

HOUSE BILL No. 6324

July 1, 2010, Introduced by Rep. Roberts and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 80176, 80177, and 80185 (MCL 324.80176,
324.80177, and 324.80185), sections 80176 and 80177 as amended by
2001 PA 12 and section 80185 as added by 1995 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

5 (b) The person has a blood alcohol content of 0.10 grams or
6 more per 100 milliliters of blood, per 210 liters of breath, or per
7 67 milliliters of urine.

8 (c) **THE PERSON HAS AN ALCOHOL CONTENT OF 0.17 GRAMS OR MORE**

1 PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67
2 MILLILITERS OF URINE.

3 (2) The owner of a vessel or a person in charge or in control
4 of a vessel shall not authorize or knowingly permit the vessel to
5 be operated on the waters of this state by a person who is under
6 the influence of intoxicating liquor or a controlled substance, or
7 both, or who has a blood alcohol content of 0.10 grams or more per
8 100 milliliters of blood, per 210 liters of breath, or per 67
9 milliliters of urine.

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

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

24 (5) A person who operates a vessel on the waters of this state
25 under the influence of intoxicating liquor or a controlled
26 substance, or both, or with a blood alcohol content of 0.10 grams
27 or more per 100 milliliters of blood, per 210 liters of breath, or

per 67 milliliters of urine, and by the operation of that vessel causes a serious impairment of a body function of another person is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

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

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

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

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

(e) Serious visible disfigurement.

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

(g) Measurable brain damage or mental impairment.

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

(i) Subdural hemorrhage or subdural hematoma.

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

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

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

(ii) Imprisonment for not more than 93 days, **OR IF THE PERSON IS CONVICTED OF VIOLATING SECTION 80176(1)(C), IMPRISONMENT FOR 180 DAYS.**

(iii) A fine of not less than \$100.00 or more than \$500.00, **OR,**

1 IF THE PERSON IS GUILTY OF VIOLATING SECTION 80176(1)(C), A FINE OF
2 NOT LESS THAN \$200.00 OR MORE THAN \$700.00.

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

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

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

12 (c) If the violation occurs within 10 years of 2 or more prior
13 convictions, the person is guilty of a felony and shall be
14 sentenced to imprisonment for not less than 1 year or more than 5
15 years, or a fine of not less than \$500.00 or more than \$5,000.00,
16 or both.

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

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

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

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

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

8 (b) Former section 171(1), (4), or (5) of the marine safety
9 act.

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

11 (d) A local ordinance substantially corresponding to section
12 80176(1) or former section 73 of the marine safety act.

13 (e) A law of another state substantially corresponding to
14 section 80176(1), (4), or (5) or former section 73 of the marine
15 safety act.

16 Sec. 80185. (1) Before accepting a plea of guilty or nolo
17 contendere under sections 80176 to 80179, or a local ordinance
18 substantially corresponding to section 80176(1), (2), or (3), the
19 court shall advise the accused of the maximum possible term of
20 imprisonment and the maximum possible fine that may be imposed for
21 the violation, and shall advise the defendant that the maximum
22 possible sanctions that may be imposed will be based upon the
23 boating record maintained by the secretary of state pursuant to
24 section 80130 or other evidence of a prior conviction as provided
25 in section 80179.

26 (2) Before imposing sentence, other than court-ordered
27 operating sanctions, for a violation of section 80176(1), (3), (4),

1 or (5) or a local ordinance substantially corresponding to section
2 80176(1) or (3), the court shall order the person to undergo
3 screening and assessment by a person or agency designated by the
4 office of substance abuse services to determine whether the person
5 is likely to benefit from rehabilitative services, including
6 alcohol or drug education or treatment programs. As part of the
7 sentence, the court may order the person to participate in and
8 successfully complete 1 or more appropriate rehabilitative
9 programs. The person shall pay for the costs of the screening,
10 assessment, and rehabilitative services. **HOWEVER, IF THE PERSON WAS**
11 **CONVICTED UNDER SECTION 80176(1)(C) OR HAS 1 OR MORE PRIOR**
12 **CONVICTIONS, THE COURT SHALL ORDER THE PERSON TO PARTICIPATE IN AND**
13 **SUCCESSFULLY COMPLETE 1 OR MORE APPROPRIATE REHABILITATIVE PROGRAMS**
14 **AS PART OF THE SENTENCE, INCLUDING, BUT NOT LIMITED TO, AN ALCOHOL**
15 **TREATMENT PROGRAM OR A SELF-HELP PROGRAM FOR A PERIOD OF NOT LESS**
16 **THAN 1 YEAR. THE TREATMENT PLAN SHALL BE DEVISED FROM AN ASSESSMENT**
17 **PERFORMED BY AN APPROPRIATELY LICENSED ALCOHOL ASSESSOR AND**
18 **APPROVED BY THE COURT. THE PERSON SHALL PAY FOR THE COSTS OF THE**
19 **SCREENING, ASSESSMENT, AND REHABILITATIVE SERVICES.**