

OCCUPATIONAL LICENSE FOR FORMER OFFENDERS (EXCERPT)
Act 381 of 1974

***** 338.42.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 4, 2021 *****

338.42.amended Judgments in civil actions and criminal convictions as evidence in determining good moral character; consideration of certificate of employability; rebuttal.

Sec. 2. (1) A licensing board or agency may only consider judgments in civil actions entered against an individual as evidence of his or her lack of good moral character if more than 1 judgment in a civil action has been entered against him or her.

(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. Except as provided in subsection (3), 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 the individual's criminal record includes a conviction for a felony and any of the following apply to that felony:

(a) The licensing board or agency concludes that the specific offense for which the individual was convicted has a direct and specific relationship to the activities authorized by the occupational or professional license.

(b) The specific offense for which the individual was convicted involves a demonstrable risk to the public safety.

(c) 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 (4), 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.

(d) 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) 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, but may use an individual's criminal conviction as evidence in the determination of his or her good moral character without meeting the requirements of subsection (2) if the licensing board or agency is 1 of the following:

(a) A principal department, or a board or agency within a principal department, to the extent that department, board, or agency is responsible for the licensing and regulation of any of the following:

(i) Child care organizations under 1973 PA 116, MCL 722.111 to 722.128.

(ii) Homes for the aged or nursing homes under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(iii) Adult foster care facilities under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(b) The Michigan commission on law enforcement standards created in section 3 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.603.

(c) The board of law examiners created in section 922 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.922.

(4) A licensing board or agency shall also consider an individual's certificate of employability, if any, under section 34d of the corrections code of 1953, 1953 PA 232, MCL 791.234d, 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) or (3).

(5) If a judgment in a civil action is used under subsection (1) or a criminal conviction is used under subsection (2) or (3) 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 criteria under subsection (1), (2), or (3) have not been met.

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;—Am. 2020, Act 368, Eff. Apr. 4, 2021.

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.