

Act No. 361
Public Acts of 1993
Approved by the Governor
January 14, 1994
Filed with the Secretary of State
January 14, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Rep. Clack

ENROLLED HOUSE BILL No. 4075

AN ACT to amend the title and section 17766a of Act No. 368 of the Public Acts of 1978, entitled as amended "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 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 penalties and remedies; 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," section 17766a as added by Act No. 30 of the Public Acts of 1990, being section 333.17766a of the Michigan Compiled Laws; and to add section 7408a.

The People of the State of Michigan enact:

Section 1. The title and section 17766a of Act No. 368 of the Public Acts of 1978, section 17766a as added by Act No. 30 of the Public Acts of 1990, being section 333.17766a of the Michigan Compiled Laws, are amended and section 7408a is added to read as follows:

TITLE

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 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 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.

Sec. 7408a. (1) As part of the sentence or probate court 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 (10), 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 a period of 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 a period of 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 to the court his or her operator's or chauffeur's license. 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 pursuant to this section pending the outcome of the appeal.

(3) Except as otherwise provided in subsection (5), before imposing sentence or entering a probate court 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 probate court 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 a period of 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, Act No. 175 of the Public Acts of 1927, being sections 771.1 to 771.14a of the Michigan Compiled Laws.

(6) A restricted license issued pursuant to an order under this section shall permit the person to whom it is issued to do 1 or more of the following:

(a) Drive to and from the person's residence and work location.

(b) Drive in the course of the person's employment or occupation.

(c) Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the court.

(d) Drive to and from the person's residence and the court probation department, or a court-ordered community service program, or both.

(e) Drive to and from the person's residence and an educational institution at which the person is enrolled as a student.

(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 materials.

(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 pursuant to testimony taken in open court or pursuant to statements contained in a sworn affidavit on a form prescribed by the state court administrator, that both of the following are true:

(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 individuals 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) A court shall not order the suspension of a person's license if the person is sentenced to either life imprisonment or 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.

(11) 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.

(12) Except as otherwise provided by law, a record described in subsection (11) is a public record, and the department of state police shall retain the information contained in that record for not less than 7 years.

(13) As used in this section:

(a) "Commercial motor vehicle" means that term as defined in section 7a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.7a of the Michigan Compiled Laws.

(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 Act No. 300 of the Public Acts of 1949, being section 257.19b of the Michigan Compiled Laws.

(d) "Juvenile adjudication" 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 which violation 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 Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws.

(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.

Sec. 17766a. (1) A person shall not knowingly use an androgenic anabolic steroid except as provided in this act. A person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or by a fine of not more than \$100.00, or both.

(2) A person shall not knowingly possess an androgenic anabolic steroid except pursuant to the lawful prescription of a practitioner. A person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or by a fine of not more than \$100.00, or both. A person who commits a second or subsequent violation of this subsection is guilty of a felony, punishable by imprisonment for not more than 4 years or by a fine of not more than \$2,000.00, or both.

(3) A person shall not knowingly deliver an androgenic anabolic steroid to another person except as provided in this act or knowingly possess an androgenic anabolic steroid with the intent to deliver that androgenic anabolic steroid to another person except as provided in this act. A person who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 7 years or by a fine of not more than \$5,000.00, or both.

(4) A person shall not knowingly deliver a counterfeit androgenic anabolic steroid to another person or knowingly possess a counterfeit androgenic anabolic steroid with the intent to deliver that counterfeit androgenic anabolic steroid to another person. A person who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 7 years or by a fine of not more than \$5,000.00, or both. This subsection does not apply to a person who knowingly delivers a counterfeit androgenic anabolic steroid to another person or knowingly possesses a counterfeit androgenic anabolic steroid with the intent to deliver that androgenic anabolic steroid to another person for legitimate and professionally recognized therapeutic or scientific purposes.

(5) It is not necessary for this state to negate any exemption or exception in a complaint, information, indictment, or other pleading or in a trial, hearing, or other proceeding pursuant to this section. The burden of proof of an exemption or exception is upon the person claiming that exemption or exception.

(6) In the absence of proof that a person is the authorized holder of an appropriate license or order form, the person is presumed not to be the holder of the license or order form. The burden of proof is upon the person to rebut the presumption.

(7) A liability is not imposed by this section upon an authorized state, county, or local officer, engaged in the lawful performance of his or her duties.

(8) Property is subject to forfeiture for a violation of this section as provided under sections 7521 to 7524.

(9) A person who violates this section is subject to licensing sanctions under section 7408a.

(10) As used in this section:

(a) Except as provided in subdivision (b), "androgenic anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

(i) Dehydrochlormethyltestosterone.

(ii) Ethylestrenol.

(iii) Fluoxymesterone.

(iv) Mesterolone.

(v) Methandienone.

(vi) Methandrostenolone.

(vii) Methenolone.

(viii) Methyltestosterone.

(ix) Nandrolone.

(x) Nandrolone deconoate.

(xi) Norethandrolone.

(xii) Oxandrolone.

(xiii) Oxymesterone.

(xiv) Oxymetholone.

(xv) Stanozolol.

(xvi) Testosterone.

(xvii) Testosterone enanthate.

(xviii) Testosterone propionate.

(xix) Testosterone cypionate.

(b) "Androgenic anabolic steroid" does not include any anabolic steroids which are expressly intended for administration through implants to livestock or other nonhuman species and which are approved by the federal food and drug administration for such use.

(c) "Counterfeit androgenic anabolic steroid" means 1 or more of the following:

(i) An androgenic anabolic steroid that, without authorization, bears a trade name, identifying mark, imprint, or number of a person other than the manufacturer, distributor, or dispenser of that androgenic anabolic steroid.

(ii) An androgenic anabolic steroid that, without authorization, is packaged in a container that bears a trade name, identifying mark, imprint, or number of a person other than the manufacturer, distributor, or dispenser of that androgenic anabolic steroid.

(iii) A substance other than an androgenic anabolic steroid that bears a trade name, identifying mark, imprint, or number that misrepresents the substance as an androgenic anabolic steroid.

(iv) A substance other than an androgenic anabolic steroid that is packaged in a container that bears a trade name, identifying mark, imprint, or number that misrepresents the substance as an androgenic anabolic steroid.

(d) "Deliver" means the actual, constructive, or attempted transfer of an androgenic anabolic steroid or counterfeit androgenic anabolic steroid from 1 person to another, whether or not there is an agency relationship.

Section 2. This amendatory act shall take effect September 1, 1994.

Section 3. The licensing sanctions prescribed in section 7408a of Act No. 368 of the Public Acts of 1978 shall apply to violations of law that occur on or after the effective date of this amendatory act.

Section 4. This amendatory act shall not take effect unless all of the following conditions are met:

(a) Senate Bill No. 222 of the 87th Legislature is enacted into law.

(b) Senate Bill No. 267 of the 87th Legislature is enacted into law.

(c) House Concurrent Resolution No. 73 of the 87th Legislature is adopted by both houses of the legislature, and the governor transmits to the United States secretary of transportation and files with the secretary of state a certification specified in 23 U.S.C. 159.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.