

**SUBSTITUTE FOR
HOUSE BILL NO. 4488**

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:

1 TITLE
2 An act to encourage and contribute to the rehabilitation of



1 former offenders and to assist them in the assumption of the
 2 responsibilities of citizenship; to ~~prescribe the use of~~ **define** the
 3 term "good moral character" ~~or similar term~~ **and establish how good**
 4 **moral character is determined when used** as a requirement for an
 5 occupational or professional license or when used as a requirement
 6 to establish or operate an organization or facility regulated by
 7 this state; and to provide administrative and judicial procedures
 8 to contest licensing board or agency rulings ~~thereon~~. **concerning an**
 9 **individual's good moral character.**

10 Sec. 1. (1) The phrase "good moral character", ~~or words of~~
 11 ~~similar import~~, when used as a requirement for an occupational or
 12 professional license or when used as a requirement to establish or
 13 operate an organization or facility regulated by this state in ~~the~~
 14 ~~Michigan Compiled Laws~~ **a statute of this state** or administrative
 15 rules promulgated under ~~those laws shall be construed to mean a~~
 16 **statute of this state, means** the propensity on the part of ~~the~~
 17 ~~person~~ **an individual** to serve the public in the licensed area in a
 18 fair, honest, and open manner.

19 (2) As used in this act: ~~,"principal~~

20 (a) **"Felony" means a violation of a penal law of this state**
 21 **for which the offender may be punished by imprisonment for more**
 22 **than 1 year or an offense expressly designated by law as a felony.**

23 (b) **"License" includes a registration.**

24 (c) **"Licensing board or agency" means a principal department,**
 25 **or a board or agency within a principal department, that issues**
 26 **occupational or professional licenses.**

27 (d) **"Principal department" means ~~the~~ a department which ~~that~~**
 28 **has jurisdiction over ~~the~~ a licensing board or agency. ~~issuing the~~**
 29 **license.**



1 Sec. 2. (1) ~~A judgment of guilt in a criminal prosecution or a~~
2 ~~judgment in a civil action shall not be used, in and of itself, by~~
3 ~~a licensing board or agency as proof of an individual's lack of~~
4 ~~good moral character. However, the licensing board or agency may~~
5 ~~use that judgment as evidence in the determination of his or her~~
6 ~~good moral character.~~ **A licensing board or agency may only consider**
7 **judgments in civil actions entered against an individual as**
8 **evidence of his or her lack of good moral character if more than 1**
9 **judgment in a civil action has been entered against him or her.**

10 (2) **A licensing board or agency shall not consider an**
11 **individual's criminal conviction, in and of itself, as conclusive**
12 **proof of his or her lack of good moral character. Except as**
13 **provided in subsection (3), a licensing board or agency may only**
14 **consider an individual's criminal conviction as evidence in the**
15 **determination of his or her good moral character if the licensing**
16 **board or agency finds that the individual's criminal record**
17 **includes a conviction for a felony and any of the following apply**
18 **to that felony:**

19 (a) **The licensing board or agency concludes that the specific**
20 **offense for which the individual was convicted has a direct and**
21 **specific relationship to the activities authorized by the**
22 **occupational or professional license.**

23 (b) **The specific offense for which the individual was**
24 **convicted involves a demonstrable risk to the public safety.**

25 (c) **The individual, based on the nature of the offense for**
26 **which he or she was convicted and on any additional information**
27 **provided by the licensee under subsection (4), is more likely to**
28 **commit a subsequent offense because he or she has the occupational**
29 **or professional license than if he or she does not have the**



1 occupational or professional license.

2 (d) A subsequent offense committed with the aid of the
3 occupational or professional license will cause greater harm to the
4 public than it would if the individual did not have the
5 occupational or professional license.

6 (3) A licensing board or agency shall not consider an
7 individual's criminal conviction, in and of itself, as conclusive
8 proof of his or her lack of good moral character, but may use an
9 individual's criminal conviction as evidence in the determination
10 of his or her good moral character without meeting the requirements
11 of subsection (2) if the licensing board or agency is 1 of the
12 following:

13 (a) A principal department, or a board or agency within a
14 principal department, to the extent that department, board, or
15 agency is responsible for the licensing and regulation of any of
16 the following:

17 (i) Child care organizations under 1973 PA 116, MCL 722.111 to
18 722.128.

19 (ii) Homes for the aged or nursing homes under the public
20 health code, 1978 PA 368, MCL 333.1101 to 333.25211.

21 (iii) Adult foster care facilities under the adult foster care
22 facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

23 (b) The Michigan commission on law enforcement standards
24 created in section 3 of the Michigan commission on law enforcement
25 standards act, 1965 PA 203, MCL 28.603.

26 (c) The board of law examiners created in section 922 of the
27 revised judicature act of 1961, 1961 PA 236, MCL 600.922.

28 (4) ~~(2) If a judgment of guilt in a criminal prosecution is~~
29 ~~used as evidence in the determination of an individual's good moral~~



1 ~~character under subsection (1), the~~ **A** licensing board or agency
 2 shall also consider ~~his or her~~ **an individual's** certificate of
 3 employability, if any, under section 34d of the corrections code of
 4 1953, 1953 PA 232, MCL 791.234d, ~~as evidence in the determination.~~
 5 **and any additional information about his or her current**
 6 **circumstances, such as how long ago the offense occurred, whether**
 7 **he or she completed the sentence for the offense, other evidence of**
 8 **rehabilitation, testimonials, employment history, and employment**
 9 **aspirations as evidence in the determination of an individual's**
 10 **good moral character under subsection (2) or (3).**

11 (5) ~~(3) If a judgment of guilt in a criminal proceeding or a~~
 12 ~~judgment in a civil action in a civil action is used under~~
 13 **subsection (1) or a criminal conviction** is used under subsection
 14 ~~(1) (2) or (3)~~ as evidence of an individual's lack of good moral
 15 character, the licensing board or agency shall notify the
 16 individual and he or she is permitted to rebut the evidence by
 17 showing that at the current time he or she has the ability to, and
 18 is likely to, serve the public in a fair, honest, and open manner,
 19 that he or she is rehabilitated, or that ~~the substance of the~~
 20 ~~former offense is not reasonably related to the occupation or~~
 21 ~~profession for which he or she is seeking a license.~~ **the criteria**
 22 **under subsection (1), (2), or (3) have not been met.**

23 Sec. 3. (1) ~~The following criminal records shall not be used,~~
 24 ~~examined, or requested by a~~ **A** licensing board or agency **shall not**
 25 **use, examine, or request any of the following criminal records** in
 26 **making** a determination of good moral character ~~when used~~ **for use** as
 27 a requirement to establish or operate an organization or facility
 28 regulated by this state ~~, or pursuant to~~ **for purposes of**
 29 occupational or professional licensure:



1 (a) Records of an arrest **that is** not followed by a conviction.

2 (b) Records of a conviction ~~which~~**that** has been reversed or
3 vacated, including the arrest records relevant to that conviction.

4 (c) Records of an arrest or conviction for a misdemeanor or a
5 felony unrelated to the ~~person's~~**individual's** likelihood to serve
6 the public in a fair, honest, and open manner.

7 (d) Records of an arrest or conviction for a misdemeanor for
8 the conviction of which ~~a person~~**an individual** may not be
9 incarcerated in a jail or prison.

10 (2) A criminal record shall not be furnished to a licensing
11 board or agency except by the principal department, and shall be
12 furnished only after the director of the principal department or a
13 ~~person~~**an individual** designated by the director has determined that
14 the information to be provided to the board or agency meets the
15 criteria set forth in this section.

16 (3) The director or ~~a person~~**an individual** designated by the
17 director of the principal department shall promulgate rules for
18 each licensing board or agency under that department's jurisdiction
19 ~~which~~**that** prescribe the offenses or categories of offenses ~~which~~
20 **that** the department considers indicate ~~a person~~**an individual** is
21 not likely to serve the public as a licensee **or registrant** in a
22 fair, honest, and open manner. Each licensing board or agency may
23 make recommendations to the director regarding the rules ~~to be~~
24 ~~promulgated.~~**described in this subsection.** The rules ~~shall~~**must** be
25 consistent with this act and promulgated ~~pursuant to Act No. 306 of~~
26 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~
27 ~~24.315 of the Michigan Compiled Laws. Prior to~~**under the**
28 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
29 **24.328. Before** the promulgation of the rules pertaining to a



1 ~~licensing~~ board or agency, ~~all felonies shall be considered by the~~
 2 **a licensing** board or agency **shall consider all felonies** to be
 3 relevant to the ability or likelihood ~~the person~~ **that an individual**
 4 will serve the public in a fair, honest, and open manner.

5 Sec. 4. This act ~~shall not bar~~ **does not prohibit** the use by a
 6 licensing board or agency in its determination of ~~a person's~~
 7 ~~fitness,~~ **an individual's good moral character** of any other public
 8 record, ~~that is~~ not related to **his or her** arrest, ~~or~~ prosecution,
 9 **or conviction** or **the use** of any other source of unbiased and
 10 accurate information.

11 Sec. 5. ~~When a person is found to be unqualified~~ **If a**
 12 **licensing board or agency determines that an individual is not**
 13 **eligible** for a license because of a lack of good moral character,
 14 ~~or similar criteria, the person shall be furnished by the licensing~~
 15 board or agency **shall provide the individual** with a statement to
 16 this effect. The statement shall contain a complete record of the
 17 evidence ~~upon~~ **on** which the determination was based. ~~The person~~
 18 ~~shall be entitled, as of right, to~~ **A licensing board or agency must**
 19 **provide an individual described in this section an opportunity for**
 20 a rehearing on the issue before the **licensing board or agency** if he
 21 or she has relevant evidence ~~not previously considered,~~ regarding
 22 his or her qualifications **that was not previously considered.**

23 Sec. 6. ~~A person,~~ **An individual who is** aggrieved by a
 24 licensing **board or** agency ~~or board determination~~ regarding the
 25 ~~person's possession of~~ **his or her** good moral character, if
 26 unsatisfied by his or her administrative ~~appeal as provided in~~
 27 **remedy under** section 5, may bring an action in circuit court for a
 28 review of the record. If, in the opinion of the circuit court, the
 29 record does not disclose a lack of good moral character, as ~~defined~~



1 ~~in-determined under~~ this act, the court shall ~~so state and shall~~
2 order the **licensing board or agency** to issue the license ~~when the~~
3 **individual meets** all other licensing requirements. ~~are complied~~
4 ~~with.~~

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

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

