OCCUPATIONAL LICENSE FOR FORMER OFFENDERS

Act 381 of 1974

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 define the term "good moral character" 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 concerning an individual's good moral character.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

Compiler's Notes: For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

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The People of the State of Michigan enact:

338.41 Definitions.

Sec. 1.

(1) 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.

(2) As used in this act:

(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 a department that has jurisdiction over a licensing board or agency.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

Compiler's Notes: For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties

pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

338.42 Judgments in civil actions and criminal convictions as evidence in determining good moral character; consideration of certificate of employability; rebuttal.

Sec. 2.

(1) A licensing board or agency may only consider judgments in civil actions entered against an individual as evidence of his or her lack of good moral character if more than 1 judgment in a civil action has been entered against him or her.

(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. Except as provided in subsection (3), 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 the individual's criminal record includes a conviction for a felony and any of the following apply to that felony:

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

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

(c) The individual, based on the nature of the offense for which he or she was convicted and on any additional information provided by the licensee under subsection (4), 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.

(d) 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) 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, but may use an individual's criminal conviction as evidence in the determination of his or her good moral character without meeting the requirements of subsection (2) if the licensing board or agency is 1 of the following:

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

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

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

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

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

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

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(4) A licensing board or agency shall also consider an individual's certificate of employability, if any, under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, 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) or (3).

(5) If a judgment in a civil action is used under subsection (1) or a criminal conviction is used under subsection (2) or (3) as evidence of an individual's lack of good moral character, the licensing board or agency shall notify the individual and he or she 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 criteria under subsection (1), (2), or (3) have not been met.

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History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2014, Act 361, Eff. Jan. 1, 2015 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

338.43 Using, examining, or requesting certain criminal records prohibited; prerequisites for furnishing criminal records; rules.

Sec. 3.

(1) 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 for use as a requirement to establish or operate an organization or facility regulated by this state or for purposes of occupational or professional licensure:

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

(b) Records of a conviction 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 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 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 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 an individual designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction that prescribe the offenses or categories of offenses that the department considers indicate 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 described in this subsection. The rules must be consistent with this act and promulgated 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 licensing board or agency, a licensing board or agency shall consider all felonies to be relevant to the ability or likelihood that an individual will serve the public in a fair, honest, and open manner.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021
Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

338.44 Use of public records or other sources to determine person's fitness.

Sec. 4.

This act does not prohibit the use by a licensing board or agency in its determination of an individual's good moral character of any other public record that is not related to his or her arrest, prosecution, or conviction or the use of any other source of unbiased and accurate information.

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338.45 Finding person ineligible; statement; rehearing.

Sec. 5.

If a licensing board or agency determines that an individual is not eligible for a license because of a lack of good moral character, the licensing board or agency shall provide the individual with a statement to this effect. The statement shall contain a complete record of the evidence on which the determination was based. A licensing board or agency must provide an individual described in this section an opportunity for a rehearing on the issue before the licensing board or agency if he or she has relevant evidence regarding his or her qualifications that was not previously considered.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 1978, Act 294, Imd. Eff. July 10, 1978 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021

Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

338.46 Judicial review; statement; order.

Sec. 6.

An individual who is aggrieved by a licensing board or agency regarding his or her good moral character, if unsatisfied by his or her administrative 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 determined under this act, the court shall order the licensing board or agency to issue the license when the individual meets all other licensing requirements.

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338.47 Power to discipline licensees not affected.

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.

History: 1974, Act 381, Eff. Apr. 1, 1975 ;-- Am. 2020, Act 368, Eff. Apr. 4, 2021
Compiler's Notes: For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.