

SENATE, No. 2094

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1997

By Senator CAFIERO

1 AN ACT concerning the appointment of certain persons over 35 years  
2 of age to certain public safety positions and their enrollment in and  
3 retirement under the Police and Firemen's Retirement System,  
4 supplementing chapter 14 of Title 40A of the New Jersey Statutes  
5 and P.L.1944, c.255 (C.43:16A-1 et seq.).  
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7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:  
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10 1. Notwithstanding the provisions of N.J.S.40A:14-12 or any other  
11 law, rule or regulation to the contrary, in any municipality wherein  
12 Title 11A (Civil Service) of the New Jersey Statutes is operative, any  
13 person who, under applicable law in effect on September 29, 1996,  
14 was eligible for appointment to the position of member or officer of a  
15 paid fire department or force in the municipality or paid member or  
16 officer of a part-paid fire department or force in the municipality, and  
17 whose name is included on a list of eligibles for such appointment that  
18 was promulgated as a result of a civil service examination for which  
19 the closing date was February 25, 1997 or earlier, shall be considered  
20 within the age requirement applicable to the position for so long as  
21 that list, or any list resulting from the consolidation of that list with  
22 another list of eligibles, remains in effect.  
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24 2. Notwithstanding the provisions of N.J.S.40A:14-127 or any  
25 other law, rule or regulation to the contrary, in any municipality  
26 wherein Title 11A (Civil Service) of the New Jersey Statutes is  
27 operative, any person who, under applicable law in effect on  
28 September 29, 1996, was eligible for appointment to the position of  
29 member or officer of the police department or force in the  
30 municipality, and whose name is included on a list of eligibles for such  
31 appointment that was promulgated as a result of a civil service  
32 examination for which the closing date was February 25, 1997 or  
33 earlier, shall be considered within the age requirement applicable to the  
34 position for so long as that list, or any list resulting from the  
35 consolidation of that list with another list of eligibles, remains in  
36 effect.

1       3. Notwithstanding the provisions of P.L.1944, c.255 (C.43:16A-1  
2 et seq.) or any other law, rule or regulation to the contrary, any person  
3 to whom the provisions of section 1 or section 2 of P.L. , c. (now  
4 pending before the Legislature as this bill) apply who becomes a  
5 fireman or policeman shall, irrespective of age, be enrolled as a  
6 member of the Police and Firemen's Retirement System upon  
7 furnishing to the retirement system such current evidence of good  
8 health as the retirement system shall require; and if the person shall  
9 during continuance of membership in the retirement system attain 65  
10 years of age without having established 25 years of creditable service,  
11 the person shall be permitted to continue such membership after  
12 attainment of that age until the first day of the calendar month  
13 immediately following the calendar month in which the member  
14 establishes 25 years of creditable service, whereupon the member shall  
15 be retired.

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17       4. This act shall take effect immediately.

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#### STATEMENT

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22       This bill permits certain otherwise overage individuals to qualify for  
23 appointment to police or fire officer positions in local Civil Service  
24 jurisdictions and for their enrollment in the Police and Firemen's  
25 Retirement System (PFRS) and, in certain cases, continued  
26 membership in the system beyond the ordinary age of mandatory  
27 retirement.

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29       Title 40A of the New Jersey Statutes restricts appointment in any  
30 municipality of a member of a police or paid fire department, or a paid  
31 member of a part-paid fire department, to persons who are at least 21  
32 but not over 35 years of age (N.J.S.A.40A:14-12 and -127). Similarly,  
33 the statute governing PFRS restricts membership in the retirement  
34 system to persons not over 35 years of age at the time of appointment  
35 to a position covered by the retirement system (N.J.S.A.43:16A-3).  
36 In Formal Opinion No. 1 (1984), the Attorney General of New Jersey  
37 found these age restrictions invalid and unenforceable under the  
38 federal Age Discrimination in Employment Act of 1967 ("ADEA"), 29  
39 U.S.C. §621 et seq. Subsequent federal legislation (the ADEA  
40 amendments of 1986) temporarily authorized the several states to  
41 enforce such hiring age restrictions for law enforcement and firefighter  
42 personnel as were in effect on March 3, 1983, and New Jersey  
43 accordingly reimplemented its restrictions; see Attorney General  
44 Opinion No. 87-0012 (February 11, 1987). This temporary  
45 authorization lapsed, however, on December 31, 1993, and New  
46 Jersey's age restrictions on public safety employee hiring were again  
suspended; see Attorney General Opinion No. 94-0072 (May 17,

1 1994). Most recently, on September 30, 1996, Congress enacted a  
2 revival of the 1986 "public safety exemption" to the ADEA, and on  
3 February 25, 1997, New Jersey's Attorney General directed that the  
4 age-35 hiring limits be reimposed; see Formal Opinion No. 1 - 1997.  
5 This bill addresses the situation of certain individuals seeking  
6 appointment to police and fire positions in certain municipalities who,  
7 though older than age 35, were eligible for such appointment under the  
8 law as it existed prior to the 1996 federal legislation reviving the  
9 "public safety exemption", but who lost that eligibility as the result of  
10 New Jersey's reimposition of its age restriction on public safety  
11 personnel hiring pursuant to that federal legislation. The bill provides  
12 that, in any political subdivision operating under the Civil Service law,  
13 a person who was eligible under the law prior to the 1996 revision for  
14 appointment to a police or fire position in the municipality and named  
15 on a list of eligibles for such appointment that was promulgated on the  
16 basis of any civil service examination, the closing date for which fell  
17 on or before the date on which the Attorney General issued F.O. No.  
18 1 of 1997, shall be considered within the age requirement applicable  
19 to the position as long as that list, or any list resulting from the  
20 consolidation of that list with another list of eligibles, remains in  
21 effect. In addition, the bill provides that upon such appointment, the  
22 person shall be eligible for enrollment in PFRS irrespective of age and,  
23 if unable to complete 25 years of service prior to attainment of 65  
24 years (the ordinary age of mandatory retirement), will be allowed to  
25 continue in active service past age 65 until completing 25 years of  
26 creditable service.

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32 Permits certain persons over 35 years of age to be appointed to certain  
33 public safety positions and enrolled in PFRS; allows them to serve past  
age 65 in certain cases.