



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bill 742 (Substitute S-1 as reported)  
Sponsor: Senator Tom Casperson  
Committee: Judiciary

Date Completed: 7-12-16

### **RATIONALE**

The Revised Judicature Act (RJA) establishes requirements for a person to be admitted to the State Bar of Michigan in order to practice law in the State. These include a requirement that an applicant for the bar exam must have graduated from a "reputable and qualified law school". According to Rules for the Board of Law Examiners, a law school is considered "reputable and qualified" if it is approved by the American Bar Association (ABA). As a result, some Michigan residents who are licensed to practice law in other states, and do practice in those states' courts as well as Federal courts, are not authorized to take the Michigan bar exam because they graduated from law schools that are not on the list of schools approved by the ABA. Some people believe that a person licensed in any other U.S. state or territory or the District of Columbia should be allowed to apply for examination in Michigan without meeting the law school accreditation requirements.

In addition, the RJA also establishes fees for admission to the State Bar. The fees set in statute have not been increased since 2000, although the Michigan Supreme Court has raised those fees, pursuant to statutory authorization for the Court to do so. Current fee revenue apparently does not cover the costs of the Board of Law Examiners in administering the bar exam and conducting background investigations, and the State's General Fund makes up for the deficit. It has been suggested that the fees established in statute, and the amount to which the Court is authorized to increase them, should be raised and that the cap on those fees should be increased administratively based on the rate of inflation.

### **CONTENT**

**The bill would amend the Revised Judicature Act to do the following regarding admission to the State Bar of Michigan:**

- **Allow a person who was licensed to practice law in another U.S. state or territory or the District of Columbia to apply for examination for admission without meeting certain educational requirements.**
- **Create a rebuttable presumption that a person licensed to practice out of State had sufficient legal education to practice law in Michigan if he or she had passed the out-of-State bar exam.**
- **Increase the fees to be paid by an applicant for admission; increase the maximum amounts to which the Supreme Court may raise those fees; and require those maximum amounts to be adjusted annually, based on the rate of inflation.**

#### **Educational Requirements**

The RJA specifies minimum educational requirements that an applicant for admission to the State Bar must have completed successfully before beginning his or her legal education. The Act also requires each applicant for examination for admission to the State Bar to be a graduate from a reputable and qualified law school in Michigan, another U.S. state or territory, or the District of Columbia. Under the bill, those requirements would apply except as provided in Section 945, which the bill would add to the Act.

Under Section 945, an individual who was duly licensed to practice law in the court of last resort of any other state or U.S. territory or the District of Columbia could apply for examination in Michigan without meeting the education requirements described above if he or she proved all of the following to the satisfaction of the Board of Law Examiners:

- He or she had not been suspended or discharged from the bar of another state or territory or the District of Columbia or from the bar of any U.S. Federal court.
- He or she was a person of good moral character, as defined in Public Act 381 of 1974.
- He or she was at least 18 years of age.
- He or she had the current fitness and ability to enable him or her to practice law in Michigan courts.
- He or she had sufficient general education and learning in the law to enable him or her to practice law in Michigan courts.

In determining whether the last condition was met, the Board of Law Examiners would have to apply a rebuttable presumption that a person who had successfully passed the bar exam in another state or territory or the District of Columbia had sufficient general education and learning in the law to enable him or her to practice law in Michigan courts.

(Under Public Act 381 of 1974, the phrase "good moral character", when used as a requirement for an occupational or professional license, means the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.)

#### Fees

The RJA contains a schedule of fees that must be paid by each applicant for admission to the State Bar and authorizes the Supreme Court to increase some of those fees up to certain amounts. Table 1 shows the statutory fees, the amount to which the Court may increase the fees, and the fees currently charged.

<b>Table 1</b>			
<b>Current State Bar Admission Fees</b>			
<b>Purpose</b>	<b>Statutory Fee</b>	<b>Maximum Court Increase</b>	<b>Current Fee</b>
Examination	\$300	\$400	\$340 <sup>a</sup>
Re-examination or Recertification	\$200	\$300	\$240 <sup>a</sup>
Admission without Exam	\$600	\$800	\$600 <sup>b</sup>
Late Filing of Application or Transfer of Application	\$100	N/A	N/A

<sup>a</sup> According to the "Michigan Bar Exam Application Instructions and Information".  
<sup>b</sup> According to the Board of Law Examiners' "Application for Admission without Examination".

(As discussed in the FISCAL IMPACT below, the court adopted an order increasing the fees to the maximum allowed, effective August 1, 2016.)

Under the bill, the fees and the amount to which the Court could increase them would be as shown in Table 2.

<b>Table 2</b>			
<b>Proposed State Bar Admission Fees</b>			
<b>Purpose</b>	<b>Fee Before 1-1-2017</b>	<b>Fee On or After 1-1-2017</b>	<b>Maximum Court Increase</b>
Examination	\$300	\$400	\$600
Re-examination	\$240	\$300	\$500
Recertification	\$200	\$300	\$500
Admission without Exam	\$600	\$800	\$1,500
Late Filing of Application or Transfer of Application	\$100	N/A	N/A

In addition, beginning two years after the bill's effective date, the maximum fees would have to be adjusted on an annual basis by an amount determined by the State Treasurer to reflect the cumulative percentage change in the Detroit consumer price index over the preceding calendar year. ("Detroit consumer price index" would mean the most comprehensive index of consumer prices available for the Detroit area from the U.S. Department of Labor's Bureau of Labor Statistics.)

The fees would continue to be paid to the Board of Law Examiners, which must deposit fee revenue in the General Fund for the restricted purpose of Supreme Court expenditures related to the administration of the Board.

MCL 600.931 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The purpose of regulating attorney licensure and restricting who may take the bar exam is to provide a level of protection to the public by ensuring the admission of skilled, knowledgeable, and reputable individuals as officers of the court. The bill would further that aim in relation to candidates for the State Bar who are licensed in other U.S. jurisdictions but did not attend a law school approved by the ABA. As noted above, candidates for the Michigan bar must have graduated from a law school that is "reputable and qualified", and the Board of Law Examiners considers law schools that are ABA-approved to be reputable and qualified. Reportedly, the ABA's accrediting standards are focused on many factors, such as a school's administration and organization, solvency, and facilities and resources, and not just on the school's specific curricular offerings or educational requirements. A law school's lack of ABA approval does not mean that a graduate of the school is not capable of serving the public with skill, knowledge, and honor; indeed, law schools that are not ABA-approved can and do educate candidates for the bar who are prepared to provide legal representation skillfully, knowledgeably, and honorably.

When a candidate has passed another state's or territory's bar exam, has completed a character and fitness evaluation, and has practiced law in another jurisdiction without sanction or penalty, he or she has exhibited sufficient learning in the law and capability to practice law in Michigan courts, regardless of the ABA accreditation of the law school from which he or she graduated. Such an individual should not be prevented from taking the Michigan bar exam. If the focus of attorney qualifications were placed on a candidate's ability, and not on the law school that he or she attended, the licensing process would reveal whether the candidate had the requisite knowledge and capability to be licensed as a lawyer in Michigan.

### **Supporting Argument**

Wisconsin reportedly has allowed non-ABA law school graduates to be admitted as attorneys since 1998. The Senate Judiciary Committee received testimony from three Michigan residents, all of whom are licensed to practice law in Wisconsin despite not having attended an ABA-approved law school. One of those attorneys lives in the Upper Peninsula, near the Wisconsin border, and has practiced criminal law in Wisconsin for 12 years. For the last six years, he has prosecuted cases for Marinette County, just across the border from Menominee, Michigan. Another lawyer who submitted testimony lives and practices law in southeastern Michigan, but may only practice in the Federal court system because Michigan law and rules prevent him from taking the bar exam in this State. The third lawyer lives in the Upper Peninsula, is licensed to practice law in Wisconsin and California, and also practices in Federal district courts in Michigan and Indiana.

These experienced and accomplished attorneys, and others like them, should be allowed to apply for admission to the bar in Michigan as well. The bill would excuse them from the requirement of having graduated from a "reputable and qualified law school" and would allow them to apply for examination in Michigan if they were licensed in another U.S. jurisdiction, had not been suspended or discharged from the bar of another U.S. state or territory or from the bar of any Federal court,

and were of good moral character. The candidate also would need sufficient general education and learning in the law to enable him or her to practice law in Michigan courts. The Board of Law Examiners would have to apply a rebuttable presumption that a candidate who passed the bar exam in another U.S. jurisdiction had sufficient general education and learning. These provisions would supply ample protections to Michigan consumers to ensure that they would be properly represented by a qualified lawyer.

### **Supporting Argument**

Although the Board of Law Examiners' rules allow schools other than those approved by the ABA to seek Board approval as reputable and qualified, and the rules authorized by the Board to permit applicants who do not possess a juris doctor degree from an ABA-approved law school to take the bar exam, those provisions are vague. Although the rules give the Board broad discretion to provide such a waiver, they do not specify standards or timelines for granting a waiver and there is no requirement that the Board even notify an applicant of the reason his or her application for a waiver was denied. This process leaves applicants uncertain of whether and how to pursue a waiver or appeal of a rejection by the Board. By creating in statute the opportunity for an attorney licensed in another jurisdiction to take the bar exam, even if he or she did not graduate from an ABA-approved law school, the bill would establish a specific process and assure both the applicant and the Board that such an attorney could take the Michigan bar exam.

### **Supporting Argument**

The statutory fees enacted 16 years ago, even with the authorized increases implemented by the Supreme Court, are insufficient to cover the costs of administering the Michigan bar exam and conducting background investigations. By increasing both the statutory fees and the amount to which the Supreme Court may raise them, and providing for future increases indexed to inflation, the bill should generate more adequate funding to continue to ensure the integrity of the attorney licensing process.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill could have a positive fiscal impact on the State and would have no fiscal impact on local government. According to the State Court Administrative Office, the current fees are insufficient to cover the cost of administering the bar exam. Any costs not covered by bar exam fees are paid from the General Fund. In December 2015, the Michigan Supreme Court published for comment an Administrative Order to increase the fees for an application for examination, reexamination, recertification, and admission without examination to their statutory maximums. The proposal was approved on May 25, 2016, with the fee schedule effective August 1, 2016. The first bar exam to which the increased fees will apply is the exam held in February 2017.

Due to decreasing enrollment for the bar exam, however, the increased fees may not be enough to fully offset the costs of administration, which are largely fixed. To the extent that the bill would allow fee increases to pay for exam administration, General Fund expenditures could be reduced.

Fiscal Analyst: Ryan Bergan

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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.