

HOUSE BILL No. 5131

October 7, 2003, Introduced by Reps. Nofs and Van Regenmorter and referred to the Committee on Criminal Justice.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 80171, 80176, 80183, 80184, and 80187 (MCL 324.80171, 324.80176, 324.80183, 324.80184, and 324.80187), section 80171 as added by 1995 PA 58, section 80176 as amended by 2001 PA 12, and sections 80183, 80184, and 80187 as amended by 1996 PA 174.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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
6 convicted of reckless operation of a vessel as defined in section
7 80147, or of operating a vessel while under the influence of

1 intoxicating liquor or narcotic drugs, or with any amount of a
 2 controlled substance listed in schedule 1 under section 7212 of
 3 the public health code, 1978 PA 368, MCL 333.7212, or a rule
 4 promulgated under that section, or of a controlled substance
 5 described in section 7214(a)(iv) of the public health code, 1978
 6 PA 368, MCL 333.7214, in his or her body, in addition to any
 7 other penalty, may be refused by the court having jurisdiction of
 8 the violation the right of operating any vessel on any of the
 9 waters of this state for a period of not more than 2 years.

10 Sec. 80176. (1) A person shall not operate a vessel on the
 11 waters of this state if ~~either~~ any of the following ~~applies~~
 12 apply:

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

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

18 (c) The person has in his or her body any amount of a
 19 controlled substance listed in schedule 1 under section 7212 of
 20 the public health code, 1978 PA 368, MCL 333.7212, or a rule
 21 promulgated under that section, or of a controlled substance
 22 described in section 7214(a)(iv) of the public health code, 1978
 23 PA 368, MCL 333.7214.

24 (2) The owner of a vessel or a person in charge or in control
 25 of a vessel shall not authorize or knowingly permit the vessel to
 26 be operated on the waters of this state by a person ~~who~~ if any
 27 of the following apply:

1 **(a) The person** is under the influence of intoxicating liquor
2 or a controlled substance, or both. ~~—, or who~~

3 **(b) The person** has a blood alcohol content of ~~—0.10—~~ **0.08**
4 grams or more per 100 milliliters of blood, per 210 liters of
5 breath, or per 67 milliliters of urine, **or has in his or her body**
6 **any amount of a controlled substance listed in schedule 1 under**
7 **section 7212 of the public health code, 1978 PA 368, MCL**
8 **333.7212, or a rule promulgated under that section, or of a**
9 **controlled substance described in section 7214(a)(iv) of the**
10 **public health code, 1978 PA 368, MCL 333.7214.**

11 **(c) The person's ability to operate the vessel is visibly**
12 **impaired due to the consumption of alcoholic liquor, a controlled**
13 **substance, or a combination of alcoholic liquor and a controlled**
14 **substance.**

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

21 (4) A person who operates a vessel on the waters of this
22 state under the influence of intoxicating liquor or a controlled
23 substance, or both, or with a blood alcohol content of ~~—0.10—~~
24 **0.08** grams or more per 100 milliliters of blood, per 210 liters
25 of breath, or per 67 milliliters of urine, and by the operation
26 of that vessel causes the death of another person is guilty of a
27 felony, punishable by imprisonment for not more than 15 years, or

1 a fine of not less than \$2,500.00 or more than \$10,000.00, or
2 both.

3 (5) A person who operates a vessel on the waters of this
4 state ~~under the influence of intoxicating liquor or a controlled~~
5 ~~substance, or both, or with a blood alcohol content of 0.10 grams~~
6 ~~or more per 100 milliliters of blood, per 210 liters of breath,~~
7 ~~or per 67 milliliters of urine,~~ **in violation of subsection (1)**
8 **or (3)** and by the operation of that vessel causes a serious
9 impairment of a body function of another person is guilty of a
10 felony, punishable by imprisonment for not more than 5 years, or
11 a fine of not less than \$1,000.00 or more than \$5,000.00, or
12 both. As used in this subsection, "serious impairment of a body
13 function" includes, but is not limited to, 1 or more of the
14 following:

- 15 (a) Loss of a limb or use of a limb.
16 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
17 foot, finger, or thumb.
18 (c) Loss of an eye or ear or use of an eye or ear.
19 (d) Loss or substantial impairment of a bodily function.
20 (e) Serious visible disfigurement.
21 (f) A comatose state that lasts for more than 3 days.
22 (g) Measurable brain damage or mental impairment.
23 (h) A skull fracture or other serious bone fracture.
24 (i) Subdural hemorrhage or subdural hematoma.

25 Sec. 80183. (1) The provisions of sections 80181 and 80182
26 relating to chemical testing do not limit the introduction of any
27 other competent evidence bearing upon the question of whether or

1 not a person was impaired by, or under the influence of,
2 intoxicating liquor or a controlled substance, or both, or
3 whether the person had a blood alcohol content of ~~0.10~~ 0.08
4 grams or more per 100 milliliters of blood, per 210 liters of
5 breath, or per 67 milliliters of urine, **or whether the person had**
6 **any amount of a controlled substance listed in schedule 1 under**
7 **section 7212 of the public health code, 1978 PA 368, MCL**
8 **333.7212, or a rule promulgated under that section, or of a**
9 **controlled substance described in section 7214(a)(iv) of the**
10 **public health code, 1978 PA 368, MCL 333.7214, in his or her**
11 **body.**

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

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

26 ~~—— (a) If at the time defendant had an alcohol content of 0.07~~
27 ~~grams or less 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's ability to operate a vessel was not impaired due~~
3 ~~to the consumption of intoxicating liquor and that the defendant~~
4 ~~was not under the influence of intoxicating liquor.~~

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

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

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

21 Sec. 80187. (1) A person who operates a vessel on the
22 waters of this state is considered to have given consent to
23 chemical tests of his or her blood, breath, or urine for the
24 purpose of determining the amount of alcohol or presence of a
25 controlled substance, or both, in his or her blood in all of the
26 following circumstances:

27 (a) The person is arrested for a violation of section

1 80176(1), (3), (4), or (5), or a local ordinance substantially
2 corresponding to section 80176(1) or (3).

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

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

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

17 Enacting section 1. This amendatory act takes effect
18 January 1, 2004.