

# HOUSE BILL No. 4794

May 17, 2007, Introduced by Reps. Schuitmaker, Bieda, Alma Smith, Byrnes, Robert Jones and Constan 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, 80177, 80178, 80184, 80186, and 80187 (MCL 324.80101, 324.80171, 324.80176, 324.80177, 324.80178, 324.80184, 324.80186, and 324.80187), section 80101 as amended by 2004 PA 547, sections 80171 and 80186 as added by 1995 PA 58, sections 80176, 80177, and 80178 as amended by 2001 PA 12, and sections 80184 and 80187 as amended by 1996 PA 174.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 80101. As used in this part:

2           (a) "Airboat" means a motorboat that is propelled, wholly or  
3 in part, by a propeller projecting above the water surface.

4           (b) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION

1 1D OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1D.

2 (C) ~~(b)~~—"Anchored rafts" means all types of nonpowered rafts  
3 used for recreational purposes that are anchored seasonally on  
4 waters of this state.

5 (D) ~~(e)~~—"Associated equipment" means any of the following that  
6 are not radio equipment:

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

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

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

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

15 (E) ~~(d)~~—"Boat" means a vessel.

16 (F) ~~(e)~~—"Boat livery" means a business that holds a vessel for  
17 renting, leasing, or chartering.

18 (G) ~~(f)~~—"Controlled substance" means that term as defined in  
19 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

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

25 Sec. 80171. Unless otherwise specified under this part, a  
26 violation of this part or rules promulgated under this part is a  
27 misdemeanor. A political subdivision having adopted a local

1 ordinance in conformity with this part may provide that any  
 2 violation of the ordinance is a misdemeanor. Any person convicted  
 3 of reckless operation of a vessel as defined in section 80147, or  
 4 of operating a vessel while under the influence of ~~intoxicating~~  
 5 **ALCOHOLIC** liquor or narcotic drugs, in addition to any other  
 6 penalty, may be refused by the court having jurisdiction of the  
 7 violation the right of operating any vessel on any of the waters of  
 8 this state for a period of not more than 2 years.

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

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

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

16 (c) **THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A**  
 17 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**  
 18 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**  
 19 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**  
 20 **DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA**  
 21 **368, MCL 333.7214.**

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

26 (A) **THE** person ~~who~~ is under the influence of ~~intoxicating~~  
 27 **ALCOHOLIC** liquor or a controlled substance, or both. ~~, or who~~

1           **(B) THE PERSON** has a blood alcohol content of ~~0.10~~**0.08** grams  
2 or more per 100 milliliters of blood, per 210 liters of breath, or  
3 per 67 milliliters of urine.

4           **(C) THE PERSON'S ABILITY TO OPERATE A VESSEL IS VISIBLY**  
5 **IMPAIRED DUE TO THE CONSUMPTION OF AN ALCOHOLIC LIQUOR, A**  
6 **CONTROLLED SUBSTANCE, OR A COMBINATION OF AN ALCOHOLIC LIQUOR AND A**  
7 **CONTROLLED SUBSTANCE.**

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

14           (4) A person who operates a vessel on the waters of this state  
15 ~~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, or~~  
18 ~~per 67 milliliters of urine,~~**IN VIOLATION OF SUBSECTION (1) OR (3)**  
19 and by the operation of that vessel causes the death of another  
20 person is guilty of a felony ~~—~~punishable by imprisonment for not  
21 more than 15 years ~~—~~or a fine of not less than \$2,500.00 or more  
22 than \$10,000.00, or both.

23           (5) A person who operates a vessel on the waters of this state  
24 ~~under the influence of intoxicating liquor or a controlled~~  
25 ~~substance, or both, or with a blood alcohol content of 0.10 grams~~  
26 ~~or more per 100 milliliters of blood, per 210 liters of breath, or~~  
27 ~~per 67 milliliters of urine,~~**IN VIOLATION OF SUBSECTION (1) OR (3)**

1 and by the operation of that vessel causes a serious impairment of  
 2 a body function of another person is guilty of a felony ~~7~~  
 3 punishable by imprisonment for not more than 5 years ~~7~~ or a fine of  
 4 not less than \$1,000.00 or more than \$5,000.00, or both. As used in  
 5 this subsection, "serious impairment of a body function" ~~includes,~~  
 6 ~~but is not limited to, 1 or more of the following:~~ **MEANS THAT TERM**  
 7 **AS DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA**  
 8 **300, MCL 257.58C.**

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

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

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

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

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

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

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

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

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

19 Sec. 80177. (1) If a person is convicted of violating section  
 20 80176(1), the following apply:

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

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

25 (ii) Imprisonment for not more than 93 days.

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

27 (b) If the violation occurs within 7 years of a prior

1 conviction, the person shall be sentenced to both a fine of not  
2 less than \$200.00 or more than \$1,000.00 and either of the  
3 following:

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

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

9 (c) If the violation occurs ~~within 10 years of~~ **AFTER** 2 or more  
10 prior convictions **REGARDLESS OF THE NUMBER OF YEARS THAT HAVE**  
11 **ELAPSED SINCE ANY PRIOR CONVICTION**, the person is guilty of a  
12 felony and shall be sentenced to imprisonment for not less than 1  
13 year or more than 5 years, or a fine of not less than \$500.00 or  
14 more than \$5,000.00, or both.

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

21 (3) In addition to the sanctions prescribed under subsection  
22 (1) and section 80176(4) and (5), the court may, pursuant to the  
23 code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, order  
24 the person to pay the costs of the prosecution. The court shall  
25 also impose sanctions under sections 80185 and 80186.

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

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

3 (5) As used in this section, "prior conviction" means a  
4 conviction 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 section  
15 80176(3), the following apply:

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

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

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

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

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

26 (i) Community service for not less than 10 days or more than 90  
27 days, and may be sentenced to imprisonment for not more than 1

1 year.

2 (ii) Imprisonment for not more than 1 year, and may be  
3 sentenced to community service for not more than 90 days.

4 (c) If the violation occurs ~~within 10 years of~~ **AFTER** 2 or more  
5 prior convictions **REGARDLESS OF THE NUMBER OF YEARS THAT HAVE**  
6 **ELAPSED SINCE ANY PRIOR CONVICTION**, the person shall be sentenced  
7 to both a fine of not less than \$200.00 or more than \$1,000.00, and  
8 either of the following:

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

12 (ii) Imprisonment for not more than 1 year, and may be  
13 sentenced to community service for not more than 90 days.

14 (2) In addition to the sanctions prescribed in subsection (1),  
15 the court may, pursuant to the code of criminal procedure, 1927 PA  
16 175, MCL 760.1 to 777.69, order the person to pay the costs of the  
17 prosecution. The court shall also impose sanctions under sections  
18 80185 and 80186.

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

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

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

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

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

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

3 (e) A local ordinance substantially corresponding to section  
4 80176(1), former section 73 of the marine safety act, or former  
5 section 73b of the marine safety act.

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

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

14 ~~—— (a) If at the time defendant had an alcohol content of 0.07~~  
15 ~~grams or less per 100 milliliters of blood, per 210 liters of~~  
16 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~  
17 ~~the defendant's ability to operate a vessel was not impaired due to~~  
18 ~~the consumption of intoxicating liquor and that the defendant was~~  
19 ~~not under the influence of intoxicating liquor.~~

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

26 ~~—— (c) If at the time defendant had an alcohol content of 0.10~~  
27 ~~grams or more per 100 milliliters of blood, per 210 liters of~~

1 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~  
2 ~~the defendant was under the influence of intoxicating liquor.~~

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

9       Sec. 80186. (1) Immediately upon acceptance by the court of a  
10 plea of guilty or nolo contendere or upon entry of a verdict of  
11 guilty for a violation of section 80176(1), (3), (4), or (5) or a  
12 local ordinance substantially corresponding to section 80176(1) or  
13 (3), whether or not the person is eligible to be sentenced as a  
14 multiple offender, the court shall consider all prior convictions  
15 currently entered upon the boating record of the person or other  
16 evidence of prior convictions established under section 80179,  
17 except those convictions that, upon motion by the defendant, are  
18 determined by the court to be constitutionally invalid, and shall  
19 impose the following sanctions:

20       (a) For a conviction under section 80176(4) or (5), the court  
21 shall order with no expiration date that the person not operate a  
22 vessel on the waters of this state.

23       (b) For a conviction under section 80176(1) or a local  
24 ordinance substantially corresponding to section 80176(1):

25       (i) If the court finds that the person has no prior convictions  
26 within 7 years for a violation of section 80176(1), (3), (4), or  
27 (5), former section 171(1), (3), (4), or (5), or another boating

1 substance abuse offense, or that the person has 1 prior conviction  
2 within 7 years for a violation of section 80176(3); former section  
3 171(3) of the marine safety act; former section 73b of the marine  
4 safety act; a local ordinance substantially corresponding to  
5 section 80176(3) or former section 73b of the marine safety act; or  
6 a law of another state substantially corresponding to section  
7 80176(3) or former section 73b of the marine safety act, the court  
8 may order that the person not operate a vessel on the waters of  
9 this state for not less than 1 year or more than 2 years.

10 (ii) If the court finds that the person has 1 or more prior  
11 convictions within 7 years for a violation of section 80176(1),  
12 (3), (4), or (5); former section 73 of the marine safety act; a  
13 local ordinance substantially corresponding to section 80176(1) or  
14 former section 73 of the marine safety act; or a law of another  
15 state substantially corresponding to section 80176(1), (4), or (5)  
16 or former section 73 of the marine safety act, the court shall  
17 order that the person not operate a vessel on the waters of this  
18 state for not less than 2 years.

19 (iii) If the court finds that the person has 2 or more prior  
20 convictions within ~~10~~**ANY PERIOD OF** years for a violation of  
21 section 80176(1), (3), (4), or (5) or former section 171(1), (3),  
22 (4), or (5) or another boating substance abuse offense, the court  
23 shall order with no expiration date that the person not operate a  
24 vessel on the waters of this state.

25 (c) For a conviction under section 80176(3) or a local  
26 ordinance substantially corresponding to section 80176(3):

27 (i) If the court finds that the convicted person has no prior

1 conviction within 7 years for a violation of section 80176(1), (3),  
2 (4), or (5) or former section 171(1), (3), (4), or (5) or another  
3 boating substance abuse offense, the court may order that the  
4 person not operate a vessel on the waters of this state for not  
5 less than 6 months or more than 1 year.

6 (ii) If the court finds that the person has 1 prior conviction  
7 within 7 years for a violation of section 80176(1), (3), (4), or  
8 (5) or former section 171(1), (3), (4), or (5) or another boating  
9 substance abuse offense, the court shall order that the person not  
10 operate a vessel on the waters of this state for not less than 1  
11 year or more than 2 years.

12 (iii) If the court finds that the person has 2 or more prior  
13 convictions within ~~10~~ **ANY PERIOD OF** years for a violation of  
14 section 80176(1), (3), (4), or (5) or former section 171(1), (3),  
15 (4), or (5) or another boating substance abuse offense, the court  
16 shall order with no expiration date that person not to operate a  
17 vessel on the waters of this state.

18 (2) As used in this section, "another boating substance abuse  
19 offense" means former section 73 or 73b of the marine safety act, a  
20 local ordinance substantially corresponding to section 80176(1) or  
21 (3) or former section 73 or 73b of the marine safety act, or a law  
22 of another state substantially corresponding to section 80176(1),  
23 (3), (4), or (5) or former section 73 or 73b of the marine safety  
24 act.

25 Sec. 80187. (1) A person who operates a vessel on the waters  
26 of this state is considered to have given consent to chemical tests  
27 of his or her blood, breath, or urine for the purpose of

1 determining the amount of alcohol or presence of a controlled  
2 substance, or both, in his or her blood in all of the following  
3 circumstances:

4 (a) The person is arrested for a violation of section  
5 80176(1), (3), (4), or (5) ~~or~~ or a local ordinance substantially  
6 corresponding to section 80176(1) or (3).

7 (b) The person is arrested for negligent homicide,  
8 manslaughter, or murder resulting from the operation of a vessel,  
9 and the peace officer had reasonable grounds to believe that the  
10 person was operating the vessel while impaired by, or under the  
11 influence of, intoxicating liquor or a controlled substance, or  
12 both, or while having a blood alcohol content of ~~0.10~~ 0.08 grams or  
13 more per 100 milliliters of blood, per 210 liters of breath, or per  
14 67 milliliters of urine.

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

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

21 Enacting section 1. This amendatory act takes effect January  
22 1, 2008.