

Legislative Analysis



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House Bill 6110 as reported from committee
Sponsor: Rep. Brandt Iden

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

House Bill 6111 as reported
Sponsor: Rep. Beth Griffin

House Bill 6113 as reported
Sponsor: Rep. Joseph N. Bellino, Jr.

House Bill 6112 as reported
Sponsor: Rep. Michele Hoyenga

House Bill 6381 as reported
Sponsor: Rep. Jeremy Moss

Committee: Regulatory Reform
Complete to 10-2-18

SUMMARY:

House Bill 6110 would amend Public Act 381 of 1974, which defines “good moral character” as it relates to qualifications for occupational licenses, to establish criteria for when a licensing board may consider a criminal conviction as evidence in determining an applicant’s good moral character.

House Bills 6111, 6112, and 6113 are companion bills that would revise the definition of “good moral character” within their respective acts to comport with the changes proposed by House Bill 6110.

House Bill 6381 would require the Department of Licensing and Regulatory Affairs (LARA) to provide an annual report to the legislature regarding the number of applications for occupational licenses denied due to failure to meet the “good moral character” standard.

Each of the bills would take effect 90 days after enactment.

House Bill 6110 would amend the title and several provisions of Public Act 381 of 1974. The statutory requirements for many types of occupational licenses issued by the state of Michigan require that an applicant for a new or renewal license be of “good moral character.” Public Act 381 defines “good moral character” and also contains provisions intended to support the rehabilitation efforts of former offenders by, among other things, prohibiting the use by a licensing board of a criminal record as the sole proof of an applicant’s lack of good moral character.

Title

The title of Public Act 381 of 1974 describes it as an act to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship. The bill would amend the title by specifying that the act is “to define the term ‘good moral character’ [rather than ‘prescribing the use of’] 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 the state.” (Underlining denotes proposed changes.)

Definition of “good moral character”

The changes to the definition of “good moral character” would be largely technical or editorial in nature, rather than being substantive. For example, the phrase “those laws shall be construed to mean” would be replaced with “a statute of this state, means.” As amended, the definition would read:

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.

Other definitions

The bill would add several definitions and revise an existing one, as follows:

“Felony” would mean a violation of a Michigan penal law for which the offender may be punished by imprisonment for more than one year or an offense expressly designated by law as a felony. (A misdemeanor that carries a maximum term of imprisonment of two years, also known as a “high court misdemeanor,” would—for purposes of “good moral character”—be treated as a felony.)

“License” would include a registration.

“Licensing board or agency” would mean a principal department, or a board or agency within a principal department, that issues occupational or professional licenses.

“Principal department” would be slightly revised to mean a department that has jurisdiction over a licensing board or agency.

Consideration of a criminal conviction or judgment in a civil action

Currently, a judgment of guilt in a criminal prosecution or a judgment in a civil action cannot—in and of itself—be used by a licensing board or agency as proof of an individual’s lack of good moral character, though either may be used as evidence in the determination of the individual’s good moral character. The bill would delete this provision.

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

Further, a criminal conviction could not be considered, in and of itself, as conclusive proof of an individual’s lack of good moral character. A licensing board or agency could only

consider a criminal conviction as evidence in the determination of the individual's good moral character if all of the following were found:

- The criminal record includes a felony conviction.
- The applicable occupational or professional licensing statute specifies that the type of felony of which the individual was convicted is a disqualifying offense.
- The licensing board or agency concludes that the specific offense has a direct and specific negative effect on the individual's ability to perform the duties authorized by the occupational or professional license.
- The licensing board or agency determines that the state's interest in protecting public safety is superior to the individual's right to pursue the occupation or profession. However, this determination must be based on all of the following:
 - The specific offense is substantially related to the state's interest in protecting public safety.
 - The individual, based on the nature of the offense of which the individual was convicted and on any additional information provided by the licensee regarding his or current circumstances, is more likely to commit a subsequent offense if he or she has the occupational or professional license than if he or did not have the license.
 - A subsequent offense committed with the aid of the license will cause greater harm to the public than it would if the individual did not have it.

Currently, a licensing board or agency must consider an individual's certificate of employability, if any, *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 italicized language and instead require the licensing board or agency to consider—as evidence in the determination of an individual's good moral character—the certificate of employability and any additional information about the individual's current circumstances, such as how long ago the offense occurred, whether or not the sentence for the offense was completed, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

(Under the Corrections Code, the Department of Corrections is required to issue a certificate of employability to a prisoner who successfully completes a career and technical education course, who had no major misconducts and not more than three minor misconducts during his or her last two years of incarceration, and who received a silver level or better on the National Work Readiness Certificate or similar score on an alternative jobs skills assessment test administered by the department.)

Rebuttal of lack of good moral character

The bill would revise a provision pertaining to an individual's ability to rebut a determination by a licensing board or agency as to a lack of good moral character based on a judgment of guilt in a criminal proceeding or a civil judgment to reflect the amendments described above.

Under the bill, if a criminal conviction is used as evidence of lack of good moral character, the individual must be notified and permitted to rebut the evidence by showing that at the current time he or she is able 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 described earlier have not been met.

Use of criminal records

The act currently prohibits the use, examination, or request by a licensing board or agency of certain criminal records in a determination of good moral character. The bill retains the prohibition but makes several revisions of an editorial, not a substantive, nature.

Miscellaneous provisions

The bill makes numerous revisions that are largely technical or editorial, rather than substantive, to several provisions. In addition, a few phrases have been deleted and replaced with language that comports with the changes made to how determinations of good moral character are to be made by licensing boards and agencies. For example, instead of specifying that when a person is found to be unqualified for a license because of a lack of good moral character the person shall be furnished by the board or agency with a statement to this effect, the bill would specify that *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 board or agency *shall provide the individual* with a statement to this effect (italicized text denotes revisions).

MCL 338.41

House Bills 6111, 6112 and 6113 would amend various acts to revise the definition of “good moral character” contained in those acts to mean good moral character as defined in, and determined under, Public Act 381 of 1974. Currently, most of the affected provisions do not include the phrase “determined under” and only reference Section 1 of PA 381. As amended, determinations of good moral character made under each bill would have to follow the provisions within PA 381 as established by House Bill 6110.

House Bill 6111 would amend the Public Health Code and would also make several other changes of a technical nature. (MCL 333.16104 and 333.21755)

House Bill 6112 would amend the Skilled Trades Regulation Act. (MCL 339.5105)

House Bill 6113 would amend the Occupational Code. (MCL 339.104)

House Bill 6381 would amend the Occupational Code to require that the annual report provided to the legislature by LARA regarding applications for occupational licenses issued under the Code include the number of applications denied by LARA because of an applicant’s lack of good moral character and a summary, by category of offense, of the criminal convictions on which those denials were based.

The report is due by December 1 of each year and submitted to the standing committees and appropriations subcommittees of the Senate and House of Representatives concerned with occupational issues. Information in the report concerns the preceding state fiscal year.

House Bills 6111, 6112, 6113, and 6380 are tie-barred to House Bill 6110, meaning that they could take effect unless House Bill 6110 were also enacted.

MCL 339.411

BRIEF DISCUSSION:

Many who have made poor decisions in the past resulting in criminal convictions find that turning one's life around is no guarantee of being able to find gainful employment in a trade or occupation that requires a state license or registration. Recently, Governor Snyder signed Executive Directive 2018-4 to require that a question preceding a license application for state employment as to whether an applicant has a felony conviction be removed. Though disclosure of criminal convictions will still be required in the application or interview process, "removing the box," so to speak, at least precludes immediate ineligibility to apply for a state job.

Along that line, this bill package would clarify how "good moral character" clauses in various occupational statutes should be used when determining the eligibility of an applicant for licensing or registration in a particular occupation or trade. Historically, such good moral character clauses were never meant to interpret a previous arrest or conviction as prima facie evidence for denial of a license by a licensing board. Legislation dating to the mid-1970s attempted to clarify that issue, as well as to restrict access to criminal records that did not relate to the license being sought.

However, some feel that the statutes need further clarification, as many with checkered pasts still find it difficult to obtain licenses required of certain occupations. Enactment of the bills could restore the original intent of the statutes and also expand the pool of eligible workers at a time when many segments of the labor market are experiencing shortages of qualified applicants. Further, data show that employment is a major predictor of successful reintegration into society after incarceration and results in lower recidivism rates. Moreover, the Michigan Department of Corrections' Vocational Village is training prisoners in many trades, only to find that they cannot obtain the necessary licenses to continue in that work upon release.

Though the bill package has broad support, some have concerns that certain wording in HB 6110 would preclude the ability of licensing boards to review a person's misdemeanor records. For some professions, such as veterinary medicine, for which some animal neglect penalties result in misdemeanors, this could mean that a licensing board could not review such records when determining eligibility for license renewal or licensing sanctions. Perhaps language in the bill limiting review to felony records could be expanded to include misdemeanor records when appropriate.

FISCAL IMPACT:

House Bills 6110 through 6113 and 6381 would not have a significant impact on expenditures or revenues for LARA or for other units of state or local government. LARA already makes determinations regarding “good moral character” of applicants, licensees, and registrants. House Bill 6110 would result in changes to the processes utilized by LARA to determine “good moral character.” However, the process changes would not be expected to lead to new or additional costs for the department.

POSITIONS:

Representatives of the following entities testified in support of HBs 6110 through 6113 on 9-26-18:

- Mackinac Center for Public Policy
- ACLU of Michigan
- Institute of Justice
- Recovery Park

The following entities indicated support for one or more of the bills on 9-26-18:

- National Association of Social Workers (all of the bills)
- Safe and Just Michigan (all of the bills)
- Americans for Prosperity (HBs 6110 through 6113)
- West Michigan Policy Forum (HBs 6110 and 6113)
- Michigan Chamber of Commerce (HBs 6110 and 6113)
- Grand Rapids Chamber (HBs 6110 and 6113)

The Michigan League for Public Policy indicated support for the bills. (10-2-18)

The Michigan Society of Professional Surveyors indicated a neutral position on HB 6110. (9-26-18)

The following entities indicated opposition to one or more of the bills on 9-26-18:

- Michigan Society of Professional Engineers (HBs 6110 through 6113)
- Michigan Veterinary Medical Association (HB 6110)
- State Court Administrative Office (HB 6110)
- Michigan Realtors (HB 6110)

Legislative Analyst: Susan Stutzky
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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.