

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.80190 Refusal to submit to chemical test; failure to request hearing; manner and conditions of hearing if requested; record of proceedings; order; petitions to review order or to review determination of hearing officer.

Sec. 80190. (1) If a person who refuses to submit to a chemical test under section 80181 or 80182 does not request a hearing within 14 days of the date of notice under section 80189, the secretary of state shall issue an order that the person not operate a motorboat on the waters of this state for 1 year or, for a second or subsequent refusal within 7 years, for 2 years.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, 1949 PA 300, MCL 257.322. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 80188, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and, except for delay attributable to the unavailability of the defendant, a witness, or material evidence or to an interlocutory appeal or exceptional circumstances, but not for delay attributable to docket congestion, shall be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

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

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

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

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

(3) The hearing officer shall make a record of proceedings held under subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification of the filing of a petition for judicial review under section 80194 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

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

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

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