

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Insurance and Financial Services

Bureau name:

Insurance

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2022-38 IF

Title of proposed rule set:

Good Moral Character

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no federal rules or standards set by a state or national licensing agency or accreditation association. The Director of the Department of Insurance and Financial Services (DIFS) is responsible for making determinations of good moral character for the purposes of licensure as an insurance producer, solicitor, adjuster, and insurance counselor, respectively, under sections 1205, 1206a, 1239, 1214, 1224, and 1234 of the Insurance Code of 1956, MCL 500.1205, 500.1206a, 500.1239, 500.1214, 500.1224, and 500.1234.

A. Are these rules required by state law or federal mandate?

DIFS is authorized to promulgate these rules under section 210 of the Insurance Code, MCL 500.210. In addition, section 3(3) of 1974 PA 381, MCL 338.43, provides that rules must be promulgated “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.”

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There is no applicable federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Related to the types of licenses listed in response to question #1, the proposed rules: a) identify convictions not already identified as a bar to licensure under the Insurance Code that evidence an applicant's lack of good moral character; b) establish standards for the Director's review of an applicant's good moral character; and c) establish procedures for an applicant to submit a claim to rebut the use of a conviction as evidence of lacking good moral character.

Similarly situated states also require licensure for certain occupations in the insurance industry (for example, through adoption of the Producer Licensing Model Act). Through statutes and regulations those states generally establish standards for licensure for applicants who have criminal histories and provide applicants with the right to notice of a license denial and to an administrative hearing and/or appeal.

Ohio requires applicants for a resident producer license to be "honest and trustworthy" and allows consideration of a conviction if it is identified by the licensing agency and certain factors are considered. See OH ST 3905.06; OH ST 3905.14; OH ST 9.79.

The Indiana Insurance Commissioner must find that an applicant for a resident producer license has not committed a prohibited act under statute, including having a felony conviction. See IN ST 27-1-15.6-6; IN ST 27-1-15.6-12.

The Illinois Department of Insurance may deny an application for a producer's license if the applicant has a felony conviction, unless the applicant demonstrates "sufficient rehabilitation to warrant the public trust." See IL ST CH 215, 5/500-70. Certain convictions may not be considered, such as juvenile adjudications, expunged and overturned convictions, and arrest records not followed by a conviction; and the Department must consider certain "mitigating factors" and "evidence of rehabilitation" if the denial is based on a conviction. See IL ST CH 215, 5/500-76.

In Wisconsin, an applicant for an agent (i.e., producer) license must be "competent and trustworthy." See WI ST 628.04. A "conviction for crimes which are substantially related to the circumstances of holding an insurance license" may be considered in assessing trustworthiness and competence. See WI ADC, INS 6.59.

The Minnesota Insurance Commissioner must find that an applicant for a resident insurance producer has not committed "a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct," among other grounds for refusing licensure. See MN ST 60K.37; MN ST 60K.43.

The Pennsylvania Insurance Department administers a "preliminary licensing determination process" that provides applicants with guidance on how their specific circumstances and convictions may affect their formal application process, given that an applicant for a resident producer license must demonstrate that they do not lack "general fitness, competence or reliability." See 40 PA STAT 310.11.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

We are not aware of any standard in another state that the proposed rules exceed. Generally, the state licensing authority, like the Director of DIFS, has certain discretion in licensing individuals under the state's insurance laws.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The proposed rules do not duplicate and do not conflict with laws, rules, or other legal requirements. As explained in #1, the Director of DIFS is responsible for making determinations of good moral character for the purposes of licensure under Chapter 12 of the Insurance Code. "Good moral character" is defined under MCL 500.1200 by reference to the definition of that term in MCL 338.41(1) of 1974 PA 381. The proposed rules work in conjunction with the Insurance Code and 1974 PA 381 to clarify the effect of certain criminal convictions and establish standards for the Director's review of an applicant's good moral character and an applicant's rebutting claim. The proposed rules do not impact existing statutory requirements for licensure, which necessarily would continue to apply.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

We are not aware of other federal or local laws applicable to the same activity or subject matter. The Director of DIFS is responsible for making determinations of good moral character for the purposes of issuing the licenses listed in #1. As explained in #3 above, the proposed rules work in conjunction with other state law applicable to the same activity or subject matter, i.e., certain provisions of Chapter 12 of the Insurance Code and 1974 PA 381.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply because the federal government has not mandated that DIFS promulgate the proposed rules.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply because there is no applicable federal standard.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rules are designed to supplement the current statutory requirements within Chapter 12 for the licenses listed under #1. Specifically, as explained in #2 and #3, those licenses require that an applicant possess good moral character, and the lack of good moral character may be evidenced by certain criminal convictions pursuant to 1974 PA 381. The proposed rules are designed to alter the process by which the Director of DIFS reviews an applicant's qualifications for licensure relating to an applicant's history of criminal convictions by adding clarity and consistency.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

DIFS estimates that all new applicants for the licenses listed under #1 will be subject to the proposed rules. Recent annual totals for the number of applications received by DIFS are provided under #29.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Currently, there are no administrative rules that govern DIFS' assessment of an applicant's good moral character, as related to the applicant's criminal conviction history. The proposed rules would provide transparency for the applicant and a streamlined process for DIFS' assessment of an applicant's good moral character as it relates to the applicant's criminal conviction history.

C. What is the desired outcome?

The desired outcome is that by providing transparency, clarity, and consistency and establishing a procedural process for assessment. The proposed rules ensure that those ultimately granted a license listed under #1 possess the requisite good moral character to serve this State's insurance industry in a fair, open, and honest manner, while also not excluding those applicants from licensure who are able to demonstrate rehabilitation since the occurrence of the criminal conviction(s).

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Because there are currently no rules governing the subject matter of the proposed rules, the resulting harm is a system in which the applicant for a license listed under #1 may not be fully aware of the potential effect of their history of criminal convictions on the application for licensure. Identifying certain criminal convictions that evidence a lack of good moral character and establishing that the applicant may submit a rebutting claim provides the applicant insight into the application process, so they are able to prepare for the licensure application process more efficiently. Additionally, establishing a standard in administrative rules for the review of license applications will improve DIFS' licensing processes.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The rules are proposed new rules, which do not amend an existing rule set; there is no option to leave the rules as currently written.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules work in conjunction with certain provisions of Chapter 12 of the Insurance Code and 1974 PA 381 to ensure only those with good moral character are permitted to engage in the occupations listed in #1. The health, safety, and welfare of Michigan residents is promoted by identifying the criminal convictions that may result in the denial of an application for licensure to ensure that those licensed to interact with consumers in the insurance industry in Michigan do so in a fair, honest, and open manner. The proposed rules make the application process more efficient by clearly establishing the standards for the Director's review of good moral character and the applicant's submission of a rebutting claim.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The proposed rules are a new rule set; there are no rules that can be rescinded as obsolete or unnecessary.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There is no estimated cost of imposing the proposed rules. The proposed rules are designed to make the application process for those occupations listed in #1 more efficient.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

There are no expenditures associated with the proposed rules; DIFS currently reviews applications for licensure as part of its responsibilities under the Insurance Code, and implementation of the proposed rules would be subsumed into those existing processes and applicable funding sources.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules do not require duplicative acts of applicants applying for a license listed in #1 or place a fiscal burden on those applicants. The proposed rules do authorize the Director of DIFS to require additional information from an applicant who is believed to have a criminal conviction evidencing a lack of good moral character and allow the applicant to submit a rebutting claim.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

Despite the potential burden of applicants in certain circumstances described above, the proposed rules ensure that the Director has all relevant information regarding the conviction(s) and the applicant in order to make an informed and accurate determination regarding the applicant's good moral character and ability to adequately perform the functions of the occupation.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no cost or revenue increases or decreases to other state or local governmental units as a result of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not impose a program, service, duty, or responsibility on a city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not require governmental units to take action to comply with the rules.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There are no additional expenditures associated with the proposed rules that would necessitate an appropriation to state or local governmental units or other funding source; as a result, no such appropriation or funding source has been made.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules will not have an impact on an area because it is a rural area; the proposed rules are generally applicable to any individual applying for licensure for an occupation listed in #1.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules are generally applicable to any individual applying for licensure for an occupation listed in #1. The rules impact the licensure process for individuals in rural areas; that impact would be generally the same in all areas of the State. The rules impact public interests in rural areas by ensuring that those licensed to interact with consumers in the insurance industry in those areas do so in a fair, honest, and open manner, and that impact would be generally the same in all areas of the State.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

No, the proposed rules do not have any impact on the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

DIFS did not consider exempting "small businesses," as that term is defined under MCL 24.207a, from the proposed rules. These rules will apply only to individuals, not business entities.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

These rules will apply only to individuals, not business entities. Accordingly, a reduction of the economic impact of the proposed rules on small businesses was not feasible.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

These rules will apply only to individuals, not business entities. Accordingly, it is estimated that no small businesses will be affected by the proposed rules, and there is no probable effect on small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

These rules will apply only to individuals, not business entities. Accordingly, DIFS did not establish differing compliance or reporting requirements or timetables for small businesses under the rules.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

These rules will apply only to individuals, not business entities. Accordingly, there are no compliance or reporting requirements for small businesses under the rules that can be consolidated or simplified, and no necessary skills to comply with such reporting requirements can be identified.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

These rules will apply only to individuals, not business entities. Accordingly, the proposed rules do not include design or operation standards relating to small businesses that may be replaced with performance standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

These rules will apply only to individuals, not business entities. Accordingly, the proposed rules would not have a disproportionate impact on small businesses because of their size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

These rules will apply only to individuals, not business entities. Accordingly, the proposed rules do not require small businesses to prepare a report to comply with the rules.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

These rules will apply only to individuals, not business entities. Accordingly, the proposed rules should not result in costs of compliance for small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

These rules will apply only to individuals, not business entities. Accordingly, the proposed rules should not result in costs of legal, consulting, or accounting services incurred by small businesses.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

These rules will apply only to individuals, not business entities. Accordingly, the proposed rules should not result in costs to small businesses.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

These rules will apply only to individuals, not business entities. Accordingly, there is no cost estimation available for administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

These rules will apply only to individuals, not business entities. Accordingly, there is no impact on the public interest of exempting or setting lesser standards of compliance for small businesses that can be identified.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

These rules will apply only to individuals, not business entities. Accordingly, small businesses were not involved in the development of the proposed rules.

A. If small businesses were involved in the development of the rules, please identify the business(es).

These rules will apply only to individuals, not business entities. Accordingly, small businesses were not involved in the development of the proposed rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

DIFS does not expect that businesses or groups will have any statewide compliance costs resulting from the proposed rules.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Only applicants for the licenses listed under #1 will be directly affected by the proposed rules and will benefit from having a simplified and clear process regarding the consideration of their application, as it relates to criminal conviction history.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There should be no additional costs imposed on businesses and other groups as a result of these proposed rules.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The actual statewide compliance costs of the proposed rules on the regulated individuals, i.e., those applying for a license listed under #1, would be nominal, if there are any additional costs associated with the proposed rules at all. Applicants are already subject to assessment and approval by DIFS.

A. How many and what category of individuals will be affected by the rules?

Any applicant for a license listed under #1 would be affected by the proposed rules; the number of individuals affected would depend on the number of applications submitted to DIFS. To illustrate an annual estimation of the number of applications received by DIFS, the following lists applications received for 2021 and 2022:

- Producer applications: 74,039 (2021 total); 35,435 (as of 7/22/2022)
- Adjuster applications: 9,609 (2021 total); 7,388 (as of 7/22/2022)
- Insurance Counselor applications: 212 (2021 total); 136 (as of 7/22/2022)
- Solicitor applications: 232 (2021 total); 147 (as of 7/22/2022)

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

Certain criminal convictions would be identified under the proposed rules as establishing evidence of an applicant's lack of good moral character. There would be clear factors established for the Director's consideration of that conviction, and the applicant would have notice of the Director's determination that a conviction evidences a lack of good moral character and an opportunity to submit a rebutting claim.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

The proposed rules would not result in any cost reductions to businesses, individuals, groups of individuals, or governmental units.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The insurance industry will benefit by the proposed rules' facilitation of ensuring that the licensees listed in #1 will perform in a fair, open, and honest manner, while also not excluding those applicants from licensure who are able to demonstrate rehabilitation since the occurrence of the criminal conviction.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules are not expected to impact business growth or job creation in Michigan.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Apart from applicants for licensure listed under #1, no individuals or businesses will be disproportionately affected by the proposed rules as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

DIFS relied on the following sources in compiling the regulatory impact statement:

- 1) Other states' law and/or standards regarding licensing criteria and discretion of insurance commissioners/directors in other states.
- 2) Internal DIFS' data systems reporting licensure application totals.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

Estimates regarding compliance of individuals affected by the proposed rules and the proposed rules' costs were based on estimates of the current number of applicants for licensure listed under #1 and the effect of the proposed rules on the existing application process applicable to those applicants. Generally, the proposed rules' estimated cost of compliance or implementation by DIFS, other state agencies, local governments, or businesses or groups is based on the effect of the proposed rules in relation to the existing application process, leading to the conclusion that those entities or agencies should not have any costs or additional costs associated with the promulgation of the proposed rules.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

As an alternative to the proposed rules, DIFS could continue assessing applications for a license listed under #1 without specific standards established in administrative rules. However, DIFS does not believe this to be a reasonable alternative for the reasons stated within, including the requirement to promulgate rules “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” under MCL 338.43(3).

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments are necessary, as DIFS does not believe there to be a reasonable alternative to the proposed rules in the first instance.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There are no private market-based mechanisms appropriate for establishing a regulatory program similar to that proposed in the rules. The Director of DIFS is responsible for making determinations of good moral character for the purposes of issuing the licenses listed in #1 under Chapter 12 of the Insurance Code.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

There are no significant alternatives that DIFS considered.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are currently no instructions regarding the method of complying with the rules.