

(S.B. 235)

(No. 22)

(Approved June 30, 2005)

AN ACT

To amend Section 2-104a of Act No. 447 of May 15, 1951, as amended, known as the “Government Personnel Retirement Act”, to fix the mandatory retirement age at fifty eight (58) for members of the Puerto Rico Police and the Firefighters Corps, and other related matters.

STATEMENT OF MOTIVES

The debate on the desirable age to maintain active the members of the Puerto Rico Police and the Firefighters Corps is not new. In 1967 the United States Congress approved the Age Discrimination in Employment Act, better known as ADEA, 29 USC §621 et seq., to prohibit employment decisions using age as criterion. At that time, The ADEA applied only to private employers and to the federal government; not to state and local governments. However, in 1974 the application of the ADEA was extended to these governments through the approval of an amendment to that effect. The application to state and local governments was acknowledged in 1983 by the United States Supreme Court, in *Equal Employment Opportunity Commission v. Wyoming*, 460 U.S. 226, 103 S. Ct. 1054, 75 L.Ed.2d 18 (1983).

Prior to the application of ADEA at the state and municipal levels, many Police and Firefighters departments required mandatory retirement at a certain age, including the City of Chicago, that required retirement at the age of 63. The provisions of ADEA, prohibited discrimination against an employee based on age

criteria, unless age is a bona fide occupational reasonably necessary requirement for the operation or administration of a particular area or in which the difference is based on other reasonable factors besides age. The decision in the case of *EEOC v. Wyoming*, *supra*, challenged restrictions because of age in the Police and Firefighters departments leading to the elimination of state and municipal public policies of compulsory retirement. In 1986 the United States Congress, in response to the concern of the state and municipal governments, amended the ADEA, to add to the statute an exception on the application of the prohibition to the local Firefighters Corps and the Police Department. That is, from the effective date of the 1986 amendment, the mandatory retirement at a certain age was reinstated for these employees. The amendment in its origin was of a temporary nature, subsequently in 1996 it was made permanent. Recently, in the case of *Smith v. City of Jackson*, 125 S.Ct. 1536 (decided in 2005) the Supreme Court also reiterates that the intention of Congress to include amendments to ADEA, was consistent with the fact that age, as opposed to race or other classifications, has no relevance in terms of the ability of the individual to carry out certain functions. The Supreme Court also reiterates that the determination made by the Firefighters and Police Departments concerning its officers must be based on factors other than age, thus complying with the legitimate purpose of retaining capable official personnel to carry out their functions.

Upon the approval of Act No. 181 of August 15, 2003, compulsory retirement was established at the age of fifty five (55) years with thirty (30) years of accredited service, in the case of Puerto Rico.

This Act increases the retirement age at fifty-eight (58), for the simple reason that Puerto Rico needs the experienced members of the Police and Firefighters Corps to remain in their posts to help direct law enforcement personnel with less time in service.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 2-104a of Act No. 447 of May 15, 1951, as amended, is hereby amended to read as follows:

“Section 2-104a. - Compulsory retirement of Policemen and Firefighters.

Members of the Police and Firefighters Corps of Puerto Rico may voluntarily opt to retire after reaching the age of fifty-five (55) with thirty (30) years of service. Retirement shall be mandatory on the date the participant reaches both thirty (30) years in service and the age of fifty-eight (58) years.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 22 (S.B. 235) of the 1st Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Section 2-104a of Act No. 447 of May 15, 1951, as amended, known as the “Government Personnel Retirement Act”, to fix the mandatory retirement age at fifty eight (58) for members of the Puerto Rico Police and the Firefighters Corps, and other related matters,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 5th of July of 2006.

Francisco J. Domenech
Director