an employee or not,
64 to aid, abet, incite, compel or coerce the doing of any of the acts
65 forbidden under this act, or to attempt to do so.

66 f. For any owner, lessee, proprietor, manager, superintendent,
67 agent, or employee of any place of public accommodation directly
68 or indirectly to refuse, withhold from or deny to any person any

69 of the accommodations, advantages, facilities or privileges thereof,
70 or to discriminate against any person in the furnishing thereof,
71 or directly or indirectly to publish, circulate, issue, display, post or
72 mail any written or printed communication, notice, or advertise-
73 ment to the effect that any of the accommodations, advantages,
74 facilities, or privileges of any such place will be refused, withheld
75 from, or denied to any person on account of the race, creed, color,
76 national origin, ancestry, marital status, sex or nationality of such
77 person, or that the patronage or custom thereof of any person of
78 any particular race, creed, color, national origin, ancestry, marital
79 status, sex or nationality is unwelcome, objectionable or not ac-
80 ceptable, desired or solicited, and the production of any such
81 written or printed communication, notice or advertisement, pur-
82 porting to relate to any such place and to be made by any owner,
83 lessee, proprietor, superintendent or manager thereof, shall be
84 presumptive evidence in any action that the same was authorized
85 by such person; provided, however, that nothing contained herein
86 shall be construed to bar any place of public accommodation which
87 is in its nature reasonably restricted exclusively to individuals
88 of one sex, and which shall include but not be limited to any summer
89 camp, day camp, or resort camp, bathhouse, dressing room, swim-
90 ming pool, gymnasium, comfort station, dispensary, clinic or
91 hospital, or school or educational institution which is restricted
92 exclusively to individuals of one sex, from refusing, withholding
93 from or denying to any individual of the opposite sex any of the
94 accommodations, advantages, facilities or privileges thereof on the
95 basis of sex; provided further, that the foregoing limitation shall
96 not apply to any restaurant as defined in R. S. 33:1-1 or place
97 where alcoholic beverages are served.

98 g. For the owner, lessee, sublessee, assignee or managing agent
99 of, or other person having the right of ownership or possession of
100 or the right to sell, rent, lease, assign, or sublease any real property
101 or part or portion thereof, or any agent or employee of any of these:

102 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
103 to deny to or withhold from any person or group of persons any
104 real property or part or portion thereof because of the race, creed,
105 color, national origin, ancestry, marital status, sex or nationality
106 of such person or group of persons;

107 (2) To discriminate against any person or group of persons be-
108 cause of the race, creed, color, national origin, marital status or
109 sex of such person or group of persons in the terms, conditions
110 or privileges of the sale, rental or lease of any real property or part

111 or portion thereof or in the furnishing of facilities or services in
112 connection therewith; or

113 (3) To print, publish, circulate, issue, display, post or mail, or
114 cause to be printed, published, circulated, issued, displayed, posted
115 or mailed any statement, advertisement, publication or sign, or to
116 use any form of application for the purchase, rental, lease, assign-
117 ment or sublease of any real property or part or portion thereof,
118 or to make any record or inquiry in connection with the prospective
119 purchase, rental, lease, assignment, or sublease of any real prop-
120 erty, or part or portion thereof which expresses, directly or in-
121 directly, any limitation, specification or discrimination as to race,
122 creed, color, national origin, ancestry, marital status, sex or
123 nationality or any intent to make any such limitation, specification
124 or discrimination, and the production of any such statement, ad-
125 vertisement, publicity, sign, form of application, record, or inquiry
126 purporting to be made by any such person shall be presumptive
127 evidence in any action that the same was authorized by such person;
128 provided, however, that nothing contained in this subsection shall
129 be construed to bar any person from refusing to sell, rent, lease,
130 assign or sublease or from advertising or recording a qualification
131 as to sex for any room, apartment, flat in a dwelling or residential
132 facility which is planned exclusively for and occupied by individuals
133 of one sex to any individual of the exclusively opposite sex on the
134 basis of sex.

135 h. For any real estate broker, real estate salesman or employee
136 or agent thereof:

137 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
138 sale, rental, lease, assignment, or sublease any real property or part
139 or portion thereof to any person or group of persons or to refuse
140 to negotiate for the sale, rental, lease, assignment, or sublease of
141 any real property or part or portion thereof to any person or group
142 of persons because of the race, creed, color, national origin, an-
143 cestry, marital status, sex or nationality of such person or group
144 of persons, or to represent that any real property or portion thereof
145 is not available for inspection, sale, rental, lease, assignment, or
146 sublease when in fact it is so available, or otherwise to deny or with-
147 hold any real property or any part or portion of facilities thereof
148 to or from any person or group of persons because of the race,
149 creed, color, national origin, ancestry, marital status, sex or
150 nationality of such person or group of persons;

151 (2) To discriminate against any person because of his race, creed,
152 color, national origin, ancestry, marital status or sex in the terms,
153 conditions or privileges of the sale, rental, lease, assignment or

154 sublease of any real property or part or portion thereof or in the
155 furnishing of facilities or services in connection therewith; or

156 (3) To print, publish, circulate, issue, display, post, or mail, or
157 cause to be printed, published, circulated, issued, displayed, posted
158 or mailed any statement, advertisement, publication or sign, or
159 to use any form of application for the purchase, rental, lease,
160 assignment, or sublease of any real property or part or portion
161 thereof or to make any record or inquiry in connection with the
162 prospective purchase, rental, lease, assignment, or sublease of any
163 real property or part or portion thereof which expresses, directly
164 or indirectly, any limitation, specification or discrimination as to
165 race, creed, color, national origin, ancestry, marital status, sex or
166 nationality or any intent to make any such limitation, specification
167 or discrimination, and the production of any such statement, adver-
168 tisement, publicity, sign, form of application, record, or inquiry
169 purporting to be made by any such person shall be presumptive
170 evidence in any action that the same was authorized by such per-
171 son; provided, however, that nothing contained in this subsection
172 h., shall be construed to bar any person from refusing to sell, rent,
173 lease, assign or sublease or from advertising or recording a quali-
174 fication as to sex for any room, apartment, flat in a dwelling or
175 residential facility which is planned exclusively for and occupied
176 exclusively by individuals of one sex to any individual of the op-
177 posite sex on the basis of sex.

178 i. For any person, bank, banking organization, mortgage com-
179 pany, insurance company or other financial institution, lender or
180 credit institution to whom application is made for any loan or
181 extension of credit including but not limited to an application for
182 financial assistance for the purchase, acquisition, construction, re-
183 habilitation, repair or maintenance of any real property or part
184 or portion thereof or any agent or employee thereof:

185 (1) To discriminate against any person or group of persons
186 because of the race, creed, color, national origin, ancestry, marital
187 status, sex or nationality of such person or group of persons or
188 of the prospective occupants or tenants of such real property or
189 part or portion thereof, in the granting, withholding, extending,
190 modifying or renewing, or in the fixing of the rates, terms, con-
191 ditions or provisions of any such loan, extension of credit or
192 financial assistance or in the extension of services in connection
193 therewith; or

194 (2) To use any form of application for such loan, extension
195 of credit or financial assistance or to make record or inquiry
196 in connection with applications for any such loan, extension of

197 credit or financial assistance which expresses, directly or indirectly,
198 any limitation, specification or discrimination as to race, creed,
199 color, national origin, ancestry, marital status, sex or nationality
200 or intent to make any such limitation, specification or discrimi-
201 nation; unless otherwise required by law or regulation to retain
202 or use such information.

203 j. For any person whose activities are included within the scope
204 of this act to refuse to post or display such notices concerning the
205 rights or responsibilities of persons affected by this act as the
206 Attorney General may by regulation require.

207 k. For any real estate broker, real estate salesman or em-
208 ployee or agent thereof or any other individual, corporation, part-
209 nership, or organization, for the purpose of inducing a transaction
210 for the sale or rental of real property from which transaction such
211 person or any of its members may benefit financially, to represent
212 that a change has occurred or will or may occur in the composition
213 with respect to race, creed, color, national origin, ancestry, marital
214 status, sex or nationality of the owners or occupants in the block,
215 neighborhood or area in which the real property is located, and
216 to represent, directly or indirectly, that this change will or may
217 result in undesirable consequences in the block, neighborhood or
218 area in which the real property is located, including, but not
219 limited to the lowering of property values, an increase in criminal
220 or anti-social behavior, or a decline in the quality of schools or
221 other facilities.

222 l. For any person to refuse to buy from, sell to, lease from or to,
223 license, contract with, or trade with, provide goods, services or
224 information to, or otherwise do business with any other person on
225 the basis of the race, creed, color, national origin, ancestry, age,
226 sex, marital status, liability for service in the Armed Forces of the
227 United States, or nationality of such other person or of such other
228 person's spouse, partners, members, stockholders, directors,
229 officers, managers, superintendents, agents, employees, business
230 associates, suppliers, or customers. This subsection shall not pro-
231 hibit refusals or other actions (1) pertaining to employee-employer
232 collective bargaining, labor disputes, or unfair labor practices, or
233 (2) made or taken in connection with a protest of unlawful dis-
234 crimination or unlawful employment practices.

235 m. For any person to:

236 (1) Grant or accept any letter of credit or other document which
237 evidences the transfer of funds or credit, or enter into any con-
238 tract for the exchange of goods or services, where the letter of
239 credit, contract, or other document contains any provisions requir-

240 ing any person to discriminate against or to certify that he, she or
 241 it has not dealt with any other person on the basis of the race, creed,
 242 color, national origin, ancestry, age, sex, marital status, liability for
 243 service in the Armed Forces of the United States, or nationality
 244 of such other person or of such other person's spouse, partners,
 245 members, stockholders, directors, officers, managers, superin-
 246 tendents, agents, employees, business associates, suppliers, or
 247 customers.

248 (2) Refuse to grant or accept any letter of credit or other docu-
 249 ment which evidences the transfer of funds or credit, or refuse to
 250 enter into any contract for the exchange of goods or services, on the
 251 ground that it does not contain such a discriminatory provision
 252 or certification,

253 The provisions of this subsection shall not apply to any letter of
 254 credit, contract, or other document which contains any provision
 255 pertaining to employee-employer collective bargaining, a labor
 256 dispute or an unfair labor practice, or made in connection with the
 257 protest of unlawful discrimination or an unlawful employment
 258 practice, if, the other provisions of such letter of credit, contract,
 259 or other document do not otherwise violate the provisions of this
 260 subsection.

261 n. For any person to aid, abet, incite, compel, coerce, or induce
 262 the doing of any act forbidden by subsections 11 l. and m. of
 263 this act, or to attempt, or to conspire to do so. Such prohibited
 264 conduct shall include, but not be limited to:

265 (1) Buying from, selling to, leasing from or to, licensing, con-
 266 tracting with, trading with, providing goods, services, or informa-
 267 tion to, or otherwise doing business with any person because that
 268 person does, or agrees or attempts to do, any such act or any act
 269 prohibited by this subsection n.; or

270 (2) Boycotting, commercially blacklisting or refusing to buy
 271 from, sell to, lease from or to, license, contract with, provide goods,
 272 services or information to, or otherwise do business with any person
 273 because that person has not done or refuses to do any such act or
 274 any act prohibited by this subsection n.; provided, that, this sub-
 275 section n. shall not prohibit refusals or other actions either
 276 pertaining to employee-employer collective bargaining, labor dis-
 277 putes, or unfair labor practices, or made or taken in connection with
 278 a protest of unlawful discrimination or unlawful employment
 279 practices.

1 *****4. (New section) Notwithstanding the provisions of section 1
 2 of P. L. 1938, c. 295 (C. 10:3-1) and section 8 of P. L. 1962, c. 37
 3 (C. 10:5-2.1), an employee who has attained 70 years of age who

4 *is serving under a contract of tenure or similar arrangement pro-*
 5 *viding for tenure at a public or private institution of higher educa-*
 6 *tion may, at the option of the institution be required to retire.******

1 ****[**4. (New section) Notwithstanding the provisions of section*
 2 *1 of P. L. 1938, c. 295 (C. 10:3-1) and section 8 of P. L. 1962, c. 37*
 3 *(C. 10:5-2.1), an employee who has attained 70 years of age who*
 4 *is serving under a contract of tenure or similar arrangement pro-*
 5 *viding for tenure at a public or private institution of higher educa-*
 6 *tion may, at the option of the institution be required to re-*
 7 *tire.**]****

1 **[4. (New section) Notwithstanding the provisions of section 1*
 2 *of P. L. 1938, c. 295 (C. 10:3-1) and section 8 of P. L. 1962, c. 37*
 3 *(C. 10:5-2.1) an employee who has attained 70 years of age who*
 4 *is serving under a contract of tenure or similar arrangement pro-*
 5 *viding for tenure at a public or private institution of higher edu-*
 6 *cation shall be required to retire.]***

1 **[5.]* **[4.]*** ***[**5.**]*** *****[***4.***]******
 2 ******5.***** (New section) Notwithstanding any provision of law*
 3 *to the contrary, relief for having been required to retire in violation*
 4 *of the provisions of section 11 of P. L. 1945, c. 169 (C. 10:5-12),*
 5 *shall be available to the person aggrieved by that violation solely*
 6 *through the procedure initiated by filing a complaint with the*
 7 *Attorney General under the provisions of P. L. 1945, c. 169 **[(C.*
 7A *10:1-5 et seq.)]** ** (C. 10:5-1 et seq.)***

8 *Notwithstanding any provision to the contrary of section 16 of*
 9 *P. L. 1945, c. 169 (C. 10:5-17) or any other law, relief ordered for*
 10 *or granted to a person in connection with his being required to*
 11 *retire in violation of the provisions of section 11 of P. L. 1945,*
 12 *c. 169 (C. 10:5-12) shall be limited to his reinstatement with back*
 13 *pay *****and interest*****.*

1 **[6.]* **[5.]*** ***[**6.**]*** *****[***5.***]******
 2 ******6.***** This act shall take effect on the first day of the seventh*
 3 *month following enactment*****[***, except that with respect to*
 4 *employees of the State or any political subdivision thereof and em-*
 5 *ployees of any authority created by the State or any political sub-*
 6 *division thereof, this act shall take effect immediately and be retro-*
 7 *active to January 1, 1984***]******.*

ASSEMBLY, No. 1042

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1984

By Assemblymen SCHWARTZ, KARCHER, PATERO, KERN,
Assemblywoman MUHLER, Assemblymen KAVANAUGH,
OTLOWSKI, PATERNITI, PELLECCCHIA, HERMAN, PAN-
KOK, FORTUNATO, RILEY, GORMAN, McENROE, MAZUR,
Assemblywomen PERUN, KALIK, Assemblymen PELLY,
DORIA, MARSELLA, GIRGENTI, HOLLENBECK, VISOT-
CKY, ZANGARI, BAER, BRYANT, THOMPSON, FLYNN,
BOCCHINI, CHARLES, CHINNICI, ROCCO, NAPLES and
WEIDEL

AN ACT concerning mandatory retirement age, amending P. L.
1938, c. 295 and P. L. 1962, c. 37 and amending and supplementing
P. L. 1945, c. 169.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1938, c. 295 (C. 10:3-1) is amended to read
2 as follows:

3 1. In the selection of persons for employment in the service of
4 the State, or of any county or municipality thereof, no appointing
5 officer shall discriminate against any such applicant because such
6 applicant has attained the age of at least 40 years, at the time of
7 his said application for employment**];** provided, that this act shall
8 not apply to appointments to police and fire departments or to the
9 positions of court attendant, process server, and prison or reforma-
10 tory officer or guard in houses of detention, jails, county farms,
11 and penal institutions**].** *Any provisions of law, executive order,*
12 *rule or regulation to the contrary notwithstanding, no person other*
13 *than a justice of the Supreme Court or a judge of the Superior*

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

14 *Court pursuant to Article VI, Section VI, paragraph 3 of the Con-*
 15 *stitution of the State of New Jersey, or a member of the Division*
 16 *of State Police, employed in the service of the State, or of any*
 17 *county or municipality thereof, shall be required to retire upon the*
 18 *attainment of a particular age unless the public employer can*
 19 *show that the retirement age bears a manifest relationship to the*
 20 *employment in question or that the person in the service of the*
 21 *State, or of any county or municipality thereof is unable to ade-*
 22 *quately perform his duties. Any violation of this act shall be a*
 23 **[misdemeanor]** *crime of the fourth degree and the violator*
 24 *punished accordingly.*

1 2. Section 8 of P. L. 1962, c. 37 (C. 10:5-2.1) is amended to
 2 read as follows:

3 8. Nothing contained in this act or in **[the act to which this is a**
 4 **supplement]** *P. L. 1945, c. 169 (C. 10:5-1 et seq.) shall be construed*
 5 *to require or authorize any act prohibited by law, nor to conflict*
 6 *with the provisions of chapter 2 (child labor) of Title 34 of the*
 7 *Revised Statutes, nor to require the employment of any person*
 8 *under the age of 18, nor to prohibit the establishment and mainte-*
 9 *nance of bona fide occupational qualifications or the establishment*
 10 *and maintenance of apprenticeship requirements based upon a*
 11 *reasonable minimum age nor to prevent the termination or change*
 12 *of the employment of any person who in the opinion of the em-*
 13 *ployer, reasonably arrived at, is unable to perform adequately the*
 14 *duties of employment, nor to preclude discrimination among indi-*
 15 *viduals on the basis of competence, performance, conduct or any*
 16 *other reasonable standard, nor to interfere with the operation of*
 17 *the terms or conditions and administration of any bona fide retire-*
 18 *ment, pension, employee benefit or insurance plan or program*
 19 *including any State or locally administered public retirement sys-*
 20 *tem, provided that the provisions of those plans or programs are*
 21 *not used to establish an age for mandatory retirement.*

1 3. Section 11 of P. L. 1945, c. 169 (C. 10:5-12) is amended to
 2 read as follows:

3 11. It shall be unlawful employment practice, or, as the case may
 4 be, an unlawful discrimination:
 5 a. For an employer, because of the race, creed, color, national
 6 origin, ancestry, age, marital status, sex or atypical hereditary
 7 cellular or blood trait of any individual, or because of the liability
 8 for service in the Armed Forces of the United States or the na-
 9 tionality of any individual, to refuse to hire or employ or to bar
 10 or to discharge *or require to retire, unless justified by lawful con-*
 11 *siderations other than age, from employment such individual or*

12 to discriminate against such individual in compensation or in terms,
13 conditions or privileges of employment; provided, however, it shall
14 not be an unlawful employment practice to refuse to accept for
15 employment an applicant who has received a notice of induction
16 or orders to report for active duty in the armed forces; provided
17 further that nothing herein contained shall be construed to bar an
18 employer from refusing to accept for employment any person on
19 the basis of sex in those certain circumstances where sex is a bona
20 fide occupational qualification, reasonably necessary to the normal
21 operation of the particular business or enterprise; *provided*
22 *further that nothing herein contained shall be construed to bar*
22A *an employer from refusing to accept for employment or to pro-*
22B *mote any person over 70 years of age;* provided further that it
23 shall not be an unlawful employment practice for a club exclusively
24 social or fraternal to use club membership as a uniform qualification
25 for employment, or for a religious association or organization to
26 utilize religious affiliation as a uniform qualification in the employ-
27 ment of clergy, religious teachers or other employees engaged in
28 the religious activities of the association or organization, or in
29 following the tenets of its religion in establishing and utilizing
30 criteria for employment of an employee, *provided further, that it*
31 *shall not be an unlawful employment practice to require the retire-*
32 *ment of any employee who, for the two-year period immediately*
33 *before retirement, is employed in a bona fide executive or a high*
33A *policy-making position, if that employee is entitled to an immediate*
33B *non-forfeitable annual retirement benefit from a pension, profit*
33C *sharing, savings or deferred retirement plan, or any combination*
33D *of those plans, of the employer of that employee which equals, in*
33E *the aggregate at least \$27,000.00;* and provided further that an
33F employer may restrict employment to citizens of the United States
33G where such restriction is required by federal law or is otherwise
33H necessary to protect the national interest.

34 b. For a labor organization, because of the race, creed, color,
35 national origin, ancestry, age, marital status or sex of any
36 individual, or because of the liability for service in the Armed
37 Forces of the United States or nationality of any individual, to
38 exclude or to expel from its membership such individual or to
39 discriminate in any way against any of its members, against any
40 applicant for, or individual included in, any apprentice or other
41 training program or against any employer or any individual em-
42 ployed by an employer; provided, however, that nothing herein
43 contained shall be construed to bar a labor organization from ex-
44 cluding from its apprentice or other training programs any person

45 on the basis of sex in those certain circumstances where sex is a
46 bona fide occupational qualification reasonably necessary to the
47 normal operation of the particular apprentice or other training
48 program.

49 c. For any employer or employment agency to print or circulate
50 or cause to be printed or circulated any statement, advertisement
51 or publication, or to use any form of application for employment,
52 or to make an inquiry in connection with prospective employment,
53 which expresses, directly or indirectly, any limitation, specification
54 or discrimination as to race, creed, color, national origin, ancestry,
55 age, marital status or sex or liability of any applicant for employ-
56 ment for service in the Armed Forces of the United States, or any
57 intent to make any such limitation, specification or discrimination,
58 unless based upon a bona fide occupational qualification.

59 d. For any person to take reprisals against any person because
60 he has opposed any practices or acts forbidden under this act or
61 because he has filed a complaint, testified or assisted in any pro-
62 ceeding under this act.

63 e. For any person, whether an employer or an employee or not,
64 to aid, abet, incite, compel or coerce the doing of any of the acts
65 forbidden under this act, or to attempt to do so.

66 f. For any owner, lessee, proprietor, manager, superintendent,
67 agent, or employee of any place of public accommodation directly
68 or indirectly to refuse, withhold from or deny to any person any
69 of the accommodations, advantages, facilities or privileges thereof,
70 or to discriminate against any person in the furnishing thereof,
71 or directly or indirectly to publish, circulate, issue, display, post or
72 mail any written or printed communication, notice, or advertise-
73 ment to the effect that any of the accommodations, advantages,
74 facilities, or privileges of any such place will be refused, withheld
75 from, or denied to any person on account of the race, creed, color,
76 national origin, ancestry, marital status, sex or nationality of such
77 person, or that the patronage or custom thereof of any person of
78 any particular race, creed, color, national origin, ancestry, marital
79 status, sex or nationality is unwelcome, objectionable or not ac-
80 ceptable, desired or solicited, and the production of any such
81 written or printed communication, notice or advertisement, pur-
82 porting to relate to any such place and to be made by any owner,
83 lessee, proprietor, superintendent or manager thereof, shall be
84 presumptive evidence in any action that the same was authorized
85 by such person; provided, however, that nothing contained herein
86 shall be construed to bar any place of public accommodation which
87 is in its nature reasonably restricted exclusively to individuals

88 of one sex, and which shall include but not be limited to any summer
89 camp, day camp, or resort camp, bathhouse, dressing room, swim-
90 ming pool, gymnasium, comfort station, dispensary, clinic or
91 hospital, or school or educational institution which is restricted
92 exclusively to individuals of one sex, from refusing, withholding
93 from or denying to any individual of the opposite sex any of the
94 accommodations, advantages, facilities or privileges thereof on the
95 basis of sex; provided further, that the foregoing limitation shall
96 not apply to any restaurant as defined in R. S. 33:1-1 or place
97 where alcoholic beverages are served.

98 g. For the owner, lessee, sublessee, assignee or managing agent
99 of, or other person having the right of ownership or possession of
100 or the right to sell, rent, lease, assign, or sublease any real property
101 or part or portion thereof, or any agent or employee of any of these:

102 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
103 to deny to or withhold from any person or group of persons any
104 real property or part or portion thereof because of the race, creed,
105 color, national origin, ancestry, marital status, sex or nationality
106 of such person or group of persons;

107 (2) To discriminate against any person or group of persons be-
108 cause of the race, creed, color, national origin, marital status or
109 sex of such person or group of persons in the terms, conditions
110 or privileges of the sale, rental or lease of any real property or part
111 or portion thereof or in the furnishing of facilities or services in
112 connection therewith; or

113 (3) To print, publish, circulate, issue, display, post or mail, or
114 cause to be printed, published, circulated, issued, displayed, posted
115 or mailed any statement, advertisement, publication or sign, or to
116 use any form of application for the purchase, rental, lease, assign-
117 ment or sublease of any real property or part or portion thereof,
118 or to make any record or inquiry in connection with the prospective
119 purchase, rental, lease, assignment, or sublease of any real prop-
120 erty, or part or portion thereof which expresses, directly or in-
121 directly, any limitation, specification or discrimination as to race,
122 creed, color, national origin, ancestry, marital status, sex or
123 nationality or any intent to make any such limitation, specification
124 or discrimination, and the production of any such statement, ad-
125 vertisement, publicity, sign, form of application, record, or inquiry
126 purporting to be made by any such person shall be presumptive
127 evidence in any action that the same was authorized by such person;
128 provided, however, that nothing contained in this subsection shall
129 be construed to bar any person from refusing to sell, rent, lease,
130 assign or sublease or from advertising or recording a qualification

131 as to sex for any room, apartment, flat in a dwelling or residential
132 facility which is planned exclusively for and occupied by individuals
133 of one sex to any individual of the exclusively opposite sex on the
134 basis of sex.

135 h. For any real estate broker, real estate salesman or employee
136 or agent thereof:

137 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
138 sale, rental, lease, assignment, or sublease any real property or part
139 or portion thereof to any person or group of persons or to refuse
140 to negotiate for the sale, rental, lease, assignment, or sublease of
141 any real property or part or portion thereof to any person or group
142 of persons because of the race, creed, color, national origin, an-
143 cestry, marital status, sex or nationality of such person or group
144 of persons, or to represent that any real property or portion thereof
145 is not available for inspection, sale, rental, lease, assignment, or
146 sublease when in fact it is so available, or otherwise to deny or with-
147 hold any real property or any part or portion of facilities thereof
148 to or from any person or group of persons because of the race,
149 creed, color, national origin, ancestry, marital status, sex or
150 nationality of such person or group of persons;

151 (2) To discriminate against any person because of his race, creed,
152 color, national origin, ancestry, marital status or sex in the terms,
153 conditions or privileges of the sale, rental, lease, assignment or
154 sublease of any real property or part or portion thereof or in the
155 furnishing of facilities or services in connection therewith; or

156 (3) To print, publish, circulate, issue, display, post, or mail, or
157 cause to be printed, published, circulated, issued, displayed, posted
158 or mailed any statement, advertisement, publication or sign, or
159 to use any form of application for the purchase, rental, lease,
160 assignment, or sublease of any real property or part or portion
161 thereof or to make any record or inquiry in connection with the
162 prospective purchase, rental, lease, assignment, or sublease of any
163 real property or part or portion thereof which expresses, directly
164 or indirectly, any limitation, specification or discrimination as to
165 race, creed, color, national origin, ancestry, marital status, sex or
166 nationality or any intent to make any such limitation, specification
167 or discrimination, and the production of any such statement, adver-
168 tisement, publicity, sign, form of application, record, or inquiry
169 purporting to be made by any such person shall be presumptive
170 evidence in any action that the same was authorized by such per-
171 son; provided, however, that nothing contained in this subsection
172 h., shall be construed to bar any person from refusing to sell, rent,
173 lease, assign or sublease or from advertising or recording a quali-

174 fication as to sex for any room, apartment, flat in a dwelling or
175 residential facility which is planned exclusively for and occupied
176 exclusively by individuals of one sex to any individual of the op-
177 posite sex on the basis of sex.

178 i. For any person, bank, banking organization, mortgage com-
179 pany, insurance company or other financial institution, lender or
180 credit institution to whom application is made for any loan or
181 extension of credit including but not limited to an application for
182 financial assistance for the purchase, acquisition, construction, re-
183 habilitation, repair or maintenance of any real property or part
184 or portion thereof or any agent or employee thereof:

185 (1) To discriminate against any person or group of persons
186 because of the race, creed, color, national origin, ancestry, marital
187 status, sex or nationality of such person or group of persons or
188 of the prospective occupants or tenants of such real property or
189 part or portion thereof, in the granting, withholding, extending,
190 modifying or renewing, or in the fixing of the rates, terms, con-
191 ditions or provisions of any such loan, extension of credit or
192 financial assistance or in the extension of services in connection
193 therewith; or

194 (2) To use any form of application for such loan, extension
195 of credit or financial assistance or to make record or inquiry
196 in connection with applications for any such loan, extension of
197 credit or financial assistance which expresses, directly or indirectly,
198 any limitation, specification or discrimination as to race, creed,
199 color, national origin, ancestry, marital status, sex or nationality
200 or intent to make any such limitation, specification or discrimi-
201 nation; unless otherwise required by law or regulation to retain
202 or use such information.

203 j. For any person whose activities are included within the scope
204 of this act to refuse to post or display such notices concerning the
205 rights or responsibilities of persons affected by this act as the
206 Attorney General may by regulation require.

207 k. For any real estate broker, real estate salesman or em-
208 ployee or agent thereof or any other individual, corporation, part-
209 nership, or organization, for the purpose of inducing a transaction
210 for the sale or rental of real property from which transaction such
211 person or any of its members may benefit financially, to represent
212 that a change has occurred or will or may occur in the composition
213 with respect to race, creed, color, national origin, ancestry, marital
214 status, sex or nationality of the owners or occupants in the block,
215 neighborhood or area in which the real property is located, and
216 to represent, directly or indirectly, that this change will or may

217 result in undesirable consequences in the block, neighborhood or
218 area in which the real property is located, including, but not
219 limited to the lowering of property values, an increase in criminal
220 or anti-social behavior, or a decline in the quality of schools or
221 other facilities.

222 l. For any person to refuse to buy from, sell to, lease from or to,
223 license, contract with, or trade with, provide goods, services or
224 information to, or otherwise do business with any other person on
225 the basis of the race, creed, color, national origin, ancestry, age,
226 sex, marital status, liability for service in the Armed Forces of the
227 United States, or nationality of such other person or of such other
228 person's spouse, partners, members, stockholders, directors,
229 officers, managers, superintendents, agents, employees, business
230 associates, suppliers, or customers. This subsection shall not pro-
231 hibit refusals or other actions (1) pertaining to employee-employer
232 collective bargaining, labor disputes, or unfair labor practices, or
233 (2) made or taken in connection with a protest of unlawful dis-
234 crimination or unlawful employment practices.

235 m. For any person to:

236 (1) Grant or accept any letter of credit or other document which
237 evidences the transfer of funds or credit, or enter into any con-
238 tract for the exchange of goods or services, where the letter of
239 credit, contract, or other document contains any provisions requir-
240 ing any person to discriminate against or to certify that he, she or
241 it has not dealt with any other person on the basis of the race, creed,
242 color, national origin, ancestry, age, sex, marital status, liability for
243 service in the Armed Forces of the United States, or nationality
244 of such other person or of such other person's spouse, partners,
245 members, stockholders, directors, officers, managers, superin-
246 tendents, agents, employees, business associates, suppliers, or
247 customers.

248 (2) Refuse to grant or accept any letter of credit or other docu-
249 ment which evidences the transfer of funds or credit, or refuse to
250 enter into any contract for the exchange of goods or services, on the
251 ground that it does not contain such a discriminatory provision
252 or certification.

253 The provisions of this subsection shall not apply to any letter of
254 credit, contract, or other document which contains any provision
255 pertaining to employee-employer collective bargaining, a labor
256 dispute or an unfair labor practice, or made in connection with the
257 protest of unlawful discrimination or an unlawful employment
258 practice, if, the other provisions of such letter of credit, contract,

259 or other document do not otherwise violate the provisions of this
260 subsection.

261 n. For any person to abet, instigate, incite, compel, coerce, or induce
262 the doing of any act forbidden by subsections 11 l. and m. of
263 this act, or to attempt, or to conspire to do so. Such prohibited
264 conduct shall include, but not be limited to:

265 (1) Buying from, selling to, leasing from or to, licensing, con-
266 tracting with, trading with, providing goods, services, or informa-
267 tion to, or otherwise doing business with any person because that
268 person does, or agrees or attempts to do, any such act or any act
269 prohibited by this subsection n.; or

270 (2) Boycotting, commercially blacklisting or refusing to buy
271 from, sell to, lease from or to, license, contract with, provide goods,
272 services or information to, or otherwise do business with any person
273 because that person has not done or refuses to do any such act or
274 any act prohibited by this subsection n.; provided, that, this sub-
275 section n. shall not prohibit refusals or other actions either
276 pertaining to employee-employer collective bargaining, labor dis-
277 putes, or unfair labor practices, or made or taken in connection with
278 a protest of unlawful discrimination or unlawful employment
279 practices.

1 4. (New section) Notwithstanding the provisions of section 1 of
2 P. L. 1938, c. 295 (C. 10:3-1) and section 8 of P. L. 1962, c. 37
3 (C. 10:5-2.1) an employee who has attained 70 years of age who
4 is serving under a contract of tenure or similar arrangement pro-
5 viding for tenure at a public or private institution of higher edu-
6 cation shall be required to retire.

1 5. (New section) Notwithstanding any provision of law to the
2 contrary, relief for having been required to retire in violation of
3 the provisions of section 11 of P. L. 1945, c. 169 (C. 10:5-12), shall
4 be available to the person aggrieved by that violation solely through
5 the procedure initiated by filing a complaint with the Attorney
6 General under the provisions of P. L. 1945, c. 169 (C. 10:1-5
7 et seq.).

8 Notwithstanding any provision to the contrary of section 16 of
9 P. L. 1945, c. 169 (C. 10:5-17) or any other law, relief ordered for
10 or granted to a person in connection with his being required to
11 retire in violation of the provisions of section 11 of P. L. 1945,
12 c. 169 (C. 10:5-12) shall be limited to his reinstatement with back
13 pay.

1 6. This act shall take effect on the first day of the seventh month
2 following enactment.

A1042

10

Sponsor's

STATEMENT

This bill would extend the current provisions in the law governing age discrimination in all of the public and private employment to clearly prohibit the compulsory retirement of most workers simply on account of advanced age. (The Federal Age Discrimination in Employment Act of 1967 does not guarantee a right to work for those persons over the age 70 who are covered by its provisions.) Tenured faculty members of institutions of higher education are exempt from the bill's coverage as are judges of the Supreme Court and the Superior Court who must retire at age 70 under the State Constitution.

SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1042

[OFFICIAL COPY REPRINT]
with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 1984

This bill prohibits the compulsory retirement of most public and private employees in New Jersey upon attainment of a particular age. As amended, exemptions from the provisions of this act include: justices of the Supreme Court, judges of the Superior Court, judges of the Tax Court, a member of the Division of State Police, State, county and municipal fire department employees, certain tenured employees at a public or private institution of higher education, and a public employee when the public employer can show that the retirement age bears a manifest relationship to the employment.

The bill allows employers to refuse to accept for employment, or to promote, any person over 70 years of age. It also allows an employer to require the retirement of executive or policy-making employees in certain situations.

The committee amended the bill to:

- (1) Provide that judges of the Tax Court may be required to retire upon the attainment of a particular age;
- (2) Provide that members of a fire department employed in the service of the State or of any county or municipality thereof may be required to retire at a particular age; and
- (3) Provide that tenured employees at a public or private institution of higher education when reaching 70 years of age may, at the option of the institution, be required to retire.

ADOPTED
NOV 29 1984

Senate Amendments
(proposed by Senator Lynch)

ok
muj

to

Third
Assembly Bill No. 1042 (OCR) Senate Re
(sponsored by Assemblyman Schwartz)

Amend:

Page	Sec.	Line
	After	After
9	3	279
10	4	1
10	5	1

Insert new section 4. as follows:

"4. (New section) Notwithstanding the provisions of section 1 of P.L. 1938, c. 295 (C. 10:3-1) and section 8 of P.L. 1962, c. 37 (C. 10:5-2.1), an employee who has attained 70 years of age who is serving under a contract of tenure or similar arrangement providing for tenure at a public or private institution of higher education may, at the option of the institution be required to retire."

Omit "4." insert "5."

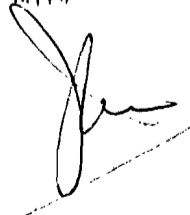
Omit "5." insert "6."

STATEMENT

These amendments incorporate into the bill a section which gives a public or private institution of higher education the option of requiring an employee to retire if the employee is 70 years of age and is serving under a contract of tenure or similar arrangement provided for tenure at the institution.

Approved

NOV 20 1984



ADOPTED

OCT 22 1984

10/22/84/rd

Senate Amendments

proposed by Senator Corran
to

File
10/23/84
TKM

Assembly Bill No. 1042 (OCR) Senate
Reprint

Sponsored by Assemblyman Schwantz

Amend:

Page	Sec.	Line
------	------	------

10	6	2
----	---	---

After "enactment" insert ", except that with respect to employees of the State or any political subdivision thereof and employees of any authority created by the State or any political subdivision thereof, this act shall take effect immediately and be retroactive to January 1, 1984"

STATEMENT

This amendment makes this act effective immediately and retroactive to January 1, 1984 with respect to employees of the State or any political subdivision thereof and employees of any authority created by the State or any political subdivision thereof.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 28, 1985

ASSEMBLY BILL NO. 1042 (4SR) (OCR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1042 (4SR) (OCR) with my recommendations for reconsideration.

Assembly Bill No. 1042 (4SR) (OCR) prohibits compulsory retirement on account of age in public and private employment. Supreme Court Justices, Tax and Superior Court Judges, State Police officers, State, county or municipal police officers and firemen and certain executives as defined in the bill are exempted. Tenured college and university faculty members are also exempted at the option of the public or private institution of higher education. A public employer may require an employee to retire upon reaching the mandatory retirement age if the employer can show that age bears a manifest relationship to the employment in question or that the employee is no longer able to adequately perform his duties.

I support the concept of eliminating a mandatory retirement age in public and private employment for most positions of employment. Age should not be a factor in assessing job performance. An individual should be judged by the quality of his performance.

Despite my support for the concept expressed within Assembly Bill No. 1042 (4SR) (OCR), I must return the bill to you and recommend that it be amended in the following areas:

Section 1 must be amended to delete the provision making age discrimination by a public employer a crime of the fourth degree. Section 1 expands the current law to establish a subjective standard to govern the instances when a public employer may require an employee to retire because of age. A public employer may require an employee to retire upon attaining a certain age if the employer shows that age bears a manifest relationship to the employment in question or that the employee is unable to adequately perform his duties. I am concerned that public employers would be afraid to utilize this provision for fear of criminal prosecution if their application of these standards is mistaken.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

As an alternative to a criminal penalty, I recommend that Section 1 be amended to allow an aggrieved employee the civil remedies of reinstatement with back pay and interest.

Consequently, Section 5 must be amended to conform to this change. Section 5 limits an employee's remedies to reinstatement with back pay if he is required to retire in violation of Section 11 of the Law Against Discrimination (C.10:5-12). I recommend that the additional remedy of interest be added as well.

These additional remedies are necessary to strengthen the bill. Frequently, an employee's back pay award is less than his legal fees. Certainly, an aggrieved employee should not have to suffer monetarily for the exercise of a legal right.

This bill fails to address the effect of a contract of tenure upon a public employer's ability to retire upon a showing that the attainment of a particular age bears a manifest relationship to the employment in question or that an employee is unable to adequately perform his duties. In order to prevent a conflict between a contract of tenure and the bill's provisions, I recommend a provision stating that a contract of tenure shall not be a bar to the retirement of an employee in accordance with the bill.

Section 3 creates an exemption to the Act for an individual who, for two years immediately prior to retirement, is a bona fide executive or occupies a high policy-making position and who will receive an annual retirement allowance of at least \$44,000.00. I am concerned that the terms "bona fide executive" and "high policy-making position" are not adequately defined. I suggest that these terms be defined to conform with the regulations promulgated to implement the federal Age Discrimination in Employment Act. In addition, the retirement allowance threshold of \$44,000.00 should be reduced to \$27,000.00 so that the exemption conforms with a similar provision within the federal Age Discrimination in Employment Act.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

3

Finally, the portion of section 6 making the effective date of the act retroactive to January 1, 1984 for public employees must be deleted. The Division of Pensions advises that this provision will create severe administrative problems. This provision is likely to be the subject of litigation. The Division of Pensions and reinstated public employees will disagree on the issues of total service credit and the amount of annual retirement allowance.

Accordingly, for the aforementioned reasons, I herewith return Assembly Bill No. 1042 (4SR) (OCR) and recommend that it be amended as follows:

Page 2, Section 1, Lines 24-26: Delete "Any violation of this act shall be a crime of the fourth degree and the violator punished accordingly." insert "A contract of tenure or similar arrangement providing for tenure shall not bar a public employer from showing that a retirement age bears a manifest relationship to the employment in question or that the person in the service of the State, or of any county or municipality thereof, is unable to adequately perform his duties. A person in the employ of the State, or of any county or municipality thereof, who is required to retire upon the attainment of a particular age in violation of this section shall be entitled to reinstatement with back pay and interest."

Page 3, Section 3, Line 33E: Delete "\$44,000.00" insert "\$27,000.00"

Page 3, Section 3, After Line 33I: Insert new paragraph as follows:

"For the purposes of this subsection, a "bona fide executive" is a top level employee who exercises substantial executive authority over a significant number of employees and a large volume of business. A "high policy-making position" is a position in which a person plays a significant role in developing policy and in recommending the implementation thereof."

Page 10, Section 5, Line 13: After "pay" insert "and interest"



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001
Contact: CARL GOLDEN
609-292-8956

TRENTON, N.J. 08625
Release: MON., MARCH 11, 198

Governor Thomas H. Kean today signed legislation to prohibit mandatory retirement based on age in both public and private employment.

The legislation, A-1042, sponsored by Assemblyman David Schwartz, D-Middlesex, was conditionally vetoed by the Governor on January 28. The Legislature concurred in the Governor's recommendations in February.

"Mandatory retirement provisions are shortsighted, discriminatory and can cost the public and private sectors many talented individuals," Kean said. "A person's productivity does not suddenly come to a halt upon reaching a birthday. Yet, mandatory retirement systems are based on the false premise that the calendar should dictate a person's work value."

Kean noted that he recently issued a proclamation designating this week as "Hire the Older Worker Week."

"We have benefited --- and will continue to benefit --- from the productivity of New Jersey's senior workers and elimination of the mandatory retirement barrier will assure that continued productivity," Kean said.

The bill, effective in October, exempts from its provisions Supreme Court justices, Tax and Superior Court judges, State Police officers and State, county and municipal police and firemen. Tenured college and university faculty members are also exempt at the option of the particular institution.

#

Matter printed in italics *thus* is new matter.