

HOUSE BILL No. 6280

August 15, 2018, Introduced by Rep. Lucido and referred to the Committee on Regulatory Reform.

A bill to amend 1974 PA 381, entitled

"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 prescribe the use of the term "good moral character" or similar term 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 thereon,"

by amending the title and sections 1, 2, 3, 4, 5, 6, and 7 (MCL 338.41, 338.42, 338.43, 338.44, 338.45, 338.46, and 338.47), section 2 as amended by 2014 PA 361.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

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 ~~prescribe the use of~~ **DEFINE** the term "good moral character" ~~or similar term~~ **AND ESTABLISH HOW GOOD**

1 **MORAL CHARACTER IS DETERMINED WHEN USED** as a requirement for an
 2 occupational or professional license or when used as a requirement
 3 to establish or operate an organization or facility regulated by
 4 this state; and to provide administrative and judicial procedures
 5 to contest licensing board or agency rulings ~~thereon.~~**CONCERNING AN**
 6 **INDIVIDUAL'S GOOD MORAL CHARACTER.**

7 Sec. 1. (1) The phrase "good moral character", ~~or words of~~
 8 ~~similar import,~~ when used as a requirement for an occupational or
 9 professional license or when used as a requirement to establish or
 10 operate an organization or facility regulated by this state in ~~the~~
 11 ~~Michigan Compiled Laws~~ **A STATUTE OF THIS STATE** or administrative
 12 rules promulgated under ~~these laws shall be construed to mean~~ **A**
 13 **STATUTE OF THIS STATE, MEANS** the propensity on the part of ~~the~~
 14 ~~person~~ **AN INDIVIDUAL** to serve the public in the licensed area in a
 15 fair, honest, and open manner.

16 (2) As used in this act: ~~,"principal~~

17 **(A) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE**
 18 **FOR WHICH THE OFFENDER MAY BE PUNISHED BY IMPRISONMENT FOR MORE**
 19 **THAN 1 YEAR OR AN OFFENSE EXPRESSLY DESIGNATED BY LAW AS A FELONY.**

20 **(B) "LICENSE" INCLUDES A REGISTRATION.**

21 **(C) "LICENSING BOARD OR AGENCY" MEANS A PRINCIPAL DEPARTMENT,**
 22 **OR A BOARD OR AGENCY WITHIN A PRINCIPAL DEPARTMENT, THAT ISSUES**
 23 **OCCUPATIONAL OR PROFESSIONAL LICENSES.**

24 **(D) "PRINCIPAL department"** means ~~the~~ **A** department ~~which~~ **THAT**
 25 has jurisdiction over ~~the~~ **A LICENSING** board or agency. ~~issuing the~~
 26 ~~license.~~

27 Sec. 2. ~~(1) A judgment of guilt in a criminal prosecution or a~~

1 ~~judgment in a civil action shall not be used, in and of itself, by~~
2 ~~a licensing board or agency as proof of an individual's lack of~~
3 ~~good moral character. However, the licensing board or agency may~~
4 ~~use that judgment as evidence in the determination of his or her~~
5 ~~good moral character.~~

6 (1) A LICENSING BOARD OR AGENCY SHALL NOT CONSIDER A JUDGMENT
7 IN A CIVIL ACTION AGAINST AN INDIVIDUAL AS EVIDENCE OF HIS OR HER
8 LACK OF GOOD MORAL CHARACTER.

9 (2) A LICENSING BOARD OR AGENCY SHALL NOT CONSIDER AN
10 INDIVIDUAL'S CRIMINAL CONVICTION, IN AND OF ITSELF, AS CONCLUSIVE
11 PROOF OF HIS OR HER LACK OF GOOD MORAL CHARACTER. A LICENSING BOARD
12 OR AGENCY MAY ONLY CONSIDER AN INDIVIDUAL'S CRIMINAL CONVICTION AS
13 EVIDENCE IN THE DETERMINATION OF HIS OR HER GOOD MORAL CHARACTER IF
14 THE LICENSING BOARD OR AGENCY FINDS THAT ALL OF THE FOLLOWING ARE
15 MET:

16 (A) THE INDIVIDUAL'S CRIMINAL RECORD INCLUDES A CONVICTION FOR
17 A FELONY.

18 (B) THE TYPE OF FELONY OF WHICH THE INDIVIDUAL WAS CONVICTED
19 IS CODIFIED AS A DISQUALIFYING OFFENSE IN THE APPLICABLE
20 OCCUPATIONAL OR PROFESSIONAL LICENSING STATUTE.

21 (C) THE LICENSING BOARD OR AGENCY CONCLUDES THAT THE SPECIFIC
22 OFFENSE OF WHICH THE INDIVIDUAL WAS CONVICTED HAS A DIRECT AND
23 SPECIFIC NEGATIVE EFFECT ON HIS OR HER ABILITY TO PERFORM THE
24 DUTIES AUTHORIZED BY THE OCCUPATIONAL OR PROFESSIONAL LICENSE.

25 (D) THE LICENSING BOARD OR AGENCY DETERMINES THAT THE STATE'S
26 INTEREST IN PROTECTING PUBLIC SAFETY IS SUPERIOR TO THE
27 INDIVIDUAL'S RIGHT TO PURSUE THE OCCUPATION OR PROFESSION, BASED ON

1 CLEAR AND CONVINCING EVIDENCE THAT ALL OF THE FOLLOWING ARE MET:

2 (i) THE SPECIFIC OFFENSE OF WHICH THE INDIVIDUAL WAS CONVICTED
3 IS SUBSTANTIALLY RELATED TO THE STATE'S INTEREST IN PROTECTING
4 PUBLIC SAFETY.

5 (ii) THE INDIVIDUAL, BASED ON THE NATURE OF THE OFFENSE FOR
6 WHICH HE OR SHE WAS CONVICTED AND ON ANY ADDITIONAL INFORMATION
7 PROVIDED BY THE INDIVIDUAL UNDER SUBSECTION (3), IS MORE LIKELY TO
8 COMMIT A SUBSEQUENT OFFENSE BECAUSE HE OR SHE HAS THE OCCUPATIONAL
9 OR PROFESSIONAL LICENSE THAN IF HE OR SHE DOES NOT HAVE THE
10 OCCUPATIONAL OR PROFESSIONAL LICENSE.

11 (iii) A SUBSEQUENT OFFENSE COMMITTED WITH THE AID OF THE
12 OCCUPATIONAL OR PROFESSIONAL LICENSE WILL CAUSE GREATER HARM TO THE
13 PUBLIC THAN IT WOULD IF THE INDIVIDUAL DID NOT HAVE THE
14 OCCUPATIONAL OR PROFESSIONAL LICENSE.

15 (3) ~~(2) If a judgment of guilt in a criminal prosecution is~~
16 ~~used as evidence in the determination of an individual's good moral~~
17 ~~character under subsection (1), the~~ **A** licensing board or agency
18 shall also consider ~~his or her~~ **AN INDIVIDUAL'S** certificate of
19 employability, if any, under section 34d of the corrections code of
20 1953, 1953 PA 232, MCL 791.234d, ~~as evidence in the~~
21 ~~determination.~~ **AND ANY ADDITIONAL INFORMATION ABOUT HIS OR HER**
22 **CURRENT CIRCUMSTANCES, SUCH AS HOW LONG AGO THE OFFENSE OCCURRED,**
23 **WHETHER HE OR SHE COMPLETED THE SENTENCE FOR THE OFFENSE, OTHER**
24 **EVIDENCE OF REHABILITATION, TESTIMONIALS, EMPLOYMENT HISTORY, AND**
25 **EMPLOYMENT ASPIRATIONS AS EVIDENCE IN THE DETERMINATION OF AN**
26 **INDIVIDUAL'S GOOD MORAL CHARACTER UNDER SUBSECTION (2).**

27 (4) ~~(3) If a judgment of guilt in a criminal proceeding or a~~

1 ~~judgment in a civil action~~ **CRIMINAL CONVICTION** is used under
 2 subsection ~~(1)~~ **(2)** as evidence of an individual's lack of good
 3 moral character, the licensing board or agency shall notify the
 4 individual and ~~he or she~~ **SPECIFICALLY DESCRIBE WHAT FACTS**
 5 **CONCERNING THAT CONVICTION SUPPORT THE DETERMINATION THAT THE**
 6 **INDIVIDUAL LACKS GOOD MORAL CHARACTER. AN INDIVIDUAL DESCRIBED IN**
 7 **THIS SECTION** is permitted to rebut the evidence by showing that at
 8 the current time he or she has the ability to, and is likely to,
 9 serve the public in a fair, honest, and open manner, that he or she
 10 is rehabilitated, or that ~~the substance of the former offense is~~
 11 ~~not reasonably related to the occupation or profession for which he~~
 12 ~~or she is seeking a license.~~ **THE CRITERIA UNDER SUBSECTION (2) HAVE**
 13 **NOT BEEN MET.**

14 Sec. 3. (1) ~~The following criminal records shall not be used,~~
 15 ~~examined, or requested by a~~ **A** licensing board or agency **SHALL NOT**
 16 **USE, EXAMINE, OR REQUEST ANY OF THE FOLLOWING CRIMINAL RECORDS** in
 17 **MAKING** a determination of good moral character ~~when used~~ **FOR USE** as
 18 a requirement to establish or operate an organization or facility
 19 regulated by this state ~~, or pursuant to~~ **FOR PURPOSES OF**
 20 occupational or professional licensure:

21 (a) Records of an arrest **THAT IS** not followed by a conviction.

22 (b) Records of a conviction ~~which~~ **THAT** has been reversed or
 23 vacated, including the arrest records relevant to that conviction.

24 (c) Records of an arrest or conviction for a misdemeanor or a
 25 felony unrelated to the ~~person's~~ **INDIVIDUAL'S** likelihood to serve
 26 the public in a fair, honest, and open manner.

27 (d) Records of an arrest or conviction for a misdemeanor for

1 the conviction of which ~~a person~~ **AN INDIVIDUAL** may not be
2 incarcerated in a jail or prison.

3 (2) A criminal record shall not be furnished to a licensing
4 board or agency except by the principal department, and shall be
5 furnished only after the director of the principal department or a
6 ~~person~~ **AN INDIVIDUAL** designated by the director has determined that
7 the information to be provided to the board or agency meets the
8 criteria set forth in this section.

9 (3) The director or a ~~person~~ **AN INDIVIDUAL** designated by the
10 director of the principal department shall promulgate rules for
11 each licensing board or agency under that department's jurisdiction
12 ~~which~~ **THAT** prescribe the offenses or categories of offenses ~~which~~
13 **THAT** the department considers indicate a ~~person~~ **AN INDIVIDUAL** is
14 not likely to serve the public as a licensee **OR REGISTRANT** in a
15 fair, honest, and open manner. Each licensing board or agency may
16 make recommendations to the director regarding the rules ~~to be~~
17 ~~promulgated.~~ **DESCRIBED IN THIS SUBSECTION.** The rules shall **MUST** be
18 consistent with this act and promulgated ~~pursuant to Act No. 306 of~~
19 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~
20 ~~24.315 of the Michigan Compiled Laws. Prior to~~ **UNDER THE**
21 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**
22 **24.328. BEFORE** the promulgation of the rules pertaining to a board
23 or agency, ~~all felonies shall be considered by the~~ **A** board or
24 agency **SHALL CONSIDER ALL FELONIES** to be relevant to the ability or
25 likelihood ~~the person~~ **THAT AN INDIVIDUAL** will serve the public in a
26 fair, honest, and open manner.

27 Sec. 4. This act ~~shall not bar~~ **DOES NOT PROHIBIT** the use by a

1 licensing board or agency in its determination of ~~a person's~~
 2 ~~fitness,~~ **AN INDIVIDUAL'S GOOD MORAL CHARACTER** of any other public
 3 record ~~, THAT IS~~ not related to **HIS OR HER** arrest, ~~or~~ prosecution,
 4 **OR CONVICTION** or **THE USE** of any other source of unbiased and
 5 accurate information.

6 Sec. 5. ~~When a person is found to be unqualified~~ **IF A**
 7 **LICENSING BOARD OR AGENCY DETERMINES THAT AN INDIVIDUAL IS NOT**
 8 **ELIGIBLE** for a license because of a lack of good moral character,
 9 ~~or similar criteria,~~ the person shall be furnished by the board or
 10 agency **SHALL PROVIDE THE INDIVIDUAL** with a statement to this
 11 effect. The statement shall contain a complete record of the
 12 evidence ~~upon~~ **ON** which the determination was based **AND A SPECIFIC**
 13 **DESCRIPTION OF HOW THAT EVIDENCE SUPPORTS THE DETERMINATION THAT**
 14 **THE INDIVIDUAL LACKS GOOD MORAL CHARACTER.** ~~The person shall be~~
 15 ~~entitled, as of right, to~~ **A LICENSING BOARD OR AGENCY MUST PROVIDE**
 16 **AN INDIVIDUAL DESCRIBED IN THIS SUBSECTION AN OPPORTUNITY FOR** a
 17 rehearing on the issue before the board **OR AGENCY** if he or she has
 18 relevant evidence ~~not previously considered,~~ regarding his or her
 19 qualifications **THAT WAS NOT PREVIOUSLY CONSIDERED.**

20 Sec. 6. ~~A person,~~ **AN INDIVIDUAL WHO IS** aggrieved by a
 21 licensing **BOARD OR** agency ~~or board determination~~ regarding the
 22 ~~person's possession of~~ **HIS OR HER** good moral character, if
 23 unsatisfied by his or her administrative ~~appeal as provided in~~
 24 **REMEDY UNDER** section 5, may bring an action in circuit court for a
 25 review of the record. If, in the opinion of the circuit court, the
 26 record does not disclose a lack of good moral character, as ~~defined~~
 27 ~~in~~ **DETERMINED UNDER** this act, the court shall ~~so state and shall~~

1 order the board **OR AGENCY** to issue the license ~~when~~ **THE**
2 **INDIVIDUAL MEETS** all other licensing requirements. ~~are complied~~
3 ~~with.~~

4 Sec. 7. This act does not affect the power of a licensing
5 **BOARD OR** agency to discipline licensees under its jurisdiction for
6 prohibited acts of professional misconduct or dishonesty.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.