

**SUBSTITUTE FOR
HOUSE BILL NO. 4794**

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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 80101. As used in this part:
- 2 (a) "Airboat" means a motorboat that is propelled, wholly or
- 3 in part, by a propeller projecting above the water surface.

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

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

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

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

11 (ii) Repair or improvement of an original or replacement
12 system, part, or component.

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

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

16 (E) ~~(d)~~—"Boat" means a vessel.

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

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

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

26 Sec. 80171. Unless otherwise specified under this part, a
27 violation of this part or rules promulgated under this part is a

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

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

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

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

22 (c) **THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A**
23 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**
24 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
25 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
26 **DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA**
27 **368, MCL 333.7214.**

1 (2) The owner of a vessel or a person in charge or in control
2 of a vessel shall not authorize or knowingly permit the vessel to
3 be operated on the waters of this state by a person ~~who~~ **IF ANY OF**
4 **THE FOLLOWING APPLY:**

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

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

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

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

20 (4) A person who operates a vessel on the waters of this state
21 under the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a
22 controlled substance, or both, or with a blood alcohol content of
23 ~~0.10~~ **0.08** grams or more per 100 milliliters of blood, per 210
24 liters of breath, or per 67 milliliters of urine, **OR HAS IN HIS OR**
25 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**
26 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
27 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**

1 CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A) (iv) OF THE PUBLIC
 2 HEALTH CODE, 1978 PA 368, MCL 333.7214, and by the operation of
 3 that vessel causes the death of another person is guilty of a
 4 felony, punishable by imprisonment for not more than 15 years, or a
 5 fine of not less than \$2,500.00 or more than \$10,000.00, or both.

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

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

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

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

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

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

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

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

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

1 ~~(i) Subdural hemorrhage or subdural hematoma.~~

2 Sec. 80177. (1) If a person is convicted of violating section
3 80176(1), the following apply:

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

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

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

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

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

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

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

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

25 (2) A term of imprisonment imposed under subdivision (b) (ii)
26 shall not be suspended. A person sentenced to perform service to
27 the community under this section shall not receive compensation and

1 shall reimburse the state or appropriate local unit of government
2 for the 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 (3) In addition to the sanctions prescribed under subsection
5 (1) and section 80176(4) and (5), the court may, pursuant to the
6 code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, order
7 the person to pay the costs of the prosecution. The court shall
8 also impose sanctions under sections 80185 and 80186.

9 (4) A person who is convicted of violating section 80176(2) is
10 guilty of a misdemeanor, punishable by imprisonment for not more
11 than 93 days, or a fine of not less than \$100.00 or more than
12 \$500.00, or both.

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

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

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

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

19 (d) A local ordinance substantially corresponding to section
20 80176(1) or former section 73 of the marine safety act.

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

24 Sec. 80178. (1) If a person is convicted of violating section
25 80176(3), the following apply:

26 (a) Except as otherwise provided in subdivisions (b) and (c),
27 the person is guilty of a misdemeanor punishable by 1 or more of

1 the following:

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

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

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

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

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

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

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

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

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

24 (2) In addition to the sanctions prescribed in subsection (1),
25 the court may, pursuant to the code of criminal procedure, 1927 PA
26 175, MCL 760.1 to 777.69, order the person to pay the costs of the
27 prosecution. The court shall also impose sanctions under sections

1 80185 and 80186.

2 (3) A person sentenced to perform service to the community
3 under this section shall not receive compensation, and shall
4 reimburse the state or appropriate local unit of government for the
5 cost of supervision incurred by the state or local unit of
6 government as a result of the person's activities in that service.

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

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

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

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

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

13 (e) A local ordinance substantially corresponding to section
14 80176(1), former section 73 of the marine safety act, or former
15 section 73b of the marine safety act.

16 (f) A law of another state 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. 80180. (1) A peace officer, without a warrant, may arrest
20 a person if the peace officer has reasonable cause to believe that
21 the person was, at the time of an accident, the operator of a
22 vessel involved in the accident in this state while in violation of
23 section 80176(1), (3), (4), or (5) or a local ordinance
24 substantially corresponding to section 80176(1) or (3).

25 (2) A peace officer who has reasonable cause to believe that a
26 person was operating a vessel on the waters of this state, and
27 that, by the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor, the

1 person may have affected his or her ability to operate a vessel,
2 may require the person to submit to a preliminary chemical breath
3 analysis. The following apply with respect to a preliminary
4 chemical breath analysis:

5 (a) Only a peace officer who has successfully completed a
6 training course taught by a state-certified instructor in the
7 administration of the preliminary chemical breath analysis may
8 administer that test.

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

11 (c) The results of a preliminary chemical breath analysis are
12 admissible in a criminal prosecution for a crime described in
13 section 80187(1) or in an administrative hearing solely to assist
14 the court or hearing officer in determining a challenge to the
15 validity of an arrest. This subdivision does not limit the
16 introduction of other competent evidence offered to establish the
17 validity of an arrest.

18 (d) A person who submits to a preliminary chemical breath
19 analysis remains subject to the requirements of sections 80187 to
20 80190 for the purposes of chemical tests described in those
21 sections.

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

26 (3) A peace officer making an arrest under this part shall
27 take measures to assure that the vessel and its occupants are

1 safely returned to shore.

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

10 Sec. 80183. (1) The provisions of sections 80181 and 80182
11 relating to chemical testing do not limit the introduction of any
12 other competent evidence bearing upon the question of whether or
13 not a person was impaired by, or under the influence of,
14 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance, or both,
15 or whether the person had 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, **OR WHETHER THE PERSON HAD**
18 **ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER**
19 **SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,**
20 **OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED**
21 **SUBSTANCE DESCRIBED IN SECTION 7214(A) (iv) OF THE PUBLIC HEALTH**
22 **CODE, 1978 PA 368, MCL 333.7214, IN HIS OR HER BODY.**

23 (2) If a chemical test described in sections 80181 and 80182
24 is administered, the results of the test shall be made available to
25 the person charged or the person's attorney upon written request to
26 the prosecution, with a copy of the request filed with the court.
27 The prosecution shall furnish the results at least 2 days before

1 the day of the trial. The results of the test shall be offered as
2 evidence by the prosecution in that trial. Failure to fully comply
3 with the request bars the admission of the results into evidence by
4 the prosecution.

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

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

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

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

26 ~~—— (2) A person's refusal to submit to a chemical test as~~
27 ~~provided in sections 80181 and 80182 is admissible in a criminal~~

1 prosecution for a crime described in section 80187(1) only for the
2 purpose of showing that a test was offered to the defendant, but
3 not as evidence in determining innocence or guilt of the defendant.
4 The jury shall be instructed accordingly.

5 Sec. 80186. (1) Immediately upon acceptance by the court of a
6 plea of guilty or nolo contendere or upon entry of a verdict of
7 guilty for a violation of section 80176(1), (3), (4), or (5) or a
8 local ordinance substantially corresponding to section 80176(1) or
9 (3), whether or not the person is eligible to be sentenced as a
10 multiple offender, the court shall consider all prior convictions
11 currently entered upon the boating record of the person or other
12 evidence of prior convictions established under section 80179,
13 except those convictions that, upon motion by the defendant, are
14 determined by the court to be constitutionally invalid, and shall
15 impose the following sanctions:

16 (a) For a conviction under section 80176(4) or (5), the court
17 shall order with no expiration date that the person not operate a
18 vessel on the waters of this state.

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

21 (i) If the court finds that the person has no prior convictions
22 within 7 years for a violation of section 80176(1), (3), (4), or
23 (5), former section 171(1), (3), (4), or (5), or another boating
24 substance abuse offense, or that the person has 1 prior conviction
25 within 7 years for a violation of section 80176(3); former section
26 171(3) of the marine safety act; former section 73b of the marine
27 safety act; a local ordinance substantially corresponding to

1 section 80176(3) or former section 73b of the marine safety act; or
2 a law of another state substantially corresponding to section
3 80176(3) or former section 73b of the marine safety act, the court
4 may order that the person not operate a vessel on the waters of
5 this state for not less than 1 year or more than 2 years.

6 (ii) If the court finds that the person has 1 or more prior
7 convictions within 7 years for a violation of section 80176(1),
8 (3), (4), or (5); former section 73 of the marine safety act; a
9 local ordinance substantially corresponding to section 80176(1) or
10 former section 73 of the marine safety act; or a law of another
11 state substantially corresponding to section 80176(1), (4), or (5)
12 or former section 73 of the marine safety act, the court shall
13 order that the person not operate a vessel on the waters of this
14 state for not less than 2 years.

15 (iii) If the court finds that the person has 2 or more prior
16 convictions within ~~10~~**ANY PERIOD OF** years for a violation of
17 section 80176(1), (3), (4), or (5) or former section 171(1), (3),
18 (4), or (5) or another boating substance abuse offense, the court
19 shall order with no expiration date that the person not operate a
20 vessel on the waters of this state.

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

23 (i) If the court finds that the convicted person has no prior
24 conviction within 7 years for a violation of section 80176(1), (3),
25 (4), or (5) or former section 171(1), (3), (4), or (5) or another
26 boating substance abuse offense, the court may order that the
27 person not operate a vessel on the waters of this state for not

1 less than 6 months or more than 1 year.

2 (ii) If the court finds that the person has 1 prior conviction
3 within 7 years for a violation of section 80176(1), (3), (4), or
4 (5) or former section 171(1), (3), (4), or (5) or another boating
5 substance abuse offense, the court shall order that the person not
6 operate a vessel on the waters of this state for not less than 1
7 year or more than 2 years.

8 (iii) If the court finds that the person has 2 or more prior
9 convictions within ~~10~~**ANY PERIOD OF** years for a violation of
10 section 80176(1), (3), (4), or (5) or former section 171(1), (3),
11 (4), or (5) or another boating substance abuse offense, the court
12 shall order with no expiration date that person not to operate a
13 vessel on the waters of this state.

14 (2) As used in this section, "another boating substance abuse
15 offense" means former section 73 or 73b of the marine safety act, a
16 local ordinance substantially corresponding to section 80176(1) or
17 (3) or former section 73 or 73b of the marine safety act, or a law
18 of another state substantially corresponding to section 80176(1),
19 (3), (4), or (5) or former section 73 or 73b of the marine safety
20 act.

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

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

House Bill No. 4794 (H-2) as amended June 13, 2007

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
8 ~~substance, or both, or while having a blood alcohol content of 0.10~~
9 ~~grams or more per 100 milliliters of blood, per 210 liters of~~
10 ~~breath, or per 67 milliliters of urine~~ **IN VIOLATION OF SECTION**
11 **80176.**

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

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

22 Sec. 80190. (1) If a person who refuses to submit to a
23 chemical test pursuant to section 80181 or 80182 does not request a
24 hearing within 14 days of the date of notice pursuant to section
25 80189, the secretary of state shall issue an order that the person
26 not operate a vessel on the waters of this state for ~~6 months~~ **1**
27 **YEAR** or, for a second or subsequent refusal within 7 years, for ~~1~~

1 ~~year~~ **2 YEARS.**

2 (2) If a hearing is requested, the secretary of state shall
3 hold the hearing in the same manner and under the same conditions
4 as provided in section 322 of the Michigan vehicle code, ~~Act No.~~
5 ~~300 of the Public Acts of 1949, being section 257.322 of the~~
6 ~~Michigan Compiled Laws 1949 PA 300, MCL 257.322.~~ A person shall not
7 order a hearing officer to make a particular finding on any issue
8 enumerated under subdivisions (a) to (d). Not less than 5 days'
9 notice of the hearing shall be mailed to the person requesting the
10 hearing, to the peace officer who filed the report under section
11 80188, and, if the prosecuting attorney requests receipt of the
12 notice, to the prosecuting attorney of the county where the arrest
13 was made. The hearing officer may administer oaths, issue subpoenas
14 for the attendance of necessary witnesses, and grant a reasonable
15 request for an adjournment. Not more than 1 adjournment shall be
16 granted to a party, and the length of an adjournment shall not
17 exceed 14 days. A hearing under this subsection shall be scheduled
18 to be held within 45 days after the date of arrest and, except for
19 delay attributable to the unavailability of the defendant, a
20 witness, or material evidence or to an interlocutory appeal or
21 exceptional circumstances, but not for delay attributable to docket
22 congestion, shall be finally adjudicated within 77 days after the
23 date of arrest. The hearing shall cover only the following issues:

24 (a) Whether the peace officer had reasonable grounds to
25 believe that the person had committed a crime described in section
26 80187(1).

27 (b) Whether the person was placed under arrest for a crime

1 described in section 80187(1).

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

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

6 (3) The hearing officer shall make a record of proceedings
7 held pursuant subsection (2). The record shall be prepared and
8 transcribed in accordance with section 86 of the administrative
9 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
10 ~~being section 24.286 of the Michigan Compiled Laws 1969 PA 306, MCL~~
11 **24.286**. Upon notification of the filing of a petition for judicial
12 review pursuant to section 80194 and not less than 10 days before
13 the matter is set for review, the hearing officer shall transmit to
14 the court in which the petition is filed the original or a
15 certified copy of the official record of the proceedings. The
16 parties to the proceedings for judicial review may stipulate that
17 the record be shortened. A party unreasonably refusing to stipulate
18 to a shortened record may be taxed by the court in which the
19 petition is filed for the additional costs. The court may permit
20 subsequent corrections to the record.

21 (4) After a hearing, if the person who requested the hearing
22 does not prevail, the secretary of state shall order that the
23 person not operate a vessel on the waters of this state for ~~6~~
24 ~~months~~ **1 YEAR** or, for a second or subsequent refusal within 7
25 years, for ~~1 year~~ **2 YEARS**. The person may file a petition in the
26 circuit court of the county in which the arrest was made to review
27 the order as provided in section 80194. If after the hearing the

1 person who requested the hearing prevails, the peace officer who
2 filed the report under section 80188 may, with the consent of the
3 prosecuting attorney, file a petition in the circuit court of the
4 county in which the arrest was made to review the determination of
5 the hearing officer as provided in section 80194.

6 Enacting section 1. This amendatory act takes effect January
7 1, 2008.