

**SUBSTITUTE FOR
HOUSE BILL NO. 5130**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81101, 81134, 81135, 81136, 81137, 81140,
81141, and 81144 (MCL 324.81101, 324.81134, 324.81135, 324.81136,
324.81137, 324.81140, 324.81141, and 324.81144), section 81101 as
amended by 2003 PA 111, section 81134 as amended by 2001 PA 12,
section 81135 as amended by 1999 PA 22, sections 81136 and 81141
as amended by 1996 PA 175, and sections 81137, 81140, and 81144
as added by 1995 PA 58, and by adding section 81140b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81101. As used in this part:

2 **(a) "Alcoholic liquor" means that term as defined in section**
3 **1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.**

4 **(b) —(a)— "ATV" means a 3- or 4-wheeled vehicle designed for**
5 **off-road use that has low-pressure tires, has a seat designed to**

1 be straddled by the rider, and is powered by a 50cc to 500cc
2 gasoline engine or an engine of comparable size using other
3 fuels.

4 **(c)** ~~—(b)—~~ "Code" means the Michigan vehicle code, 1949 PA
5 300, MCL 257.1 to 257.923.

6 **(d)** ~~—(e)—~~ "Dealer" means a person engaged in the sale, lease,
7 or rental of an ORV as a regular business or, for purposes of
8 selling licenses under section 81116, any other person authorized
9 by the department to sell licenses or permits, or both, under
10 this act.

11 **(e)** ~~—(d)—~~ "Designated", unless the context implies otherwise,
12 means posted open for ORV use with appropriate signs by the
13 department.

14 **(f)** ~~—(e)—~~ "Forest road" means a hard surfaced road, gravel or
15 dirt road, or other route capable of travel by a 2-wheel drive,
16 4-wheel conventional vehicle designed for highway use, except an
17 interstate, state, or county highway.

18 **(g)** ~~—(f)—~~ "Forest trail" means a designated path or way
19 capable of travel only by a vehicle less than 50 inches in
20 width.

21 **(h)** ~~—(g)—~~ "Highway" means the entire width between the
22 boundary lines of a way publicly maintained when any part of the
23 way is open to the use of the public for purposes of vehicular
24 travel.

25 **(i)** ~~—(h)—~~ "Highly restricted personal information" means an
26 individual's photograph or image, social security number,
27 digitized signature, and medical and disability information.

1 (j) ~~-(i)-~~ "Late model ORV" means an ORV manufactured in the
2 current model year or the 5 model years immediately preceding the
3 current model year.

4 (k) ~~-(j)-~~ "Manufacturer" means a person, partnership,
5 corporation, or association engaged in the production and
6 manufacture of ORVs as a regular business.

7 (l) ~~-(k)-~~ "Operate" means to ride in or on, and be in actual
8 physical control of, the operation of an ORV.

9 (m) ~~-(l)-~~ "Operator" means a person who operates or is in
10 actual physical control of the operation of an ORV.

11 (n) ~~-(m)-~~ "ORV" or "vehicle" means a motor driven off-road
12 recreation vehicle capable of cross-country travel without
13 benefit of a road or trail, on or immediately over land, snow,
14 ice, marsh, swampland, or other natural terrain. ORV or vehicle
15 includes, but is not limited to, a multitrack or multiwheel drive
16 vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or
17 4-wheel vehicle, an amphibious machine, a ground effect air
18 cushion vehicle, or other means of transportation deriving motive
19 power from a source other than muscle or wind. ORV or vehicle
20 does not include a registered snowmobile, a farm vehicle being
21 used for farming, a vehicle used for military, fire, emergency,
22 or law enforcement purposes, a vehicle owned and operated by a
23 utility company or an oil or gas company when performing
24 maintenance on its facilities or on property over which it has an
25 easement, a construction or logging vehicle used in performance
26 of its common function, or a registered aircraft.

27 (o) ~~-(n)-~~ "Owner" means any of the following:

1 (i) A vendee or lessee of an ORV which is the subject of an
2 agreement for the conditional sale or lease of the ORV, with the
3 right of purchase upon performance of the conditions stated in
4 the agreement, and with an immediate right of possession vested
5 in the conditional vendee or lessee.

6 (ii) A person renting an ORV, or having the exclusive use of
7 an ORV, for more than 30 days.

8 (iii) A person who holds legal ownership of an ORV.

9

(p) ~~—(e)—~~ "Person with disabilities" means a person who has 1
10 or more of the following physical characteristics:

11 (i) Blindness.

12 (ii) Inability to ambulate more than 200 feet without having
13 to stop and rest during any time of the year.

14 (iii) Loss of use of 1 or both legs or feet.

15 (iv) Inability to ambulate without the prolonged use of a
16 wheelchair, walker, crutches, braces, or other device required to
17 aid mobility.

18 (v) A lung disease from which the person's expiratory volume
19 for 1 second, when measured by spirometry, is less than 1 liter,
20 or from which the person's arterial oxygen tension is less than
21 60 mm/hg of room air at rest.

22 (vi) A cardiovascular disease from which the person measures
23 between 3 and 4 on the New York heart classification scale, or
24 from which a marked limitation of physical activity causes
25 fatigue, palpitation, dyspnea, or anginal pain.

26 (vii) Other diagnosed disease or disorder including, but not
27 limited to, severe arthritis or a neurological or orthopedic

1 impairment that creates a severe mobility limitation.

2 **(q)** ~~—(p)—~~ "Personal information" means information that
3 identifies an individual, including an individual's driver
4 identification number, name, address not including zip code, and
5 telephone number, but does not include information on ORV
6 operation or equipment-related violations or civil infractions,
7 operator or vehicle registration status, accidents, or other
8 behaviorally-related information.

9 **(r)** ~~—(q)—~~ "Public agency" means the department or a local or
10 federal unit of government.

11 **(s)** ~~—(r)—~~ "Roadway" means that portion of a highway improved,
12 designated, or ordinarily used for vehicular travel. If a
13 highway includes 2 or more separate roadways, the term roadway
14 refers to a roadway separately, but not to all roadways
15 collectively.

16 **(t)** ~~—(s)—~~ "Route" means a forest road or other road that is
17 designated for purposes of this part by the department.

18 **(u)** ~~—(t)—~~ "Safety education fund" means the safety education
19 fund created under section 81118.

20 **(v)** ~~—(u)—~~ "Safety chief instructor" means a person who has
21 been certified by a nationally recognized ATV and ORV
22 organization to certify instructors and to do on-sight
23 evaluations of instructors.

24 **(w)** ~~—(v)—~~ "Trail improvement fund" means the ORV trail
25 improvement fund created pursuant to section 81117.

26 **(x)** ~~—(w)—~~ "Visual supervision" means the direct observation
27 of the operator with the unaided or normally corrected eye, where

1 the observer is able to come to the immediate aid of the
2 operator.

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

8 (2) A person who has an alcohol content of ~~0.10~~ **0.08** grams
9 or more per 100 milliliters of blood, per 210 liters of breath,
10 or per 67 milliliters of urine shall not operate an ORV.

11 (3) A person who has in his or her body any amount of a
12 controlled substance listed in schedule 1 under section 7212 of
13 the public health code, 1978 PA 368, MCL 333.7212, or a rule
14 promulgated under that section, or of a controlled substance
15 described in section 7214(a)(iv) of the public health code, 1978
16 PA 368, MCL 333.7214, shall not operate an ORV.

17 (4) ~~(3)~~ The owner or person in charge or in control of an
18 ORV shall not authorize or knowingly permit the ORV to be
19 operated by a person ~~who~~ **if any of the following apply:**

20 (a) The person is under the influence of ~~intoxicating~~
21 **alcoholic** liquor or a controlled substance or a combination of
22 ~~intoxicating~~ **alcoholic** liquor and a controlled substance.

23 (b) The person has an alcohol content of 0.08 grams or more
24 per 100 milliliters of blood, per 210 liters of breath, or per 67
25 milliliters of urine.

26 (c) The person's ability to operate an ORV is visibly
27 impaired due to the consumption of alcoholic liquor, a controlled

1 substance, or a combination of alcoholic liquor and a controlled
2 substance.

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

12 (6) ~~—(5)—~~ On a second conviction under subsection (1), ~~—or—~~
13 (2), or (3) or a local ordinance substantially corresponding to
14 subsection (1), ~~—or—~~ (2), or (3) within a period of 7 years, a
15 person is guilty of a misdemeanor, punishable by imprisonment for
16 not more than 1 year, or a fine of not more than \$1,000.00, or
17 both. As part of the sentence, the court shall order the person
18 convicted not to operate an ORV for a period of not less than 1
19 year or more than 2 years.

20 (7) ~~—(6)—~~ On a third or subsequent conviction within a period
21 of 10 years under subsection (1), ~~—or—~~ (2), or (3) or a local
22 ordinance substantially corresponding to subsection (1), ~~—or—~~
23 (2), or (3), a person is guilty of a felony and shall be
24 sentenced to imprisonment for not less than 1 year or more than
25 5 years, or a fine of not less than \$500.00 or more than \$5,000,
26 or both. As part of the sentence, the court shall order the
27 person convicted not to operate an ORV for a period of not less

1 than 1 year or more than 2 years.

2 **(8)** ~~—(7)—~~ A person who operates an ORV in violation of
 3 subsection (1), ~~—or—~~ (2), **or (3)** or section 81135 and by the
 4 operation of that ORV causes the death of another person is
 5 guilty of a felony punishable by imprisonment for not more than
 6 15 years or a fine of not less than \$2,500.00 or more than
 7 \$10,000.00, or both.

8 **(9)** ~~—(8)—~~ A person who operates an ORV within this state in
 9 violation of subsection (1), ~~—or—~~ (2), **or (3)** or section 81135
 10 and by the operation of that ORV causes a serious impairment of a
 11 body function of another person is guilty of a felony punishable
 12 by imprisonment for not more than 5 years or a fine of not less
 13 than \$1,000.00 or more than \$5,000.00, or both. As used in this
 14 subsection, "serious impairment of a body function" ~~—includes,~~
 15 ~~but is not limited to, 1 or more of the following:~~ **means that**
 16 **term as defined in section 58c of the Michigan vehicle code, 1949**
 17 **PA 300, MCL 257.58c.**

18 ~~—(a) Loss of a limb or use of a limb.~~

19 ~~—(b) Loss of a hand, foot, finger, or thumb or use of a hand,~~
 20 ~~foot, finger, or thumb.~~

21 ~~—(c) Loss of an eye or ear or use of an eye or ear.~~

22 ~~—(d) Loss or substantial impairment of a bodily function.~~

23 ~~—(e) Serious visible disfigurement.~~

24 ~~—(f) A comatose state that lasts for more than 3 days.~~

25 ~~—(g) Measurable brain damage or mental impairment.~~

26 ~~—(h) A skull fracture or other serious bone fracture.~~

27 ~~—(i) Subdural hemorrhage or subdural hematoma.~~

1 **(10)** ~~-(9)-~~ As part of the sentence for a violation of
2 subsection (1), ~~or~~ (2), **or (3)**, or a local ordinance
3 substantially corresponding to subsection (1), ~~or~~ (2), **or (3)**,
4 the court may order the person to perform service to the
5 community, as designated by the court, without compensation, for
6 a period not to exceed 12 days. The person shall reimburse the
7 state or appropriate local unit of government for the cost of
8 insurance incurred by the state or local unit of government as a
9 result of the person's activities under this subsection.

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

22 **(12)** ~~-(11)-~~ Before accepting a plea of guilty under this
23 section, the court shall advise the accused of the statutory
24 consequences possible as the result of a plea of guilty in
25 respect to suspension of the person's right to operate an ORV and
26 the penalty imposed for violation of this section.

27 **(13)** ~~-(12)-~~ Each municipal judge and each clerk of a court of

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

6 Sec. 81135. (1) A person shall not operate an ORV if, due
7 to the consumption of ~~intoxicating~~ **alcoholic** liquor, a
8 controlled substance, as defined by section 7104 of the public
9 health code, 1978 PA 368, MCL 333.7104, or a combination of
10 ~~intoxicating~~ **alcoholic** liquor and a controlled substance, the
11 person has visibly impaired his or her ability to operate the
12 ORV. If a person is charged with violating section 81134, a
13 finding of guilty is permissible under this section.

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

21 (3) A person who violates this section or a local ordinance
22 substantially corresponding to this section, and has 1 or more
23 prior convictions under this section or section 81134 or a local
24 ordinance substantially corresponding to this section or section
25 81134, is guilty of a misdemeanor, punishable by imprisonment for
26 not more than 1 year, or a fine of not more than \$1,000.00, or
27 both. If the person convicted has only 1 prior conviction

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

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

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

26 (6) Before accepting a plea of guilty under this section, the
27 court shall advise the accused of the statutory consequences

1 possible as a result of a plea of guilty in respect to suspension
2 of the person's right to operate an ORV and the penalty imposed
3 for violation of this section.

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

10 Sec. 81136. (1) In a criminal prosecution for violating
11 section 81134 or 81135 or a local ordinance substantially
12 corresponding to section 81134 or 81135, or in a criminal
13 prosecution for negligent homicide or manslaughter resulting from
14 the operation of an ORV while the operator is alleged to have
15 been impaired by or under the influence of ~~intoxicating~~
16 **alcoholic** liquor or a controlled substance or a combination of
17 ~~intoxicating~~ **alcoholic** liquor and a controlled substance, or to
18 have had a blood alcohol content of ~~0.10~~ **0.08** grams or more per
19 100 milliliters of blood, per 210 liters of breath, or per 67
20 milliliters of urine, the amount of alcohol **or type or amount of**
21 **a controlled substance** in the operator's blood at the time
22 alleged as shown by chemical analysis of the operator's blood,
23 urine, or breath shall be admissible into evidence.

24 (2) If a chemical test of an operator's blood, urine, or
25 breath is given, the results of the test shall be made available
26 to the person charged with an offense enumerated in subsection
27 (1) or the person's attorney upon written request to the

1 prosecution, with a copy of the request filed with the court.
2 The prosecution shall furnish the report at least 2 days before
3 the day of the trial and the results shall be offered as evidence
4 by the prosecution in a criminal proceeding. Failure to fully
5 comply with the request shall bar the admission of the results
6 into evidence by the prosecution.

7 ~~(3) Except in a prosecution relating solely to a violation~~
8 ~~of section 81134(2), the amount of alcohol in the operator's~~
9 ~~blood at the time alleged as shown by chemical analysis of the~~
10 ~~operator's blood, urine, or breath shall give rise to the~~
11 ~~following presumptions:~~

12 ~~—— (a) If at the time the operator had an alcohol content of~~
13 ~~0.07 grams or less per 100 milliliters of blood, per 210 liters~~
14 ~~of breath, or per 67 milliliters of urine, it shall be presumed~~
15 ~~that the operator was not under the influence of intoxicating~~
16 ~~liquor.~~

17 ~~—— (b) If at the time the operator had an alcohol content of~~
18 ~~more than 0.07 grams but less than 0.10 grams per 100 milliliters~~
19 ~~of blood, per 210 liters of breath, or per 67 milliliters of~~
20 ~~urine, it shall be presumed that the operator's ability to~~
21 ~~operate an ORV was impaired within the provisions of section~~
22 ~~81135 due to the consumption of intoxicating liquor.~~

23 ~~—— (c) If at the time the operator had an alcohol content of~~
24 ~~0.10 grams or more per 100 milliliters of blood, per 210 liters~~
25 ~~of breath, or per 67 milliliters of urine, it shall be presumed~~
26 ~~that the operator was under the influence of intoxicating~~
27 ~~liquor.~~

1 (3) ~~—(4)—~~ A sample or specimen of urine or breath shall be
2 taken and collected in a reasonable manner. Only a licensed
3 physician, or a licensed nurse or medical technician under the
4 direction of a licensed physician and qualified to withdraw blood
5 acting in a medical environment, at the request of a peace
6 officer, may withdraw blood for the purpose of determining the
7 alcoholic content of the blood under this part. Liability for a
8 crime or civil damages predicated on the act of withdrawing blood
9 and related procedures shall not attach to a qualified person who
10 withdraws blood or assists in the withdrawal in accordance with
11 this part unless the withdrawal is performed in a negligent
12 manner.

13 (4) ~~—(5)—~~ A person arrested for a crime enumerated in
14 subsection (1) who takes a chemical test administered at the
15 request of a peace officer, as provided in this part, shall be
16 given a reasonable opportunity to have a person of his or her own
17 choosing administer 1 of the chemical tests described in this
18 section within a reasonable time after his or her detention, and
19 the results of the test shall be admissible and shall be
20 considered with other competent evidence in determining the
21 defendant's innocence or guilt of a crime enumerated in
22 subsection (1). If the person arrested is administered a
23 chemical test by a person of his or her own choosing, the person
24 arrested shall be responsible for obtaining a chemical analysis
25 of the test sample. The person shall be informed that he or she
26 has the right to demand that a person of his or her choosing
27 administer 1 of the chemical tests described in this section,

1 that the results of the test shall be admissible and shall be
2 considered with other competent evidence in determining the
3 innocence or guilt of the defendant, and that the person arrested
4 shall be responsible for obtaining a chemical analysis of the
5 test sample.

6 (5) ~~—(6)—~~ A person arrested shall be advised that if the
7 person refuses the request of a peace officer to take a test
8 described in this section, a test shall not be given without a
9 court order. The person arrested shall also be advised that the
10 person's refusal of the request of a peace officer to take a test
11 described in this section shall result in the suspension of the
12 person's right to operate an ORV.

13 (6) ~~—(7)—~~ This section shall not be construed as limiting the
14 introduction of any other competent evidence bearing upon the
15 question of whether or not the defendant was impaired by or under
16 the influence of ~~—intoxicating—~~ **alcoholic** liquor or a controlled
17 substance, or a combination of ~~—intoxicating—~~ **alcoholic** liquor
18 and a controlled substance, or whether the person had a blood
19 alcohol content of ~~—0.10—~~ **0.08** grams or more per 100 milliliters
20 of blood, per 210 liters of breath, or per 67 milliliters of
21 urine.

22 (7) ~~—(8)—~~ If a jury instruction regarding a defendant's
23 refusal to submit to a chemical test under this section is
24 requested by the prosecution or the defendant, the jury
25 instruction shall be given as follows:

26 "Evidence was admitted in this case which, if believed by the
27 jury, could prove that the defendant had exercised his or her

1 right to refuse a chemical test. You are instructed that such a
2 refusal is within the statutory rights of the defendant and is
3 not evidence of the defendant's guilt. You are not to consider
4 such a refusal in determining the guilt or innocence of the
5 defendant.".

6 **(8)** ~~—(9)—~~ If after an accident the operator of an ORV
7 involved in the accident is transported to a medical facility and
8 a sample of the operator's blood is withdrawn at that time for
9 the purpose of medical treatment, the results of a chemical
10 analysis of that sample shall be admissible in a criminal
11 prosecution for a crime described in subsection (1) to show the
12 amount of alcohol or presence of a controlled substance, or both,
13 in the person's blood at the time alleged, regardless of whether
14 the person had been offered or had refused a chemical test. The
15 medical facility or person performing the chemical analysis shall
16 disclose the results of the analysis to a prosecuting attorney
17 who requests the results for use in a criminal prosecution as
18 provided in this subsection. A medical facility or person
19 disclosing information in compliance with this subsection shall
20 not be civilly or criminally liable for making the disclosure.

21 **(9)** ~~—(10)—~~ If after an accident the operator of an ORV
22 involved in the accident is deceased, a sample of the decedent's
23 blood shall be withdrawn in a manner directed by the medical
24 examiner for the purpose of determining blood alcohol content or
25 presence of a controlled substance, or both. The medical
26 examiner shall give the results of the chemical analysis to the
27 law enforcement agency investigating the accident, and that

1 agency shall forward the results to the department of state
2 police.

3 Sec. 81137. (1) Except as provided in subsection (2), a
4 person who operates an ORV is considered to have given consent to
5 chemical tests of his or her blood, breath, or urine for the
6 purpose of determining the amount of alcohol or presence of a
7 controlled substance or both in his or her blood, and may be
8 requested by a peace officer to submit to chemical tests of his
9 or her blood, breath, or urine for the purpose of determining the
10 amount of alcohol or presence of a controlled substance or both
11 in his or her blood if:

12 (a) The person is arrested for a violation of section
13 81134(1), ~~or~~ (2), (3), (6), (7), (8), or (9) or 81135 or a
14 local ordinance substantially corresponding to section 81134(1),
15 ~~or~~ (2), or (3) or 81135.

16 (b) The person is arrested for negligent homicide or
17 manslaughter resulting from the operation of an ORV, and the
18 peace officer has reasonable grounds to believe that the person
19 was operating the ORV while impaired by or under the influence of
20 ~~intoxicating~~ **alcoholic** liquor, a controlled substance, or a
21 combination of ~~intoxicating~~ **alcoholic** liquor and a controlled
22 substance.

23 (2) A person who is afflicted with hemophilia, diabetes, or a
24 condition requiring the use of an anticoagulant under the
25 direction of a physician shall not be considered to have given
26 consent to the withdrawal of blood.

27 Sec. 81140. (1) If a person who refuses to submit to a

1 chemical test pursuant to section 81138 does not request an
2 administrative hearing within 14 days after the date of notice
3 pursuant to section 81139, the secretary of state shall suspend
4 the person's right to operate an ORV for a period of ~~6 months~~ 1
5 **year**, or for a second or subsequent refusal within a period of 7
6 years, for ~~1 year~~ **2 years**.

7 (2) If an administrative hearing is requested, the secretary
8 of state shall appoint a hearing officer to conduct the hearing.
9 Not less than 10 days' notice of the hearing shall be provided by
10 mail to the person submitting the request, to the peace officer
11 who filed the report under section 81138, and, if a prosecuting
12 attorney requests receipt of the notice, to the prosecuting
13 attorney of the county where the arrest was made. The hearing
14 officer may administer oaths and issue subpoenas for the
15 attendance of necessary witnesses, and may grant a reasonable
16 request for an adjournment. The hearing shall cover only the
17 following issues:

18 (a) Whether the peace officer had reasonable grounds to
19 believe that the person committed a crime described in section
20 81137(1).

21 (b) Whether the person was placed under arrest for a crime
22 described in section 81137(1).

23 (c) Whether the person reasonably refused to submit to a
24 chemical test upon request of the officer.

25 (d) Whether the person was advised of his or her rights under
26 section 81136.

27 (3) An administrative hearing conducted under this section is

1 not a contested case for the purposes of chapter 4 of the
2 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
3 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
4 ~~Compiled Laws~~ **1969 PA 306, MCL 24.271 to 24.287.** The hearing
5 shall be conducted in an impartial manner. A final decision or
6 order of a hearing officer shall be made in writing or stated in
7 the record, and shall include findings of fact based exclusively
8 on the evidence presented and matters officially noticed, and
9 shall specify any sanction to be imposed against the person
10 involved. A copy of the final decision or order shall be
11 delivered or mailed immediately to the person and the peace
12 officer.

13 (4) After the administrative hearing, if the person is found
14 to have unreasonably refused to submit to a chemical test, the
15 secretary of state shall suspend the person's right to operate an
16 ORV for a period of ~~6 months~~ **1 year**, or for a second or
17 subsequent refusal within a period of 7 years, for ~~1 year~~ **2**
18 **years.** Within 60 days after the final decision or order is
19 issued by the hearing officer, the person may file a petition in
20 the circuit court of the county in which the arrest was made to
21 review the suspension. **If after the hearing the person who**
22 **requested the hearing prevails, the peace officer who filed the**
23 **report under section 81138 may, with the consent of the**
24 **prosecuting attorney, file a petition in the circuit court of the**
25 **county in which the arrest was made to review the determination**
26 **of the hearing officer as provided in section 81140b.** The scope
27 of the court's review shall be limited to the issues provided in

1 section 106 of ~~Act No. 306 of the Public Acts of 1969, being~~
2 ~~section 24.306 of the Michigan Compiled Laws~~ **the administrative**
3 **procedure act of 1969, 1969 PA 306, MCL 24.306.**

4 (5) The circuit court shall enter an order setting the cause
5 for hearing for a date certain that is not more than 60 days
6 after the date of the order. The order, a copy of the petition,
7 which shall include the person's full name, current address,
8 birth date, and driver's license number, and all supporting
9 affidavits shall be served on the secretary of state's office in
10 Lansing not less than 50 days before the date set for the
11 hearing. The department shall cause a record to be made of the
12 proceedings held pursuant to subsection (2). The record shall be
13 prepared and transcribed in accordance with section 86 of ~~Act~~
14 ~~No. 306 of the Public Acts of 1969, being section 24.286 of the~~
15 ~~Michigan Compiled Laws~~ **the administrative procedure act of 1969,**
16 **1969 PA 306, MCL 24.286.** Upon notification of the filing of a
17 petition for judicial review, the department shall transmit to
18 the court in which the petition was filed, not less than 10 days
19 before the matter is set for review, the original or a certified
20 copy of the official record of the proceedings.

21 **Sec. 81140b. (1) A person who is aggrieved by a final**
22 **determination of the secretary of state under this part may**
23 **petition for a review of the determination in the circuit court**
24 **in the county where the person was arrested. The petition shall**
25 **be filed within 63 days after the determination is made except**
26 **that, for good cause shown, the court may allow the petition to**
27 **be filed within 182 days after the determination is made. As**

1 provided in section 81140, a peace officer who is aggrieved by a
2 determination of a hearing officer in favor of a person who
3 requested a hearing under section 81140 may, with the consent of
4 the prosecuting attorney, petition for review of the
5 determination in the circuit court in the county where the arrest
6 was made. The petition shall be filed within 63 days after the
7 determination is made except that, for good cause shown, the
8 court may allow the petition to be filed within 182 days after
9 the determination is made.

10 (2) The circuit court shall enter an order setting the cause
11 for hearing for a day certain that is not more than 63 days after
12 the date of the order. The order, a copy of the petition, which
13 shall include the person's full name, current address, and birth
14 date, and all supporting affidavits shall be served on the
15 secretary of state's office in Lansing not less than 20 days
16 before the date set for the hearing. If the person is seeking a
17 review of the record prepared pursuant to section 81140, the
18 service upon the secretary of state shall be made not less than
19 50 days before the date set for the hearing.

20 (3) Except as provided in subsections (4) and (6), the court
21 may take testimony and examine all the facts and circumstances
22 incident to the order that the person not operate an ORV in this
23 state. The court may affirm, modify, or set aside the order.
24 The order of the court shall be duly entered, and the petitioner
25 shall file a certified copy of the order with the secretary of
26 state's office in Lansing within 7 days after entry of the
27 order.

1 (4) In reviewing a determination under section 81140, the
2 court shall confine its consideration to a review of the record
3 prepared pursuant to section 81140 to determine whether the
4 hearing officer properly determined the issues enumerated in
5 section 81140.

6 (5) This section does not apply to an order issued by the
7 secretary of state pursuant to a court order issued as part of
8 the sentence for a conviction under section 81134, or a local
9 ordinance substantially corresponding to section 81134(1) or
10 (3).

11 (6) In reviewing a determination resulting in issuance of an
12 order under section 81134(6), (7), (8), or (9), the court shall
13 confine its consideration to a review of the record prepared
14 pursuant to section 81140. The court shall set aside the
15 determination of the secretary of state only if substantial
16 rights of the petitioner have been prejudiced because the
17 determination is any of the following:

18 (a) In violation of the constitution of the United States,
19 the state constitution of 1963, or a statute.

20 (b) In excess of the statutory authority or jurisdiction of
21 the secretary of state.

22 (c) Made upon unlawful procedure resulting in material
23 prejudice to the petitioner.

24 (d) Not supported by competent, material, and substantial
25 evidence on the whole record.

26 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
27 exercise of discretion.

(f) Affected by other substantial and material error of law.

Sec. 81141. (1) A peace officer who has reasonable cause to believe that a person was operating an ORV and that the person by the consumption of ~~intoxicating~~ **alcoholic** liquor may have affected his or her ability to operate the ORV, may require the person to submit to a preliminary chemical breath analysis.

(2) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(3) The results of a preliminary chemical breath analysis shall be admissible in a criminal prosecution for a crime enumerated in section 81136(1) or in an administrative hearing held under section 81140, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(4) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 81136, 81137, 81138, 81139, and 81140 for the purposes of chemical tests described in those sections.

(5) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

Sec. 81144. If a peace officer has reasonable cause to believe that a person was, at the time of an accident, the operator of an ORV involved in the accident and was operating the

1 ORV while under the influence of an ~~intoxicating~~ **alcoholic**
2 liquor, a controlled substance as defined in section 7104 of the
3 public health code, ~~Act No. 368 of the Public Acts of 1978,~~
4 ~~being section 333.7104 of the Michigan Compiled Laws~~ **1978 PA**
5 **368, MCL 333.7104**, or a combination of ~~intoxicating~~ **alcoholic**
6 liquor and a controlled substance, or was operating the ORV while
7 his or her ability to operate an ORV was impaired due to the
8 consumption of ~~intoxicating~~ **alcoholic** liquor, a controlled
9 substance, or a combination of ~~intoxicating~~ **alcoholic** liquor
10 and a controlled substance, the peace officer may arrest the
11 alleged operator of the ORV without a warrant.

12 Enacting section 1. This amendatory act takes effect
13 January 1, 2004.