

Act No. 12
Public Acts of 2001
Approved by the Governor
May 29, 2001
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May 29, 2001
EFFECTIVE DATE: July 1, 2001

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Senators North, Goschka, Shugars and DeBeaussiaert

ENROLLED SENATE BILL No. 38

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," 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:

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

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

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

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

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

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

(5) A person who operates a vessel on the waters of this state under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, and by the operation of that vessel causes a serious impairment of a body function of another person is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

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

Sec. 80177. (1) If a person is convicted of violating section 80176(1), the following apply:

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

- (i) Community service for not more than 45 days.
- (ii) Imprisonment for not more than 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 subdivision (b)(ii) shall not be suspended. 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.

(3) In addition to the sanctions prescribed under subsection (1) and section 80176(4) and (5), the court may, pursuant to the code of criminal procedure, 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 sections 80185 and 80186.

(4) A person who is convicted of violating section 80176(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 or more than \$500.00, or both.

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

- (a) Section 80176(1), (4), or (5).
- (b) Former section 171(1), (4), or (5) of the marine safety act.
- (c) Former section 73 of the marine safety act.
- (d) A local ordinance substantially corresponding to section 80176(1) or former section 73 of the marine safety act.
- (e) A law of another state substantially corresponding to section 80176(1), (4), or (5) or former section 73 of the marine safety act.

Sec. 80178. (1) If a person is convicted of violating section 80176(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 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, 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 sections 80185 and 80186.

(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.

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

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

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

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

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

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

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

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

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

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

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

(5) On a second conviction under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2) within a period of 7 years, a person is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(6) On a third or subsequent conviction within a period of 10 years under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), a 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, or both. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

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

(8) A person who operates an ORV within this state in violation of subsection (1) or (2) or section 81135 and by the operation of that ORV causes a serious impairment of a body function of another person is guilty of a felony punishable

by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

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

(9) As part of the sentence for a violation of subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(10) Before imposing sentence for a violation of subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), the court shall order the person to undergo screening and assessment by a person or agency 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. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

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

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

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

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

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

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

(5) A person who operates a snowmobile under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, and by the operation of that snowmobile causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

- (a) Loss of a limb or use of a limb.
- (b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.
- (c) Loss of an eye or ear or use of an eye or ear.

- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain damage or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.

Enacting section 1. This amendatory act takes effect July 1, 2001.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Sam E. Randall

Clerk of the House of Representatives.

Approved

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Governor.