

Legislative Analysis



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House Bill 4488 (H-2) as referred to second committee
Sponsor: Rep. Brandt Iden

Analysis available at
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House Bill 4489 as referred to second committee
Sponsor: Rep. Joseph N. Bellino, Jr.

House Bill 4490 as referred
Sponsor: Rep. Michele Hoytenga

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

House Bill 4491 as referred
Sponsor: Rep. Beth Griffin

House Bill 4493 as referred
Sponsor: Rep. Rebekah Warren

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 9-2-20

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

House Bill 4488 would amend 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 would amend the Revised Judicature Act to provide that 1974 PA 381 does not apply in determining “good moral character” for admission to the State Bar of Michigan, for which purpose good moral character will be determined by the Board of Law Examiners.

House Bills 4490, 4491, and 4492 would align the definition of “good moral character” in their respective acts 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 on the number of applications for occupational licenses that were denied due to failure to meet the “good moral character” standard.

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.

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, either for their lifetime or for a specified period of time, from eligibility to work in a particular occupation or profession. However, even if a statute doesn't preclude a person with a criminal record from eligibility for a license or registration for a particular occupation, the manner in which 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, such good moral character clauses were never 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, as well as 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.

THE CONTENT OF THE BILLS:

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 would not make substantive changes to the definition of *good moral character*. 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.

The restrictions on consideration of a conviction or on requesting or examining an individual's criminal record would not apply to a licensing board or agency when determining an individual's good moral character in connection with any of the following licenses under the Occupational Code:

- A certified public accountant.
- A real estate broker, associate broker, or salesperson.
- A design professional, as defined under section 104 of the Construction Lien Act.

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

MCL 600.934

House Bills 4490, 4491, and 4492 would revise the definition of “good moral character” in different 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 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. The report addresses the previous state fiscal year.

MCL 339.411

Enactment provisions

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

Each bill would take effect 90 days after its enactment.

BACKGROUND:

The bills are virtually identical 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 would clarify how “good moral character” clauses in various 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 cite many reasons why the bills make sense. These include the fact 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, paying child support, and through purchases of 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, 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 the box,” so to speak, from job application forms, disclosure of criminal convictions will still be required in the application or interview process. The issue that the bills will fix is that if an employer decides to give a person a second chance, he or she would have a fairer chance of being issued a needed state license or registration and not be blocked by good moral character clauses in the manner that is happening today.

Against:

Some have concerns 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 penalties result in misdemeanors, or professions whose job tasks 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 in the bill limiting review to felony records could be expanded to include misdemeanor records when appropriate.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-21-19):

- Goodwill Industries of Detroit
- Recovery Park

The following entities indicated support for the bills:

- Americans for Prosperity (5-13-20)
- Mackinac Center for Public Policy (5-13-20)
- ACLU of Michigan (5-13-20)
- Michigan League for Public Policy (5-13-20)
- Alliance for Safety and Justice (5-13-20)
- West Michigan Policy Forum (5-21-19)
- Safe and Just Michigan (5-21-19)
- Grand Rapids Chamber (5-21-19)

The following entities indicated support for HB 4488:

- Michigan Realtors (5-13-20)
- Foundation for Government Accountability (5-21-19)

The State Bar of Michigan indicated support for HB 4489. (5-13-20)

The Department of Licensing and Regulatory Affairs indicated a neutral position on the bills. (5-13-20)

The following entities indicated opposition to HB 4488 as introduced (5-21-19):

- Michigan Medical Veterinary Association
- Michigan Society of Professional Surveyors
- Michigan Society of Professional Engineers
- American Council of Engineering Companies

Legislative Analyst: S. Stutzky
Fiscal Analyst: Marcus Coffin

■ 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.