

HOUSE BILL No. 4615

April 14, 2005, Introduced by Reps. Schuitmaker, Van Regenmorter and Sak and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 80101, 80171, 80176, 80180, 80183, 80184,
80187, and 80190 (MCL 324.80101, 324.80171, 324.80176, 324.80180,
324.80183, 324.80184, 324.80187, and 324.80190), sections 80101,
80171, and 80190 as added by 1995 PA 58, section 80176 as amended
by 2001 PA 12, and sections 80180, 80183, 80184, and 80187 as
amended by 1996 PA 174.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 80101. As used in this part:

(A) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION
1D OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1D.

1 **(B)** ~~—(a)—~~ "Anchored rafts" means all types of nonpowered rafts
2 used for recreational purposes that are anchored seasonally on
3 waters of this state.

4 **(C)** ~~—(b)—~~ "Associated equipment" means any of the following
5 that are not radio equipment:

6 (i) An original system, part, or component of a boat at the
7 time that boat was manufactured, or a similar part or component
8 manufactured or sold for replacement.

9 (ii) Repair or improvement of an original or replacement
10 system, part, or component.

11 (iii) An accessory or equipment for, or appurtenance to, a boat.

12 (iv) A marine safety article, accessory, or equipment intended
13 for use by a person on board a boat.

14 **(D)** ~~—(c)—~~ "Boat" means a vessel.

15 **(E)** ~~—(d)—~~ "Boat livery" means a business that holds a vessel
16 for renting, leasing, or chartering.

17 **(F)** ~~—(e)—~~ "Controlled substance" means that term as defined
18 in section 7104 of the public health code, ~~Act No. 368 of the~~
19 ~~Public Acts of 1978, being section 333.7104 of the Michigan~~
20 ~~Compiled Laws~~ **1978 PA 368, MCL 333.7104.**

21 **(G)** ~~—(f)—~~ "Conviction" means a final conviction, the payment
22 of a fine, a plea of guilty or nolo contendere if accepted by the
23 court, a finding of guilt, or a probate court disposition on a
24 violation of this part, regardless of whether the penalty is
25 rebated or suspended.

26 Sec. 80171. Unless otherwise specified under this part, a
27 violation of this part or rules promulgated under this part is a

1 misdemeanor. A political subdivision having adopted a local
2 ordinance in conformity with this part may provide that any
3 violation of the ordinance is a misdemeanor. Any person convicted
4 of reckless operation of a vessel as defined in section 80147, or
5 of operating a vessel while under the influence of ~~intoxicating~~
6 **ALCOHOLIC** liquor or narcotic drugs, **OR WITH ANY AMOUNT OF A**
7 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**
8 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
9 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
10 **DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA**
11 **368, MCL 333.7214, IN HIS OR HER BODY,** in addition to any other
12 penalty, may be refused by the court having jurisdiction of the
13 violation the right of operating any vessel on any of the waters of
14 this state for a period of not more than 2 years.

15 Sec. 80176. (1) A person shall not operate a vessel on the
16 waters of this state if ~~either~~ **ANY** of the following ~~applies~~
17 **APPLY:**

18 (a) The person is under the influence of ~~intoxicating~~
19 **ALCOHOLIC** liquor or a controlled substance, or both.

20 (b) The person has a blood alcohol content of ~~0.10~~ **0.08**
21 grams or more per 100 milliliters of blood, per 210 liters of
22 breath, or per 67 milliliters of urine.

23 (c) **THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A**
24 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**
25 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
26 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
27 **DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA**

1 368, MCL 333.7214.

2 (2) The owner of a vessel or a person in charge or in control
3 of a vessel shall not authorize or knowingly permit the vessel to
4 be operated on the waters of this state by a person ~~who~~ **IF ANY OF**
5 **THE FOLLOWING APPLY:**

6 (A) **THE PERSON** is under the influence of ~~intoxicating~~
7 **ALCOHOLIC** liquor or a controlled substance, or both. ~~—, or who~~

8 (B) **THE PERSON** has a blood alcohol content of ~~0.10~~ **0.08**
9 grams or more per 100 milliliters of blood, per 210 liters of
10 breath, or per 67 milliliters of urine, **OR HAS IN HIS OR HER BODY**
11 **ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER**
12 **SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,**
13 **OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED**
14 **SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH**
15 **CODE, 1978 PA 368, MCL 333.7214.**

16 (C) **THE PERSON'S ABILITY TO OPERATE THE VESSEL IS VISIBLY**
17 **IMPAIRED DUE TO THE CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED**
18 **SUBSTANCE, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED**
19 **SUBSTANCE.**

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

26 (4) A person who operates a vessel on the waters of this state
27 under the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a

1 controlled substance, or both, or with 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, **OR HAS IN HIS OR**
4 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**
5 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
6 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**
7 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC**
8 **HEALTH CODE, 1978 PA 368, MCL 333.7214, and by the operation of**
9 that vessel causes the death of another person is guilty of a
10 felony, punishable by imprisonment for not more than 15 years, or a
11 fine of not less than \$2,500.00 or more than \$10,000.00, or both.

12 (5) A person who operates a vessel on the waters of this state
13 ~~under the influence of intoxicating liquor or a controlled~~
14 ~~substance, or both, or with a blood alcohol content of 0.10 grams~~
15 ~~or more per 100 milliliters of blood, per 210 liters of breath, or~~
16 ~~per 67 milliliters of urine,~~ **IN VIOLATION OF SUBSECTION (1) OR (3)**
17 and by the operation of that vessel causes a serious impairment of
18 a body function of another person is guilty of a felony, punishable
19 by imprisonment for not more than 5 years, or a fine of not less
20 than \$1,000.00 or more than \$5,000.00, or both. As used in this
21 subsection, "serious impairment of a body function" ~~includes, but~~
22 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**
23 **DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
24 **MCL 257.58C.**

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

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

- 1 ~~—— (c) Loss of an eye or ear or use of an eye or ear.~~
- 2 ~~—— (d) Loss or substantial impairment of a bodily function.~~
- 3 ~~—— (e) Serious visible disfigurement.~~
- 4 ~~—— (f) A comatose state that lasts for more than 3 days.~~
- 5 ~~—— (g) Measurable brain damage or mental impairment.~~
- 6 ~~—— (h) A skull fracture or other serious bone fracture.~~
- 7 ~~—— (i) Subdural hemorrhage or subdural hematoma.~~

8 Sec. 80180. (1) A peace officer, without a warrant, may arrest
9 a person if the peace officer has reasonable cause to believe that
10 the person was, at the time of an accident, the operator of a
11 vessel involved in the accident in this state while in violation of
12 section 80176(1), (3), (4), or (5) or a local ordinance
13 substantially corresponding to section 80176(1) or (3).

14 (2) A peace officer who has reasonable cause to believe that a
15 person was operating a vessel on the waters of this state, and
16 that, by the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor, the
17 person may have affected his or her ability to operate a vessel,
18 may require the person to submit to a preliminary chemical breath
19 analysis. The following apply with respect to a preliminary
20 chemical breath analysis:

21 (a) Only a peace officer who has successfully completed a
22 training course taught by a state-certified instructor in the
23 administration of the preliminary chemical breath analysis may
24 administer that test.

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

27 (c) The results of a preliminary chemical breath analysis are

1 admissible in a criminal prosecution for a crime described in
2 section 80187(1) or in an administrative hearing solely to assist
3 the court or hearing officer in determining a challenge to the
4 validity of an arrest. This subdivision does not limit the
5 introduction of other competent evidence offered to establish the
6 validity of an arrest.

7 (d) A person who submits to a preliminary chemical breath
8 analysis remains subject to the requirements of sections 80187 to
9 80190 for the purposes of chemical tests described in those
10 sections.

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

15 (3) A peace officer making an arrest under this part shall
16 take measures to assure that the vessel and its occupants are
17 safely returned to shore.

18 (4) If, within 60 days after the issuance of a citation for a
19 state civil infraction under this section, the person to whom the
20 citation is issued is not charged with a violation of section
21 80176(1), (3), (4), or (5) or a local ordinance substantially
22 corresponding to section 80176(1) or (3), the citation issued for
23 the state civil infraction is void. Upon application of the person
24 to whom the citation is issued, money paid by the person as a fine,
25 costs, or otherwise shall be immediately returned.

26 Sec. 80183. (1) The provisions of sections 80181 and 80182
27 relating to chemical testing do not limit the introduction of any

1 other competent evidence bearing upon the question of whether or
 2 not a person was impaired by, or under the influence of,
 3 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance, or both,
 4 or whether the person had a blood alcohol content of ~~0.10~~ **0.08**
 5 grams or more per 100 milliliters of blood, per 210 liters of
 6 breath, or per 67 milliliters of urine, **OR WHETHER THE PERSON HAD**
 7 **ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER**
 8 **SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,**
 9 **OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED**
 10 **SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH**
 11 **CODE, 1978 PA 368, MCL 333.7214, IN HIS OR HER BODY.**

12 (2) If a chemical test described in sections 80181 and 80182
 13 is administered, the results of the test shall be made available to
 14 the person charged or the person's attorney upon written request to
 15 the prosecution, with a copy of the request filed with the court.
 16 The prosecution shall furnish the results at least 2 days before
 17 the day of the trial. The results of the test shall be offered as
 18 evidence by the prosecution in that trial. Failure to fully comply
 19 with the request bars the admission of the results into evidence by
 20 the prosecution.

21 Sec. 80184. ~~—(1) Except in a prosecution relating solely to a~~
 22 ~~violation of section 80176(1)(b), the amount of alcohol in the~~
 23 ~~operator's blood at the time alleged as shown by chemical analysis~~
 24 ~~of the person's blood, urine, or breath gives rise to the following~~
 25 ~~presumptions:~~

26 ~~—— (a) If at the time defendant had an alcohol content of 0.07~~
 27 ~~grams or less per 100 milliliters of blood, per 210 liters of~~

~~breath, or per 67 milliliters of urine, it shall be presumed that the defendant's ability to operate a vessel was not impaired due to the consumption of intoxicating liquor and that the defendant was not under the influence of intoxicating liquor.~~

~~—— (b) If at the time defendant had an alcohol content of more than 0.07 grams but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the defendant's ability to operate a vessel was impaired within the provisions of section 80176(3) due to the consumption of intoxicating liquor.~~

~~—— (c) If at the time defendant had 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, it shall be presumed that the defendant was under the influence of intoxicating liquor.~~

~~—— (2) A person's refusal to submit to a chemical test as provided in sections 80181 and 80182 is admissible in a criminal prosecution for a crime described in section 80187(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.~~

Sec. 80187. (1) A person who operates a vessel on the waters of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

(a) The person is arrested for a violation of section

1 80176(1), (3), (4), or (5), or a local ordinance substantially
2 corresponding to section 80176(1) or (3).

3 (b) The person is arrested for negligent homicide,
4 manslaughter, or murder resulting from the operation of a vessel,
5 and the peace officer had reasonable grounds to believe that the
6 person was operating the vessel while impaired by, or under the
7 influence of, ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled
8 substance, or both, or while having a blood alcohol content of
9 ~~0.10~~ **0.08** grams or more per 100 milliliters of blood, per 210
10 liters of breath, or per 67 milliliters of urine **OR WHILE HAVING IN**
11 **HIS OR HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN**
12 **SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA**
13 **368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF**
14 **A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE**
15 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214.**

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

20 (3) A chemical test described in subsection (1) shall be
21 administered as provided in sections 80181 and 80182.

22 Sec. 80190. (1) If a person who refuses to submit to a
23 chemical test pursuant to section 80181 or 80182 does not request a
24 hearing within 14 days of the date of notice pursuant to section
25 80189, the secretary of state shall issue an order that the person
26 not operate a vessel on the waters of this state for ~~6 months~~ **1**
27 **YEAR** or, for a second or subsequent refusal within 7 years, for ~~1~~

1 ~~year~~ **2 YEARS.**

2 (2) If a hearing is requested, the secretary of state shall
3 hold the hearing in the same manner and under the same conditions
4 as provided in section 322 of the Michigan vehicle code, ~~Act No.~~
5 ~~300 of the Public Acts of 1949, being section 257.322 of the~~
6 ~~Michigan Compiled Laws~~ **1949 PA 300, MCL 257.322.** A person shall
7 not order a hearing officer to make a particular finding on any
8 issue enumerated under subdivisions (a) to (d). Not less than 5
9 days' notice of the hearing shall be mailed to the person
10 requesting the hearing, to the peace officer who filed the report
11 under section 80188, and, if the prosecuting attorney requests
12 receipt of the notice, to the prosecuting attorney of the county
13 where the arrest was made. The hearing officer may administer
14 oaths, issue subpoenas for the attendance of necessary witnesses,
15 and grant a reasonable request for an adjournment. Not more than 1
16 adjournment shall be granted to a party, and the length of an
17 adjournment shall not exceed 14 days. A hearing under this
18 subsection shall be scheduled to be held within 45 days after the
19 date of arrest and, except for delay attributable to the
20 unavailability of the defendant, a witness, or material evidence or
21 to an interlocutory appeal or exceptional circumstances, but not
22 for delay attributable to docket congestion, shall be finally
23 adjudicated within 77 days after the date of arrest. The hearing
24 shall cover only the following issues:

25 (a) Whether the peace officer had reasonable grounds to
26 believe that the person had committed a crime described in section
27 80187(1).

1 (b) Whether the person was placed under arrest for a crime
2 described in section 80187(1).

3 (c) If the person refused to submit to the test upon the
4 request of the officer, whether the refusal was reasonable.

5 (d) Whether the person was advised of his or her rights under
6 section 80181.

7 (3) The hearing officer shall make a record of proceedings
8 held pursuant subsection (2). The record shall be prepared and
9 transcribed in accordance with section 86 of the administrative
10 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
11 ~~being section 24.286 of the Michigan Compiled Laws~~ **1969 PA 306,**
12 **MCL 24.286.** Upon notification of the filing of a petition for
13 judicial review pursuant to section 80194 and not less than 10 days
14 before the matter is set for review, the hearing officer shall
15 transmit to the court in which the petition is filed the original
16 or a certified copy of the official record of the proceedings. The
17 parties to the proceedings for judicial review may stipulate that
18 the record be shortened. A party unreasonably refusing to stipulate
19 to a shortened record may be taxed by the court in which the
20 petition is filed for the additional costs. The court may permit
21 subsequent corrections to the record.

22 (4) After a hearing, if the person who requested the hearing
23 does not prevail, the secretary of state shall order that the
24 person not operate a vessel on the waters of this state for ~~6~~
25 ~~months~~ **1 YEAR** or, for a second or subsequent refusal within 7
26 years, for ~~1 year~~ **2 YEARS**. The person may file a petition in the
27 circuit court of the county in which the arrest was made to review

1 the order as provided in section 80194. If after the hearing the
2 person who requested the hearing prevails, the peace officer who
3 filed the report under section 80188 may, with the consent of the
4 prosecuting attorney, file a petition in the circuit court of the
5 county in which the arrest was made to review the determination of
6 the hearing officer as provided in section 80194.

7 Enacting section 1. This amendatory act takes effect January
8 1, 2006.