

CRAIN'S DETROIT BUSINESS

www.craindetroit.com

JUNE 23, 2013

Advocates want state to get serious on gay bias

By CHRIS GAUTZ

CRAIN'S DETROIT BUSINESS

Add one more to the list of issues not discussed during the Michigan legislative session: expanding the state's anti-discrimination statute to include sexual orientation.

But there appears to be renewed interest in the topic.

Advocates say that if Michigan is serious about becoming an inviting and inclusive state attractive to investment and new workers, it needs to stop being a state where it is legal for businesses to fire someone simply for being gay.

While that argument has been made for years, the issue has gone nowhere in the Legislature. But there is now more interest in expanding the state's anti-discrimination statute to include sexual orientation -- and the potential that it actually may happen after a Republican went public with his interest in changing the law.

"I do agree it's time to have the conversation," said Rep. Frank Foster, R-Petoskey. "I view this as a human rights issue."

On the other side, one of the arguments against expanding anti-discrimination laws at the state level is increased legal costs for employers who may face claims.

Gov. Rick Snyder has not wanted to talk about the issue. When reporters bring it up, Snyder says he is focused on jobs and the economy. He has said that if the Legislature

wants to bring it up, it is something that could be looked at in the fall.

Foster said it's an important issue because people should feel protected in the state where they want to live and work.

"If it's really perceived by certain people that it's legal for them to be discriminated (against), ... then it puts us as a state at a disadvantage," Foster said. "I think it communicates the wrong thing about how we're open for business and how we want to welcome people into Michigan."

Foster said he does not have any particular timing in mind on when to introduce the bill or on the language it will contain, as he needs to discuss it with stakeholders.

The Michigan Department of Civil Rights issued a report in January on the inclusion of gay rights into state law and made the case that adding such a provision would benefit the state economically.

It noted that in 2000, the three Detroit automakers jointly announced their decision to add sexual orientation to their anti-discrimination policies to help them attract "the most capable workforce." According to the report, in 2011, of the 22 Fortune 500 companies headquartered in the state, 20 voluntarily had added sexual orientation language into their anti-discrimination policies.

Some municipalities have done the same, and at the end of last year, 19 cities in the state had enacted local ordinances



Clark Hill attorney Tom Hathaway

prohibiting discrimination based on sexual orientation.

But there has always been resistance at the state level to expanding the anti-discrimination law, referred to as the Elliott-Larsen Civil Rights Act. It includes protections for things like race, religion, gender, height, weight and disabilities. The law was last amended in 2009, when then-Gov. Jennifer Granholm signed a bill that added pregnancy to the list of protections.

If passed, Michigan would become the 21st state to include sexual orientation into its anti-discrimination law.

"Our Legislature is 30 years behind the times arguing whether there should be discrimination protection," said Peter

continued on page 2

continued from page 1

Hammer, a law professor and director of the Damon J. Keith Center for Civil Rights at Wayne State University.

“Michigan has become Mississippi for gay and lesbian issues.”

Hammer argues that quality of life is a big factor for young talent that has mobility and that they will choose to work in other states unless the law is changed.

One of the problems in building momentum to change the law, Foster said, is that most people think sexual orientation is already covered in the law, but it is not. That leaves those who believe they have been fired because of their sexual orientation without any options.

months when the organization receives 40 claims statewide of discrimination and there is basically nothing it can do for them.

“This is clearly a problem,” she said.

“We want people to have legal recourse when there is wrong that is done to them.”

But the potential for an increase in legal action should concern businesses, said Gary Klotz, a labor and employment attorney at Butzel Long PC.

Klotz, who has helped companies develop their own nondiscrimination policies, said that in his experience, this issue doesn't come up.

He said a considerable amount of societal change in attitude has occurred regarding

be increased exposure to more lawsuits and discrimination claims, Klotz said.

“Every time there is an expansion of the anti-discrimination laws, the predictable and actual outcome is that there are more allegations that people have been discriminated against on that basis,” Klotz said.

Tom Hathaway, a member of the labor and employment practice group at Clark Hill PLC, said that is a concern. But for his business clients, the other aspect is that if the protection is added, it could be brought up not just if someone is fired but for every missed promotion or raise or any number of other scenarios in which an employee could claim discrimination was the cause.

“It's one thing to not discriminate in terms of hiring, but it's totally another when you run into issues where people can use that shield as a sword to go after employers,” Hathaway said.

It's unclear when the issue may proceed further, as Foster said he is still drafting language. But the legislative leadership, while not welcoming the idea with open arms, did not by any means close the door on it.

“It's one thing to not discriminate in terms of hiring, but it's totally another when you run into issues where people can use that shield as a sword to go after employers,” Hathaway said.

Emily Dievendorf, managing director of Equality Michigan, which has pushed this change in the law for years, said there are

sexual orientation in the past 30 years, and it does not have a stigma attached to it.

The problem for businesses then would

Tom Hathaway is nationally known as a premier lawyer displaying superb skills and an excellent trial demeanor (Chambers USA: Leading Lawyers for Business). He is also recognized by Best Lawyers and Michigan Super Lawyers. He is a Member in Clark Hill's Labor & Employment Practice Group where he advises and litigates on all aspects of management public and private sector [management and executives in] personnel and labor issues and business litigation, including employment discrimination, wrongful discharge, harassment, retaliation, whistleblower, trade secret and non-compete matters and counseling on business and personnel matters. **Contact him at: thathaway@clarkhill.com or (313) 965 8233.**

CLARK HILL

www.clarkhill.com