

by PETER FREIBERG

In March 1982 a milestone in the gay rights movement occurred in Wisconsin as then-Gov. Lee Sherman Dreyfus, a Republican, signed into law the first statewide gay rights legislation in the United States. Since that time, gay rights groups, and their supporters in more than a dozen states, have sought passage of similar bills—but despite some near successes, Wisconsin still stands alone as a "free state," in the words of state Rep. David Clarenbach (D-Madison), the law's chief sponsor.

How has Wisconsin's law worked in the almost 3½ years since it was signed? Has it affected the daily lives of lesbians and gay men in the state, making it easier—and safer—to come out? Was the law worth the priority Wisconsin activists gave it, just as groups in other states continue to do?

In interviews with *The Advocate*, Clarenbach, Wisconsin activists and supporters of gay rights within the state administration generally agreed that the bill's impact has been positive and even profound. On a symbolic level, they said, the legislation bolstered the morale of lesbians and gay men; on a practical level, it gave them recourse by making antigay discrimination illegal in private and public employment, housing and public accommodations.

"I feel lucky to live in Wisconsin," says Sandra Lipke, who heads the Wisconsin Lesbian and Gay Network. "The law has granted us credibility as a minority."

Moreover, current Gov. Anthony Earl, a Democrat, whose responsibility it has been to implement the gay rights law, has shown extraordinary sensitivity to gay concerns, according to activists. Earl set up an advisory Council on Les-

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bian and Gay Issues to help in implementation of the legislation and to make recommendations on other gay-related issues. Recently Earl won funding for a half-time staff member for the council despite legislative opposition. Without the law, it is extremely doubtful such a council would have been created.

On the other side of the ledger, the number of people filing discrimination complaints with the state's Equal Rights Division (ERD) has been relatively small—only about 100 to date. And activists in the rural areas of Wisconsin say that most straight people—even many gays—are unaware of the law's existence. It seems clear that most gays in Wisconsin, like gays in the 49 other



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states, still fear coming out, making it impossible for them to take advantage of the law when discrimination does occur.

Nevertheless, the very existence of the law makes it likely that more and more gays will use it as time goes on. Merry Fran Tryon, ERD's administrator, says that this has been the experience with other minority groups that win rights legislation. And the long-term benefit, Clarenbach maintains, will be to provide a basis for gays to assert their rights on

will succeed. He also believes that the law "has had a profound impact on the lives of lesbians and gay men, both from a legal and symbolic standpoint.

"The message is clear that Wisconsin is a 'free state,' and lesbians and gay men are to be accepted in our state on an equal legal footing," claims Clarenbach. "The message is equally directed at the straight community, that we are a diverse society... and we have to protect subgroups in our society from

Wisconsin: Gay Rights

a variety of issues "in every nook and cranny" of Wisconsin. "The battle will be waged in the village squares," he says.

Some activists outside Wisconsin, who remember the state as the home of Sen. Joseph McCarthy, whose now-infamous House UnAmerican Activities Committee included "fag hunts" along with its publicized "red hunts," feel the state was an odd locale for passage of the nation's first state gay rights legislation. But Wisconsin, which nurtured the progressive movement earlier in the century, passed much legislation that was subsequently emulated in other cities and states—and the populist tradition has never entirely died out there.

The state gay rights bill was approved about eight years after it was first introduced, according to Clarenbach. A key element in its passage was support obtained from mainstream religious groups and leaders, especially the Roman Catholic Archdiocese of Milwaukee. This backing helped offset last-minute organizing by right-wing Moral Majority-type groups who sought to convince Gov. Dreyfus to veto the measure.

Ironically, it was not until the year after approval of the gay rights bill that the Wisconsin legislature repealed the state's sodomy law, decriminalizing gay sex.

Since passage of the gay rights law, says Clarenbach, there have been some attempts to repeal it, but none recently—and he does not believe any future effort

mistreatment."

Following passage, gay groups cooperated with the ERD in publishing a brochure about the law, "The Rights of Gay People." A respected former Republican governor of Wisconsin, Warren Knowles, made a television public service announcement in which he enumerated the protections of the state's equal rights legislation, including sexual orientation. Media coverage of the law has continued to surface on occasion.

This publicity has probably helped to make many lesbians and gay men in the cities aware of the law's existence, but, ERD's Tryon says, "I'm not sure the word is really out as much as we'd like it to be." In the rural areas of the state, ignorance of the law is widespread among both gays and straights, according to some activists.

"The people here don't know it passed," says Bob Jansen, who owns the Main Club, a gay bar in Superior, a northern Wisconsin city of about 20,000. One reason for the lack of awareness, according to Jansen, is the absence of contact between gay activists in areas like Milwaukee and Madison and those up north. "I don't think people in the lower part of the state realize there's a gay community up here," Jansen says.

Duane Graves, 20, who organized a gay student group in Superior, was forced to leave his job in a restaurant after he was interviewed on television protesting an antigay sign placed on a marquee by a fundamentalist minister.

"I thought of filing a complaint under the legislation," says Graves, "but I didn't know where to turn. I didn't know any lawyers to turn to. Then I decided for the amount of money I would get, it would have cost three times as much [to file the complaint]."

In fact, it doesn't require a lawyer to file a complaint with the ERD. Tryon, who heads the agency, says a bigger barrier to gays' filing complaints is the fear of retaliation if their gayness becomes known.

"I think that's the big reason," says Tryon, in explaining why so few people have filed charges since the law was enacted. "I think they [gays] don't want to... call attention to themselves. Better to remain quiet or leave or suffer indignities. I've had potential complainants call me and say, 'This is what happened,' and I say, 'Are you willing to file charges?' There's very little you can do unless a person comes forward."

Tryon is convinced there's a great deal more antigay discrimination in Wisconsin than is reflected by the number of complaints filed to date. But even when complaints are not filed, the existence of the law sometimes gives ERD an oppor-

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tunity to exercise influence.

Tryon recalls a case in which a gay male university professor was hired by a state school. The professor and his lover began looking for a house. A real-estate agent who realized they were gay called the university, after which the dean requested the gay man's resignation.

According to Tryon, the professor did not want to file a complaint, fearing it would jeopardize any future employment. But Tryon wrote a letter to the dean, saying that while the agency could not take any formal action, she did want to inform the school of the state's gay rights legislation.

"They retained him, they rescinded the request for the resignation," she says.

While the number of complaints has increased since the first year, Tryon warns that employers are "sophisticated in their ways," and that proving antigay discrimination is harder than demonstrating bias against other groups of people.

"It's not like gender or race, where you can see this person is black or Asian or a woman. Someone will say, 'I had no idea they were gay.' You have to have evidence that really stands out."

Issues. She says that after ERD found "probable cause" in a case involving discrimination by a bar owner who refused to let two gay men dance together, the case was referred back to the district attorney—who has filed no charges.



The majority of complaints filed thus far are in public accommodations and employment. About 30%, Tryon estimates, have had a "definite positive outcome," with the case settled either before the agency completed its investigation or after it found "probable cause" for hearings on the complaints.

The other cases include those that were withdrawn by the complainant, were found by the agency to have "no probable cause" of discrimination or did

not come within the agency's jurisdiction. She says that after ERD found "probable cause" in a case involving discrimination by a bar owner who refused to let two gay men dance together, the case was referred back to the district attorney—who has filed no charges.

Gay Issues and appointed an openly gay man, Ron McCrea, as his press secretary. Sandra Lipke, who heads the Wisconsin Lesbian and Gay Network, which is seeking to organize gay people throughout the state, sums up the view of many activists when she says: "We've been very fortunate to have a governor who has shown as much courage and guts as he has. His appointment of the council, of his own press person, those are moves he politically didn't have to make."

Earl's commitment was demonstrated again this year. He signed into law—despite requests from his own agencies for a veto—legislation guaranteeing confidentiality for people taking the AIDS antibody test. He secured nearly \$200,000 in AIDS funding and overcame a 9-1 legislative committee vote against his request for money to enable the council to hire a staff person.

The council, says Cochair Kathleen Nichols, has worked with state agencies to make sure that they enforce the law. The 14-member council, according to Nichols, initially spent time familiarizing itself with state government. "Then we used leverage to make certain changes," she says.

When gay prisoners complained that they were being harassed by guards Nichols says, the council stepped in: The prison system has since agreed to include gay rights material in its training curriculum for guards. The council recently asked Earl to direct the state Law Enforcement Standards Board to include gay rights material in the training curriculum for local police agencies—and Earl, she says, agreed to make that request.

Nichols, an openly lesbian elected member of the Dane County Board of Supervisors (which includes Madison and surrounding areas), says many police agencies are staffed by "decent-hearted people" who need to be told how to adapt their programs to meet the needs of lesbians and gay men.

On the other hand, the state superintendent of public instruction has not yet agreed to requests from the council to discuss educational policies, notes Cindy Lappman, a Racine resident who is also on the Governor's Council. And the number of openly gay police officers in localities remains tiny—reflecting the discrimination that undoubtedly still exists.

"The challenge," says Marc Hauptert, president of the Cream City Business Association, a Milwaukee gay organization, "is to get the legislation infused in the whole bureaucratic structure."

There have also been unexpected effects from the law. Sue Burke, editor of *Out!*, a Wisconsin gay monthly newspaper, and a former member of the Governor's Council, believes it was largely because of the gay rights legislation that she and others were able to meet with the top editors of the *Milwaukee Journal* and do some "consciousness raising" with them. The law, of course, did not mandate any such meeting, but Burke is convinced the credibility it gave to gays helped in obtaining the meeting.

Some activists say the law has



Cindy Lappman

spurred gay groups in Madison to propose alternative family legislation, which would bar discrimination against unmarried couples—gay and straight—by local government and businesses; many issues, such as child custody, are not covered by the gay rights law. Activists are working for such legislation.

"I don't think anyone's taking it easy yet," says Lappman. "There's still a lot of work to be done."

Among that work is political organizing. Press Secretary McCrea says that if the gay rights law was proposed today, it would be extremely difficult to pass, given the conservative trends in the nation and in the state. "It doesn't seem to me," says McCrea, "that the gay political vote counts for anything in Wisconsin. There's no really strong [statewide] gay organization."

Unless a homophobic governor is elected, however, there seems little likelihood that the law will be overturned. And that, says McCrea, means "the whole nature of discussions about gay rights has changed. . . . The law confers a kind of legitimacy on a sexual minority that it never had before. The burden is not on the individual to justify his or her sexuality. The burden is on the discriminators."



Gov. Anthony Earl (left), CCBA Sect'y Sue Mortensen and CCBA Pres. Marc Hauptert (right)

Moreover, the public accommodations section in Wisconsin's equal rights law is weak, because prosecution is left up to the local district attorney—something gay activists and others are trying to change. An example of the "weak link" in this system is given by Kathleen Nichols, cochair of the Governor's Council on Gay and Lesbian

not come within the agency's jurisdiction. A handful of cases are still going through the hearing process, with no final decision yet rendered.

Just as important as the formal process of implementing the law has been the support shown by Gov. Earl. Shortly after he took office in 1983, Earl created the Governor's Council on Lesbian and

based in Ft. Wayne, Ind., sent a letter to 700 smaller firms it underwrites, asking them to take "lifestyle" and habits into account when considering applicants. Jerry Davis, a spokesman for the company, said later that the letter had been "misunderstood" by the press and that the company had no intention of discriminating against homosexuals. But he says the company has gotten approval in about 35 states to add AIDS-related questions to its application forms—just as it inquires about other diseases.

- Another firm, Columbus, Ohio-based Nationwide Insurance Co., which had been quoted as saying it would search out and reject gay applicants, claimed it was misquoted. But a company vice president, Stephen Rish, says, "If it came to our attention in the underwriting process [of an applicant] that an individual happened to be gay, we'd give serious thought to giving him the antibody test."

- In San Francisco, Steve Shiflett, 33, says he was turned down for disability insurance by a firm after his doctor sent the company data that he had participated in a research blood study. He was subsequently turned down by three more firms.

As with many gay men who were sexually active, Shiflett's case is complicated. He has a history of STDs that would have made it difficult for him to get insurance even before the AIDS crisis. While Shiflett acknowledges he's in the "high risk group," he says he has no symptoms of ARC. "I don't think the insurance companies are using diagnoses to make their decisions. They're using pre-conceived notions about applicants."

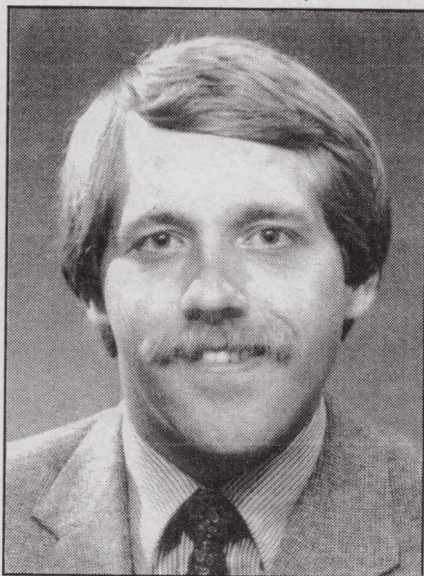
Shiflett's insurance agent, Deborah Pines, says, "The way to sneak through is to ask for small amounts [of disability insurance], but to ask for a guaranteed insurability option [that allows the holder to raise it later]. The same applies for life insurance, she says. Asking for \$100,000, she says, "is no problem"; if the amount is higher, the underwriter—the person who checks on applications submitted through insurance agents—is going to give it a rigorous review.

Carl Heimann, an openly gay insurance broker in San Francisco, says disability insurance is the most difficult to get, followed by life insurance and then health. His advice to gay men who don't have adequate insurance is: "Apply now, for God's sake, get it done. Things aren't going to get any easier, the AIDS crisis is crisis is not going to get any better. Try to get insurance as quickly as possible. Screw the VCR, take care of yourself first." Heimann added that gay men should read their health insurance policies carefully—especially the sections on exclusions, limitations and preexisting conditions—to find out if they need additional coverage. Most group disability

plans, he says, are inadequate against AIDS—and a separate individual contract should be purchased. Still, Heimann maintains insurance companies have no business singling out gay men for special testing. "They should look at the rest of our health history," he says.

No lawsuits have yet been filed on any cases. "It's still at an early stage," says Leonard Graff, legal director of National Gay Rights Advocates, the San Francisco-based legal rights group, "and there's still a chance we can have some influence short of litigation."

Ben Schatz, an NGRA lawyer, says, "We don't even know if a case can be brought." As Schatz noted, and as insurance firm executives emphasized in



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interviews with *The ADVOCATE*, insurance underwriting is inherently discriminatory—the object is to exclude from coverage as many unhealthy people as possible, providing firms can show an actuarial basis for their decisions.

ACLI's Bier says he expects an increasing number of companies to start using the HTLV-3 antibody test. Questioned about whether people who test positive will automatically be marked uninsurable, he replied:

"All I'm prepared to say is that they're going to have a lot harder time if they test positive than if they don't, and a company may decline to insure you altogether. That's in fact not so different from a middle-aged man with hypertension, who's overweight and has an abnormal EKG. He would probably have an awfully difficult time getting insurance."

Asked whether this would be fair to the estimated 80% of positive testing people who will not come down with AIDS, Bier said, "To quote from a former president of ours, 'Life's not fair.' We know that someone who tests positive may *not* go on to

get the disease, but we have no way of knowing who *is* going to go on to get it."

Individuals covered through group insurance obtained by their firm—which accounts for 85% of all health insurance—are unlikely to be asked to take the antibody test, since those contracts do not include health questions.

Bier also says that for people holding individual insurance, "There's no question of [insurance] companies changing the rules and saying we're not going to honor claims. Under existing laws, that simply is not permissible." (Individual employers who pay for their employees' health care and are not state-regulated may seek to lessen coverage.)

The catastrophic effect of lack of insurance for an individual led Wisconsin state Rep. David Clarenbach (D-Madison) to sponsor a law last summer to assure confidentiality of HTLV-3 antibody test results and to ban insurance companies from using the test to determine "insurability or insurance rates."

The legislation was approved, but this fall the insurance industry sought to overturn it. In negotiations, a new bill was approved, which both Clarenbach and George Hardy, legislative counsel to Northwestern Mutual Life Insurance Co., call a "compromise."

The new bill states that before antibody test results can be used, the state epidemiologist must certify that the tests were proven to be "medically significant." What "medically significant" will mean in practice is uncertain.

The new law also provides that if and when the test is deemed "significant," anyone denied individual health insurance will automatically be covered under Wisconsin's high-risk sharing pool for catastrophic illnesses. (Seven other states have similar high-risk pools, with costs shared by insurance companies.)

Dr. Mathilde Krim, cochair of the American Foundation for AIDS Research, echoes others who say the insurance industry isn't acting much differently with AIDS than with other diseases. "It's the system that's wrong," she says. "This country, because of AIDS, is going to have to rethink whether it doesn't need some sort of national health insurance."

In a similar vein, *The New York Times* wrote in an editorial: "If the epidemic and its costs continue, Federal payment of AIDS medical bills may be the only way to protect the present system of private health insurance and to defend AIDS victims from the cruelty of needless ostracism." But whether even such a limited national policy will be adopted given the present conservative political climate is very doubtful—and one of the reasons gay men have serious cause to be alarmed.

—Peter Freiberg