

SUBSTITUTE FOR
HOUSE BILL NO. 4616

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 82101, 82127, 82136, 82139, 82140, 82143, 82144, and 82146 (MCL 324.82101, 324.82127, 324.82136, 324.82139, 324.82140, 324.82143, 324.82144, and 324.82146), section 82101 as amended by 2004 PA 587, section 82127 as amended by 2001 PA 12, sections 82136 and 82146 as added by 1995 PA 58, and sections 82139, 82140, 82143, and 82144 as amended by 1996 PA 183.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 82101. As used in this part:

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

4 (B) ~~-(a)-~~ "Conviction" means a final conviction, the payment

1 of a fine, a plea of guilty or nolo contendere if accepted by the
2 court, or a finding of guilt or probate court disposition on a
3 violation of this part, regardless of whether the penalty is
4 rebated or suspended.

5 (C) ~~-(b)-~~ "Dealer" means any person engaged in the sale,
6 lease, or rental of snowmobiles as a regular business.

7 (D) ~~-(e)-~~ "Former section 15a" means section 15a of former
8 1968 PA 74, as constituted ~~—prior to—~~ **BEFORE** May 1, 1994.

9 (E) ~~-(d)-~~ "Highly restricted personal information" means an
10 individual's photograph or image, social security number, digitized
11 signature, and medical and disability information.

12 (F) ~~-(e)-~~ "Highway or street" means the entire width between
13 the boundary lines of every way publicly maintained if any part
14 thereof is open to the use of the public for purposes of vehicular
15 travel.

16 (G) ~~-(f)-~~ "In-kind contributions" means services and goods as
17 approved by the department that are provided by a grant recipient
18 toward completion of a department-approved local snowmobile program
19 under section 82107.

20 (H) ~~-(g)-~~ "Law of another state" means a law or ordinance
21 enacted by another state or by a local unit of government in
22 another state.

23 ~~—(h) "Long-term incapacitating injury" means an injury that~~
24 ~~causes a person to be in a comatose, quadriplegic, hemiplegic, or~~
25 ~~paraplegic state, which state is likely to continue for 1 year or~~
26 ~~more.~~

27 (i) "Operate" means to ride in or on and be in actual physical

1 control of the operation of a snowmobile.

2 (j) "Operator" means any person who operates a snowmobile.

3 (k) "Owner" means any of the following:

4 (i) A person who holds the legal title to a snowmobile.

5 (ii) A vendee or lessee of a snowmobile that is the subject of
6 an agreement for conditional sale or lease with the right of
7 purchase upon performance of the conditions stated in the agreement
8 and with an immediate right of possession vested in the conditional
9 vendee or lessee.

10 (iii) A person renting a snowmobile or having the exclusive use
11 of a snowmobile for more than 30 days.

12 (l) "Peace officer" means any of the following:

13 (i) A sheriff.

14 (ii) A sheriff's deputy.

15 (iii) A deputy who is authorized by a sheriff to enforce this
16 part and who has satisfactorily completed at least 40 hours of law
17 enforcement training, including training specific to this part.

18 (iv) A village or township marshal.

19 (v) An officer of the police department of any municipality.

20 (vi) An officer of the Michigan state police.

21 (vii) The director and conservation officers employed by the
22 department.

23 (viii) A law enforcement officer who is certified ~~pursuant to~~
24 **UNDER** the commission on law enforcement standards act, 1965 PA 203,
25 MCL 28.601 to 28.616, as long as that officer is policing within
26 his or her jurisdiction.

27 (m) "Personal information" means information that identifies

1 an individual, including an individual's driver identification
2 number, name, address not including zip code, and telephone number,
3 but does not include information on snowmobile operation or
4 equipment-related violations or civil infractions, operator or
5 snowmobile registration status, accidents, or other behaviorally-
6 related information.

7 (n) "Probate court or family division disposition" means the
8 entry of a probate court order of disposition or family division
9 order of disposition for a child found to be within the provisions
10 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
11 712A.1 to 712A.32.

12 (o) "Prosecuting attorney", except as the context requires
13 otherwise, means the attorney general, the prosecuting attorney of
14 a county, or the attorney representing a local unit of government.

15 (p) "Recreational snowmobile trail improvement subaccount"
16 means the recreational snowmobile trail improvement subaccount of
17 the snowmobile account created in section 82110. **THIS SUBDIVISION**
18 **DOES NOT APPLY UNLESS HOUSE RESOLUTION Z OF THE 92ND LEGISLATURE**
19 **BECOMES PART OF THE STATE CONSTITUTION OF 1963.**

20 (q) "Right-of-way" means that portion of a highway or street
21 less the roadway and any shoulder.

22 (r) "Roadway" means that portion of a highway or street
23 improved, designated, or ordinarily used for vehicular travel. If a
24 highway or street includes 2 or more separate roadways, the term
25 roadway refers to any such roadway separately, but not to all such
26 roadways collectively.

27 (s) "Shoulder" means that portion of a highway or street on

1 either side of the roadway that is normally snowplowed for the
2 safety and convenience of vehicular traffic.

3 (t) "Snowmobile" means any motor-driven vehicle designed for
4 travel primarily on snow or ice of a type that utilizes sled-type
5 runners or skis, an endless belt tread, or any combination of these
6 or other similar means of contact with the surface upon which it is
7 operated, but is not a vehicle that must be registered under the
8 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

9 (u) "Snowmobile account" means the snowmobile account of the
10 Michigan conservation and recreation legacy fund provided for in
11 section 2025. **THIS SUBDIVISION DOES NOT APPLY UNLESS HOUSE**
12 **RESOLUTION Z OF THE 92ND LEGISLATURE BECOMES PART OF THE STATE**
13 **CONSTITUTION OF 1963.**

14 (v) "Snowmobile registration fee subaccount" means the
15 snowmobile registration fee subaccount of the snowmobile account
16 created in section 82111. **THIS SUBDIVISION DOES NOT APPLY UNLESS**
17 **HOUSE RESOLUTION Z OF THE 92ND LEGISLATURE BECOMES PART OF THE**
18 **STATE CONSTITUTION OF 1963.**

19 (w) "Zone 1" means all of the Upper Peninsula.

20 (x) "Zone 2" means all of that part of the Lower Peninsula
21 north of a line beginning at and drawn from a point on the
22 Michigan-Wisconsin boundary line due west of the westerly terminus
23 of River road in Muskegon county; thence due east to the westerly
24 terminus of River road; thence north and east along the center line
25 of the River road to its intersection with highway M-120; thence
26 northeasterly and easterly along the center line of highway M-120
27 to the junction of highway M-20; thence easterly along the center

1 line of M-20 to its junction with US-10 at the Midland-Bay county
 2 line; thence easterly along the center line of the "business route"
 3 of highway US-10 to the intersection of Garfield road in Bay
 4 county; thence north along the center line of Garfield road to the
 5 intersection of the Pinconning road; thence east along the center
 6 line of Pinconning road to the intersection of the Seven Mile road;
 7 thence north along the center of the Seven Mile road to the Bay-
 8 Arenac county line; thence north along the center line of the
 9 Lincoln School road (county road 25) in Arenac county to the
 10 intersection of highway M-61; thence east along the center line of
 11 highway M-61 to the junction of highway US-23; thence northerly and
 12 easterly along the center line of highway US-23 to the center line
 13 of the Au Gres river; thence southerly along the center line of the
 14 river to its junction with Saginaw Bay of Lake Huron; thence north
 15 78° east to the international boundary line between the United
 16 States and the Dominion of Canada.

17 (y) "Zone 3" means all of that part of the Lower Peninsula
 18 south of the line described in subdivision (x).

19 Sec. 82127. (1) A person shall not operate a snowmobile in
 20 this state if ~~either~~ **ANY** of the following ~~applies~~ **APPLY**:

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

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

26 **(C) THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A**
 27 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**

1 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE
2 PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE
3 DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA
4 368, MCL 333.7214.

5 (2) The owner of a snowmobile or a person in charge or in
6 control of a snowmobile shall not authorize or knowingly permit the
7 snowmobile to be driven or operated by a person ~~who~~ **IF ANY OF THE**
8 **FOLLOWING APPLY:**

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

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

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

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

24 (4) A person who operates a snowmobile ~~under the influence of~~
25 ~~intoxicating liquor or a controlled substance, or both, or with a~~
26 ~~blood alcohol content of 0.10 grams or more per 100 milliliters of~~
27 ~~blood, per 210 liters of breath, or per 67 milliliters of urine,~~

1 **IN VIOLATION OF SUBSECTION (1) OR (3)** and by the operation of that
 2 snowmobile causes the death of another person is guilty of a felony
 3 punishable by imprisonment for not more than 15 years ~~—~~ or a fine
 4 of not less than \$2,500.00 or more than \$10,000.00, or both.

5 (5) A person who operates a snowmobile ~~under the influence of~~
 6 ~~intoxicating liquor or a controlled substance, or both, or with a~~
 7 ~~blood alcohol content of 0.10 grams or more per 100 milliliters of~~
 8 ~~blood, per 210 liters of breath, or per 67 milliliters of urine,~~

9 **IN VIOLATION OF SUBSECTION (1) OR (3)** and by the operation of that
 10 snowmobile causes a serious impairment of a body function of
 11 another person is guilty of a felony punishable by imprisonment for
 12 not more than 5 years ~~—~~ or a fine of not less than \$1,000.00 or
 13 more than \$5,000.00, or both. As used in this subsection, "serious
 14 impairment of a body function" ~~includes, but is not limited to, 1~~
 15 ~~or more of the following:~~ **MEANS THAT TERM AS DEFINED IN SECTION**

16 **58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, 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. 82136. (1) A peace officer, without a warrant, may arrest

1 a person if the peace officer has reasonable cause to believe that
2 the person was, at the time of an accident, the operator of a
3 snowmobile involved in the accident in this state while in
4 violation of section 82127(1), (3), (4), or (5) or a local
5 ordinance substantially corresponding to section 82127(1) or (3).

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

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

14 (b) The results of a preliminary chemical breath analysis are
15 admissible in a criminal prosecution for a crime enumerated in
16 section 82143(1) or in an administrative hearing solely to assist
17 the court or hearing officer in determining a challenge to the
18 validity of an arrest. This subdivision does not limit the
19 introduction of other competent evidence offered to establish the
20 validity of an arrest.

21 (c) A person who submits to a preliminary chemical breath
22 analysis remains subject to the requirements of sections 82143 to
23 82146 for the purposes of chemical tests described in those
24 sections.

25 (d) A person who refuses to submit to a preliminary chemical
26 breath analysis upon a lawful request by a peace officer is guilty
27 of a misdemeanor.

1 Sec. 82139. (1) The provisions of sections 82137 and 82138
2 relating to chemical testing do not limit the introduction of any
3 other competent evidence bearing upon the question of whether a
4 person was impaired by, or under the influence of, ~~intoxicating~~
5 **ALCOHOLIC** liquor or a controlled substance, or both, or whether the
6 person had a blood alcohol content of ~~0.10~~ **0.08** grams or more per
7 100 milliliters of blood, per 210 liters of breath, or per 67
8 milliliters of urine.

9 (2) If a chemical test described in sections 82137 and 82138
10 is administered, the results of the test shall be made available to
11 the person charged or the person's attorney upon written request to
12 the prosecution, with a copy of the request filed with the court.
13 The prosecution shall furnish the results at least 2 days before
14 the day of the trial. The results of the test shall be offered as
15 evidence by the prosecution in that trial. Failure to fully comply
16 with the request bars the admission of the results into evidence by
17 the prosecution.

18 Sec. 82140. ~~-(1) Except in a prosecution relating solely to a~~
19 ~~violation of section 82127(1)(b), the amount of alcohol in the~~
20 ~~driver's blood at the time alleged as shown by chemical analysis of~~
21 ~~the person's blood, urine, or breath gives rise to the following~~
22 ~~presumptions:~~

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

1 ~~defendant was not under the influence of intoxicating liquor.~~

2 ~~—— (b) If at the time the defendant had a blood alcohol content~~
3 ~~of more than 0.07 grams but less than 0.10 grams per 100~~
4 ~~milliliters of blood, per 210 liters of breath, or per 67~~
5 ~~milliliters of urine, it shall be presumed that the defendant's~~
6 ~~ability to operate a snowmobile was impaired within the provisions~~
7 ~~of section 82127(3) due to the consumption of intoxicating liquor.~~

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

12 ~~—— (2) A person's refusal to submit to a chemical test as~~
13 ~~provided in sections 82137 and 82138 is admissible in a criminal~~
14 ~~prosecution for a crime described in section 82143(1) only for the~~
15 ~~purpose of showing that a test was offered to the defendant, but~~
16 ~~not as evidence in determining innocence or guilt of the defendant.~~
17 ~~The jury shall be instructed accordingly.~~

18 Sec. 82143. (1) A person who operates a snowmobile is
19 considered to have given consent to chemical tests of his or her
20 blood, breath, or urine for the purpose of determining the amount
21 of alcohol or presence of a controlled substance, or both, in his
22 or her blood in all of the following circumstances:

23 (a) The person is arrested for a violation of section
24 82127(1), (3), (4), or (5) or a local ordinance substantially
25 corresponding to section 82127(1) or (3).

26 (b) The person is arrested for negligent homicide,
27 manslaughter, or murder resulting from the operation of a

1 snowmobile, and the peace officer had reasonable grounds to believe
2 that the person was operating the snowmobile ~~while impaired by, or~~
3 ~~under the influence of, intoxicating liquor or a controlled~~
4 ~~substance, or both, or while having a blood alcohol content of 0.10~~
5 ~~grams or more per 100 milliliters of blood, per 210 liters of~~
6 ~~breath, or per 67 milliliters of urine~~ **IN VIOLATION OF SECTION**
7 **82127.**

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

12 (3) A chemical test described in subsection (1) shall be
13 administered as provided in sections 82137 and 82138.

14 Sec. 82144. (1) If a person refuses the request of a peace
15 officer to submit to a chemical test offered pursuant to section
16 82137 or 82138, a test shall not be given without a court order,
17 but the officer may seek to obtain the court order.

18 (2) If a person refuses a chemical test offered pursuant to
19 section 82137 or 82138, or submits to the chemical test and the
20 test reveals a blood alcohol content of ~~0.10~~ **0.08** grams or more
21 per 100 milliliters of blood, per 210 liters of breath, or per 67
22 milliliters of urine, the peace officer who requested the person to
23 submit to the test shall immediately forward a written report to
24 the secretary of state. The report shall state that the officer had
25 reasonable grounds to believe that the person had committed a crime
26 described in section 82143(1), and either that the person has
27 refused to submit to the test upon the request of the peace officer

1 and has been advised of the consequences of the refusal or that the
2 test revealed a blood alcohol content of ~~0.10~~ **0.08** grams or more
3 per 100 milliliters of blood, per 210 liters of breath, or per 67
4 milliliters of urine. The form of the report shall be prescribed
5 and furnished by the secretary of state.

6 Sec. 82146. (1) If a person who refuses to submit to a
7 chemical test ~~pursuant to~~ **UNDER** section 82144 does not request a
8 hearing within 14 days of the date of notice pursuant to section
9 82145, the secretary of state shall issue an order that the person
10 not operate a snowmobile for ~~6 months~~ **1 YEAR** or, for a second or
11 subsequent refusal within 7 years, for ~~1 year~~ **2 YEARS**.

12 (2) If a hearing is requested, the secretary of state shall
13 hold the hearing in the same manner and under the same conditions
14 as provided in section 322 of the Michigan vehicle code, ~~Act No.~~
15 ~~300 of the Public Acts of 1949, being section 257.322 of the~~
16 ~~Michigan Compiled Laws~~ **1949 PA 300, MCL 257.322**. A person shall
17 not order a hearing officer to make a particular finding on any
18 issue enumerated under subdivisions (a) to (d). Not less than 5
19 days' notice of the hearing shall be mailed to the person
20 requesting the hearing, to the peace officer who filed the report
21 under section 82144, and, if the prosecuting attorney requests
22 receipt of the notice, to the prosecuting attorney of the county
23 where the arrest was made. The hearing officer may administer
24 oaths, issue subpoenas for the attendance of necessary witnesses,
25 and grant a reasonable request for an adjournment. Not more than 1
26 adjournment shall be granted to a party, and the length of an
27 adjournment shall not exceed 14 days. A hearing under this

1 subsection shall be scheduled to be held within 45 days after the
2 date of arrest and, except for delay attributable to the
3 unavailability of the defendant, a witness, or material evidence or
4 to an interlocutory appeal or exceptional circumstances, but not
5 for delay attributable to docket congestion, shall be finally
6 adjudicated within 77 days after the date of arrest. The hearing
7 shall cover only the following issues:

8 (a) Whether the peace officer had reasonable grounds to
9 believe that the person had committed a crime described in section
10 82143(1).

11 (b) Whether the person was placed under arrest for a crime
12 described in section 82143(1).

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

15 (d) Whether the person was advised of his or her rights under
16 section 82137.

17 (3) The hearing officer shall make a record of proceedings
18 held ~~pursuant to~~ **UNDER** subsection (2). The record shall be
19 prepared and transcribed in accordance with section 86 of the
20 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
21 ~~Acts of 1969, being section 24.286 of the Michigan Compiled Laws~~
22 **1969 PA 306, MCL 24.286**. Upon notification of the filing of a
23 petition for judicial review ~~pursuant to~~ **UNDER** section 82150 and
24 not less than 10 days before the matter is set for review, the
25 hearing officer shall transmit to the court in which the petition
26 is filed the original or a certified copy of the official record of
27 the proceedings. The parties to the proceedings for judicial review

1 may stipulate that the record be shortened. A party unreasonably
2 refusing to stipulate to a shortened record may be taxed by the
3 court in which the petition is filed for the additional costs. The
4 court may permit subsequent corrections to the record.

5 (4) After a hearing, if the person who requested the hearing
6 does not prevail, the secretary of state shall order that the
7 person not operate a snowmobile for ~~6 months~~ **1 YEAR** or, for a
8 second or subsequent refusal within 7 years, for ~~1 year~~ **2 YEARS**.
9 The person may file a petition in the circuit court of the county
10 in which the arrest was made to review the order as provided in
11 section 82150. If after the hearing the person who requested the
12 hearing prevails, the peace officer who filed the report under
13 section 82144 may, with the consent of the prosecuting attorney,
14 file a petition in the circuit court of the county in which the
15 arrest was made to review the determination of the hearing officer
16 as provided in section 82150.

17 Enacting section 1. This amendatory act takes effect January
18 1, 2006.