



Senate Fiscal Agency
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BILL ANALYSIS



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House Bills 6110 through 6113 (as passed by the House)
Sponsor: Representative Brandt Iden (H.B. 6110)
Representative Beth Griffin (H.B. 6111)
Representative Michele Hoytenga (H.B. 6112)
Representative Joseph N. Bellino, Jr. (H.B. 6113)
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 12-5-18

CONTENT

House Bill 6110 would amend Public Act 381 of 1974, which governs the occupational or professional licensing and regulation of former offenders, to do the following:

- **Prohibit a licensing board or agency from considering a judgment in a civil action against a former offender who was seeking an occupational or professional license as evidence of his or her good moral character.**
- **Prohibit a licensing board or agency from considering an individual's criminal conviction as conclusive proof of his or her lack of good moral character.**
- **Specify that a licensing board or agency could use an individual's criminal conviction as evidence of his or her good moral character only if certain conditions were met.**
- **Require a licensing board or agency to consider any additional information about an individual's current circumstances as evidence in a determination of his or her good moral character, in addition to considering his or her certificate or employability.**
- **Allow an individual to rebut evidence of lack of good moral character by showing that at the current time he or she had the ability to, and was likely to, serve the public in a fair, honest, and open manner, or that the criteria required for considering the individual's character as evidence in the determination of his or her good moral character had not been met.**
- **Prohibit a licensing board or agency from using a public record related to an individual's conviction in a determination of that his or her good moral character.**

House Bills 6111 to 6113 would amend the Public Health Code, the Skilled Trades Regulation Act, and the Occupational Code, respectively, to revise each Act's definition of "good moral character" to mean that term as defined in, and determined under, Public Act 381 of 1974 (which House Bill 6110 would amend).

Each bill would take effect 90 days after its enactment. House Bills 6111 through 6113 are tie-barred to House Bill 6110.

House Bills 6110 is described in greater detail below.

Under Public Act 381, the phrase "good moral character", when used as a requirement for an occupational or professional license or when used a requirement to establish or operate an organization or facility regulated in the State by Michigan law or administrative rules, means the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.

The Act prohibits a judgment of guilt in a criminal prosecution or a judgment in a civil action from being used, in and of itself, by a licensing board or agency as proof of an individual's lack of good moral character. However, the licensing board of agency may use that judgment as evidence in the determination of his or her good moral character. The bill would delete these provisions.

Under the bill, a licensing board or agency could not consider a civil action against an individual as evidence of his or her lack of good moral character.

A licensing board also could not consider an individual's criminal conviction, in and of itself, as conclusive proof of his or her lack of good moral character. A licensing board of agency could consider an individual's character as evidence in the determination of his or her good moral character only if it found that all of the following were met:

- The individual's criminal record included a felony conviction.
- The type of felony of which the individual was convicted was codified as a disqualifying offense in the applicable occupational or professional licensing statute.
- The licensing board of agency concluded that the specific offense of which the individual was convicted had a direct and specific negative effect on his or her ability to perform the duties authorized by the occupational or professional licensing license.

Additionally, in order to use an individual's character as evidence in the determination of his or her good moral character, a licensing board of agency also would have determine that the State's interest in protecting public safety was superior to the individual's right to pursue the occupation or professional, based on clear and convincing evidence that all of the following were met:

- The specific offense of which the individual was convicted was substantially related to the State's interest in protecting public safety.
- The individual, based on the nature of the offense for which he or she was convicted and on additional information provided by the licensee, was more likely to commit a subsequent offense because he or she had the occupational or professional license than if he or she did not have the license.
- A subsequent offense committed with the aid of the occupational or professional license would cause greater harm to the public than it would if the individual did not have the license.

Certificate of Employability

The Act requires a licensing board or agency to consider an individual certificate of employability, if any, under Section 34d of the Corrections Code, 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 pertaining to a judgment of guilt in a criminal prosecution used as evidence in the determination of an individual's good moral character.

Under the bill, a licensing board or agency would have to consider an individual certificate of employability *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.

(Section 34d of the Corrections Code requires the Department of Corrections to issue to a prisoner a certificate of employability if he or she successfully completed a career and technical course, received no major misconducts during the two years immediately preceding his or her release, and received no more than three minor misconducts in the two years immediately preceding his or her release.)

Lack of Good Moral Character Rebuttal

Under the Act, if a judgment of guilt in a criminal proceeding or a judgment in a civil action is used as evidence of an individual's lack of good moral character, a licensing board of agency must 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, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she is seeking a license.

Instead of a judgment of guilt in a criminal proceeding or a judgment in a civil action, the bill would refer only to a criminal conviction.

The bill also would delete the language pertaining to the substance of a former offense is not reasonably related to the occupation or profession for which he or she is seeking a license. Under the bill, an individual could rebut evidence of lack of good moral character by showing that at the current time he or she had the ability to, and was likely to, serve the public in a fair, honest, and open manner, or that the criteria required under the bill for considering an individual's character as evidence in the determination of his or her good moral character had not been met.

Public Record of Conviction

The Act does not prohibit the use by a licensing board or agency in its determination of a person's fitness of any other public record, not related to his or her arrest or prosecution, or of any source of unbiased and accurate information.

The bill would refer to an individual's *good moral character* instead of a person's fitness. Also, in addition to prohibiting a licensing board or agency from using a public record related to an individual's arrest or prosecution, a licensing board or agency could not use a public record related to his or her conviction.

MCL 338.41-338.47 (H.B. 6110)
333.16104 & 333.21755 (H.B. 6111)
339.5105 (H.B. 6112)
339.104 (H.B. 6113)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 6110

The bill would have no fiscal impact on State or local government. The bill's specifications regarding good moral character determinations would not add any additional cost burden to the Department of Licensing and Regulatory Affairs and would not result in any significant increase in revenue from licensing fees.

House Bills 6111 to 6113

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Raczowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.