

Act No. 74  
Public Acts of 1999  
Approved by the Governor  
June 28, 1999  
Filed with the Secretary of State  
June 28, 1999  
EFFECTIVE DATE: October 1, 1999

STATE OF MICHIGAN  
90TH LEGISLATURE  
REGULAR SESSION OF 1999

**Introduced by Senators Rogers, Shugars and Gougeon**

# **ENROLLED SENATE BILL No. 557**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 7408a (MCL 333.7408a), as added by 1993 PA 361.

*The People of the State of Michigan enact:*

Sec. 7408a. (1) As part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or section 17766a or of a local ordinance that prohibits conduct prohibited under this part or section 17766a, the court shall consider all prior convictions currently entered upon the criminal history record and Michigan driving record of the person, except those convictions which, upon motion of the defendant, are determined by the court to be constitutionally invalid, and, subject to subsection (12), shall impose the following licensing sanctions in addition to any other penalty or sanction imposed for the violation:

(a) If the court finds that the person does not have a prior conviction within 7 years of the violation, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for 6 months. If the court finds compelling circumstances under subsection (8) sufficient to warrant the issuance of a restricted license, the court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension, except that a restricted license shall not be issued during the first 30 days of the period of suspension.

(b) If the court finds that the person has 1 or more prior convictions within 7 years of the violation, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for 1 year. If the court finds compelling circumstances under subsection (8) sufficient to warrant the issuance of a restricted license, the court may order the secretary of state to issue to the person a restricted license during all or any portion of the period of suspension, except that a restricted license shall not be issued during the first 60 days of the period of suspension.

(2) The person whose operator's or chauffeur's license is ordered suspended under this section shall immediately surrender his or her operator's or chauffeur's license to the court. The court shall immediately destroy the license and forward an abstract of conviction with court-ordered license sanctions to the secretary of state. Upon receipt of, and pursuant to, the abstract of conviction with court-ordered license sanctions, the secretary of state shall suspend the person's license and, if ordered by the court and if the person is otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract. If the judgment is appealed to circuit court, the court may, ex parte, order the secretary of state to stay the suspension or license restriction issued under this section pending the outcome of the appeal.

(3) Except as otherwise provided in subsection (5), before imposing sentence or entering a juvenile disposition, other than court-ordered license sanctions under this section, for an attempt to violate, a conspiracy to violate, or a violation of this part or section 17766a or of a local ordinance that prohibits conduct prohibited under this part or section 17766a, the court may order the person to undergo screening and assessment by a person or agency as designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The person shall pay for the costs of the screening and assessment services.

(4) Except as otherwise provided in subsection (5), as part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or section 17766a or of a local ordinance that prohibits conduct prohibited under this part or section 17766a, the court may order the person to do 1 or both of the following:

(a) Perform service to the community for not more than 90 days. A person ordered to perform service to the community under this subdivision shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(b) Participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the rehabilitative services.

(5) Subsections (3) and (4) do not apply to a person who is not eligible for probation under chapter XI of the code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.14a.

(6) A restricted license issued in compliance with an order under this section shall permit the person to whom it is issued to drive under the following circumstances:

(a) In the course of the person's employment or occupation.

(b) To and from any combination of the following:

(i) The person's residence.

(ii) The person's work location.

(iii) An alcohol or drug education or treatment program as ordered by the court.

(iv) The court probation department.

(v) A court-ordered community service program.

(vi) An educational institution at which the person is enrolled as a student.

(vii) A place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.

(7) The court shall not order the secretary of state under this section to issue a restricted license that would permit a person to operate a commercial motor vehicle that hauls hazardous material.

(8) The court shall not order the secretary of state under this section to issue a restricted license unless the person states under oath, and the court finds by testimony taken in open court or by statements contained in a sworn affidavit on a form prescribed by the state court administrator, that both of the following apply:

(a) The person needs vehicular transportation to and from his or her work location, place of alcohol or drug education treatment, court probation department, court-ordered community service program, or educational institution, or in the course of the person's employment or occupation.

(b) The person is unable to take public transportation and does not have any family members or other individual able to provide transportation to a destination or for a purpose described in subdivision (a).

(9) The court order issued under this section and the restricted license shall indicate the permitted destinations of the person or the permitted purposes for which the person may operate a vehicle, the approved route or routes if specified by the court, and permitted times of travel.

(10) Regardless of a court order issued under this section, the secretary of state shall not issue a restricted license to a person whose license is suspended under this section unless a restricted license is authorized under this section and the person is otherwise eligible for a license.

(11) While driving, the person shall carry proof of his or her destination and the hours of any employment, class, or other reason for traveling and shall display that proof upon a peace officer's request.

(12) A court shall not order the suspension of a person's license if the person is sentenced to life imprisonment or to a minimum term of imprisonment that exceeds 1 year for an attempt to violate, a conspiracy to violate, or a violation of part 74 or section 17766a.

(13) The court shall do both of the following:

(a) Transmit a record of each order issued under this section to the secretary of state.

(b) Forward to the department of state police, on a form or forms prescribed by the state court administrator, a record that specifies the penalties imposed by the court for an offense described in subsection (1), including a licensing sanction ordered under this section and a term of imprisonment imposed for the offense.

(14) Except as otherwise provided by law, a record described in subsection (13) is a public record, and the department of state police shall retain the information contained in that record for not less than 7 years.

(15) As used in this section:

(a) "Commercial motor vehicle" means that term as defined in section 7a of the Michigan vehicle code, 1949 PA 300, MCL 257.7a.

(b) "Conviction" means a final conviction, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt, a probate court disposition, or a juvenile adjudication, for a criminal law violation, regardless of whether the penalty is rebated or suspended.

(c) "Hazardous material" means that term as defined in section 19b of 1949 PA 300, MCL 257.19b.

(d) "Juvenile disposition" means either of the following:

(i) A finding of juvenile delinquency under chapter 403 of title 18 of the United States Code, 18 U.S.C. 5031 to 5040 and 5042.

(ii) The entry of a judgment or order of disposition by a court of another state that states or is based upon a finding that a juvenile violated a law of another state that would have been a criminal offense if committed by an adult in that state.

(e) "Law of another state" means a law or ordinance enacted by another state or by a local unit of government in another state.

(f) "Office of substance abuse services" means the agency created by section 6201.

(g) "Prior conviction" means either of the following:

(i) A conviction for an attempt to violate, a conspiracy to violate, or a violation of part 74 or section 17766a, a local ordinance that prohibits conduct prohibited under part 74 or section 17766a, or a law of another state that prohibits conduct prohibited under part 74 or section 17766a.

(ii) A conviction for an attempt to violate, a conspiracy to violate, or a violation of the controlled substances act, title II of the comprehensive drug abuse prevention and control act of 1970, Public Law 91-513, 84 Stat. 1242.

(h) "Probate court disposition" means the entry of a probate court order of disposition for a child found to be within the provisions of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.28.

(i) "Work location" means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person's occupation, or both.

Enacting section 1. This amendatory act takes effect October 1, 1999.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 90th Legislature are enacted into law:

(a) Senate Bill No. 556.

(b) Senate Bill No. 559.

(c) Senate Bill No. 558.

(d) House Bill No. 4585.

(e) Senate Bill No. 560.

(f) House Bill No. 4580.

(g) House Bill No. 4583.

(h) House Bill No. 4584.

(i) House Bill No. 4581.

(j) House Bill No. 4582.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate.

*Jay E. Randall*

Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.