

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5851**

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~~
5 ~~prior convictions currently entered upon the criminal history~~
6 ~~record and Michigan driving record of the person, except those~~
7 ~~convictions which, upon motion of the defendant, are determined by~~
8 ~~the court to be constitutionally invalid, and, subject to~~

1 ~~subsection (11), shall impose the following licensing sanctions in~~
2 ~~addition to any other penalty or sanction imposed for the~~
3 ~~violation:~~

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

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

24 ~~(2) The person whose operator's or chauffeur's license is~~
25 ~~ordered suspended under this section shall immediately surrender~~
26 ~~his or her operator's or chauffeur's license to the court. The~~
27 ~~court shall immediately destroy the license and forward an abstract~~
28 ~~of conviction with court-ordered license sanctions to the secretary~~
29 ~~of state. Upon receipt of, and pursuant to, the abstract of~~

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

9 (1) ~~(3)~~ Except as otherwise provided in subsection ~~(5)~~, ~~(3)~~,
10 before imposing sentence or entering a juvenile disposition, ~~other~~
11 ~~than court-ordered license sanctions under this section,~~ for an
12 attempt to violate, a conspiracy to violate, or a violation of this
13 part or of a local ordinance that prohibits conduct prohibited
14 under this part, the court may order the ~~person-individual~~ to
15 undergo screening and assessment by a person or agency as
16 designated by a department-designated community mental health
17 entity or a community mental health services program under the
18 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, to
19 determine whether the ~~person-individual~~ is likely to benefit from
20 rehabilitative services, including alcohol or drug education and
21 alcohol or drug treatment programs. The ~~person-individual~~ shall pay
22 for the costs of the screening and assessment services.

23 (2) ~~(4)~~ Except as otherwise provided in subsection ~~(5)~~, ~~(3)~~,
24 as part of the sentence or juvenile disposition for an attempt to
25 violate, a conspiracy to violate, or a violation of this part or of
26 a local ordinance that prohibits conduct prohibited under this
27 part, the court may order the ~~person-individual~~ to do 1 or both of
28 the following:

29 (a) Perform service to the community for not more than 90

1 days. ~~A person~~ **An individual** ordered to perform service to the
 2 community under this subdivision shall not receive compensation,
 3 and shall reimburse the state or appropriate local unit of
 4 government for the cost of supervision incurred by the state or
 5 local unit of government as a result of the ~~person's~~ **individual's**
 6 activities in that service.

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

10 (3) ~~(5)~~ Subsections ~~(3) and (4)~~ **(1) and (2)** do not apply to a
 11 ~~person~~ **an individual** who is not eligible for probation under
 12 chapter XI of the code of criminal procedure, 1927 PA 175, MCL
 13 ~~777.1 to 777.14a.~~ **771.1 to 771.14a.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(11) A court shall not order the suspension of a person's~~
29 ~~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 this part.~~

~~(12) 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.~~

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

~~(14) 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 the Michigan vehicle code, 1949 PA 300, MCL 257.19b.~~

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

~~(i) A finding of juvenile delinquency under 18 USC 5031 to 5042.5043.~~

~~(ii) The entry of a judgment or order of disposition by a court~~

1 of another state that states or is based ~~upon~~ **on** a finding that a
 2 juvenile violated a law of another state that would have been a
 3 criminal offense if committed by an adult in that state.

4 **(b)** ~~(e)~~—"Law of another state" means a law or ordinance
 5 enacted by another state or by a local unit of government in
 6 another state.

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

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

13 ~~(ii) A conviction for an attempt to violate, a conspiracy to~~
 14 ~~violate, or a violation of the controlled substances act, 21 USC~~
 15 ~~801 to 971.~~

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

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

24 Enacting section 1. This amendatory act takes effect October
 25 1, 2021.

26 Enacting section 2. This amendatory act does not take effect
 27 unless both of the following occur:

28 (a) House Concurrent Resolution No. 29 of the 100th
 29 Legislature is adopted by a majority of the members elected and

1 serving in each house of the legislature.

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

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

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