HOUSE BILL No. 6280

August 15, 2018, Introduced by Rep. Lucido and referred to the Committee on Regulatory Reform.

A bill to amend 1974 PA 381, entitled "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;"

by amending the title and sections 1, 2, 3, 4, 5, 6, and 7 (MCL 338.41, 338.42, 338.43, 338.44, 338.45, 338.46, and 338.47), section 2 as amended by 2014 PA 361.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

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 AND ESTABLISH HOW GOOD
MORAL CHARACTER IS DETERMINED 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; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon.

CONCERNING AN INDIVIDUAL'S GOOD MORAL CHARACTER.

Sec. 1. (1) The phrase "good moral character", or words of similar import, 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 the Michigan Compiled Laws A STATUTE OF THIS STATE or administrative rules promulgated under those laws shall be construed to mean A STATUTE OF THIS STATE, MEANS the propensity on the part of the person—AN INDIVIDUAL to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act: "principal

(A) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE FOR WHICH THE OFFENDER MAY BE PUNISHED BY IMPRISONMENT FOR MORE THAN 1 YEAR OR AN OFFENSE EXPRESSLY DESIGNATED BY LAW AS A FELONY.

(B) "LICENSE" INCLUDES A REGISTRATION.

(C) "LICENSING BOARD OR AGENCY" MEANS A PRINCIPAL DEPARTMENT, OR A BOARD OR AGENCY WITHIN A PRINCIPAL DEPARTMENT, THAT ISSUES OCCUPATIONAL OR PROFESSIONAL LICENSES.

(D) "PRINCIPAL department" means the department which THAT has jurisdiction over the LICENSING board or agency, issuing the license.

Sec. 2. (1) A judgment of guilt in a criminal prosecution or a
judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of an individual's lack of good moral character. However, the licensing board or agency may use that judgment as evidence in the determination of his or her good moral character.

(1) A LICENSING BOARD OR AGENCY SHALL NOT CONSIDER A JUDGMENT IN A CIVIL ACTION AGAINST AN INDIVIDUAL AS EVIDENCE OF HIS OR HER LACK OF GOOD MORAL CHARACTER.

(2) A LICENSING BOARD OR AGENCY SHALL NOT CONSIDER AN INDIVIDUAL'S CRIMINAL CONVICTION, IN AND OF ITSELF, AS CONCLUSIVE PROOF OF HIS OR HER LACK OF GOOD MORAL CHARACTER. A LICENSING BOARD OR AGENCY MAY ONLY CONSIDER AN INDIVIDUAL'S CRIMINAL CONVICTION AS EVIDENCE IN THE DETERMINATION OF HIS OR HER GOOD MORAL CHARACTER IF THE LICENSING BOARD OR AGENCY FINDS THAT ALL OF THE FOLLOWING ARE MET:

(A) THE INDIVIDUAL'S CRIMINAL RECORD INCLUDES A CONVICTION FOR A FELONY.

(B) THE TYPE OF FELONY OF WHICH THE INDIVIDUAL WAS CONVICTED IS CODIFIED AS A DISQUALIFYING OFFENSE IN THE APPLICABLE OCCUPATIONAL OR PROFESSIONAL LICENSING STATUTE.

(C) THE LICENSING BOARD OR AGENCY CONCLUDES THAT THE SPECIFIC OFFENSE OF WHICH THE INDIVIDUAL WAS CONVICTED HAS A DIRECT AND SPECIFIC NEGATIVE EFFECT ON HIS OR HER ABILITY TO PERFORM THE DUTIES AUTHORIZED BY THE OCCUPATIONAL OR PROFESSIONAL LICENSE.

(D) THE LICENSING BOARD OR AGENCY DETERMINES THAT THE STATE'S INTEREST IN PROTECTING PUBLIC SAFETY IS SUPERIOR TO THE INDIVIDUAL'S RIGHT TO PURSUE THE OCCUPATION OR PROFESSION, BASED ON
CLEAR AND CONVINCING EVIDENCE THAT ALL OF THE FOLLOWING ARE MET:

(i) THE SPECIFIC OFFENSE OF WHICH THE INDIVIDUAL WAS CONVICTED IS SUBSTANTIALLY RELATED TO THE STATE'S INTEREST IN PROTECTING PUBLIC SAFETY.

(ii) THE INDIVIDUAL, BASED ON THE NATURE OF THE OFFENSE FOR WHICH HE OR SHE WAS CONVICTED AND ON ANY ADDITIONAL INFORMATION PROVIDED BY THE INDIVIDUAL UNDER SUBSECTION (3), IS MORE LIKELY TO COMMIT A SUBSEQUENT OFFENSE BECAUSE HE OR SHE HAS THE OCCUPATIONAL OR PROFESSIONAL LICENSE THAN IF HE OR SHE DOES NOT HAVE THE OCCUPATIONAL OR PROFESSIONAL LICENSE.

(iii) A SUBSEQUENT OFFENSE COMMITTED WITH THE AID OF THE OCCUPATIONAL OR PROFESSIONAL LICENSE WILL CAUSE GREATER HARM TO THE PUBLIC THAN IT WOULD IF THE INDIVIDUAL DID NOT HAVE THE OCCUPATIONAL OR PROFESSIONAL LICENSE.

(3) (2) If a judgment of guilt in a criminal proceeding is used as evidence in the determination of an individual's good moral character under subsection (1), the licensing board or agency shall also consider his or her AN INDIVIDUAL'S certificate of employability, if any, under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, as evidence in the determination AND ANY ADDITIONAL INFORMATION ABOUT HIS OR HER CURRENT CIRCUMSTANCES, SUCH AS HOW LONG AGO THE OFFENSE OCCURRED, WHETHER HE OR SHE COMPLETED THE SENTENCE FOR THE OFFENSE, OTHER EVIDENCE OF REHABILITATION, TESTIMONIALS, EMPLOYMENT HISTORY, AND EMPLOYMENT ASPIRATIONS AS EVIDENCE IN THE DETERMINATION OF AN INDIVIDUAL'S GOOD MORAL CHARACTER UNDER SUBSECTION (2).

(4) (3) If a judgment of guilt in a criminal proceeding or a
judgment in a civil action. A CRIMINAL CONVICTION is used under subsection (1) (2) as evidence of an individual's lack of good moral character, the licensing board or agency shall notify the individual and he or she SPECIFICALLY DESCRIBE WHAT FACTS CONCERNING THAT CONVICTION SUPPORT THE DETERMINATION THAT THE INDIVIDUAL LACKS GOOD MORAL CHARACTER. AN INDIVIDUAL DESCRIBED IN THIS SECTION is permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she is seeking a license. THE CRITERIA UNDER SUBSECTION (2) HAVE NOT BEEN MET.

Sec. 3. (1) The following criminal records shall not be used, examined, or requested by a licensing board or agency SHALL NOT USE, EXamine, OR REQUEST ANY OF THE FOLLOWING CRIMINAL RECORDS in MAKING a determination of good moral character when used FOR USE as a requirement to establish or operate an organization or facility regulated by this state, or pursuant to FOR PURPOSES OF occupational or professional licensure:

(a) Records of an arrest THAT IS not followed by a conviction.
(b) Records of a conviction which THAT has been reversed or vacated, including the arrest records relevant to that conviction.
(c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's INDIVIDUAL'S likelihood to serve the public in a fair, honest, and open manner.
(d) Records of an arrest or conviction for a misdemeanor for
the conviction of which a person AN INDIVIDUAL may not be incarcerated in a jail or prison.

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

(3) The director or a person AN INDIVIDUAL designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction which THAT prescribe the offenses or categories of offenses which THAT the department considers indicate a person AN INDIVIDUAL is not likely to serve the public as a licensee OR REGISTRANT in a fair, honest, and open manner. Each licensing board or agency may make recommendations to the director regarding the rules to be promulgated DESCRIBED IN THIS SUBSECTION. The rules shall MUST be consistent with this act and promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. Prior to UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. BEFORE the promulgation of the rules pertaining to a board or agency, all felonies shall be considered by the A board or agency SHALL CONSIDER ALL FELONIES to be relevant to the ability or likelihood the person THAT AN INDIVIDUAL will serve the public in a fair, honest, and open manner.

Sec. 4. This act DOES NOT PROHIBIT the use by a
licensing board or agency in its determination of a person's fitness, AN INDIVIDUAL'S GOOD MORAL CHARACTER of any other public record, THAT IS not related to HIS OR HER arrest, or prosecution, OR CONVICTION or THE USE of any other source of unbiased and accurate information.

Sec. 5. When a person is found to be unqualified IF A LICENSING BOARD OR AGENCY DETERMINES THAT AN INDIVIDUAL IS NOT ELIGIBLE for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the board or agency SHALL PROVIDE THE INDIVIDUAL with a statement to this effect. The statement shall contain a complete record of the evidence upon which the determination was based AND A SPECIFIC DESCRIPTION OF HOW THAT EVIDENCE SUPPORTS THE DETERMINATION THAT THE INDIVIDUAL LACKS GOOD MORAL CHARACTER. The person shall be entitled, as of right, to A LICENSING BOARD OR AGENCY MUST PROVIDE AN INDIVIDUAL DESCRIBED IN THIS SUBSECTION AN OPPORTUNITY FOR a rehearing on the issue before the board OR AGENCY if he or she has relevant evidence not previously considered, regarding his or her qualifications THAT WAS NOT PREVIOUSLY CONSIDERED.

Sec. 6. A person, AN INDIVIDUAL WHO IS aggrieved by a licensing BOARD OR agency or board determination regarding the person's possession of HIS OR HER good moral character, if unsatisfied by his or her administrative appeal as provided in REMEDY UNDER section 5, may bring an action in circuit court for a review of the record. If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as defined in DETERMINED UNDER this act, the court shall so state and shall
order the board OR AGENCY to issue the license — when THE
INDIVIDUAL MEETS all other licensing requirements. are complied
with.

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

Enacting section 1. This amendatory act takes effect 90 days
after the date it is enacted into law.