



HOUSE BILL No. 5185

November 4, 1993, Introduced by Rep. Bankes and referred to the Committee on Human Services and Children.

A bill to amend the title and sections 1, 2, 3, 4, and 7 of Act No. 381 of the Public Acts of 1974, entitled as amended

"An act to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to prescribe the use of the term "good moral character" or similar term as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon,"

being sections 338.41, 338.42, 338.43, 338.44, and 338.47 of the Michigan Compiled Laws; to add sections 1a and 8; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. The title and sections 1, 2, 3, 4, and 7 of Act No. 381 of the Public Acts 1974, being sections 338.41, 338.42, 338.43, 338.44, and 338.47 of the Michigan Compiled Laws, are amended and sections 1a and 8 are added to read as follows:

TITLE

1
2 An act ~~to encourage and contribute to the rehabilitation of~~
3 ~~former offenders and to assist them in the assumption of the~~
4 ~~responsibilities of citizenship;~~ to prescribe the use of the
5 term "good moral character" ~~or similar term~~ as a requirement
6 for ~~an occupational or professional license or when used as a~~
7 ~~requirement to establish or operate an organization or facility~~
8 ~~regulated~~ LICENSURE by this state; TO PRESCRIBE CERTAIN DUTIES
9 FOR CERTAIN STATE DEPARTMENTS AND AGENCIES; and to provide
10 ~~administrative and judicial~~ CERTAIN procedures AND REMEDIES to
11 contest licensing board or agency rulings thereon.

12 Sec. 1. ~~(1) The phrase "good~~ AS USED IN THIS ACT:

13 (A) "ADMINISTRATIVE PROCEDURES ACT OF 1969" MEANS ACT
14 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
15 24.328 OF THE MICHIGAN COMPILED LAWS.

16 (B) "GOOD moral character", ~~or words of similar import,~~
17 when used as a QUALIFICATION TO OBTAIN A LICENSE OR AS A require-
18 ment ~~for an occupational or professional license or when used as~~
19 ~~a requirement to establish or operate an organization or facility~~
20 ~~regulated by this state in the Michigan Compiled Laws or adminis-~~
21 ~~trative rules promulgated under those laws shall be construed to~~
22 ~~mean the propensity on the part of~~ TO MAINTAIN A LICENSE IN THIS
23 STATE, MEANS THE LIKELIHOOD THAT, GIVEN FULL DISCLOSURE OF THE
24 CIRCUMSTANCES, THE PUBLIC WILL TRUST the person to serve the
25 public in the licensed area in a fair, honest, and open manner.

26 (C) "LICENSE" MEANS AN OCCUPATIONAL OR PROFESSIONAL LICENSE,
27 CERTIFICATE, REGISTRATION, PERMIT, APPROVAL, OR SIMILAR AUTHORITY

1 TO ESTABLISH OR OPERATE AN ORGANIZATION OR FACILITY, PERFORM
2 CERTAIN ACTIVITIES, OR USE 1 OR MORE SPECIFIC TITLES REGULATED BY
3 THIS STATE AS PROVIDED BY LAW OR BY RULE.

4 (D) ~~(2) As used in this act, "principal~~ "PRINCIPAL
5 department" means the department which has jurisdiction over the
6 board or agency issuing the license.

7 SEC. 1A. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS "THE
8 GOOD MORAL CHARACTER ACT".

9 Sec. 2. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS ACT,
10 A judgment of guilt in a criminal prosecution or a judgment in a
11 civil action shall not be used, in and of itself, by a licensing
12 board or agency as proof of a person's lack of good moral
13 character. It may be used as evidence in the determination ~~—~~
14 and, when so used, the person shall be notified and shall be per-
15 mitted to rebut the evidence by showing that at the current time
16 he or she ~~has the ability to, and~~ is likely to ~~—~~ BE TRUSTED
17 TO serve the public in a fair, honest, and open manner, that he
18 or she is rehabilitated, or that the substance of the former
19 offense OR JUDGMENT IN A CIVIL ACTION is not reasonably related
20 to the ~~occupation or profession for which he or she seeks to be~~
21 ~~licensed~~ LICENSE BEING SOUGHT.

22 (2) THE PROCEDURES FOR ISSUING A PERSON A NOTICE THAT THE
23 LICENSING BOARD OR AGENCY HAS DETERMINED THAT THE PERSON MAY LACK
24 GOOD MORAL CHARACTER AND FOR PRESENTING HIS OR HER REBUTTAL AND
25 ANY ADDITIONAL EVIDENCE NOT CONTAINED IN THE LICENSING BOARD OR
26 AGENCY RECORDS SHALL FOLLOW THE PROCEDURE SET FORTH IN THE
27 APPLICABLE LICENSING ACT FOR THE DENIAL OF A LICENSE TO AN

1 APPLICANT OR FOR DISCIPLINARY ACTION AGAINST AN EXISTING
2 LICENSE. IF NO SPECIFIC PROCEDURE IS PROVIDED IN THE LICENSING
3 ACT, THE PROCEDURE SET FORTH IN CHAPTERS 4, 5, AND 6 OF THE
4 ADMINISTRATIVE PROCEDURES ACT OF 1969, BEING SECTIONS 24.271 TO
5 24.306 OF THE MICHIGAN COMPILED LAWS, APPLIES.

6 Sec. 3. (1) The following criminal records shall not be
7 used, examined, or requested by a licensing board or agency in a
8 determination of good moral character: ~~when used as a require-~~
9 ~~ment to establish or operate an organization or facility regu-~~
10 ~~lated by this state, or pursuant to occupational or professional~~
11 ~~licensure.~~

12 (a) Records of an arrest not followed by a conviction.

13 (b) Records of a conviction which has been reversed or
14 vacated, including the arrest records relevant to that
15 conviction.

16 (c) Records of an arrest or conviction for a misdemeanor ~~or~~
17 ~~a felony~~ unrelated to ~~the person's likelihood to serve the~~
18 ~~public in a fair, honest, and open manner~~ GOOD MORAL CHARACTER.

19 (d) Records of an arrest or conviction for a misdemeanor for
20 the conviction of which a person may not be incarcerated in a
21 jail or prison.

22 (2) A criminal record shall not be furnished to a licensing
23 board or agency except by the principal department, and shall be
24 furnished only after the director of the principal department or
25 a person designated by the director has determined that the
26 information to be provided to the LICENSING board or agency meets
27 the criteria set forth in this section.

1 (3) The director or a person designated by the director of
2 the principal department ~~shall~~ MAY promulgate rules CONSISTENT
3 WITH THIS ACT PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF
4 1969 for each licensing board or agency under that department's
5 jurisdiction which prescribe the offenses or categories of
6 offenses which the department considers indicate a person ~~is not~~
7 ~~likely to serve the public as a licensee in a fair, honest, and~~
8 ~~open manner~~ LACKS GOOD MORAL CHARACTER. Each licensing board or
9 agency may make recommendations to the director regarding the
10 rules to be promulgated. ~~The rules shall be consistent with~~
11 ~~this act and promulgated pursuant to Act No. 306 of the Public~~
12 ~~Acts of 1969, as amended, being sections 24.201 to 24.315 of the~~
13 ~~Michigan Compiled Laws. Prior to the promulgation of the rules~~
14 ~~pertaining to a board or agency, all felonies~~ ANY FELONY shall
15 be considered by the LICENSING board or agency to be relevant to
16 the ~~ability or likelihood the person will serve the public in a~~
17 ~~fair, honest and open manner~~ DETERMINATION OF GOOD MORAL
18 CHARACTER.

19 Sec. 4. This act ~~shall~~ DOES not bar the use by a licens-
20 ing board or agency ~~in its determination of a person's fitness,~~
21 of any other public record ~~—~~ not related to arrest or prosecu-
22 tion ~~—~~ or of any other source of unbiased and accurate informa-
23 tion IN ITS DETERMINATION OF A PERSON'S GOOD MORAL CHARACTER.

24 Sec. 7. This act does not affect the power of a licensing
25 BOARD OR agency to discipline licensees under its jurisdiction
26 for ~~prohibited~~ acts of ~~professional~~ misconduct or
27 dishonesty.

1 SEC. 8. (1) NOTWITHSTANDING SECTION 2, FAILURE OF A PERSON
2 TO PAY CHILD SUPPORT PURSUANT TO A SUPPORT ORDER SHALL BE PRIMA
3 FACIE EVIDENCE OF A LACK OF GOOD MORAL CHARACTER, DEMONSTRATING A
4 DISREGARD FOR THE LAW AND LEGAL AUTHORITY SUFFICIENT TO ENDANGER
5 THE PUBLIC TRUST IN THE PERSON'S ABILITY TO PERFORM AS A
6 LICENSEE.

7 (2) UPON RECEIPT OF NOTICE FROM THE FRIEND OF THE COURT OF A
8 CHILD SUPPORT ARREARAGE, THE LICENSING BOARD OR AGENCY SHALL
9 PROMPTLY SCHEDULE A COMPLIANCE CONFERENCE IN ACCORDANCE WITH SEC-
10 TION 92 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, BEING SEC-
11 TION 24.292 OF THE MICHIGAN COMPILED LAWS. AT THE COMPLIANCE
12 CONFERENCE, THE ONLY ISSUES TO BE CONSIDERED ARE WHETHER OR NOT
13 THE PERSON IS LICENSED UNDER THE APPLICABLE ACT AND WHETHER OR
14 NOT THE FRIEND OF THE COURT HAS FOUND THAT THE ARREARAGE HAS BEEN
15 PAID OR ARRANGED TO BE PAID IN A MANNER SATISFACTORY TO THE
16 FRIEND OF THE COURT. IF THE LICENSEE IS DETERMINED NOT TO BE IN
17 COMPLIANCE WITH THE PAYMENT OF THE SUPPORT ORDER, THE LICENSE MAY
18 BE SUMMARILY SUSPENDED AS PROVIDED IN SECTION 92 OF THE ADMINIS-
19 TRATIVE PROCEDURES ACT OF 1969. WHEN AN ADMINISTRATIVE HEARING
20 IS HELD ON FINAL DISCIPLINARY ACTION, THE FRIEND OF THE COURT MAY
21 MAKE WRITTEN RECOMMENDATIONS REGARDING REVOCATION, SUSPENSION, OR
22 THE IMPOSITION OF ANY RESTRICTIONS ON THE LICENSEE AUTHORIZED
23 UNDER THE APPLICABLE LICENSING ACT.

24 Section 2. Sections 5 and 6 of Act No. 381 of the Public
25 Acts of 1974, being sections 338.45 and 338.46 of the Michigan
26 Compiled Laws, are repealed.