

HOUSE BILL No. 4072

January 13, 2011, Introduced by Reps. Lori, Tyler, MacMaster and Somerville 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, 80180, 80183, 80184, 80186, 80187, and 80190 (MCL 324.80101, 324.80171, 324.80176, 324.80177, 324.80178, 324.80180, 324.80183, 324.80184, 324.80186, 324.80187, and 324.80190), section 80101 as amended by 2004 PA 547, sections 80171, 80186, and 80190 as added by 1995 PA 58, sections 80176, 80177, and 80178 as amended by 2001 PA 12, section 80180 as amended by 2007 PA 8, and sections 80183, 80184, and 80187 as amended by 1996 PA 174, and by adding sections 80178a and 80178b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 80101. As used in this part:

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

3 (B) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION
4 1D OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1D.

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

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

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

13 (ii) Repair or improvement of an original or replacement
14 system, part, or component.

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

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

18 (E) ~~(d)~~—"Boat" means a vessel.

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

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

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

1 Sec. 80171. Unless otherwise specified under this part, a
2 violation of this part or rules promulgated under this part is a
3 misdemeanor. A political subdivision having adopted a local
4 ordinance in conformity with this part may provide that any
5 violation of the ordinance is a misdemeanor. Any person convicted
6 of reckless operation of a vessel as defined in section 80147, or
7 of operating a vessel while under the influence of ~~intoxicating~~
8 **ALCOHOLIC** liquor or narcotic drugs, **OR WITH ANY AMOUNT OF A**
9 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**
10 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
11 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
12 **DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA**
13 **368, MCL 333.7214, IN HIS OR HER BODY,** in addition to any other
14 penalty, may be refused by the court having jurisdiction of the
15 violation the right of operating any vessel on any of the waters of
16 this state for a period of not more than 2 years.

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

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

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

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

1 DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA
2 368, MCL 333.7214.

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~~ **IF ANY OF**
6 **THE FOLLOWING APPLY:**

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

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

12 (C) **THE PERSON'S ABILITY TO OPERATE THE VESSEL IS VISIBLY**
13 **IMPAIRED DUE TO THE CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED**
14 **SUBSTANCE, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED**
15 **SUBSTANCE.**

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

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

1 person is guilty of a felony, punishable by imprisonment for not
 2 more than 15 years, or a fine of not less than \$2,500.00 or more
 3 than \$10,000.00, or both.

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

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

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

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

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

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

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

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

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

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

27 Sec. 80177. (1) If a person is convicted of violating section

1 80176(1), the following apply:

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

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

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

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

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

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

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

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

23 (2) A term of imprisonment imposed under subdivision (b) (ii)
24 shall not be suspended. A person sentenced to perform service to
25 the community under this section shall not receive compensation and
26 shall reimburse the state or appropriate local unit of government
27 for the cost of supervision incurred by the state or local unit of

1 government as a result of the person's activities in that service.

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

7 (4) A person who is convicted of violating section 80176(2) is
8 guilty of a misdemeanor, punishable by imprisonment for not more
9 than 93 days, or a fine of not less than \$100.00 or more than
10 \$500.00, or both.

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

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

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

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

17 (d) A local ordinance substantially corresponding to section
18 80176(1) or former section 73 of the marine safety act.

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

22 **(F) A LAW OF THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO**
23 **SECTION 80176(1), (4), OR (5) OR FORMER SECTION 73 OF THE MARINE**
24 **SAFETY ACT.**

25 **(6) A PERSON WHO IS LESS THAN 21 YEARS OF AGE, WHETHER**
26 **LICENSED OR NOT, SHALL NOT OPERATE A VESSEL ON THE WATERS OF THIS**
27 **STATE IF THE PERSON HAS ANY BODILY ALCOHOL CONTENT. AS USED IN THIS**

1 SUBSECTION, "ANY BODILY ALCOHOL CONTENT" MEANS EITHER OF THE
2 FOLLOWING:

3 (A) AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN
4 0.08 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,
5 OR PER 67 MILLILITERS OF URINE, OR, BEGINNING OCTOBER 1, 2013, THE
6 PERSON HAS AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN
7 0.10 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,
8 OR PER 67 MILLILITERS OF URINE.

9 (B) ANY PRESENCE OF ALCOHOL WITHIN A PERSON'S BODY RESULTING
10 FROM THE CONSUMPTION OF ALCOHOLIC LIQUOR, OTHER THAN CONSUMPTION OF
11 ALCOHOLIC LIQUOR AS A PART OF A GENERALLY RECOGNIZED RELIGIOUS
12 SERVICE OR CEREMONY.

13 (7) A PERSON, WHETHER LICENSED OR NOT, IS SUBJECT TO THE
14 FOLLOWING REQUIREMENTS:

15 (A) HE OR SHE SHALL NOT OPERATE A VESSEL IN VIOLATION OF
16 SECTION 80176(1), (3), (4), OR (5) WHILE ANOTHER PERSON WHO IS LESS
17 THAN 16 YEARS OF AGE IS OCCUPYING THE VESSEL.

18 (B) HE OR SHE SHALL NOT OPERATE A VESSEL IN VIOLATION OF
19 SUBSECTION (6) WHILE ANOTHER PERSON WHO IS LESS THAN 16 YEARS OF
20 AGE IS OCCUPYING THE VESSEL.

21 Sec. 80178. (1) If a person is convicted of violating section
22 80176(3), the following apply:

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

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

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

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

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

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

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

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

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

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

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

26 (3) A person sentenced to perform service to the community
27 under this section shall not receive compensation, and shall

1 reimburse the state or appropriate local unit of government for the
2 cost of supervision incurred by the state or local unit of
3 government as a result of the person's activities in that service.

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

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

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

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

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

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

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

16 (G) A LAW OF THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO
17 SECTION 80176(1), (3), (4), OR (5), FORMER SECTION 73 OF THE MARINE
18 SAFETY ACT, OR FORMER SECTION 73B OF THE MARINE SAFETY ACT.

19 SEC. 80178A. (1) IF A PERSON IS CONVICTED OF VIOLATING SECTION
20 80177(6), ALL OF THE FOLLOWING APPLY:

21 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), THE
22 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR BOTH OF THE
23 FOLLOWING:

24 (i) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

25 (ii) A FINE OF NOT MORE THAN \$250.00.

26 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF 1 OR MORE PRIOR
27 CONVICTIONS, THE PERSON MAY BE SENTENCED TO 1 OR MORE OF THE

1 FOLLOWING:

2 (i) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

3 (ii) A FINE OF NOT MORE THAN \$500.00.

4 (iii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

5 (2) IN ADDITION TO IMPOSING THE SANCTIONS PRESCRIBED UNDER
6 THIS SECTION, THE COURT MAY ORDER THE PERSON TO PAY THE COSTS OF
7 THE PROSECUTION UNDER THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
8 MCL 760.1 TO 777.69.

9 (3) A PERSON SENTENCED TO PERFORM COMMUNITY SERVICE UNDER THIS
10 SECTION SHALL NOT RECEIVE COMPENSATION AND SHALL REIMBURSE THE
11 STATE OR APPROPRIATE LOCAL UNIT OF GOVERNMENT FOR THE COST OF
12 SUPERVISION INCURRED BY THE STATE OR LOCAL UNIT OF GOVERNMENT AS A
13 RESULT OF THE PERSON'S ACTIVITIES IN THAT SERVICE.

14 SEC. 80178B. (1) A PERSON WHO VIOLATES SECTION 80177(7) (A) IS
15 GUILTY OF A CRIME PUNISHABLE AS FOLLOWS:

16 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), A PERSON WHO
17 VIOLATES SECTION 80177(7) (A) IS GUILTY OF A MISDEMEANOR AND SHALL
18 BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$200.00 OR MORE THAN
19 \$1,000.00 AND TO 1 OR MORE OF THE FOLLOWING:

20 (i) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
21 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED
22 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

23 (ii) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN
24 90 DAYS.

25 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
26 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE
27 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A

1 PERSON WHO VIOLATES SECTION 80177(7)(A) IS GUILTY OF A FELONY AND
2 SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$500.00 OR MORE
3 THAN \$5,000.00 AND TO EITHER OF THE FOLLOWING:

4 (i) IMPRISONMENT UNDER THE JURISDICTION OF THE DEPARTMENT OF
5 CORRECTIONS FOR NOT LESS THAN 1 YEAR OR MORE THAN 5 YEARS.

6 (ii) PROBATION WITH IMPRISONMENT IN THE COUNTY JAIL FOR NOT
7 LESS THAN 30 DAYS OR MORE THAN 1 YEAR AND COMMUNITY SERVICE FOR NOT
8 LESS THAN 60 DAYS OR MORE THAN 180 DAYS. NOT LESS THAN 48 HOURS OF
9 THIS IMPRISONMENT SHALL BE SERVED CONSECUTIVELY. THIS TERM OF
10 IMPRISONMENT SHALL NOT BE SUSPENDED.

11 (2) A PERSON WHO VIOLATES SECTION 80177(7)(B) IS GUILTY OF A
12 MISDEMEANOR PUNISHABLE AS FOLLOWS:

13 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), A PERSON WHO
14 VIOLATES SECTION 80177(7)(B) MAY BE SENTENCED TO 1 OR MORE OF THE
15 FOLLOWING:

16 (i) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

17 (ii) A FINE OF NOT MORE THAN \$500.00.

18 (iii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

19 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
20 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE
21 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A
22 PERSON WHO VIOLATES SECTION 80177(7)(B) SHALL BE SENTENCED TO PAY A
23 FINE OF NOT LESS THAN \$200.00 OR MORE THAN \$1,000.00 AND TO 1 OR
24 MORE OF THE FOLLOWING:

25 (i) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
26 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED
27 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

1 (ii) **COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN**
2 **90 DAYS.**

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

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

16 (a) Only a peace officer who has successfully completed a
17 training course taught by a state-certified instructor in the
18 administration of the preliminary chemical breath analysis may
19 administer that test.

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

22 (c) The results of a preliminary chemical breath analysis are
23 admissible in a criminal prosecution for a crime described in
24 section 80187(1) or in an administrative hearing solely to assist
25 the court or hearing officer in determining a challenge to the
26 validity of an arrest. This subdivision does not limit the
27 introduction of other competent evidence offered to establish the

1 validity of an arrest.

2 (d) A person who submits to a preliminary chemical breath
3 analysis remains subject to the requirements of sections 80187 to
4 80190 for the purposes of chemical tests described in those
5 sections.

6 (e) A person who refuses to submit to a preliminary chemical
7 breath analysis upon a lawful request by a peace officer is
8 responsible for a state civil infraction and may be ordered to pay
9 a civil fine of not more than \$500.00.

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

13 (4) If, not more than 60 days after the issuance of a citation
14 for a state civil infraction under this section, the person to whom
15 the citation is issued is not charged with a violation of section
16 80176(1), (3), (4), or (5) or a local ordinance substantially
17 corresponding to section 80176(1) or (3), the citation issued for
18 the state civil infraction is void. Upon application of the person
19 to whom the citation is issued, money paid by the person as a fine,
20 costs, or otherwise shall be immediately returned.

21 Sec. 80183. (1) The provisions of sections 80181 and 80182
22 relating to chemical testing do not limit the introduction of any
23 other competent evidence bearing upon the question of whether or
24 not a person was impaired by, or under the influence of,
25 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance, or both,
26 or whether the person had a blood alcohol content of ~~0.10~~ **0.08**
27 grams or more per 100 milliliters of blood, per 210 liters of

1 breath, or per 67 milliliters of urine, OR WHETHER THE PERSON HAD
2 ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER
3 SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,
4 OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED
5 SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH
6 CODE, 1978 PA 368, MCL 333.7214, IN HIS OR HER BODY.

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

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

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

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

1 ~~than 0.07 grams but less than 0.10 grams per 100 milliliters of~~
2 ~~blood, per 210 liters of breath, or per 67 milliliters of urine, it~~
3 ~~shall be presumed that the defendant's ability to operate a vessel~~
4 ~~was impaired within the provisions of section 80176(3) due to the~~
5 ~~consumption of intoxicating liquor.~~

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

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

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

27 (a) For a conviction under section 80176(4) or (5), the court

1 shall order with no expiration date that the person not operate a
2 vessel on the waters of this state.

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

5 (i) If the court finds that the person has no prior convictions
6 within 7 years for a violation of section 80176(1), (3), (4), or
7 (5), former section 171(1), (3), (4), or (5) **OF THE MARINE SAFETY**
8 **ACT**, or another boating substance abuse offense, or that the person
9 has 1 prior conviction within 7 years for a violation of section
10 80176(3); former section 171(3) of the marine safety act; former
11 section 73b of the marine safety act; a local ordinance
12 substantially corresponding to section 80176(3) or former section
13 73b of the marine safety act; or a law of another state
14 substantially corresponding to section 80176(3) or former section
15 73b of the marine safety act, the court may order that the person
16 not operate a vessel on the waters of this state for not less than
17 1 year or more than 2 years.

18 (ii) If the court finds that the person has 1 or more prior
19 convictions within 7 years for a violation of section 80176(1),
20 (3), (4), or (5); former section 73 of the marine safety act; a
21 local ordinance substantially corresponding to section 80176(1) or
22 former section 73 of the marine safety act; or a law of another
23 state substantially corresponding to section 80176(1), (4), or (5)
24 or former section 73 of the marine safety act, the court shall
25 order that the person not operate a vessel on the waters of this
26 state for not less than 2 years.

27 (iii) If the court finds that the person has 2 or more prior

1 convictions within ~~10~~**ANY PERIOD OF** years for a violation of
2 section 80176(1), (3), (4), or (5); ~~ex~~former section 171(1), (3),
3 (4), or (5) **OF THE MARINE SAFETY ACT**; or another boating substance
4 abuse offense, the court shall order with no expiration date that
5 the person not operate a vessel on the waters of this state.

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

8 (i) If the court finds that the convicted person has no prior
9 conviction within 7 years for a violation of section 80176(1), (3),
10 (4), or (5); ~~ex~~former section 171(1), (3), (4), or (5) **OF THE**
11 **MARINE SAFETY ACT**; or another boating substance abuse offense, the
12 court may order that the person not operate a vessel on the waters
13 of this state for not less than 6 months or more than 1 year.

14 (ii) If the court finds that the person has 1 prior conviction
15 within 7 years for a violation of section 80176(1), (3), (4), or
16 (5); ~~ex~~former section 171(1), (3), (4), or (5) **OF THE MARINE**
17 **SAFETY ACT**; or another boating substance abuse offense, the court
18 shall order that the person not operate a vessel on the waters of
19 this state for not less than 1 year or more than 2 years.

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

26 (2) As used in this section, "another boating substance abuse
27 offense" means **A VIOLATION OF** former section 73 or 73b of the

1 marine safety act, a local ordinance substantially corresponding to
2 section 80176(1) or (3) or former section 73 or 73b of the marine
3 safety act, or a law of another state substantially corresponding
4 to section 80176(1), (3), (4), or (5) or former section 73 or 73b
5 of the marine safety act.

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

12 (a) The person is arrested for a violation of section
13 80176(1), (3), (4), or (5), or a local ordinance substantially
14 corresponding to section 80176(1) or (3).

15 (b) The person is arrested for negligent homicide,
16 manslaughter, or murder resulting from the operation of a vessel,
17 and the peace officer had reasonable grounds to believe that the
18 person was operating the vessel ~~while impaired by, or under the~~
19 ~~influence of, intoxicating liquor or a controlled substance, or~~
20 ~~both, or while having a blood alcohol content of 0.10 grams or more~~
21 ~~per 100 milliliters of blood, per 210 liters of breath, or per 67~~
22 ~~milliliters of urine~~ **IN VIOLATION OF SECTION 80176.**

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

27 (3) A chemical test described in subsection (1) shall be

1 administered as provided in sections 80181 and 80182.

2 Sec. 80190. (1) If a person who refuses to submit to a
3 chemical test pursuant to section 80181 or 80182 does not request a
4 hearing within 14 days of the date of notice pursuant to section
5 80189, the secretary of state shall issue an order that the person
6 not operate a vessel on the waters of this state for ~~6 months~~ 1
7 **YEAR** or, for a second or subsequent refusal within 7 years, for ~~1~~
8 **year** ~~2~~ **YEARS**.

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

1 exceptional circumstances, but not for delay attributable to docket
2 congestion, shall be finally adjudicated within 77 days after the
3 date of arrest. The hearing shall cover only the following issues:

4 (a) Whether the peace officer had reasonable grounds to
5 believe that the person had committed a crime described in section
6 80187(1).

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

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

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

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

1 (4) After a hearing, if the person who requested the hearing
2 does not prevail, the secretary of state shall order that the
3 person not operate a vessel on the waters of this state for ~~6~~
4 ~~months~~ **1 YEAR** or, for a second or subsequent refusal within 7
5 years, for ~~1 year~~ **2 YEARS**. The person may file a petition in the
6 circuit court of the county in which the arrest was made to review
7 the order as provided in section 80194. If after the hearing the
8 person who requested the hearing prevails, the peace officer who
9 filed the report under section 80188 may, with the consent of the
10 prosecuting attorney, file a petition in the circuit court of the
11 county in which the arrest was made to review the determination of
12 the hearing officer as provided in section 80194.

13 Enacting section 1. This amendatory act takes effect April 1,
14 2011.