

Legislative Analysis



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House Bill 4488 as introduced
Sponsor: Rep. Brandt Iden

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

House Bill 4489 as introduced
Sponsor: Rep. Joseph N. Bellino, Jr.

House Bill 4490 as introduced
Sponsor: Rep. Michele Hoitenga

House Bill 4492 as introduced
Sponsor: Rep. Sherry Gay-Dagnogo, M.Ed.

House Bill 4491 as introduced
Sponsor: Rep. Beth Griffin

House Bill 4493 as introduced
Sponsor: Rep. Rebekah Warren

Committee: Regulatory Reform
Complete to 5-20-19

BRIEF SUMMARY:

House Bill 4488 would amend 1974 PA 381, which defines “good moral character” as it relates to qualifications for occupational and professional licenses in the statutes and administrative rules of this state, 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 would amend the Revised Judicature Act to provide that 1974 PA 381 would not apply to determining “good moral character” for admission to the State Bar of Michigan and that, for those purposes, good moral character would be determined by the Board of Law Examiners.

House Bills 4490, 4491, and 4492 would revise the definition of “good moral character” within their respective acts to comport with the changes proposed by HB 4488.

House Bill 4493 would require the Department of Licensing and Regulatory Affairs (LARA) to provide an annual report to the legislature regarding the number of applications for occupational licenses denied due to failure to meet the “good moral character” standard.

DETAILED SUMMARY:

House Bill 4488 would amend the title and several provisions of 1974 PA 381. The statutory requirements for many types of occupational licenses issued by the state of Michigan require that an applicant for a new or renewal license 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’s changes to the definition of *good moral character* would be largely editorial in nature, rather than substantive. As amended, the definition would read:

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

Currently, a judgment of guilt in a criminal prosecution or a judgment in a civil action cannot—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 may be used as evidence in the determination of the individual’s good moral character.

Under the bill, a *licensing board or agency* could not consider a judgment in a civil action against an individual as evidence of his or her lack of good moral character.

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

License would include a registration.

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

Further, under the bill, a criminal conviction could not be considered, in and of itself, as conclusive proof of an individual’s lack of good moral character. A licensing board or agency could consider a criminal conviction as evidence in the determination of the individual’s good moral character only if all of the following were found:

- The criminal record includes a *felony* conviction.
- The applicable occupational or professional licensing statute specifies that the type of felony of which the individual was convicted is a disqualifying offense.
- The licensing board or agency concludes that the specific offense has a direct and specific negative effect on the individual’s ability to perform the duties authorized by the occupational or professional license.
- 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. However, this determination would have to be based on all of the following:
 - The specific offense is substantially related to the state’s interest in protecting 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 did 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 would mean 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.

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.

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

The bill would delete the language italicized above and instead require 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 would amend the Revised Judicature Act to provide that, for the purposes of admission to the State Bar of Michigan, 1974 PA 381 would not apply and that instead the determination of “good moral character” would be made by the Board of Law Examiners.

MCL 600.934

House Bills 4490, 4491 and 4492 would amend various acts to revise the definition of “good moral character” contained in those acts to mean good moral character as defined in, and determined under, 1974 PA 381. Currently, most of the affected provisions do not include the phrase “determined under” and reference only the section of 1974 PA 381 that contains the definition of “good moral character.” As amended, determinations of good moral character made under each affected act would have to follow all of the provisions of 1974 PA 381 (as they would be amended by HB 4488).

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

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

House Bill 4492 would amend the Occupational Code. (MCL 339.104)

House Bill 4493 would amend the Occupational Code to require that the annual report provided by LARA to the legislature regarding applications for occupational licenses issued under that act must 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.

The report is due by December 1 of each year and submitted to the standing committees and appropriations subcommittees of the Senate and House of Representatives concerned with occupational issues. Information in the report concerns the preceding state fiscal year.

MCL 339.411

Enactment provisions

House Bills 4489, 4490, 4491, and 4492 are tie-barred to HB 4488, meaning that they could not take effect unless HB 4488 were also enacted.

Each of the bills would take effect 90 days after enactment.

FISCAL IMPACT:

House Bills 4488 through 4493 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.

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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.