

Legislative Analysis



“GOOD MORAL CHARACTER” REQUIREMENTS

Phone: (517) 373-8080
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House Bill 4488 as enacted
Public Act 368 of 2020
Sponsor: Rep. Brandt Iden

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4489 as enacted
Public Act 369 of 2020
Sponsor: Rep. Joseph N. Bellino, Jr.

House Bill 4491 as enacted
Public Act 371 of 2020
Sponsor: Rep. Beth Griffin

House Bill 4490 as enacted
Public Act 370 of 2020
Sponsor: Rep. Michele Hoytenga

House Bill 4492 as enacted
Public Act 372 of 2020
Sponsor: Rep. Sherry Gay-Dagnogo, M.Ed.

1st House Committee: Regulatory Reform
2nd House Committee: Ways and Means
Senate Committee: Regulatory Reform

Senate Bill 293 as enacted
Public Act 388 of 2020
Sponsor: Sen. Jeremy Moss

House Committee: Ways and Means
Senate Committee: Regulatory Reform

Complete to 1-27-21

BRIEF SUMMARY: The bills amend provisions in several acts regarding “good moral character” requirements for occupational and professional licensure.

House Bill 4488 amends 1974 PA 381, which defines “good moral character” as it relates to qualifications for occupational and professional licenses in state laws and administrative rules, to establish criteria for when a licensing board may consider a criminal conviction as evidence in determining an applicant’s good moral character.

House Bill 4489 amends the Revised Judicature Act (RJA) to provide that 1974 PA 381 does not apply in determining “good moral character” for admission to the State Bar of Michigan. “Good moral character” for that purpose will be determined by the Board of Law Examiners.

House Bills 4490, 4491, and 4492 align the definition of “good moral character” in their respective acts with the changes made by HB 4488.

Senate Bill 293 requires the Department of Licensing and Regulatory Affairs (LARA) to provide an annual report on the number of applications for occupational licenses that were denied due to failure to meet the “good moral character” standard.

FISCAL IMPACT: The bills would not have a significant impact on expenditures or revenues for LARA or for other units of state or local government. LARA and the other entities affected by the bills already make determinations regarding the “good moral character” of applicants, licensees, and registrants. House Bill 4488 would result in changes to the processes utilized by LARA to determine “good moral character.” However, the process changes would not be expected to lead to new or additional costs for the department.

THE APPARENT PROBLEM:

Many who have made poor decisions in the past resulting in criminal convictions find that turning one’s life around is no guarantee of being able to find gainful employment in a trade or occupation that requires a state license or registration. Some statutes disqualify applicants convicted of specific offenses from eligibility to work in a particular occupation or profession, either for life or for a specified period of time. However, even if a statute doesn’t exclude a person with a criminal record from eligibility for a license or registration for a particular occupation, the way licensing boards implement statutory “good moral character” clauses often results in a barrier to employment.

“Good moral character” clauses in various occupational statutes are used when determining the eligibility of an applicant for licensure or registration in a particular occupation or trade. Historically, these clauses were not meant to interpret a previous arrest or conviction as *prima facie* evidence for denial of a license by a licensing board. Legislation dating to the mid-1970s attempted to clarify that issue and to restrict access to criminal records that did not relate to the license being sought. However, some feel that the statutes need further clarification, as many with criminal records still find it difficult to obtain licenses required for certain occupations even when the conviction has no relation to the license sought.

THE CONTENT OF THE BILLS:

House Bill 4488 amends several provisions of 1974 PA 381. Many types of occupational licenses issued by the state of Michigan require that an applicant be of “good moral character.” 1974 PA 381 defines “good moral character” and also contains provisions intended to support the rehabilitation efforts of former offenders by, among other things, prohibiting the use by a licensing board of a criminal record as the sole proof of an applicant’s lack of good moral character.

Definition of “good moral character”

The bill does not substantively change the definition of “good moral character.” The definition as amended reads:

The phrase “good moral character”, when used 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 in a statute of this state or administrative rules promulgated under a statute of this state, means the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.

Consideration of a criminal conviction or judgment in a civil action

Previously under the act, a judgment of guilt in a criminal prosecution or a judgment in a civil action could not—in and of itself—be used by a licensing board or agency as proof of an

individual's lack of good moral character, though either could be used as evidence in the determination of the individual's good moral character.

Under the bill, a **licensing board or agency** may consider judgments in civil actions entered against an individual as evidence of his or her lack of good moral character only if more than one judgment in a civil action has been entered against him or her.

Licensing board or agency means a **principal department**, or a board or agency within a principal department, that issues occupational or professional **licenses**.

License includes a registration.

Principal department means a department that has jurisdiction over a licensing board or agency.

Further, under the bill, a criminal conviction cannot be considered, in and of itself, as conclusive proof of an individual's lack of good moral character. A licensing board or agency may consider a criminal conviction as evidence in determining the individual's good moral character only if that record includes a conviction for a **felony** and any of the following apply to that felony:

- The licensing board or agency concludes that the specific offense has a direct and specific relationship to the activities authorized by the occupational or professional license.
- The specific offense of which the individual was convicted involves a demonstrable risk to the public safety.
- The individual, based on the nature of the offense of which the individual was convicted and on any additional information provided by the licensee regarding his or current circumstances, is more likely to commit a subsequent offense if he or she has the occupational or professional license than if he or does not have the license.
- A subsequent offense committed with the aid of the license will cause greater harm to the public than it would if the individual did not have it.

Felony means a violation of a Michigan penal law for which the offender may be punished by imprisonment for more than one year or an offense expressly designated by law as a felony.

However, although it cannot consider an individual's criminal conviction, in and of itself, to be conclusive proof of his or her lack of good moral character, a licensing board or agency that is one of the following may use an individual's criminal conviction as evidence in determining his or her good moral character without meeting the requirements described above:

- A principal department, or a board or agency within a principal department, to the extent that the department, board, or agency is responsible for the licensing and regulation of any of the following:
 - Child care organizations under the child care licensing act, 1973 PA 116.
 - Homes for the aged or nursing homes under the Public Health Code.
 - Adult foster care facilities under the Adult Foster Care Facility Licensing Act.
- The Michigan Commission on Law Enforcement Standards (MCOLES).
- The Board of Law Examiners created under the RJA (see HB 4489, below).

Certificates of employability

Under the Corrections Code, the Department of Corrections is required to issue a certificate of employability to a prisoner who successfully completes a career and technical education course, who had no major misconducts and not more than three minor misconducts during his or her last two years of incarceration, and who received a silver level or better on the National Work Readiness Certificate or similar score on an alternative jobs skills assessment test administered by the department.

Previously under 1974 PA 381, a licensing board or agency had to consider an individual's certificate of employability, if any, *if a judgment of guilt in a criminal prosecution was used as evidence in the determination of an individual's good moral character.*

The bill deletes the language italicized above and instead requires the licensing board or agency to consider—as evidence in the determination of an individual's good moral character—the certificate of employability and any additional information about the individual's current circumstances, such as how long ago the offense occurred, whether or not the sentence for the offense was completed, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

MCL 338.41 et al.

House Bill 4489 amends the RJA to provide that, for purposes of admission to the State Bar of Michigan, 1974 PA 381 does not apply and that the determination of “good moral character” is instead to be made by the Board of Law Examiners.

MCL 600.934

House Bills 4490, 4491, and 4492 revise the definition of “good moral character” in different acts to mean that term as defined in, and determined under, 1974 PA 381. Previously, most of the affected provisions did not include the phrase “determined under” and referenced only the section of 1974 PA 381 that contains the definition of “good moral character.” As amended, determinations of good moral character under each affected act must follow all of the provisions of 1974 PA 381 as amended by HB 4488.

House Bill 4490 amends the Skilled Trades Regulation Act (MCL 339.5105).

House Bill 4491 amends the Public Health Code (MCL 333.16104 and 333.21755).

House Bill 4492 amends the Occupational Code (MCL 339.104).

Senate Bill 293 amends the Occupational Code to require LARA to report annually to the legislature regarding applications for occupational licenses that were denied because of an applicant's lack of good moral character.

Section 411 of the code requires LARA, by December 1 of each year, to submit a report to the standing committees and appropriations subcommittees of the Senate and House of Representatives concerned with occupational issues. The report must include certain specified information regarding applications for occupational licenses during the state fiscal year that ended the previous September 30.

In addition to information already required to be included in the report, the bill requires it to include the number of applications denied by LARA because of an applicant's lack of good moral character and a summary, by category of offense, of the criminal convictions on which those denials were based.

MCL 339.411

The bills take effect April 4, 2021.

BACKGROUND:

The bills are similar to House Bills 6110 to 6113 and 6381 of the 2017-18 legislative session, which were passed by the House of Representatives.

ARGUMENTS:

For:

The bills prescribe how "good moral character" clauses in several occupational statutes should be used when an applicant for a license or registration has a criminal record. Under the legislation, a misdemeanor conviction or a civil judgment in a civil suit would no longer be considered when a person applies for an original or renewal state license or registration. Enactment of the bills could restore the original intent of the statutes as being more of a guideline.

Supporters of the legislation noted that approximately one-third of adults have a criminal conviction. Most people in prison today will return to their communities and will need to find work. Data show that employment is a major predictor of successful reintegration into society after incarceration and results in lower recidivism rates across all offense categories, including sex offenses. Individuals employed after incarceration support the state and local economies by paying taxes and child support and purchasing goods and services. The Michigan Department of Corrections' Vocational Villages are training prisoners in many trades, only to find that they cannot obtain the necessary licenses to continue in that work upon release. Major employers in the state report that ex-felons they have hired are hardworking, dependable, and loyal and become some of their most trusted employees.

Although Michigan no longer requires a person to disclose a felony conviction on an application for state employment, and many other employers in the state have also removed conviction history questions from job application forms, disclosure of criminal convictions will still be required in the application or interview process. The issue the bills address is that if an employer decides to give a person a second chance, that person will have a fairer prospect of being issued a needed state license or registration and not being blocked by "good moral character" clauses.

Against:

Concerns were expressed that certain wording in HB 4488 would preclude the ability of licensing boards to review a person's misdemeanor records. For some professions, such as veterinary medicine, for which some animal neglect violations are misdemeanors, or professions whose jobs impact public safety, this could mean that a licensing board could not review such records when determining eligibility for license approval, renewal, or licensing

sanctions. To address this concern, language limiting review to felony records could be expanded to include misdemeanor records when appropriate.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.