



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4411 (Substitute S-1 as reported) (as enrolled)  
House Bill 4412 (Substitute S-1 as reported) (as enrolled)  
Senate Bill 235 (Substitute S-1 as passed by the Senate) (as enrolled)  
Sponsor: Representative Gail Haines (H.B. 4411)  
Representative Matt Huuki (H.B. 4412)  
Senator Rick Jones (S.B. 235)  
House Committee: Health Policy (H.B. 4411 & 4412)  
Senate Committee: Judiciary

Date Completed: 8-18-11

### **RATIONALE**

The Public Health Code authorizes the investigation of health professionals' activities, and lists administrative sanctions that may be imposed for specific violations. Typically, the potential sanctions include a fine, restitution, probation, and the suspension, denial, revocation, or limitation of a professional license or registration. If a license or registration is suspended or revoked, the health professional may apply for reinstatement after three or five years, depending on the violation. An applicant for reinstatement has the burden of proving, by clear and convincing evidence, that he or she is of good moral character, is able to practice with reasonable skill and safety to patients, has met criteria in rules, and should be permitted in the public interest to practice. Despite these requirements, it is reported that licenses have been inappropriately reinstated for some health professionals who were convicted of criminal sexual conduct (CSC), exacerbating the trauma experienced by their victims and potentially endangering other patients or clients. To address this, it has been suggested that the administrative sanctions should include the *permanent* revocation of a license or registration if a health professional is convicted of a serious CSC offense.

### **CONTENT**

**House Bill 4411 (S-1) would amend the Public Health Code to provide that a former licensee or registrant would be ineligible for reinstatement, if his or her**

**license or registration were revoked permanently for first-, second-, or third-degree criminal sexual conduct.**

**House Bill 4412 (S-1) would amend the Code to allow permanent revocation of the license or registration of a health professional convicted of first-, second-, or third-degree CSC, if the offense occurred while the person was acting within his or her health profession.**

**Senate Bill 235 (S-1) would amend the Code to categorize a conviction of first-, second-, or third-degree CSC separately from a conviction of fourth-degree CSC or assault with intent to commit CSC, in the list of grounds for sanctions against licensed or registered health professionals.**

All of the bills are tie-barred to each other.

The House bills are described in detail below.

### **House Bill 4411 (S-1)**

The Code authorizes the Department of Licensing and Regulatory Affairs (LARA) to investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The Department may hold hearings and must report its findings to the appropriate disciplinary subcommittee. After finding that one or more grounds for disciplinary action exist, the subcommittee

must impose certain sanctions for each violation.

An individual whose license or registration is limited, suspended, or revoked may apply to his or her board or task force for reinstatement. Typically, an individual may not apply for reinstatement of a revoked license or registration until three years after the effective date of the revocation. In the case of revocation for specific violations, including any CSC offense, an applicant may not apply for reinstatement until five years after the effective date of revocation.

Under the bill, in the case of a license or registration that was permanently revoked for a conviction of first-, second-, or third-degree CSC, the former licensee or registrant would be ineligible for reinstatement.

Currently, LARA must return an application for reinstatement received before the end of the waiting period. The bill also would require LARA to return an application if the applicant were ineligible for reinstatement because of permanent revocation for a first-, second-, or third-degree CSC conviction.

The Code requires LARA to provide an opportunity for a hearing before final rejection of an application for reinstatement. Under the bill, this would not be required if the application were returned because the applicant was ineligible for reinstatement.

#### **House Bill 4412 (S-1)**

Under the Code, for a conviction of first-, second-, third-, or fourth-degree CSC, or assault with intent to commit CSC, a disciplinary subcommittee must impose one or more of the following sanctions:

- Probation.
- Limitation, denial, suspension, or revocation of a license or registration.
- Restitution.
- Community service.
- A fine.

The bill would require a disciplinary subcommittee to impose one or more of those sanctions for a conviction of fourth-degree CSC or assault with intent to commit CSC. For a conviction of first-, second-, or third-degree CSC, a disciplinary subcommittee would have to impose one or more of the sanctions listed above or

permanent revocation. Permanent revocation could not be imposed, however, unless the violation occurred while the licensee or registrant was acting within the health profession for which he or she was licensed or registered.

MCL 333.16245 (H.B. 4411)  
333.16226 (H.B. 4412)  
333.16221 (S.B. 235)

#### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

When the Senate Judiciary Committee took up Senate Bill 235 and Senate bills that are equivalent to these House bills, the committee heard testimony by a woman who had been victimized by a dentist, Dr. Donald Quinn, in 2001. According to the testimony and media reports, after the woman became a patient of Dr. Quinn and began to date him, Quinn repeatedly sexually assaulted the woman, beat her, kept her in a drug-induced state for more than six weeks by injecting her with legal and illegal medication, and took videos of his sexual activity with her. In 2002, Quinn pleaded guilty to various offenses, including two counts of second-degree CSC, and he was sentenced to one year in jail and five years' probation (mlive.com, "Bills pushed after Michigan dentist gets license back", 2-25-09). Quinn's license to practice dentistry was suspended in 2002 but, in 2007, the Michigan Board of Dentistry restored the license subject to limitations. According to committee testimony, Quinn's victim was diagnosed with post-traumatic stress disorder (PTSD) and other afflictions, including depression and bipolar disorder, following his court case, and her condition escalated when she learned about the license reinstatement.

Although this is a description of one egregious case, it is not unique. The Judiciary Committee also heard testimony from a psychiatrist, Dr. Frank Ochberg, who is an expert in PTSD and a former director of the Michigan Department of Mental Health. Evidently, Dr. Ochberg accompanied Quinn's victim to a hearing of the Board of Dentistry following the license restoration, and learned that the board had not been not fully aware of Quinn's background when it decided to

reinstate his license. According to Dr. Ochberg, he has served in many cases like the one involving Donald Quinn.

Many people find it outrageous and unacceptable that a health professional who has been convicted of a serious CSC offense can be allowed to practice again. In addition to dentists, the Public Health Code regulates physicians, nurses, psychologists, marriage and family therapists, chiropractors, physical therapists, and other health professionals. These individuals have patients and clients who are vulnerable and place their trust in the health professionals. When that trust is violated and a patient or client is victimized, there should be appropriate recourse.

In some cases, permanently revoking the offender's license or registration may be the best sanction. By authorizing licensing boards to impose permanent revocation for health professionals who were convicted of first-, second-, or third-degree CSC, the bills would help prevent their victims from being retraumatized when a license or registration was reinstated, and would protect future patients or clients from being victimized. If a board chose to impose permanent revocation, the health professional would have no opportunity to reapply for reinstatement, which could prevent future incidents such as the one involving Dr. Quinn.

**Response:** Under House Bill 4412 (S-1), permanent revocation would be authorized only if a violation occurred "while the licensee or registrant was acting within the health profession for which he or she was licensed or registered". This language is ambiguous. It is not clear whether permanent revocation would be allowed only if a health professional committed the CSC offense against a patient or client in the course of practice, or under other circumstances as well.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.