To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, Public Policy Counsel

Date: May 7, 2019

Re: Good Moral Character; HB 4488 (Iden) and HB 4489 (Bellino)

Background
HB 4488 is a reintroduction of a bill from last session (HB 6110 of 2018) that proposes amending MCL 338.41 to 338.47 to establish criteria for when a licensing board could consider a criminal conviction or judgement in a civil action as evidence in determining an applicant’s good moral character. MCL 338.41 to 338.47 are cited in the Revised Judicature Act (RJA) under MCL 600.934 in defining “good moral character” for admission to the bar. Therefore, standing alone, HB 4488 of 2019 (and HB 6110 of 2018, as introduced) would prevent the Board of Law Examiners (BLE) from considering criminal convictions or civil judgments in determining whether an applicant had good moral character to practice law.

1. Previous State Bar Action: HB 6110 of 2018

In 2018, the State Bar of Michigan, the State Court Administrative Office, and the BLE shared the position that HB 6110 should not apply to the legal profession because the licensing of attorneys is the exclusive domain of the Supreme Court through the BLE.

Although HB 6110 was not signed into law last session, it was amended during the legislative process to include an explicit exemption for the licensing of attorneys.

2. Current Bills Under Consideration: HB 4488 and HB 4489

HB 4488 does not include an explicit exemption for the legal profession; instead, the legislators introduced HB 4489 to amend the RJA to give the BLE exclusive authority to determine good moral character for law license applicants and explicitly provide that MCL 338.41 to 338.47 do not apply to the BLE’s determination of good moral character.

As introduced, HB 4489 is tie-barred to HB 4488. This means that HB 4489, which would establish that the BLE’s exclusive authority to define good moral character for the legal profession, could not become law unless HB 4488 is also signed into law. HB 4488 is not tie-barred to HB 4489, which means that HB 4488 can become law and apply to the legal profession. In the latter situation, HB
4488 could be interpreted to apply to the BLE’s good moral character evaluation and prevent the BLE from considering criminal convictions and civil judgments in its determination.

**Keller Considerations**

HB 4489 meets *Keller* requirements because it explicitly concerns the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

HB 4488 also meets the *Keller* requirements. If HB 4488 is enacted without HB 4489, HB 4488 would likely apply to the legal profession and directly impact the regulation of the legal profession.

**Keller Quick Guide**

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<thead>
<tr>
<th>THE TWO PERMISSIBLE SUBJECT AREAS UNDER <em>KELLER</em>:</th>
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<tbody>
<tr>
<td>Regulation of Legal Profession</td>
<td>Improvement in Quality of Legal Services</td>
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<td>✔ Regulation and discipline of attorneys</td>
<td>✔ Improvement in functioning of the courts</td>
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<td>• Ethics</td>
<td>• Availability of legal services to society</td>
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<td>✔ Integrity of the Legal Profession</td>
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<td>• Regulation of attorney trust accounts</td>
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**Staff Recommendation**

Both bills satisfy the requirements of *Keller* and may be considered on their merits.
House Bill 4488 (2019)


Sponsors
Brandt Iden (district 61)
Rebekah Warren, David LaGrand, Eric Leutheuser, John Chirkun, Sherry Gay-Dagnogo, William Sowerby
(click name to see bills sponsored by that person)

Categories
Occupations: individual licensing and registration; Occupations: other; State agencies (existing): licensing and regulatory affairs; State agencies (existing): boards and commissions;

Occupations; individual licensing and registration; use of criminal record to determine eligibility for occupational licensing; restrict. Amends title & secs. 1, 2, 3, 4, 5, 6 & 7 of 1974 PA 381 (MCL 338.41 et seq.).

Bill Documents
Bill Document Formatting Information
[x]
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<td>416 read a first time</td>
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HOUSE BILL No. 4488

April 23, 2019, Introduced by Reps. Iden, Warren, LaGrand, Leutheuser, Chirkun, Gay-Dagnogo and Sowerby 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 the term "good moral character" or similar term 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 this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon. CONCERNING AN INDIVIDUAL'S GOOD MORAL CHARACTER.

Sec. 1. (1) The phrase "good moral character", or words of similar import, 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 the Michigan Compiled Laws—A STATUTE OF THIS STATE or administrative rules promulgated under those laws shall be construed to mean A STATUTE OF THIS STATE, MEANS the propensity on the part of the person—AN INDIVIDUAL to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act: "principal

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

(B) "LICENSE" INCLUDES A REGISTRATION.

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

(D) "PRINCIPAL department" means the A department which THAT has jurisdiction over the A LICENSING board or agency, issuing the license.

Sec. 2. (1) A judgment of guilt in a criminal prosecution or a
A judgment in a civil action shall not be 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 or agency may use that judgment as evidence in the determination of his or her good moral character.

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

(2) A LICENSING BOARD OR AGENCY SHALL 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 OR AGENCY MAY ONLY CONSIDER AN INDIVIDUAL'S CRIMINAL CONVICTION AS EVIDENCE IN THE DETERMINATION OF HIS OR HER GOOD MORAL CHARACTER IF THE LICENSING BOARD OR AGENCY FINDS THAT ALL OF THE FOLLOWING ARE MET:

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

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

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

(D) 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, BASED ON
CLEAR AND CONVINCING EVIDENCE THAT ALL OF THE FOLLOWING ARE MET:

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

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

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

(3) (2) If a judgment of guilt in a criminal prosecution is used as evidence in the determination of an individual's good moral character under subsection (1), the licensing board or agency shall also consider his or her AN INDIVIDUAL'S certificate of employability, if any, under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, as evidence in the determination. 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 UNDER SUBSECTION (2).

(4) (3) If a judgment of guilt in a criminal proceeding or a
judgment in a civil action CRIMINAL CONVICTION is used under subsection (1)-(2) as evidence of an individual's lack of good moral character, the licensing board or agency shall 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, that he or she is rehabilitated, 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. THE CRITERIA UNDER SUBSECTION (2) HAVE NOT BEEN MET.

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

(a) Records of an arrest THAT IS not followed by a conviction.
(b) Records of a conviction which THAT has been reversed or vacated, including the arrest records relevant to that conviction.
(c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's individual's likelihood to serve the public in a fair, honest, and open manner.
(d) Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in a jail or prison.

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

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

Sec. 4. This act shall not bar—DOES NOT PROHIBIT the use by a
licensing board or agency in its determination of a person's
fitness—AN INDIVIDUAL'S GOOD MORAL CHARACTER of any other public
record—that is not related to HIS OR HER arrest, or prosecution,
OR CONVICTION or THE USE of any other source of unbiased and 
accurate information.

Sec. 5. When a person is found to be unqualified IF A 
LICENSING BOARD OR AGENCY DETERMINES THAT AN INDIVIDUAL IS NOT 
ELIGIBLE for a license because of a lack of good moral character, 
or similar criteria, the person shall be furnished by the board or 
agency SHALL PROVIDE THE INDIVIDUAL with a statement to this 
effect. The statement shall contain a complete record of the 
evidence upon which the determination was based. The person 
shall be entitled, as of right, to A LICENSING BOARD OR AGENCY MUST 
PROVIDE AN INDIVIDUAL DESCRIBED IN THIS SUBSECTION AN OPPORTUNITY 
FOR a rehearing on the issue before the board OR AGENCY if he or 
she has relevant evidence not previously considered, regarding his 
or her qualifications THAT WAS NOT PREVIOUSLY CONSIDERED.

Sec. 6. A person, AN INDIVIDUAL WHO IS aggrieved by a 
licensing BOARD OR agency or board determination regarding the 
person's possession of HIS OR HER good moral character, if 
unsatisfied by his or her administrative appeal as provided in 
REMEDY UNDER section 5, may bring an action in circuit court for a 
review of the record. If, in the opinion of the circuit court, the 
record does not disclose a lack of good moral character, as defined 
DETERMINED UNDER this act, the court shall so state and shall 
order the board OR AGENCY to issue the license — when THE 
INDIVIDUAL MEETS all other licensing requirements. are complied 
with.

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

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
House Bill 4489 (2019) rss?

Sponsors
Joseph Bellino (district 17)
Brandt Iden, Rebekah Warren, David LaGrand, Sherry Gay-Dagnogo, William Sowerby
(click name to see bills sponsored by that person)

Categories
Occupations: attorneys; Occupations: individual licensing and registration; State agencies (existing): boards and commissions;

Occupations; attorneys; qualifications for admission to state bar; clarify good moral character requirement. Amends sec. 934 of 1961 PA 236 (MCL 600.934). TIE BAR WITH: HB 4488'19

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<td>4/24/2019</td>
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<td>bill electronically reproduced 04/23/2019</td>
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A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 934 (MCL 600.934), as amended by 2004 PA 558.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 934. (1) A person—AN INDIVIDUAL is qualified for
admission to the bar of this state who—IF HE OR SHE proves to the
satisfaction of the board of law examiners that he or she is—
a person—AN INDIVIDUAL of good moral character, is 18 years of age or
older, has the required general education, learning in the law, and
fitness and ability to enable him or her to practice law in the
courts of record of this state, and that he or she intends in good
faith to practice or teach law in this state. Additional
requirements concerning the qualifications for admission are
contained in subsequent sections of this chapter. As used in this subsection, "good moral character" means good moral character as defined and determined under 1974 PA 381, MCL 338.41 to 338.47. FOR PURPOSES OF THIS SUBSECTION, GOOD MORAL CHARACTER IS DETERMINED BY THE BOARD OF LAW EXAMINERS AND 1974 PA 381, MCL 338.41 TO 338.47, DOES NOT APPLY TO THAT DETERMINATION.

(2) A person—AN INDIVIDUAL may elect to use the multi-state bar examination scaled score that the person—HE OR SHE achieved on a multi-state bar examination administered in another state or territory when applying for admission to the bar of this state, but only if all of the following occur ARE MET:

(a) The score that the person—INDIVIDUAL elects to use was achieved on a multi-state examination administered within the 3 years immediately preceding the multi-state bar examination in this state for which the person—INDIVIDUAL would otherwise sit.

(b) The person—INDIVIDUAL achieved a passing grade on the bar examination of which the multi-state examination the score of which the person—INDIVIDUAL elects to use was a part.

(c) The multi-state examination the score of which the person INDIVIDUAL elects to use was administered in a state or territory that accords the PROVIDES A reciprocal right to elect to use the score achieved on the multi-state examination administered in this state to Michigan residents WHO ARE seeking admission to the bar of that state or territory.

(d) The person—INDIVIDUAL earns a grade on the essay portion of the bar examination that when combined with the transferred multi-state scaled score constitutes a passing grade for that bar
(e) The person

otherwise meets all requirements for
admission to the bar of this state.

(3) The state board of law examiners shall disclose to a
person electing AN INDIVIDUAL WHO ELECTS under subsection (2) to
transfer the multi-state bar examination scaled score achieved on
an examination administered in another state or territory the score
the person achieved as soon as that score is received by
the board regardless of whether the person could have
obtained that score in the jurisdiction in which the examination
was administered. This subsection does not require disclosure by
the board of the score achieved on a multi-state bar examination
administered in another state or territory until the scores
achieved on that examination administered in Michigan are released.

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

Enacting section 2. This amendatory act does not take effect
unless Senate Bill No.____ or House Bill No. 4488 (request no.
00446'19) of the 100th Legislature is enacted into law.