

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT OFFICERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that mandatory retirement  
2 upon attaining a certain age is necessary because there are  
3 certain occupations that require individuals to be placed in  
4 dangerous situations, such as law enforcement officers and  
5 military service members, or require high levels of mental  
6 skill, such as air traffic controllers and airline pilots, where  
7 age of the worker can play a significant role. Proponents for a  
8 mandatory retirement age contend that a worker's productivity  
9 declines significantly after age sixty-five and requiring  
10 retirement upon workers attaining a certain age allows employers  
11 to avoid this reduction in productivity.

12           The mandatory age requirement for pilots serving as pilot-  
13 in-command in domestic, flag, and supplemental airline  
14 operations is set at sixty-five years of age under federal law.  
15 Furthermore, federal law enforcement officers are required to be  
16 separated from the service on the last day of the month in which  
17 the law enforcement officer becomes fifty-seven years of age or



1 completes twenty years of law enforcement officer service if  
2 then over that age. The Department of Justice's policy  
3 supporting a mandatory retirement age requirement is to maintain  
4 a young and vigorous workforce in physically arduous law  
5 enforcement officer positions and ensure the employment of  
6 persons who are physically capable of meeting the rigorous  
7 demands of law enforcement activities.

8 The purpose of this Act is to establish a mandatory  
9 retirement age for law enforcement officers in Hawaii by:

- 10 (1) Requiring all law enforcement officers to retire upon  
11 attaining sixty-five years of age or be transferred to  
12 an administrative or support role in the law  
13 enforcement officer's agency or to another government  
14 agency;
- 15 (2) Requiring all volunteer law enforcement officers to  
16 retire from volunteer law enforcement officer duty  
17 upon attaining sixty-five years of age; and
- 18 (3) Establishing that the mandatory retirement of law  
19 enforcement officers upon attaining the age of sixty-  
20 five shall not be an unlawful discriminatory practice.



1 SECTION 2. Section 52D-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§52D-6[+] Police force; employees. (a) The chief of  
4 police may appoint officers and other employees under such rules  
5 and at such salaries as are authorized by law. Probationary  
6 appointment, suspension, and dismissal of officers and employees  
7 of the police department shall be as authorized by law.

8 (b) A police officer shall be separated from service upon  
9 attaining sixty-five years of age or be transferred to an  
10 administrative or support role in the police officer's agency or  
11 to another government agency; provided that such transfer shall  
12 be in compliance with chapter 89. Any volunteer police officers  
13 shall be separated from service upon attaining sixty-five years  
14 of age."

15 SECTION 3. Section 353C-4, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§353C-4 Appointment of employees with police powers and  
18 other employees[-]; separation of public safety officers. (a)  
19 The director may appoint employees to be public safety officers  
20 who shall have all of the powers of police officers; provided  
21 that the director may establish and assign the employees to



1 positions or categories of positions that may have differing  
2 titles, specific duties, and limitations upon the exercise of  
3 police powers.

4 (b) The director may appoint other personnel necessary to  
5 carry out the functions of the department.

6 (c) The state law enforcement officers transferred from  
7 the department of the attorney general by Act 211, Session Laws  
8 of Hawaii 1989, shall be responsible for public safety in state  
9 buildings as well as the personal protection of government  
10 officials and employees while in the conduct of their duties.  
11 The duties of state law enforcement officers shall also include  
12 the service of process, including subpoenas, warrants, and other  
13 legal documents, and other duties as the director may assign,  
14 including the performance of duties of other public safety  
15 officers within the department. State law enforcement officers  
16 shall have all of the powers of police officers, including the  
17 power of arrest.

18 (d) A public safety officer shall be separated from  
19 service upon attaining sixty-five years of age or be transferred  
20 to an administrative or support role in the public safety  
21 officer's agency or to another government agency; provided that



1 such transfer shall be in compliance with chapter 89. Any  
2 volunteer public safety officers shall be separated from service  
3 upon attaining sixty-five years of age."

4 SECTION 4. Section 378-3, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§378-3 **Exceptions.** Nothing in this part shall be deemed  
7 to:

8 (1) Repeal or affect any law, ordinance, or government  
9 rule having the force and effect of law;

10 (2) Prohibit or prevent the establishment and maintenance  
11 of bona fide occupational qualifications reasonably  
12 necessary to the normal operation of a particular  
13 business or enterprise, and that have a substantial  
14 relationship to the functions and responsibilities of  
15 prospective or continued employment;

16 (3) Prohibit or prevent an employer, employment agency, or  
17 labor organization from refusing to hire, refer, or  
18 discharge any individual for reasons relating to the  
19 ability of the individual to perform the work in  
20 question;



- 1           (4) Affect the operation of the terms or conditions of any  
2           bona fide retirement, pension, employee benefit, or  
3           insurance plan that is not intended to evade the  
4           purpose of this chapter; provided that this exception  
5           shall not be construed to permit any employee plan to  
6           set a maximum age requirement for hiring or a  
7           mandatory retirement age[?] unless the employee is a  
8           law enforcement officer or volunteer law enforcement  
9           officer with any county police department or  
10           department of public safety as provided under  
11           paragraph (12);
- 12           (5) Prohibit or prevent any religious or denominational  
13           institution or organization, or any organization  
14           operated for charitable or educational purposes, that  
15           is operated, supervised, or controlled by or in  
16           connection with a religious organization, from giving  
17           preference to individuals of the same religion or  
18           denomination or from making a selection calculated to  
19           promote the religious principles for which the  
20           organization is established or maintained;



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- 1           (6) Conflict with or affect the application of security  
2           regulations or rules in employment established by the  
3           United States or the State;
- 4           (7) Require the employer to execute unreasonable  
5           structural changes or expensive equipment alterations  
6           to accommodate the employment of a person with a  
7           disability;
- 8           (8) Prohibit or prevent the department of education or  
9           private schools from considering criminal convictions  
10          in determining whether a prospective employee is  
11          suited to working in close proximity to children;
- 12          (9) Prohibit or prevent any financial institution in which  
13          deposits are insured by a federal agency having  
14          jurisdiction over the financial institution from  
15          denying employment to or discharging from employment  
16          any person who has been convicted of any criminal  
17          offense involving dishonesty or a breach of trust,  
18          unless it has the prior written consent of the federal  
19          agency having jurisdiction over the financial  
20          institution to hire or retain the person;



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1           (10) Preclude any employee from bringing a civil action for  
 2           sexual harassment or sexual assault and infliction of  
 3           emotional distress or invasion of privacy related  
 4           thereto; provided that notwithstanding section 368-12,  
 5           the commission shall issue a right to sue on a  
 6           complaint filed with the commission if it determines  
 7           that a civil action alleging similar facts has been  
 8           filed in circuit court; [~~or~~]

9           (11) Require the employer to accommodate the needs of a  
 10          nondisabled person associated with or related to a  
 11          person with a disability in any way not required by  
 12          title I of the Americans with Disabilities Act[-]; or

13          (12) Prohibit or prevent any county police department or  
 14          the department of public safety from establishing a  
 15          mandatory retirement age for its law enforcement  
 16          officers and volunteer law enforcement officers."

17          SECTION 5. Statutory material to be repealed is bracketed  
 18          and stricken. New statutory material is underscored.

19          SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Will Zygo  
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**Report Title:**

Law Enforcement Officers; Retirement; Reserve Officers

**Description:**

Requires all law enforcement officers to retire upon attaining sixty-five years of age with certain exceptions. Requires all volunteer law enforcement officers to retire from volunteer law enforcement officer duty upon attaining sixty-five years of age. Exempts the mandatory retirement age of law enforcement officers as an unlawful discriminatory practice.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

