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Senate Bill 4 (as enrolled)
Sponsor: Senator Jeremy Moss
Senate Committee: Civil Rights, Judiciary, and Public Safety
House Committee: Judiciary

Date Completed: 3-14-23

CONTENT

The bill would amend the Elliott-Larsen Civil Rights Act (ELCRA) to prohibit discrimination based on sexual orientation and/or gender identity or expression.

Generally, the ELCRA prohibits discrimination in employment, public accommodations and public services, educational facilities, and housing and real estate based on religion, race, color, national origin, age, sex, height, weight, familial status, or marital status.

The bill also would prohibit discrimination in the areas described above based on sexual orientation and gender identity or expression. "Sexual orientation" would mean having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation. "Gender identity or expression" would mean having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual's assigned sex at birth.

The bill would take effect 90 days after its enactment.

MCL 37.2102 et al.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

The bill is a reintroduction of Senate Bill 208 from the 2021-2022 Legislative Session. The bill was referred to the Senate Committee on Government Operations but received no further action.

BACKGROUND

In May 2018, the Michigan Civil Rights Commission issued Interpretative Statement 2018-1 declaring that discrimination based on sexual orientation and gender identity falls under the definition of "discrimination because of . . . sex" under the ELCRA. Therefore, the Michigan Department of Civil Rights (MDCR) determined it has the authority to accept complaints of discrimination based on sexual orientation and gender identity.

In July 2022, the Michigan Supreme Court ruled that the denial of "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a

place of public accommodation or public service" on the basis of sexual orientation constitutes discrimination "because of . . . sex", which constitutes a violation of the ELCRA.¹

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Cory Savino, PhD

¹ In *Rouch World, LLC and Uprooted Electrolysis v Department of Civil Rights*, Case No. 162482 (2022), Rouch World, LLC brought an action in the Court of Claims against the MDCR seeking, among other things, a declaratory judgment that the prohibition of sex discrimination in places of public accommodation under the ELCRA did not bar discrimination based on sexual orientation or gender identity. The owners of Rouch World denied a request to host a same-sex wedding, claiming that doing so would violate their religious beliefs. The owner of Uprooted Electrolysis denied providing hair-removal services to a transgender woman on the same basis. The affected individuals filed complaints with the MDCR. The MDCR opened investigations into both incidents, but the investigations were stayed when the plaintiffs brought their lawsuit. Relying on *Barbour v Dept. of Social Services*, 198 Mich App 183 (1993), the Court of Claims concluded that the ELCRA's discrimination prohibition did not encompass sexual orientation. (In *Barbour*, the Court of Appeals held that Congress's intent in prohibiting discrimination because of sex was to place women on an equal footing with men rather than to regulate discrimination based on sexual orientation and, therefore, the ELCRA did not encompass discrimination based on sexual orientation.)

However, because *Barbour* did not address gender identity discrimination, the Court of Claims ruled that when a person discriminates against someone who identifies with a gender different than that assigned at birth, then that conduct is disparate treatment on the basis of sex and is prohibited under the ELCRA. In coming to its conclusion regarding discrimination based on gender identity, the Court of Claims relied on the United States Supreme Court's decision in *Bostock v Clayton Co*, 590 US ___ (2020), in which the Court held that an employer violates Title VII when it intentionally fires a person on the basis of that person's homosexuality or transgender identity because doing so necessarily involves discrimination based on sex.

The Court of Claims granted the defendants' motion for summary disposition as to Uprooted Electrolysis but denied defendant's motion for summary disposition as to Rouch World. Defendants filed an appeal challenging the rejection of summary disposition as to Rouch World and filed a bypass application in the Michigan Supreme Court. The Court overruled *Barbour* and reversed the Court of Claims's decision with respect to Rouch World.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.