

Legislative Analysis



UNIFORM BAR EXAMINATION

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House Bill 5541 (H-1) as reported from committee

Sponsor: Rep. Andrew Fink

Committee: Judiciary

Complete to 1-25-22

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BRIEF SUMMARY: House Bill 5541 would amend the Revised Judicature Act to allow for the consideration of Uniform Bar Examination scores for those seeking admission to the State Bar of Michigan.

FISCAL IMPACT: House Bill 5541 would have an indeterminate fiscal impact on the state. Under the bill, a fee of \$400 would be implemented for admission by Uniform Bar Examination score transfer. It is not known how much additional fee revenue would be collected. Fee revenue collected by the Board of Law Examiners is deposited into the state's general fund and is used for compensating board members and for administering the Michigan bar exam. Under the current fee structure, roughly \$750,000 is collected annually.

THE APPARENT PROBLEM:

Admission to the State Bar of Michigan currently requires a specific minimum score on the Multistate Bar Examination (MBE) and the Michigan essay examination or a state-specific essay examination equivalent. Scores from examinations in other states also may be transferred to Michigan's jurisdiction under certain conditions, or a waiver from taking the bar exam may be obtained if the individual meets certain requirements, including practicing for a specific number of years as a licensed attorney in another jurisdiction. Various fees are also associated with taking the bar exam.

According to the National Conference of Bar Examiners (NCBE), 39 states, plus the District of Columbia and the Virgin Islands, have adopted the use of the Uniform Bar Examination (UBE).¹ Michigan is slated to begin administering the UBE in February 2023.² Some believe that the bill would help with administering the UBE within this time frame.

THE CONTENT OF THE BILL:

House Bill 5541 would allow an individual to choose to use a UBE score achieved in another jurisdiction. The fee for admission by UBE score transfer would be \$400. The bill would define **Uniform Bar Examination** as the examination as defined and administered by the NCBE. According to the NCBE, the UBE is coordinated by the NCBE and is composed of the Multistate Essay Examination (MEE), two Multistate Performance Test (MPT) tasks, and the MBE. It is uniformly administered, graded, and scored, resulting in a portable score that can be transferred to other UBE jurisdictions.³ (Michigan currently does not administer the MEE or the MPT.)

¹ <https://www.ncbex.org/exams/ube/>.

² <https://www.ncbex.org/jurisdiction-information/jurisdiction/mi>.

³ <https://www.ncbex.org/exams/ube/>.

Under the bill, an individual could elect to use the UBE score that the individual achieved on a UBE administered in another state or territory when applying for admission to the Michigan bar if all of the following occur:

- The score the individual elects to use was achieved on a UBE administered within the three years immediately preceding the UBE in Michigan for which the individual would otherwise sit.
- The score the individual elects to use meets the passing UBE score for Michigan set by the Board of Law Examiners.
- The individual meets all requirements for admission to the Michigan bar.

However, the bill would prohibit an individual from receiving a portable UBE score if the individual instead elects to use an MBE scaled score as currently allowed under the act. Additionally, the Board of Law Examiners would not have to accept a UBE score from another state until Michigan first administers the UBE.

The Board of Law Examiners would have the discretion to administer a Michigan-law-specific component in conjunction with the UBE as part of the requirements for admission to the bar. In the event of a national or state emergency, the board also would have the discretion to administer an alternate examination consistent with the standards for entry into the bar. If the alternate examination does not meet the portability requirements of the UBE, the board could enter into reciprocal agreements with other UBE states to provide for agreed-upon score portability between those states and Michigan.

Under the act, an individual may obtain a waiver from taking the bar exam for licensure in Michigan if the individual meets several requirements, including intending either to maintain a law office and practice law actively in Michigan or to teach law full-time at a Michigan law school. The bill would remove the intention to maintain a Michigan law office from this provision.

MCL 600.931 et seq. and proposed MCL 600.935

ARGUMENTS:

For:

Supporters of the bill argued that Michigan should not have artificial barriers to practice law in the state. In a national trend, 38 other states use the UBE. However, Michigan currently does not use the UBE or allow for the transfer of a UBE score achieved in a different state to practice law in Michigan. The Michigan Supreme Court has recognized this as a barrier to enter the practice of law in Michigan and has decided to allow for the administering of the UBE starting in February 2023. The bill would reflect this change as well as allow for UBE scores achieved in other states to be transferred to Michigan.

Against:

Although no arguments against the bill were presented during House committee testimony, some voiced concerns that requiring law school graduation as a prerequisite to practice law is also a barrier and should be removed as a requirement.

POSITIONS:

Representatives of the following entities testified in support of the bill (11-30-21):

- Michigan Supreme Court
- Board of Law Examiners
- National Conference of Bar Examiners

Wayne State University Law School indicated support for the bill. (11-30-21)

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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.