

# HOUSE BILL No. 5130

October 7, 2003, Introduced by Reps. Meisner and Van Regenmorter and referred to the Committee on Criminal Justice.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 81134 and 81136 (MCL 324.81134 and  
324.81136), section 81134 as amended by 2001 PA 12 and section  
81136 as amended by 1996 PA 175.

## 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  
5 controlled substance shall not operate an ORV.

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

9       (3) A person who has in his or her body any amount of a

1 controlled substance listed in schedule 1 under section 7212 of  
2 the public health code, 1978 PA 368, MCL 333.7212, or a rule  
3 promulgated under that section, or of a controlled substance  
4 described in section 7214(a)(iv) of the public health code, 1978  
5 PA 368, MCL 333.7214, shall not operate an ORV.

6 (4) ~~-(3)-~~ The owner or person in charge or in control of an  
7 ORV shall not authorize or knowingly permit the ORV to be  
8 operated by a person ~~who~~ **if any of the following apply:**

9 (a) **The person** is under the influence of intoxicating liquor  
10 or a controlled substance or a combination of intoxicating liquor  
11 and a controlled substance.

12 (b) **The person** has an alcohol content of 0.08 grams or more  
13 per 100 milliliters of blood, per 210 liters of breath, or per 67  
14 milliliters of urine.

15 (c) **The person's** ability to operate an ORV is visibly  
16 impaired due to the consumption of alcoholic liquor, a controlled  
17 substance, or a combination of alcoholic liquor and a controlled  
18 substance.

19 (5) ~~-(4)-~~ Except as otherwise provided in this section, a  
20 person who is convicted of a violation of subsection (1), (2),  
21 ~~or~~ (3), **or (4)** is guilty of a misdemeanor, punishable by  
22 imprisonment for not more than 93 days, or a fine of not less  
23 than \$100.00 or more than \$500.00, or both, together with costs  
24 of the prosecution. As part of the sentence for a violation of  
25 subsection (1), ~~or~~ (2), **or (3)**, the court shall order the  
26 person convicted not to operate an ORV for a period of not less  
27 than 6 months or more than 2 years.

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

9       **(7)** ~~—(6)—~~ On a third or subsequent conviction within a period  
10   of 10 years under subsection (1), ~~—or~~ (2), **or (3)** or a local  
11   ordinance substantially corresponding to subsection (1), ~~—or~~  
12   (2), **or (3)**, a person is guilty of a felony and shall be  
13   sentenced to imprisonment for not less than 1 year or more than  
14   5 years, or a fine of not less than \$500.00 or more than \$5,000,  
15   or both. As part of the sentence, the court shall order the  
16   person convicted not to operate an ORV for a period of not less  
17   than 1 year or more than 2 years.

18       **(8)** ~~—(7)—~~ A person who operates an ORV in violation of  
19   subsection (1), ~~—or~~ (2), **or (3)** or section 81135 and by the  
20   operation of that ORV causes the death of another person is  
21   guilty of a felony punishable by imprisonment for not more than  
22   15 years or a fine of not less than \$2,500.00 or more than  
23   \$10,000.00, or both.

24       **(9)** ~~—(8)—~~ A person who operates an ORV within this state in  
25   violation of subsection (1), ~~—or~~ (2), **or (3)** or section 81135  
26   and by the operation of that ORV causes a serious impairment of a  
27   body function of another person is guilty of a felony punishable

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

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

6 (b) Loss of a hand, foot, finger, or thumb or use of a hand,  
 7 foot, finger, or thumb.

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

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

10 (e) Serious visible disfigurement.

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

12 (g) Measurable brain damage or mental impairment.

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

14 (i) Subdural hemorrhage or subdural hematoma.

15 **(10)** ~~-(9)-~~ As part of the sentence for a violation of  
 16 subsection (1), ~~-or-~~ (2), **or (3)**, or a local ordinance  
 17 substantially corresponding to subsection (1), ~~-or-~~ (2), **or (3)**,  
 18 the court may order the person to perform service to the  
 19 community, as designated by the court, without compensation, for  
 20 a period not to exceed 12 days. The person shall reimburse the  
 21 state or appropriate local unit of government for the cost of  
 22 insurance incurred by the state or local unit of government as a  
 23 result of the person's activities under this subsection.

24 **(11)** ~~-(10)-~~ Before imposing sentence for a violation of  
 25 subsection (1), ~~-or-~~ (2), **or (3)** or a local ordinance  
 26 substantially corresponding to subsection (1), ~~-or-~~ (2), **or (3)**,  
 27 the court shall order the person to undergo screening and

1 assessment by a person or agency designated by the office of  
2 substance abuse services, to determine whether the person is  
3 likely to benefit from rehabilitative services, including alcohol  
4 or drug education and alcohol or drug treatment programs. As  
5 part of the sentence, the court may order the person to  
6 participate in and successfully complete 1 or more appropriate  
7 rehabilitative programs. The person shall pay for the costs of  
8 the screening, assessment, and rehabilitative services.

9       **(12)** ~~—(11)—~~ Before accepting a plea of guilty under this  
10 section, the court shall advise the accused of the statutory  
11 consequences possible as the result of a plea of guilty in  
12 respect to suspension of the person's right to operate an ORV and  
13 the penalty imposed for violation of this section.

14       **(13)** ~~—(12)—~~ Each municipal judge and each clerk of a court of  
15 record shall keep a full record of every case in which a person  
16 is charged with a violation of this section. The municipal judge  
17 or clerk of the court of record shall prepare and immediately  
18 forward to the secretary of state an abstract of the court of  
19 record for each case charging a violation of this section.

20       Sec. 81136. (1) In a criminal prosecution for violating  
21 section 81134 or 81135 or a local ordinance substantially  
22 corresponding to section 81134 or 81135, or in a criminal  
23 prosecution for negligent homicide or manslaughter resulting from  
24 the operation of an ORV while the operator is alleged to have  
25 been impaired by or under the influence of intoxicating liquor or  
26 a controlled substance or a combination of intoxicating liquor  
27 and a controlled substance, or to have had a blood alcohol

1 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of  
2 blood, per 210 liters of breath, or per 67 milliliters of urine,  
3 the amount of alcohol **or type or amount of a controlled substance**  
4 in the operator's blood at the time alleged as shown by chemical  
5 analysis of the operator's blood, urine, or breath shall be  
6 admissible into evidence.

7 (2) If a chemical test of an operator's blood, urine, or  
8 breath is given, the results of the test shall be made available  
9 to the person charged with an offense enumerated in subsection  
10 (1) or the person's attorney upon written request to the  
11 prosecution, with a copy of the request filed with the court.  
12 The prosecution shall furnish the report at least 2 days before  
13 the day of the trial and the results shall be offered as evidence  
14 by the prosecution in a criminal proceeding. Failure to fully  
15 comply with the request shall bar the admission of the results  
16 into evidence by the prosecution.

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

22 ~~—— (a) If at the time the operator had an alcohol content of~~  
23 ~~0.07 grams or less per 100 milliliters of blood, per 210 liters~~  
24 ~~of breath, or per 67 milliliters of urine, it shall be presumed~~  
25 ~~that the operator was not under the influence of intoxicating~~  
26 ~~liquor.~~

27 ~~—— (b) If at the time the operator had an alcohol content of~~

~~1 more than 0.07 grams but less than 0.10 grams per 100 milliliters~~  
~~2 of blood, per 210 liters of breath, or per 67 milliliters of~~  
~~3 urine, it shall be presumed that the operator's ability to~~  
~~4 operate an ORV was impaired within the provisions of section~~  
~~5 81135 due to the consumption of intoxicating liquor.~~

~~6 (c) If at the time the operator had an alcohol content of~~  
~~7 0.10 grams or more per 100 milliliters of blood, per 210 liters~~  
~~8 of breath, or per 67 milliliters of urine, it shall be presumed~~  
~~9 that the operator was under the influence of intoxicating~~  
~~10 liquor.~~

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

~~23 (4) —(5)—~~ A person arrested for a crime enumerated in  
24 subsection (1) who takes a chemical test administered at the  
25 request of a peace officer, as provided in this part, shall be  
26 given a reasonable opportunity to have a person of his or her own  
27 choosing administer 1 of the chemical tests described in this

1 section within a reasonable time after his or her detention, and  
2 the results of the test shall be admissible and shall be  
3 considered with other competent evidence in determining the  
4 defendant's innocence or guilt of a crime enumerated in  
5 subsection (1). If the person arrested is administered a  
6 chemical test by a person of his or her own choosing, the person  
7 arrested shall be responsible for obtaining a chemical analysis  
8 of the test sample. The person shall be informed that he or she  
9 has the right to demand that a person of his or her choosing  
10 administer 1 of the chemical tests described in this section,  
11 that the results of the test shall be admissible and shall be  
12 considered with other competent evidence in determining the  
13 innocence or guilt of the defendant, and that the person arrested  
14 shall be responsible for obtaining a chemical analysis of the  
15 test sample.

16 (5) ~~-(6)-~~ A person arrested shall be advised that if the  
17 person refuses the request of a peace officer to take a test  
18 described in this section, a test shall not be given without a  
19 court order. The person arrested shall also be advised that the  
20 person's refusal of the request of a peace officer to take a test  
21 described in this section shall result in the suspension of the  
22 person's right to operate an ORV.

23 (6) ~~-(7)-~~ This section shall not be construed as limiting the  
24 introduction of any other competent evidence bearing upon the  
25 question of whether or not the defendant was impaired by or under  
26 the influence of intoxicating liquor or a controlled substance,  
27 or a combination of intoxicating liquor and a controlled

1 substance, or whether the person had a blood alcohol content of  
2 ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per 210  
3 liters of breath, or per 67 milliliters of urine.

4 (7) ~~-(8)-~~ If a jury instruction regarding a defendant's  
5 refusal to submit to a chemical test under this section is  
6 requested by the prosecution or the defendant, the jury  
7 instruction shall be given as follows:

8 "Evidence was admitted in this case which, if believed by the  
9 jury, could prove that the defendant had exercised his or her  
10 right to refuse a chemical test. You are instructed that such a  
11 refusal is within the statutory rights of the defendant and is  
12 not evidence of the defendant's guilt. You are not to consider  
13 such a refusal in determining the guilt or innocence of the  
14 defendant.".

15 (8) ~~-(9)-~~ If after an accident the operator of an ORV  
16 involved in the accident is transported to a medical facility and  
17 a sample of the operator's blood is withdrawn at that time for  
18 the purpose of medical treatment, the results of a chemical  
19 analysis of that sample shall be admissible in a criminal  
20 prosecution for a crime described in subsection (1) to show the  
21 amount of alcohol or presence of a controlled substance, or both,  
22 in the person's blood at the time alleged, regardless of whether  
23 the person had been offered or had refused a chemical test. The  
24 medical facility or person performing the chemical analysis shall  
25 disclose the results of the analysis to a prosecuting attorney  
26 who requests the results for use in a criminal prosecution as  
27 provided in this subsection. A medical facility or person

1 disclosing information in compliance with this subsection shall  
2 not be civilly or criminally liable for making the disclosure.

3       **(9)** ~~—(10)—~~ If after an accident the operator of an ORV  
4 involved in the accident is deceased, a sample of the decedent's  
5 blood shall be withdrawn in a manner directed by the medical  
6 examiner for the purpose of determining blood alcohol content or  
7 presence of a controlled substance, or both. The medical  
8 examiner shall give the results of the chemical analysis to the  
9 law enforcement agency investigating the accident, and that  
10 agency shall forward the results to the department of state  
11 police.

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