

HOUSE BILL NO. 5851

June 11, 2020, Introduced by Reps. Yancey, Gay-Dagnogo, Stone, Lasinski, Bolden, Hood, Brenda Carter, Tyrone Carter, Hope, Whitsett, Sneller, Sabo, Warren, Sowerby, Cambensy, Clemente, Cherry, Manoogian, Kuppa, Hoadley, Guerra, Brann, O'Malley, Kahle, Wozniak, Brixie, Peterson, Meerman, Ellison, Wittenberg, Hammoud, Kennedy, Chirkun and Cynthia Johnson and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7408a (MCL 333.7408a), as amended by 2012 PA
501.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7408a. ~~(1) As part of the sentence or juvenile~~
2 ~~disposition for an attempt to violate, a conspiracy to violate, or~~
3 ~~a violation of this part or of a local ordinance that prohibits~~
4 ~~conduct prohibited under this part, the court shall consider all~~



1 ~~prior convictions currently entered upon the criminal history~~
2 ~~record and Michigan driving record of the person, except those~~
3 ~~convictions which, upon motion of the defendant, are determined by~~
4 ~~the court to be constitutionally invalid, and, subject to~~
5 ~~subsection (11), shall impose the following licensing sanctions in~~
6 ~~addition to any other penalty or sanction imposed for the~~
7 ~~violation:~~

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

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

28 ~~(2) The person whose operator's or chauffeur's license is~~
29 ~~ordered suspended under this section shall immediately surrender~~



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

13 (1) ~~(3)~~ Except as otherwise provided in subsection ~~(5)~~, ~~(3)~~,
 14 before imposing sentence or entering a juvenile disposition, ~~other~~
 15 ~~than court-ordered license sanctions under this section,~~ for an
 16 attempt to violate, a conspiracy to violate, or a violation of this
 17 part or of a local ordinance that prohibits conduct prohibited
 18 under this part, the court may order the person to undergo
 19 screening and assessment by a person or agency as designated by a
 20 department-designated community mental health entity or a community
 21 mental health services program under the mental health code, 1974
 22 PA 258, MCL 330.1001 to 330.2106, to determine whether the person
 23 is likely to benefit from rehabilitative services, including
 24 alcohol or drug education and alcohol or drug treatment programs.
 25 The person shall pay for the costs of the screening and assessment
 26 services.

27 (2) ~~(4)~~ Except as otherwise provided in subsection ~~(5)~~, ~~(3)~~,
 28 as part of the sentence or juvenile disposition for an attempt to
 29 violate, a conspiracy to violate, or a violation of this part or of



1 a local ordinance that prohibits conduct prohibited under this
 2 part, the court may order the person to do 1 or both of the
 3 following:

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

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

13 **(3)** ~~(5)~~ Subsections ~~(3)~~ and ~~(4)~~ **(1) and (2)** do not apply to a
 14 person who is not eligible for probation under chapter XI of the
 15 code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.14a. **771.1**
 16 **to 771.14a.**

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

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

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

22 ~~(i) The person's residence.~~

23 ~~(ii) The person's work location.~~

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

26 ~~(iv) The court probation department.~~

27 ~~(v) A court-ordered community service program.~~

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



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

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

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

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

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

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

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



1 ~~request.~~

2 ~~(11) A court shall not order the suspension of a person's~~
 3 ~~license if the person is sentenced to life imprisonment or to a~~
 4 ~~minimum term of imprisonment that exceeds 1 year for an attempt to~~
 5 ~~violate, a conspiracy to violate, or a violation of this part.~~

6 ~~(12) The court shall do both of the following:~~

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

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

15 ~~(13) Except as otherwise provided by law, a record described~~
 16 ~~in subsection (12) is a public record, and the department of state~~
 17 ~~police shall retain the information contained in that record for~~
 18 ~~not less than 7 years.~~

19 ~~(4) (14) As used in this section:~~

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

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

27 ~~(c) "Hazardous material" means that term as defined in section~~
 28 ~~19b of the Michigan vehicle code, 1949 PA 300, MCL 257.19b.~~

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



1 (i) A finding of juvenile delinquency under 18 USC 5031 to
2 ~~5042-5043.~~

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

7 **(b)** ~~(e)~~ "Law of another state" means a law or ordinance
8 enacted by another state or by a local unit of government in
9 another state.

10 ~~(f) "Prior conviction" means either of the following:~~

11 ~~(i) A conviction for an attempt to violate, a conspiracy to~~
12 ~~violate, or a violation of this part or former section 17766a, a~~
13 ~~local ordinance that prohibits conduct prohibited under this part~~
14 ~~or former section 17766a, or a law of another state that prohibits~~
15 ~~conduct prohibited under this part or former section 17766a.~~

16 ~~(ii) A conviction for an attempt to violate, a conspiracy to~~
17 ~~violate, or a violation of the controlled substances act, 21 USC~~
18 ~~801 to 971.~~

19 ~~(g) "Probate court disposition" means the entry of a probate~~
20 ~~court order of disposition for a child found to be within the~~
21 ~~provisions of chapter XIIIA of the probate code of 1939, 1939 PA~~
22 ~~288, MCL 712A.1 to 712A.32.~~

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

27 Enacting section 1. This amendatory act does not take effect
28 unless both of the following occur:

29 (a) Senate Concurrent Resolution No. _____ or House



1 Concurrent Resolution No. _____ of the 100th Legislature
2 expressing their opposition to the enactment or enforcement of this
3 federal mandate in accordance with 23 USC 159 is approved on a
4 record roll call vote by a majority of the members elected and
5 serving in each house of the legislature.

6 (b) The governor submits a certification to the United States
7 Secretary of Transportation stating both of the following:

8 (i) The governor is opposed to the enactment or enforcement of
9 a law requiring driver license suspension for drug offenses as set
10 forth in 23 USC 159(a)(3)(A).

11 (ii) Both houses of the legislature have adopted a concurrent
12 resolution expressing their opposition to the enactment or
13 enforcement of this federal mandate in accordance with 23 USC 159.

