Michigan

Licensing & Other Barriers to Growing Occupations That Unfairly Exclude People with Records

Nearly one in three Michigan adults, disproportionately people of color, has an arrest or conviction record that may prevent them from working in a variety of occupations regulated by state governments.[1] Michigan requires a license or certification for **some of the largest and fastest-growing professions**, such as healthcare and education. Michigan's licensing laws typically require background checks and grant boards and agencies **broad discretion to reject applicants based on unrelated or old conviction records**—an unfair result that undermines economic health, government efficiency, community wellbeing, and racial equity.
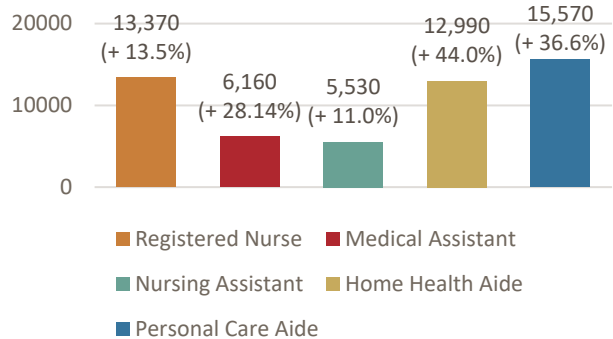
Four major industries—healthcare, K-12 education, childcare, and private security—stand out as including large, growing occupations, for which Michigan law requires a criminal background check. The occupations discussed below account for almost 9.5% of annual job openings in Michigan and have, collectively, an average annual growth of 15.6%, which compares favorably to the statewide average for all occupations, 7.0%.[2]

Barriers to Rapidly Growing Healthcare Professions

Healthcare professions include some of the fastest-growing occupations in Michigan, measured by both the number of new jobs and percent growth.

While employers cite difficulties in filling their many healthcare job openings, Michigan background check restrictions often block qualified workers with records from filling those vacancies. The standards used to evaluate a person's record remain vague and inadequately tailored to the goals of advancing community safety, economic growth, government efficiency, and racial equity.

Number of New MI Healthcare Jobs Projected, 2016–2026[1]

- 13,370 (+ 13.5%)
- 6,160 (+ 28.14%)
- 5,530 (+ 11.0%)
- 12,990 (+ 44.0%)
- 15,570 (+ 36.6%)

Registered Nurse ■ Medical Assistant ■ Nursing Assistant ■ Home Health Aide ■ Personal Care Aide

Source: U.S. Dep't of Labor, Bureau of Labor Stats., Employment Projections— 2016-2026, https://data.bls.gov/projections/occupationProj.

Legend:	✓ Enhances equity	⚠ Potential for bias	✕ Source of unfairness

Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
Registered Nurse, Nursing Assistant, Medical Assistant, Home Health Aide & Personal Care Aide (Bd. of Nursing)[3]	✕ Mandatory, permanent disqualification for convictions directly related to working in a healthcare facility (e.g., patient abuse, healthcare fraud), certain drug felonies, and misdemeanors directly related to providing health care in a clinical setting. ✕ Mandatory, time-limited disqualification for violent offenses (15 years) and all felonies (10 years). ✕ Mandatory, time-limited (10, 5, or 3 years) disqualification for various misdemeanor convictions.[4]	✓ Arrests not resulting in conviction may not be considered.[5]	⚠ Applicant may present evidence of rehabilitation or that conviction is not reasonably related to occupation.[6]

	⚠ Discretionary disqualification if fail to satisfy vague standards of "good moral character" and "propensity to serve the public in a fair, honest, and open manner."		

Demand Occupations: K-12 Education, Childcare, and Security

*Roughly 161,600 Michigan residents are employed in K-12 education, childcare, or security jobs that require licensure. Thousands of job openings in these fields emerge each year, and that number continues to increase. Despite the growing need for qualified applicants, Michigan law unnecessarily prevents many people with records from obtaining licensure or other clearance.*

Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy & Procedural Protections
K-12 Teacher[7] (Bd. of Education)	✖ Automatic disqualification for all felonies (waivable if school superintendent and governing board specifically approve in writing the employment of the applicant). ✖ Mandatory, permanent disqualification for any listed felony or misdemeanor sex offense conviction.[8] ⚠ State law is silent on whether other misdemeanor convictions may be disqualifying.[9] ⚠ Vague "good moral character" requirement.	✔ Arrests not resulting in conviction may not be considered.	⚠ Applicant may present evidence of rehabilitation or that conviction is not reasonably related to occupation.
Childcare Worker[10] (Dep't of Licensing & Regulatory Affairs, Childcare Licensing Division)	✖ Mandatory, permanent disqualification for certain felony convictions, including murder, child abuse, neglect, domestic violence, sexual offenses, assault, and battery. ✖ Mandatory, permanent disqualification for certain misdemeanor convictions, including child abuse and child endangerment. ✖ Mandatory, time-limited disqualification for several listed felony convictions (10 years),[11] felony drug conviction (7 years), and certain misdemeanor convictions (5 years).[12] ⚠ Vague "good moral character" requirement.		
Security Guard[13] (Dep't of Licensing & Regulatory Affairs)	✖ Mandatory, permanent disqualification for any felony conviction.[14] ✖ Mandatory, 5-year disqualification for certain misdemeanor convictions.[15] ⚠ Vague "good moral character" requirement.		

NELP

Blanket Bans

For security guards, Michigan maintains a permanent, blanket ban for any felony conviction without review as to relevance or time since conviction. Forever is too long. Old, potentially irrelevant felony convictions ought not prevent applicants from obtaining a security guard license.

Percent of Total Michigan Workforce Licensed

20.6%

79.4%

■ Non-licensed ■ Licensed or certified
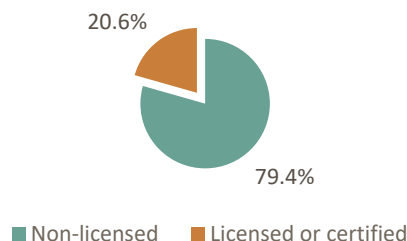
Source: The White House, Occupational Licensing: A Framework for Policymakers tbl.1 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_fina_nonembargo.pdf.

Recommended Fair Chance Licensing Reforms for Michigan
Impose common-sense limitations on the unchecked discretion of boards and agencies to deny a license or certification based on virtually any criminal record.

1   *Limit the scope of the record inquiry because unlimited and unguided discretion leads to inconsistent and discriminatory decisions, often based on race and national origin.*
- Forever is too long: Set a look-back limit to prevent denials based on old, irrelevant convictions.
- Vague language leads to discrimination: Remove ambiguous standards, including "good moral character."

2   *Require boards and agencies to justify denials after considering common-sense factors related to relevancy.*
- Not all records indicate relevant misconduct: Prohibit denial of applicants unless board or agency demonstrates that the conviction directly relates to the occupation.
- Clearer guidance means fairer outcomes: List specific factors for determining whether a direct relationship exists (e.g., elements of the offense; specific duties of the occupation; and how a license offers unique possibility for community safety concerns beyond harm an unlicensed person could cause).

3   *Mandate consideration by boards and agencies of evidence of rehabilitation and mitigating circumstances.*
- Rap sheets oversimplify to the point of distortion: Consider circumstances of the offense, including age of the person at that time.
- Recent efforts matter: Consider evidence of work or volunteer history and letters of reference.

Vague Terminology Increases Unpredictable Outcomes & Discrimination

Laws and regulations that invoke vague standards—such as "**good moral character**" or "**propensity to serve the public in a fair, honest, and open manner**"—reduce predictability, consistency, and fairness among decisions, while allowing implicit bias to impact outcomes.

Promote Fairness by Considering Common-Sense Relevancy Factors

To comply with Title VII of the Civil Rights Act of 1964, employers should consider three simple, common-sense factors when contemplating a record-related rejection:

(1) Nature and gravity of the offense;
(2) Time that has passed since the offense; and
(3) Nature of the job

Fair and effective occupational licensing laws similarly require state agencies to weigh the time since an offense and prohibit exclusions based on convictions that are unrelated to the occupation.[16]

ENDNOTES

[1] NELP, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* app. E (2019), https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/.

[2] U.S. Dep't of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, https://data.bls.gov/projections/occupationProj (last visited Nov. 1, 2019).

[3] Mich. Comp. Laws §§ 333.16174, 333.20173a, 338.41 to 338.47.

[4] 10-year ban for misdemeanors involving violence, abuse, and neglect; 5-year ban for misdemeanors such as theft, larceny, fraud, home invasion, and drug possession or delivery; 3-year ban for misdemeanors including assault without a weapon or retail fraud under $200.

[5] Mich. Comp. Laws § 338.43 (applicable to all licensed occupations).

[6] Mich. Comp. Laws § 338.42 (applicable to all licensed occupations).

[7] Mich. Comp. Laws §§ 380.1230, 338.41 to 338.47.

[8] *See also* Mich. Dep't of Educ., *Criminal Convictions* (2017), https://www.michigan.gov/documents/mde/Criminal_Convictions_Enumerated_Offenses_560187_7.PDF.

[9] *N.B.* Several misdemeanors trigger disciplinary proceedings for current state license holders. Mich. Comp. Laws §§ 380.1535a, 380.1539b; *see* Memorandum from Venessa A. Keesler, Deputy Superintendent, Accountability Servs., Mich. Dep't of Educ., to Loc. & Intermediate Sch. Dist. Superintendents & Pub. Sch. Acad. Dirs. (Apr. 9, 2015), https://www.michigan.gov/documents/mde/Criminal_Conviction_486610_7.pdf (addressing criminal conviction notification).

[10] Mich. Comp. Laws §§ 722.115, 722.115r, 338.41 to 338.47.

[11] List includes any felony involving harm or threatened harm to an individual and any felony involving use of the internet.

[12] List includes petty theft, shoplifting, and any misdemeanor drug convictions.

[13] Mich. Comp. Laws §§ 338.1056, 338.1060, 338.41 to 338.47.

[14] Ban is permanent if license is issued after March 28, 2001. If license was issued prior to March 28, 2001, 5-year blanket ban for any felony conviction.

[15] List includes misdemeanors involving dishonesty or fraud; those involving using, carrying, or possessing a dangerous weapon; conviction involving controlled substances; assault; or two or more alcohol-related offenses.

[16] *See, e.g.,* Equal Emp't Opportunity Comm'n, *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (2012), https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.