

SENATE BILL NO. 126

(As amended March 4, 1999)

January 27, 1999, Introduced by Senator GAST and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 81134, 81135, 82128, 82129 and 82141 (MCL 324.81134, 324.81135, 324.82128, 324.82129 and 324.82141), section 81134 as amended by 1998 PA 355 and sections 81135, 82128, 82129 and 82141 as added by 1995 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81134. (1) A person who is under the influence of
2 intoxicating liquor or a controlled substance, as defined by
3 section 7104 of the public health code, 1978 PA 368, MCL
4 333.7104, or a combination of intoxicating liquor and a con-
5 trolled substance shall not operate an ORV.

6 (2) A person who has an alcohol content of 0.10 grams or
7 more per 100 milliliters of blood, per 210 liters of breath, or
8 per 67 milliliters of urine shall not operate an ORV.

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1 (3) The owner or person in charge or in control of an ORV
2 shall not authorize or knowingly permit the ORV to be operated by
3 a person who is under the influence of intoxicating liquor or a
4 controlled substance or a combination of intoxicating liquor and
5 a controlled substance.

6 (4) Except as otherwise provided in this section, a person
7 who is convicted of a violation of subsection (1), (2), or (3) is
8 guilty of a misdemeanor, punishable by imprisonment for not more
9 than ~~90~~ 93 days, or a fine of not less than \$100.00 or more than
10 \$500.00, or both, together with costs of the prosecution. As
11 part of the sentence for a violation of subsection (1) or (2),
12 the court shall order the person convicted not to operate an ORV
13 for a period of not less than 6 months or more than 2 years.

14 (5) On a second conviction under subsection (1) or (2) or a
15 local ordinance substantially corresponding to subsection (1) or
16 (2) within a period of 7 years, a person is guilty of a misde-
17 meanor, punishable by imprisonment for not more than 1 year, or a
18 fine of not more than \$1,000.00, or both. As part of the sen-
19 tence, the court shall order the person convicted not to operate
20 an ORV for a period of not less than 1 year or more than 2
21 years.

22 (6) On a third or subsequent conviction within a period of
23 10 years under subsection (1) or (2) or a local ordinance sub-
24 stantially corresponding to subsection (1) or (2), a person is
25 guilty of a felony. As part of the sentence, the court shall
26 order the person convicted not to operate an ORV for a period of
27 not less than 1 year or more than 2 years.

1 (7) A person who operates an ORV in violation of subsection
2 (1) or (2) or section 81135 and by the operation of that ORV
3 causes the death of another person is guilty of a felony punish-
4 able by imprisonment for not more than 15 years or a fine of not
5 less than \$2,500.00 or more than \$10,000.00, or both.

6 (8) A person who operates an ORV within this state in viola-
7 tion of subsection (1) or (2) or section 81135 and by the opera-
8 tion of that ORV causes a serious impairment of a body function
9 of another person is guilty of a felony punishable by imprison-
10 ment for not more than 5 years or a fine of not less than
11 \$1,000.00 or more than \$5,000.00, or both. As used in this sub-
12 section, "serious impairment of a body function" includes, but is
13 not limited to, 1 or more of the following:

14 (a) Loss of a limb or use of a limb.

15 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
16 foot, finger, or thumb.

17 (c) Loss of an eye or ear or use of an eye or ear.

18 (d) Loss or substantial impairment of a bodily function.

19 (e) Serious visible disfigurement.

20 (f) A comatose state that lasts for more than 3 days.

21 (g) Measurable brain damage or mental impairment.

22 (h) A skull fracture or other serious bone fracture.

23 (i) Subdural hemorrhage or subdural hematoma.

24 (9) As part of the sentence for a violation of subsection
25 (1) or (2), or a local ordinance substantially corresponding to
26 subsection (1) or (2), the court may order the person to perform
27 service to the community, as designated by the court, without

1 compensation, for a period not to exceed 12 days. The person
2 shall reimburse the state or appropriate local unit of government
3 for the cost of insurance incurred by the state or local unit of
4 government as a result of the person's activities under this
5 subsection.

6 (10) Before imposing sentence for a violation of subsection
7 (1) or (2) or a local ordinance substantially corresponding to
8 subsection (1) or (2), the court shall order the person to
9 undergo screening and assessment by a person or agency designated
10 by the office of substance abuse services, to determine whether
11 the person is likely to benefit from rehabilitative services,
12 including alcohol or drug education and alcohol or drug treatment
13 programs. As part of the sentence, the court may order the
14 person to participate in and successfully complete 1 or more
15 appropriate rehabilitative programs. The person shall pay for
16 the costs of the screening, assessment, and rehabilitative
17 services.

18 (11) Before accepting a plea of guilty under this section,
19 the court shall advise the accused of the statutory consequences
20 possible as the result of a plea of guilty in respect to suspen-
21 sion of the person's right to operate an ORV and the penalty
22 imposed for violation of this section.

23 (12) EACH MUNICIPAL JUDGE AND EACH CLERK OF A COURT OF
24 RECORD SHALL KEEP A FULL RECORD OF EVERY CASE IN WHICH A PERSON
25 IS CHARGED WITH A VIOLATION OF THIS SECTION. THE MUNICIPAL JUDGE
26 OR CLERK OF THE COURT OF RECORD SHALL PREPARE AND IMMEDIATELY

1 FORWARD TO THE SECRETARY OF STATE AN ABSTRACT OF THE COURT OF
2 RECORD FOR EACH CASE CHARGING A VIOLATION OF THIS SECTION.

3 Sec. 81135. (1) A person shall not operate an ORV if, due
4 to the consumption of intoxicating liquor, a controlled sub-
5 stance, as defined by section 7104 of the public health code,
6 ~~Act No. 368 of the Public Acts of 1978, being section 333.7104~~
7 ~~of the Michigan Compiled Laws~~ 1978 PA 368, MCL 333.7104, or a
8 combination of intoxicating liquor and a controlled substance,
9 the person has visibly impaired his or her ability to operate the
10 ORV. If a person is charged with violating section 81134, a
11 finding of guilty is permissible under this section.

12 (2) Except as otherwise provided in this section, a person
13 convicted of a violation of this section is guilty of a misde-
14 meanor, punishable by imprisonment for not more than ~~90~~ 93 days, or
15 a fine of not more than \$300.00, or both, together with costs of
16 the prosecution. As part of the sentence, the court shall order
17 the person convicted not to operate an ORV for a period of not
18 less than 90 days or more than 1 year.

19 (3) A person who violates this section or a local ordinance
20 substantially corresponding to this section, and has 1 or more
21 prior convictions under this section or section 81134 or a local
22 ordinance substantially corresponding to this section or section
23 81134, is guilty of a misdemeanor, punishable by imprisonment for
24 not more than 1 year, or a fine of not more than \$1,000.00, or
25 both. If the person convicted has only 1 prior conviction
26 described in this subsection, as part of the sentence, the court
27 shall order the person not to operate an ORV for a period of not

1 less than 6 months or more than 18 months. If the person has 2
2 or more prior convictions described in this subsection, the court
3 shall order the person not to operate an ORV for a period of not
4 less than 1 year or more than 2 years.

5 (4) As part of the sentence for a violation of this section
6 or a local ordinance substantially corresponding to this section,
7 the court may order the person to perform service to the communi-
8 ty, as designated by the court, without compensation, for a
9 period not to exceed 12 days. The person shall reimburse the
10 state or appropriate local unit of government for the cost of
11 insurance incurred by the state or local unit of government as a
12 result of the person's activities under this subsection.

13 (5) Before imposing sentence for a violation of this section
14 or a local ordinance substantially corresponding to this section,
15 the court shall order the person to undergo screening and assess-
16 ment by a person or agency designated by the office of substance
17 abuse services, to determine whether the person is likely to ben-
18 efit from rehabilitative services, including alcohol or drug edu-
19 cation and alcohol or drug treatment programs. As part of the
20 sentence, the court may order the person to participate in and
21 successfully complete 1 or more appropriate rehabilitative
22 programs. The person shall pay for the costs of the screening,
23 assessment, and rehabilitative services.

24 (6) Before accepting a plea of guilty under this section,
25 the court shall advise the accused of the statutory consequences
26 possible as a result of a plea of guilty in respect to suspension

1 of the person's right to operate an ORV and the penalty imposed
2 for violation of this section.

3 (7) EACH MUNICIPAL JUDGE AND EACH CLERK OF A COURT OF RECORD
4 SHALL KEEP A FULL RECORD OF EVERY CASE IN WHICH A PERSON IS
5 CHARGED WITH A VIOLATION OF THIS SECTION. THE MUNICIPAL JUDGE OR
6 CLERK OF THE COURT OF RECORD SHALL PREPARE AND IMMEDIATELY FOR-
7 WARD TO THE SECRETARY OF STATE AN ABSTRACT OF THE COURT OF RECORD
8 FOR EACH CASE CHARGING A VIOLATION OF THIS SECTION.

Sec. 82128. (1) If a person is convicted of violating section 82127(1), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor and may be punished by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than ~~90~~ 93 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00 and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year.

(ii) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years, or a fine of not less than \$500.00 or more than \$5,000.00, or both.

(2) A term of imprisonment imposed under subsection (1)(b)(ii) shall not be suspended.

(3) A person sentenced to perform service to the community under this section 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 if ordered by the court.

(4) In addition to the sanctions prescribed under subsection (1) and section 82127(4) and (5), the court may, pursuant to the code of criminal procedure, ~~Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws 1927 PA 175, MCL 760.1 TO 777.69,~~ order the person to pay the costs of the prosecution. The court shall also impose sanctions under section 82142.

(5) A person who is convicted of violating section 82127(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both.

(6) As used in this section, "prior conviction" means a conviction for a violation of section 82127(1), (4), or (5), former section 15a(1), (4), or (5) of ~~Act No. 74 of the Public Acts of 1968~~ 1968 PA 74, or former section 15a, a local ordinance

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substantially corresponding to section 82127(1) or former section 15a, or a law of another state substantially corresponding to section 82127(1), (4), or (5) or former section 15a.

Sec. 82129. (1) If a person is convicted of violating section 82127(3), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than ~~90~~ 93 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(2) In addition to the sanctions prescribed in subsection (1), the court may, pursuant to the code of criminal procedure, ~~Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws 1927 PA 175, MCL 760.1 TO 777.69,~~ order the person to pay the costs of the prosecution. The court shall also impose sanctions under section 82142.

(3) A person sentenced to perform service to the community under this section 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 as ordered by the court.

(4) As used in this section, "prior conviction" means a conviction for a violation of section 82127(1), (3), (4), or (5), section 15a(1), (3), (4), or (5) of ~~Act No. 74 of the Public Acts of 1968~~ 1968 PA 74, or former section 15a, a local ordinance substantially corresponding to section 82127(1) or (3) or former section 15a, or a law of another state substantially corresponding to section 82127(1), (3), (4), or (5) or former section 15a.

9 Sec. 82141. (1) Before accepting a plea of guilty or nolo
10 contendere under section 82127 or a local ordinance substantially
11 corresponding to section 82127(1), (2), or (3), the court shall
12 advise the accused of the maximum possible term of imprisonment
13 and the maximum possible fine that may be imposed for the
14 violation.

15 (2) Before imposing sentence, other than court-ordered oper-

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16 ating sanctions, for a violation of section 82127(1), (3), (4),
17 or (5) or a local ordinance substantially corresponding to sec-
18 tion 82127(1) or (3), the court shall order the person to undergo
19 screening and assessment by a person or agency designated by the
20 office of substance abuse services to determine whether the
21 person is likely to benefit from rehabilitative services, includ-
22 ing alcohol or drug education or treatment programs. As part of
23 the sentence, the court may order the person to participate in
24 and successfully complete 1 or more appropriate rehabilitative
25 programs. The person shall pay for the costs of the screening,
26 assessment, and rehabilitative services.

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