

HOUSE BILL No. 4863

July 27, 2011, Introduced by Reps. Poleski, Agema, Pscholka, Bumstead and Shirkey and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7408a, 16106a, 16221, and 18214 (MCL 333.7408a, 333.16106a, 333.16221, and 333.18214), section 7408a as amended by 1999 PA 144, section 16106a as added by 1993 PA 80, and section 16221 as amended by 2004 PA 214.

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 section 17766a~~ or of a local ordinance
4 that prohibits conduct prohibited under this part, ~~or section~~
5 ~~17766a~~, the court shall consider all prior convictions currently
6 entered upon the criminal history record and Michigan driving

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

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

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

26 (2) The person whose operator's or chauffeur's license is
27 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 (3) Except as otherwise provided in subsection (5), before
14 imposing sentence or entering a juvenile disposition, other than
15 court-ordered license sanctions under this section, for an attempt
16 to violate, a conspiracy to violate, or a violation of this part ~~or~~
17 ~~section 17766a~~ or of a local ordinance that prohibits conduct
18 prohibited under this part, ~~or section 17766a~~, the court may order
19 the person to undergo screening and assessment by a person or
20 agency as designated by ~~the office of substance abuse services~~ **A**
21 **COMMUNITY MENTAL HEALTH SERVICES PROGRAM UNDER THE MENTAL HEALTH**
22 **CODE, 1974 PA 258, MCL 330.1001 TO 330.2106**, to determine whether
23 the person is likely to benefit from rehabilitative services,
24 including alcohol or drug education and alcohol or drug treatment
25 programs. The person shall pay for the costs of the screening and
26 assessment services.

27 (4) Except as otherwise provided in subsection (5), as part of

1 the sentence or juvenile disposition for an attempt to violate, a
2 conspiracy to violate, or a violation of this part ~~or section~~
3 ~~17766a~~ or of a local ordinance that prohibits conduct prohibited
4 under this part, ~~or section 17766a~~, the court may order the person
5 to do 1 or both of the following:

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

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

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

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

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

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

23 (i) The person's residence.

24 (ii) The person's work location.

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

27 (iv) The court probation department.

1 (v) A court-ordered community service program.

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

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

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

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

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

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

25 (9) Regardless of a court order issued under this section, the
26 secretary of state shall not issue a restricted license to a person
27 whose license is suspended under this section unless a restricted

1 license is authorized under this section and the person is
2 otherwise eligible for a license.

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

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

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

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

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

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

25 (14) As used in this section:

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

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

6 (c) "Hazardous material" means that term as defined in section
7 19b of **THE MICHIGAN VEHICLE CODE**, 1949 PA 300, MCL 257.19b.

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

9 (i) A finding of juvenile delinquency under ~~chapter 403 of~~
10 ~~title 18 of the United States Code, 18 U.S.C. 5031 to 5040 and 5042~~
11 **18 USC 5031 TO 5042.**

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

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

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

20 **(F)** ~~(g)~~ "Prior conviction" means either of the following:

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

26 (ii) A conviction for an attempt to violate, a conspiracy to
27 violate, or a violation of the controlled substances act, ~~title II~~

1 ~~of the comprehensive drug abuse prevention and control act of 1970,~~
 2 ~~Public Law 91-513, 84 Stat. 1242-21 USC 801 TO 971.~~

3 (G) ~~(h)~~—"Probate court disposition" means the entry of a
 4 probate court order of disposition for a child found to be within
 5 the provisions of chapter XIIA of the probate code of 1939, 1939 PA
 6 288, MCL 712A.1 to ~~712A.28-712A.32~~.

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

11 Sec. 16106a. "Impaired" or "impairment" means the inability or
 12 immediately impending inability of a health professional to
 13 practice his or her health profession in a manner that conforms to
 14 the minimum standards of acceptable and prevailing practice for
 15 that health profession due to the health professional's substance
 16 abuse, chemical dependency, or mental illness or the health
 17 professional's use of drugs or alcohol that does not constitute
 18 substance abuse or chemical dependency. As used in this section:

19 (a) "Chemical dependency" means a group of cognitive,
 20 behavioral, and physiological symptoms that indicate that an
 21 individual has a substantial lack of or no control over the
 22 individual's use of 1 or more psychoactive substances.

23 (b) "Mental illness" means that term as defined in ~~section~~
 24 ~~400a of the mental health code, Act No. 258 of the Public Acts of~~
 25 ~~1974, being section 330.1400a of the Michigan Compiled Laws~~ **SECTION**
 26 **400 OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1400.**

27 (c) "Substance abuse" means ~~that term as defined in section~~

1 ~~6107~~—THE TAKING OF ALCOHOL OR OTHER DRUGS AT DOSAGES THAT PLACE AN
2 INDIVIDUAL'S SOCIAL, ECONOMIC, PSYCHOLOGICAL, AND PHYSICAL WELFARE
3 IN POTENTIAL HAZARD OR TO THE EXTENT THAT AN INDIVIDUAL LOSES THE
4 POWER OF SELF-CONTROL AS A RESULT OF THE USE OF ALCOHOL OR DRUGS,
5 OR WHILE HABITUALLY UNDER THE INFLUENCE OF ALCOHOL OR DRUGS,
6 ENDANGERS PUBLIC HEALTH, MORALS, SAFETY, OR WELFARE, OR A
7 COMBINATION THEREOF.

8 Sec. 16221. The department may investigate activities related
9 to the practice of a health profession by a licensee, a registrant,
10 or an applicant for licensure or registration. The department may
11 hold hearings, administer oaths, and order relevant testimony to be
12 taken and shall report its findings to the appropriate disciplinary
13 subcommittee. The disciplinary subcommittee shall proceed under
14 section 16226 if it finds that 1 or more of the following grounds
15 exist:

16 (a) A violation of general duty, consisting of negligence or
17 failure to exercise due care, including negligent delegation to or
18 supervision of employees or other individuals, whether or not
19 injury results, or any conduct, practice, or condition that
20 impairs, or may impair, the ability to safely and skillfully
21 practice the health profession.

22 (b) Personal disqualifications, consisting of 1 or more of the
23 following:

24 (i) Incompetence.

25 (ii) Subject to sections 16165 to 16170a, substance abuse as
26 defined in section ~~6107~~—16106A.

27 (iii) Mental or physical inability reasonably related to and

1 adversely affecting the licensee's ability to practice in a safe
2 and competent manner.

3 (iv) Declaration of mental incompetence by a court of competent
4 jurisdiction.

5 (v) Conviction of a misdemeanor punishable by imprisonment for
6 a maximum term of 2 years; a misdemeanor involving the illegal
7 delivery, possession, or use of a controlled substance; or a
8 felony. A certified copy of the court record is conclusive evidence
9 of the conviction.

10 (vi) Lack of good moral character.

11 (vii) Conviction of a criminal offense under sections 520b to
12 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to
13 750.520g. A certified copy of the court record is conclusive
14 evidence of the conviction.

15 (viii) Conviction of a violation of section 492a of the Michigan
16 penal code, 1931 PA 328, MCL 750.492a. A certified copy of the
17 court record is conclusive evidence of the conviction.

18 (ix) Conviction of a misdemeanor or felony involving fraud in
19 obtaining or attempting to obtain fees related to the practice of a
20 health profession. A certified copy of the court record is
21 conclusive evidence of the conviction.

22 (x) Final adverse administrative action by a licensure,
23 registration, disciplinary, or certification board involving the
24 holder of, or an applicant for, a license or registration regulated
25 by another state or a territory of the United States, by the United
26 States military, by the federal government, or by another country.
27 A certified copy of the record of the board is conclusive evidence

1 of the final action.

2 (xi) Conviction of a misdemeanor that is reasonably related to
3 or that adversely affects the licensee's ability to practice in a
4 safe and competent manner. A certified copy of the court record is
5 conclusive evidence of the conviction.

6 (xii) Conviction of a violation of section 430 of the Michigan
7 penal code, 1931 PA 328, MCL 750.430. A certified copy of the court
8 record is conclusive evidence of the conviction.

9 (c) Prohibited acts, consisting of 1 or more of the following:

10 (i) Fraud or deceit in obtaining or renewing a license or
11 registration.

12 (ii) Permitting the license or registration to be used by an
13 unauthorized person.

14 (iii) Practice outside the scope of a license.

15 (iv) Obtaining, possessing, or attempting to obtain or possess
16 a controlled substance as defined in section 7104 or a drug as
17 defined in section 7105 without lawful authority; or selling,
18 prescribing, giving away, or administering drugs for other than
19 lawful diagnostic or therapeutic purposes.

20 (d) Unethical business practices, consisting of 1 or more of
21 the following:

22 (i) False or misleading advertising.

23 (ii) Dividing fees for referral of patients or accepting
24 kickbacks on medical or surgical services, appliances, or
25 medications purchased by or in behalf of patients.

26 (iii) Fraud or deceit in obtaining or attempting to obtain third
27 party reimbursement.

1 (e) Unprofessional conduct, consisting of 1 or more of the
2 following:

3 (i) Misrepresentation to a consumer or patient or in obtaining
4 or attempting to obtain third party reimbursement in the course of
5 professional practice.

6 (ii) Betrayal of a professional confidence.

7 (iii) Promotion for personal gain of an unnecessary drug,
8 device, treatment, procedure, or service.

9 (iv) Either of the following:

10 (A) A requirement by a licensee other than a physician that an
11 individual purchase or secure a drug, device, treatment, procedure,
12 or service from another person, place, facility, or business in
13 which the licensee has a financial interest.

14 (B) A referral by a physician for a designated health service
15 that violates ~~section 1877 of part D of title XVIII of the social~~
16 ~~security act, 42 USC 1395nn~~ , or a regulation promulgated under
17 that section. ~~Section 1877 of part D of title XVIII of the social~~
18 ~~security act~~ **FOR PURPOSES OF THIS SUBPARAGRAPH**, 42 USC 1395nn , and
19 the regulations promulgated under that section , as they exist on
20 June 3, 2002 , are incorporated by reference. ~~for purposes of this~~
21 ~~subparagraph.~~ A disciplinary subcommittee shall apply ~~section 1877~~
22 ~~of part D of title XVIII of the social security act, 42 USC 1395nn~~
23 , and the regulations promulgated under that section regardless of
24 the source of payment for the designated health service referred
25 and rendered. If ~~section 1877 of part D of title XVIII of the~~
26 ~~social security act, 42 USC 1395nn~~ , or a regulation promulgated
27 under that section is revised after June 3, 2002, the department

1 shall officially take notice of the revision. Within 30 days after
2 taking notice of the revision, the department shall decide whether
3 or not the revision pertains to referral by physicians for
4 designated health services and continues to protect the public from
5 inappropriate referrals by physicians. If the department decides
6 that the revision does both of those things, the department may
7 promulgate rules to incorporate the revision by reference. If the
8 department does promulgate rules to incorporate the revision by
9 reference, the department shall not make any changes to the
10 revision. As used in this subparagraph, "designated health service"
11 means that term as defined in ~~section 1877 of part D of title XVIII~~
12 ~~of the social security act,~~ 42 USC 1395nn ~~,~~ and the regulations
13 promulgated under that section and "physician" means that term as
14 defined in sections 17001 and 17501.

15 (v) For a physician who makes referrals pursuant to ~~section~~
16 ~~1877 of part D of title XVIII of the social security act,~~ 42 USC
17 1395nn ~~,~~ or a regulation promulgated under that section, refusing
18 to accept a reasonable proportion of patients eligible for medicaid
19 and refusing to accept payment from medicaid or medicare as payment
20 in full for a treatment, procedure, or service for which the
21 physician refers the individual and in which the physician has a
22 financial interest. A physician who owns all or part of a facility
23 in which he or she provides surgical services is not subject to
24 this subparagraph if a referred surgical procedure he or she
25 performs in the facility is not reimbursed at a minimum of the
26 appropriate medicaid or medicare outpatient fee schedule, including
27 the combined technical and professional components.

1 (f) Beginning June 3, 2003, the department of consumer and
2 industry services shall prepare the first of 3 annual reports on
3 the effect of ~~this amendatory act~~ **2002 PA 402** on access to care for
4 the uninsured and medicaid patients. The department shall report on
5 the number of referrals by licensees of uninsured and medicaid
6 patients to purchase or secure a drug, device, treatment,
7 procedure, or service from another person, place, facility, or
8 business in which the licensee has a financial interest.

9 (g) Failure to report a change of name or mailing address
10 within 30 days after the change occurs.

11 (h) A violation, or aiding or abetting in a violation, of this
12 article or of a rule promulgated under this article.

13 (i) Failure to comply with a subpoena issued pursuant to this
14 part, failure to respond to a complaint issued under this article
15 or article 7, failure to appear at a compliance conference or an
16 administrative hearing, or failure to report under section 16222 or
17 16223.

18 (j) Failure to pay an installment of an assessment levied
19 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to
20 500.8302, within 60 days after notice by the appropriate board.

21 (k) A violation of section 17013 or 17513.

22 (l) Failure to meet 1 or more of the requirements for licensure
23 or registration under section 16174.

24 (m) A violation of section 17015 or 17515.

25 (n) A violation of section 17016 or 17516.

26 (o) Failure to comply with section 9206(3).

27 (p) A violation of section 5654 or 5655.

1 (q) A violation of section 16274.

2 (r) A violation of section 17020 or 17520.

3 (s) A violation of the medical records access act, **2004 PA 47,**
4 **MCL 333.26261 TO 333.26271.**

5 (t) A violation of section 17764(2).

6 Sec. 18214. (1) This part does not prohibit an individual who
7 holds a doctoral degree in psychology from a regionally accredited
8 college or university from using a title including "psychologist"
9 if the individual does not engage in the practice of psychology.

10 (2) This part does not prohibit an individual approved by the
11 state department of education from using the title "school
12 psychologist" and engaging in those duties and activities pertinent
13 to employment by a public or private elementary or secondary
14 school.

15 (3) This part does not prohibit an individual employed by a
16 regionally accredited college or university and involved in
17 research or the teaching of psychology from performing those duties
18 for which he or she is employed by that institution.

19 (4) This part does not prohibit a certified, licensed,
20 registered, or otherwise statutorily recognized member of any
21 profession including a lawyer, social worker, school counselor or
22 marriage counselor from practicing his or her profession as
23 authorized by law.

24 (5) This part does not prohibit a clergyman, professional
25 educator, or professional counselor, including an alcoholism or
26 drug abuse counselor, whose practice may include preventive
27 techniques, counseling techniques, or behavior modification

1 techniques from practicing his or her profession consistent with
2 his or her training and with a code of ethics for that respective
3 profession.

4 (6) This part shall not apply to a participant or employee in
5 a **COMMUNITY MENTAL HEALTH SERVICES** program ~~licensed under part 62~~
6 **PROVIDING SUBSTANCE ABUSE SERVICES UNDER THE MENTAL HEALTH CODE,**
7 **1974 PA 258, MCL 330.1001 TO 330.2106,** or self-help, peer
8 counseling, or support services provided by a nonprofit
9 organization.

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. ____ or House Bill No. 4862 (request no.
12 00859'11) of the 96th Legislature is enacted into law.