

## OCCUPATIONAL LICENSE FOR FORMER OFFENDERS

### Act 381 of 1974

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.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

*The People of the State of Michigan enact:*

#### **338.41 “Good moral character” and “principal department” defined.**

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 or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act, “principal department” means the department which has jurisdiction over the board or agency issuing the license.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

#### **338.42 Judgment of guilt in criminal prosecution or judgment in civil action as evidence in determining good moral character; consideration of certificate of employability; rebuttal.**

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

(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 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.

(3) If a judgment of guilt in a criminal proceeding or a judgment in a civil action is used under subsection (1) 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.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978;—Am. 2014, Act 361, Eff. Jan. 1, 2015.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

#### **338.43 Using, examining, or requesting certain criminal records prohibited; prerequisites for furnishing criminal records; rules.**

Sec. 3. (1) The following criminal records shall not be used, examined, or requested by a licensing board or

agency in a determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by this state, or pursuant to occupational or professional licensure:

(a) Records of an arrest not followed by a conviction.

(b) Records of a conviction which 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 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 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 designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction which prescribe the offenses or categories of offenses which the department considers indicate a person is not likely to serve the public as a licensee in a fair, honest, and open manner. Each licensing board or agency may make recommendations to the director regarding the rules to be promulgated. The rules shall 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 the promulgation of the rules pertaining to a board or agency, all felonies shall be considered by the board or agency to be relevant to the ability or likelihood the person will serve the public in a fair, honest and open manner.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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### **338.44 Use of public records or other sources to determine person's fitness.**

Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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### **338.45 Finding person unqualified; statement; rehearing.**

Sec. 5. When a person is found to be unqualified for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the board or agency 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 rehearing on the issue before the board if he or she has relevant evidence not previously considered, regarding his or her qualifications.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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### **338.46 Judicial review; statement; order.**

Sec. 6. A person, aggrieved by a licensing agency or board determination regarding the person's possession of good moral character, if unsatisfied by his or her administrative appeal as provided in 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 in this act, the court shall so state and shall order the board to issue the license, when all other licensing requirements are complied with.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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### **338.47 Power to discipline licensees not affected.**

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

**History:** 1974, Act 381, Eff. Apr. 1, 1975.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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