

8-36-205. Mandatory retirement age — Exceptions. —

(a) There shall not be a mandatory age requirement for any member of the Tennessee consolidated retirement system, except for the following:

(1) Members who are employed as state police officers, wildlife officers or commissioned members of the alcoholic beverage commission and who are engaged in law enforcement activities on a day-to-day basis, or who have been transferred from law enforcement activities to a supervisory or administrative position within the same department or agency for which they served as state police officers, wildlife officers or commissioned members of the alcoholic beverage commission; provided, that the mandatory retirement of those members does not violate the Age Discrimination in Employment Act, compiled in 29 U.S.C. § 621 et seq. A mandatory age requirement shall also apply for commissioned instructors employed at the Tennessee law enforcement training academy and members who are employed with the wildlife resources agency as commissioned wildlife area managers, commissioned wildlife lake managers, commissioned boating chiefs, commissioned boating assistant chiefs, commissioned wildlife safety officers, commissioned habitat biologists, commissioned enforcement chiefs or commissioned assistant enforcement chiefs; provided, that the mandatory retirement of those members does not violate the Age Discrimination in Employment Act compiled in 29 U.S.C. § 621 et seq. In cases of doubt, the Tennessee department of human resources shall determine whether the member is employed in a position requiring the mandatory retirement of the member under this subdivision (a)(1). In making that determination, the department shall apply the applicable definitions contained in chapters 34-37 of this title and in the Age Discrimination in Employment Act, compiled in 29 U.S.C. § 621 et seq. Any member employed in a position requiring mandatory retirement under this subsection (a) shall be retired on the first day of the month following the month in which the member attains sixty (60) years of age; and

(2) A mandatory age requirement shall also apply for members who are employed as firefighters or police officers with a political subdivision participating in the Tennessee consolidated retirement system, or who have been transferred from such a position to a supervisory or administrative position within the police or fire department; provided the political subdivision has adopted a mandatory retirement age requirement pursuant to this subdivision (a)(2), and provided that the mandatory retirement of any such member does not violate the Age Discrimination in Employment Act. In cases of doubt, the respective political subdivision shall determine whether the member is employed in a position requiring the mandatory retirement of such member under the provisions of this subdivision (a)(2). In making any such determination, the political subdivision shall apply the applicable definitions contained in chapters 34-37 of this title and in the Age Discrimination in Employment Act. Any political subdivision participating in the retirement system may establish a mandatory retirement age requirement for all its firefighters and police officers and for all its employees who have been transferred from the position of a firefighter or police officer to a supervisory or administrative position within the police or fire department; provided that:

(A) The terms and conditions of the requirement shall be the same for all such employees within its employ;

(B) The mandatory age requirement shall not be less than sixty (60) years of age;

(C) Each such employee shall be retired on the first day of the month following the month in which the employee attains the age requirement established by the political subdivision;

(D) If the mandatory age requirement established by the political subdivision is less than the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act (42 U.S.C. §§ 401-425), each such employee shall be entitled to the supplemental bridge benefit established pursuant to § 8-36-211; and

(E) The chief governing body of the political subdivision passes a resolution authorizing the establishment of the mandatory retirement age requirement. If the mandatory age requirement established by the political subdivision is less than the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act, the political subdivision must first authorize and pay for the cost of an actuarial study to determine the liability associated with the granting of the supplemental bridge benefit. All costs associated with providing the supplemental benefit shall be paid by the political subdivision and not by the state.

(3) (A) Notwithstanding any provision of this section to the contrary, any member employed in a position requiring mandatory retirement under the provisions of subdivision (a)(1) shall be retired on the first day of the month following the month in which the member attains sixty (60) years of age, unless the department of human resources determines that such member serves in a supervisory or administrative position which requires less than fifty percent (50%) of the member's duties to be involved in day-to-day law enforcement activities. Upon such determination by the department, the member may continue in service until the first day of the month following the month in which the member reaches the age requirement for receipt of old age and survivors benefits under Title II of the federal Social Security Act (42 U.S.C. §§ 401-425); provided, that such member signs a consent form whereon the member acknowledges that by continuing in service the member forfeits any rights to retirement benefits, including the supplemental bridge benefit provided for in § 8-36-211, during the period of the member's continued service. Such form must be filed with the retirement division on or before the first day of the month prior to the month in which the member attains sixty (60) years of age. Any such member who fails to file the form at the time and in the manner prescribed by this subdivision (a)(3)(A) shall be retired on the first day of the month following the month in which the member attains sixty (60) years of age.

(B) Notwithstanding any provision of this section to the contrary, any member employed in a position requiring mandatory retirement under the provisions of subdivision (a)(2) shall be retired on the first day of the month following the month in which the member attains the age requirement established by the political subdivision under subdivision (a)(2), unless the respective political subdivision determines that such member serves in a supervisory or administrative position which requires less than fifty percent (50%) of the member's duties to be involved in day-to-day law enforcement or firefighting activities. Upon such determination by the respective political subdivision, the member may continue in service until the first day of the month following the month in which the member reaches the age requirement for receipt of old age and survivors benefits under Title II of the federal Social Security Act (42 U.S.C. §§ 401-425); provided, that such member signs a consent form whereon the member acknowledges that by continuing in service the member forfeits any rights to retirement benefits, including the supplemental bridge benefit provided for in § 8-36-211, during the period of the member's continued service. Such form must be filed with the retirement division on or before the first day of the month prior to the month in which the member attains the age requirement established by the political subdivision under subdivision (a)(2). Any such member who fails to file the form at the time and in the manner prescribed by this subdivision (a)(3)(B) shall be retired on the first day of the month following the month in which the member attains the age requirement established by the political subdivision under subdivision (a)(2).

(C) Notwithstanding any other provision of the law to the contrary, any member who would otherwise be covered under the mandatory retirement provisions of this section and who serves as the

commissioner of the Tennessee department of safety, the director of the Tennessee bureau of investigation, the director of the Tennessee wildlife resources agency, the director of the Tennessee alcoholic beverage commission, or as the chief of a police department or of a fire department, may continue in service beyond the age requirement for receipt of old age and survivors benefits under Title II of the federal Social Security Act (42 U.S.C. §§ 401-425).

(b) This section shall not be construed to render ineffectual the mandatory retirement of any member occurring prior to July 1, 1998.

[Acts 1972, ch. 814, § 5; impl. am. Acts 1974, ch. 481, § 16; Acts 1974, ch. 505, § 1; 1974, ch. 630, § 2; 1978, ch. 516, § 1; 1978, ch. 717, § 1; 1979, ch. 288, § 1; T.C.A., § 8-3905(b); Acts 1988, ch. 973, § 9; 1993, ch. 67, § 23; 1997, ch. 240, § 1; 1998, ch. 1011, § 1; 2005, ch. 204, §§ 12-15; 2006, ch. 870, § 19; 2007, ch. 418, § 4.]