

**SUBSTITUTE FOR
SENATE BILL NO. 38**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 80176, 80177, 80178, 81134, and 82127
(MCL 324.80176, 324.80177, 324.80178, 324.81134, and 324.82127),
section 80176 as amended by 1996 PA 174, sections 80177 and 80178
as added by 1995 PA 58, section 81134 as amended by 1999 PA 22,
and section 82127 as amended by 1996 PA 183.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 80176. (1) A person shall not operate a vessel on the
2 waters of this state if either of the following applies:

3 (a) The person is under the influence of intoxicating liquor
4 or a controlled substance, or both.

5 (b) The person has a blood alcohol content of 0.10 grams or
6 more per 100 milliliters of blood, per 210 liters of breath, or
7 per 67 milliliters of urine.

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1 (2) The owner of a vessel or a person in charge or in
2 control of a vessel shall not authorize or knowingly permit the
3 vessel to be operated on the waters of this state by a person who
4 is under the influence of intoxicating liquor or a controlled
5 substance, or both, or who has a blood alcohol content of 0.10
6 grams or more per 100 milliliters of blood, per 210 liters of
7 breath, or per 67 milliliters of urine.

8 (3) A person shall not operate a vessel on the waters of
9 this state when, due to the consumption of an intoxicating liquor
10 or a controlled substance, or both, the person's ability to oper-
11 ate the vessel is visibly impaired. If a person is charged with
12 violating subsection (1), a finding of guilty under this subsec-
13 tion may be rendered.

14 (4) A person who operates a vessel on the waters of this
15 state under the influence of intoxicating liquor or a controlled
16 substance, or both, or with a blood alcohol content of 0.10 grams
17 or more per 100 milliliters of blood, per 210 liters of breath,
18 or per 67 milliliters of urine, and by the operation of that
19 vessel causes the death of another person is guilty of a felony,
20 punishable by imprisonment for not more than 15 years, or a fine
21 of not less than \$2,500.00 or more than \$10,000.00, or both.

22 (5) A person who operates a vessel on the waters of this
23 state under the influence of intoxicating liquor or a controlled
24 substance, or both, or with a blood alcohol content of 0.10 grams
25 or more per 100 milliliters of blood, per 210 liters of breath,
26 or per 67 milliliters of urine, and by the operation of that
27 vessel causes a ~~long-term incapacitating injury to~~ SERIOUS

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1 IMPAIRMENT OF A BODY FUNCTION OF another person is guilty of a
2 felony, punishable by imprisonment for not more than 5 years, or
3 a fine of not less than \$1,000.00 or more than \$5,000.00, or
4 both. AS USED IN THIS SUBSECTION, "SERIOUS IMPAIRMENT OF A BODY
5 FUNCTION" INCLUDES, BUT IS NOT LIMITED TO, 1 OR MORE OF THE
6 FOLLOWING:

7 (A) LOSS OF A LIMB OR USE OF A LIMB.

8 (B) LOSS OF A HAND, FOOT, FINGER, OR THUMB OR USE OF A HAND,
9 FOOT, FINGER, OR THUMB.

10 (C) LOSS OF AN EYE OR EAR OR USE OF AN EYE OR EAR.

11 (D) LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY FUNCTION.

12 (E) SERIOUS VISIBLE DISFIGUREMENT.

13 (F) A COMATOSE STATE THAT LASTS FOR MORE THAN 3 DAYS.

14 (G) MEASURABLE BRAIN DAMAGE OR MENTAL IMPAIRMENT.

15 (H) A SKULL FRACTURE OR OTHER SERIOUS BONE FRACTURE.

16 (I) SUBDURAL HEMORRHAGE OR SUBDURAL HEMATOMA.

17 Sec. 80177. (1) If a person is convicted of violating sec-
18 tion 80176(1), the following apply:

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

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

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

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

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

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1 (i) Community service for not less than 10 days or more than
2 90 days, and may be imprisoned for not more than 1 year.

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

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

11 (2) A term of imprisonment imposed under subdivision (b)(ii)
12 shall not be suspended. A person sentenced to perform service to
13 the community under this section shall not receive compensation
14 and shall reimburse the state or appropriate local unit of gov-
15 ernment for the cost of supervision incurred by the state or
16 local unit of government as a result of the person's activities
17 in that service.

18 (3) In addition to the sanctions prescribed under
19 subsection (1) and section 80176(4) and (5), the court may, pur-
20 suant to the code of criminal procedure, ~~Act No. 175 of the~~
21 ~~Public Acts of 1927, being sections 760.1 to 776.21 of the~~
22 ~~Michigan Compiled Laws~~ 1927 PA 175, MCL 760.1 TO 777.69, order
23 the person to pay the costs of the prosecution. The court shall
24 also impose sanctions under sections 80185 and 80186.

25 (4) A person who is convicted of violating section 80176(2)
26 is guilty of a misdemeanor, punishable by imprisonment for not

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1 more than ~~90~~ 93 days, or a fine of not less than \$100.00 or
2 more than \$500.00, or both.

3 (5) As used in this section, "prior conviction" means a con-
4 viction for a violation of any of the following:

5 (a) Section 80176(1), (4), or (5).

6 (b) Former section 171(1), (4), or (5) of the marine safety
7 act.

8 (c) Former section 73 of the marine safety act.

9 (d) A local ordinance substantially corresponding to section
10 80176(1) or former section 73 of the marine safety act.

11 (e) A law of another state substantially corresponding to
12 section 80176(1), (4), or (5) or former section 73 of the marine
13 safety act.

14 Sec. 80178. (1) If a person is convicted of violating sec-
15 tion 80176(3), the following apply:

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

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

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

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

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

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1 (i) Community service for not less than 10 days or more than
2 90 days, and may be sentenced to imprisonment for not more than 1
3 year.

4 (ii) Imprisonment for not more than 1 year, and may be sen-
5 tenced to community service for not more than 90 days.

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

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

13 (ii) Imprisonment for not more than 1 year, and may be sen-
14 tenced to community service for not more than 90 days.

15 (2) In addition to the sanctions prescribed in subsection
16 (1), the court may, pursuant to the code of criminal procedure,
17 ~~Act No. 175 of the Public Acts of 1927, being sections 760.1 to~~
18 ~~776.21 of the Michigan Compiled Laws~~ 1927 PA 175, MCL 760.1 TO
19 777.69, order the person to pay the costs of the prosecution.
20 The court shall also impose sanctions under sections 80185 and
21 80186.

22 (3) A person sentenced to perform service to the community
23 under this section shall not receive compensation, and shall
24 reimburse the state or appropriate local unit of government for
25 the cost of supervision incurred by the state or local unit of
26 government as a result of the person's activities in that
27 service.

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1 (4) As used in this section, "prior conviction" means a
2 conviction for a violation of any of the following:

3 (a) Section 80176(1), (3), (4), or (5).

4 (b) Former section 171(1) of the marine safety act.

5 (c) Former section 73 of the marine safety act.

6 (d) Former section 73b of the marine safety act.

7 (e) A local ordinance substantially corresponding to section
8 80176(1), former section 73 of the marine safety act, or former
9 section 73b of the marine safety act.

10 (f) A law of another state substantially corresponding to
11 section 80176(1), (3), (4), or (5), former section 73 of the
12 marine safety act, or former section 73b of the marine safety
13 act.

14 Sec. 81134. (1) A person who is under the influence of
15 intoxicating liquor or a controlled substance, as defined by
16 section 7104 of the public health code, 1978 PA 368, MCL
17 333.7104, or a combination of intoxicating liquor and a con-
18 trolled substance shall not operate an ORV.

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

22 (3) The owner or person in charge or in control of an ORV
23 shall not authorize or knowingly permit the ORV to be operated by
24 a person who is under the influence of intoxicating liquor or a
25 controlled substance or a combination of intoxicating liquor and
26 a controlled substance.

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1 (4) Except as otherwise provided in this section, a person
2 who is convicted of a violation of subsection (1), (2), or (3) is
3 guilty of a misdemeanor, punishable by imprisonment for not more
4 than 93 days, or a fine of not less than \$100.00 or more than
5 \$500.00, or both, together with costs of the prosecution. As
6 part of the sentence for a violation of subsection (1) or (2),
7 the court shall order the person convicted not to operate an ORV
8 for a period of not less than 6 months or more than 2 years.

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

17 (6) On a third or subsequent conviction within a period of
18 10 years under subsection (1) or (2) or a local ordinance sub-
19 stantially corresponding to subsection (1) or (2), a person is
20 guilty of a felony AND SHALL BE SENTENCED TO IMPRISONMENT FOR NOT
21 LESS THAN 1 YEAR OR MORE THAN 5 YEARS, OR A FINE OF NOT LESS THAN
22 \$500.00 OR MORE THAN \$5,000, OR BOTH. As part of the sentence,
23 the court shall order the person convicted not to operate an ORV
24 for a period of not less than 1 year or more than 2 years.

25 (7) A person who operates an ORV in violation of subsection
26 (1) or (2) or section 81135 and by the operation of that ORV
27 causes the death of another person is guilty of a felony

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1 punishable by imprisonment for not more than 15 years or a fine
2 of not less than \$2,500.00 or more than \$10,000.00, or both.

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

- 11 (a) Loss of a limb or use of a limb.
- 12 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
13 foot, finger, or thumb.
- 14 (c) Loss of an eye or ear or use of an eye or ear.
- 15 (d) Loss or substantial impairment of a bodily function.
- 16 (e) Serious visible disfigurement.
- 17 (f) A comatose state that lasts for more than 3 days.
- 18 (g) Measurable brain damage or mental impairment.
- 19 (h) A skull fracture or other serious bone fracture.
- 20 (i) Subdural hemorrhage or subdural hematoma.

21 (9) As part of the sentence for a violation of subsection
22 (1) or (2), or a local ordinance substantially corresponding to
23 subsection (1) or (2), the court may order the person to perform
24 service to the community, as designated by the court, without
25 compensation, for a period not to exceed 12 days. The person
26 shall reimburse the state or appropriate local unit of government
27 for the cost of insurance incurred by the state or local unit of

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1 government as a result of the person's activities under this
2 subsection.

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

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

20 (12) Each municipal judge and each clerk of a court of
21 record shall keep a full record of every case in which a person
22 is charged with a violation of this section. The municipal judge
23 or clerk of the court of record shall prepare and immediately
24 forward to the secretary of state an abstract of the court of
25 record for each case charging a violation of this section.

26 Sec. 82127. (1) A person shall not operate a snowmobile in
27 this state if either of the following applies:

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1 (a) The person is under the influence of intoxicating liquor
2 or a controlled substance, or both.

3 (b) The person has a blood alcohol content of 0.10 grams or
4 more per 100 milliliters of blood, per 210 liters of breath, or
5 per 67 milliliters of urine.

6 (2) The owner of a snowmobile or a person in charge or in
7 control of a snowmobile shall not authorize or knowingly permit
8 the snowmobile to be driven or operated by a person who is under
9 the influence of intoxicating liquor or a controlled substance,
10 or both, or who has a blood alcohol content of 0.10 grams or more
11 per 100 milliliters of blood, per 210 liters of breath, or per 67
12 milliliters of urine.

13 (3) A person shall not operate a snowmobile when, due to the
14 consumption of an intoxicating liquor or a controlled substance,
15 or both, the person's ability to operate the snowmobile is visi-
16 bly impaired. If a person is charged with violating subsection
17 (1), a finding of guilty under this subsection may be rendered.

18 (4) A person who operates a snowmobile under the influence
19 of intoxicating liquor or a controlled substance, or both, or
20 with a blood alcohol content of 0.10 grams or more per 100 milli-
21 liters of blood, per 210 liters of breath, or per 67 milliliters
22 of urine, and by the operation of that snowmobile causes the
23 death of another person is guilty of a felony punishable by
24 imprisonment for not more than 15 years, or a fine of not less
25 than \$2,500.00 or more than \$10,000.00, or both.

26 (5) A person who operates a snowmobile under the influence
27 of intoxicating liquor or a controlled substance, or both, or

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1 with a blood alcohol content of 0.10 grams or more per 100
2 milliliters of blood, per 210 liters of breath, or per 67 milli-
3 liters of urine, and by the operation of that snowmobile causes a
4 ~~long-term incapacitating injury to~~ SERIOUS IMPAIRMENT OF A BODY
5 FUNCTION OF another person is guilty of a felony punishable by
6 imprisonment for not more than 5 years, or a fine of not less
7 than \$1,000.00 or more than \$5,000.00, or both. AS USED IN THIS
8 SUBSECTION, "SERIOUS IMPAIRMENT OF A BODY FUNCTION" INCLUDES, BUT
9 IS NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

- 10 (A) LOSS OF A LIMB OR USE OF A LIMB.
11 (B) LOSS OF A HAND, FOOT, FINGER, OR THUMB OR USE OF A HAND,
12 FOOT, FINGER, OR THUMB.
13 (C) LOSS OF AN EYE OR EAR OR USE OF AN EYE OR EAR.
14 (D) LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY FUNCTION.
15 (E) SERIOUS VISIBLE DISFIGUREMENT.
16 (F) A COMATOSE STATE THAT LASTS FOR MORE THAN 3 DAYS.
17 (G) MEASURABLE BRAIN DAMAGE OR MENTAL IMPAIRMENT.
18 (H) A SKULL FRACTURE OR OTHER SERIOUS BONE FRACTURE.
19 (I) SUBDURAL HEMORRHAGE OR SUBDURAL HEMATOMA.

20 Enacting section 1. This amendatory act takes effect June
21 1, 2001.