

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

324.81140 Suspension of right to operate ORV; appointment of hearing officer; notice; powers of hearing officer; scope and conduct of hearing; final decision or order; petition; review; order; record of proceedings.

Sec. 81140. (1) If a person who refuses to submit to a chemical test under section 81138 does not request an administrative hearing within 14 days after the date of notice under section 81139, the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years.

(2) If an administrative hearing is requested, the secretary of state shall appoint a hearing officer to conduct the hearing. Not less than 10 days' notice of the hearing shall be provided by mail to the person submitting the request, to the peace officer who filed the report under section 81138, and, if a 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 and issue subpoenas for the attendance of necessary witnesses, and may grant a reasonable request for an adjournment. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person committed a crime described in section 81137(1).

(b) Whether the person was placed under arrest for a crime described in section 81137(1).

(c) Whether the person reasonably refused to submit to a chemical test upon request of the officer.

(d) Whether the person was advised of his or her rights under section 81136.

(3) An administrative hearing conducted under this section is not a contested case for the purposes of chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The hearing shall be conducted in an impartial manner. A final decision or order of a hearing officer shall be made in writing or stated in the record, and shall include findings of fact based exclusively on the evidence presented and matters officially noticed, and shall specify any sanction to be imposed against the person involved. A copy of the final decision or order shall be delivered or mailed immediately to the person and the peace officer.

(4) After the administrative hearing, if the person is found to have unreasonably refused to submit to a chemical test, the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years. Within 60 days after the final decision or order is issued by the hearing officer, the person may file a petition in the circuit court of the county in which the arrest was made to review the suspension. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 81138 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 81140b. The scope of the court's review shall be limited to the issues provided in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306.

(5) The circuit court shall enter an order setting the cause for hearing for a date certain that is not more than 60 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, birth date, and driver's license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 50 days before the date set for the hearing. The department shall cause a record to be made of the 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, the department shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 405, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV