

ELIGIBILITY TO TAKE MICHIGAN BAR EXAM FOR ATTORNEY LICENSED IN ANOTHER STATE

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House Bill 4312 (reported from committee as H-1)
Sponsor: Rep. Beau Matthew LaFave
Committee: Judiciary
Complete to 6-14-17

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

BRIEF SUMMARY: House Bill 4312 would amend the Revised Judicature Act by adding Section 945 to provide an exemption from certain educational requirements so that an individual licensed to practice law in another state can apply to take Michigan Bar Exam in order to practice law in Michigan. The bill also makes numerous non-substantive editorial changes.

FISCAL IMPACT: Depending on the number of individuals who meet all specified criteria in the bill and apply for admission to the bar in Michigan, there could be an increase in examination fee revenue received in the Law Exam Fee Fund.

THE APPARENT PROBLEM/ BACKGROUND:

Michigan, along with 49 other states and the District of Columbia has its own, separate standards to become a licensed attorney in that state. Once licensed in the state, an attorney becomes admitted to that state's Bar. The Michigan Board of Law Examiners has developed rules for becoming a licensed attorney in Michigan, including admissions to the State Bar of Michigan with or without examination.¹ Some of the pre-requisites to be admitted in Michigan consist of certain undergraduate and legal education completion requirements.

Even though attorneys throughout the nation practice at the same caliber once licensed, Michigan's current admission requirements can exclude licensed attorneys from other states from becoming licensed in Michigan, even if the attorney has been competently practicing for several years or even decades. For example, one individual who testified in support of the bill on March 14, 2017, is a licensed attorney in California, Wisconsin, and the Federal Court system for the Western District of Michigan, yet has been denied admission twice by the State of Michigan. This is because he gained legal education from a law school that has not been approved by the American Bar Association (ABA). Graduation from an ABA-accredited school is one of the many requirements to be a licensed attorney in Michigan.

According to the bill's sponsor, Michigan's Upper Peninsula has a shortage of lawyers, especially in the western area on the border with Wisconsin. Although Michigan allows out-of-state attorneys to practice in Michigan (called "pro hac vice"), an out-of-state

¹ See Michigan Supreme Court, Board of Law Examiners, *Rules, Statutes, and Policy Statements*, http://courts.mi.gov/Courts/MichiganSupremeCourt/BLE/Documents/BLE_Rules_Statutes_Policy_Statements_Jan2017.pdf.

attorney may only be temporarily admitted to practice in Michigan for no more than five cases in a 365-day period and must be associated with an active member of the State Bar of Michigan for each appearance.² However, this kind of representation still does not meet the needs of the Upper Peninsula.

THE CONTENT OF THE BILL:

House Bill 4312 would amend the Revised Judicature Act by adding Section 945 to provide an exemption from certain educational requirements so that an individual licensed to practice law in another state can apply to take Michigan Bar Exam in order to practice law in Michigan. The bill also makes numerous non-substantive editorial changes.

Specifically, the bill would allow an individual, who is properly licensed to practice law in in the court of last resort of any other state or territory of the United States or the District of Columbia, to apply for the Michigan Bar Exam without meeting certain Michigan educational requirements (described later), if by proving *all* of the following five requirements to the satisfaction of the Board of Law Examiners:

- Has not been suspended or discharged from the bar of another state or territory of the United States or the District of Columbia or from the bar of any federal court of the United States.
- Is a person of good moral character, defined in the Occupational License for Former Offenders Act as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."
- Is 18 years of age or older.
- Has sufficient general education and learning in the law to be able to practice law in this state. In determining whether an individual has met this requirement, the Board of Law Examiners must apply a rebuttable presumption that an individual who has successfully passed the bar examination in another state or territory of the United States or the District of Columbia has sufficient general education and learning in the law to be able to practice law in this state.
- Has the current fitness and ability to be able to practice law in this state.

Educational requirements being waived

Currently Section 937 of the RJA says an applicant for admission to the Michigan Bar must complete at least two years of study (60 semester hours, or 90 quarter hours) before beginning legal education. These hours can be completed at a four-year college or at a junior college or other school from which students can transfer to a four-year school. Additionally, Section 940 states, generally speaking, that an applicant is required to be a graduate from a "reputable and qualified" law school. (However, an applicant who is entering the Armed Forces to take the exam, but withhold certification until graduation, could be permitted to take the exam if the applicant has successfully completed two-and-one-half years of full-time study or three-and-one-half years as a part-time student.)

² MCR 8.126, <https://www.michbar.org/professional/prohacvice>.

If passed, the law would take effect 90 days after the date it is enacted into law.

ARGUMENTS:

For:

Proponents of the bill argue that relaxing some of the prerequisites for a licensed attorney from another state to apply for the Michigan Bar Exam will help people living in counties in the Upper Peninsula gain access to much needed legal assistance.

Against:

The bill would no longer require a licensed attorney seeking admission to the State Bar of Michigan to graduate from an ABA accredited law school, and some concerns were raised with this. The ABA sets standards that accredited law schools must meet, including education in professional responsibility. Some critics are concerned that lawyers seeking admission to the State Bar of Michigan would not have the proper knowledge of responsible conduct within the legal profession.

Response:

Supporters of the bill responded that most non-accredited schools still require a professional responsibility course, and that all lawyers in the nation are required to pass the Multistate Professional Responsibility Exam before licensure.

POSITIONS:

The following showed support for the bill on 3-14-17:

- An attorney from Crystal Falls, Michigan, who testified
- An attorney from Whitmore Lake, Michigan
- An attorney from Menominee, Michigan
- A representative from the Iron County Prosecutor's office

A representative from the Michigan Bankers Association indicated neutrality on the bill. (3-14-17)

The Michigan Board of Law Examiners indicated opposition to the bill. (6-16-17)

The State Court Administrative Office (SVAO) indicated opposition to the bill. (6-16-17)

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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.