

HOUSE BILL No. 4722

May 8, 2007, Introduced by Reps. Nitz, Ball, Proos, Shaffer, Meekhof, Meadows, Vagnozzi and Stakoe and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 80101, 80171, 80176, 80180, 80181, 80183, 80184, 80187, and 80190 (MCL 324.80101, 324.80171, 324.80176, 324.80180, 324.80181, 324.80183, 324.80184, 324.80187, and 324.80190), section 80101 as amended by 2004 PA 547, sections 80171, 80181, and 80190 as added by 1995 PA 58, section 80176 as amended by 2001 PA 12, and sections 80180, 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~~ **DESCRIBED** in section
 5 80147, or of operating a vessel while under the influence of
 6 ~~intoxicating~~ **ALCOHOLIC** liquor or narcotic drugs, **OR WITH ANY AMOUNT**
 7 **OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212**
 8 **OF THE 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, **OR HAS IN HIS OR HER BODY ANY AMOUNT**
10 **OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212**
11 **OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
12 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
13 **DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA**
14 **368, MCL 333.7214.**

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

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

25 (4) A person who operates a vessel on the waters of this state
26 under the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a
27 controlled substance, or both, or with a blood alcohol content of

1 ~~0.10~~**0.08** grams or more per 100 milliliters of blood, per 210
 2 liters of breath, or per 67 milliliters of urine, **OR HAS IN HIS OR**
 3 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**
 4 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
 5 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**
 6 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A) (iv) OF THE PUBLIC**
 7 **HEALTH CODE, 1978 PA 368, MCL 333.7214,** and by the operation of
 8 that vessel causes the death of another person is guilty of a
 9 felony, punishable by imprisonment for not more than 15 years, or a
 10 fine of not less than \$2,500.00 or more than \$10,000.00, or both.

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

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

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

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

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

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

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

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

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

6 ~~—— (i) Subdural hemorrhage or subdural hematoma.~~

7 Sec. 80180. (1) A peace officer, without a warrant, may arrest
8 a person if the peace officer has reasonable cause to believe that
9 the person was, at the time of an accident, the operator of a
10 vessel involved in the accident in this state while in violation of
11 section 80176(1), (3), (4), or (5) or a local ordinance
12 substantially corresponding to section 80176(1) or (3).

13 (2) A peace officer who has reasonable cause to believe that a
14 person was operating a vessel on the waters of this state, and
15 that, by the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor, the
16 person may have affected his or her ability to operate a vessel,
17 may require the person to submit to a preliminary chemical breath
18 analysis. The following apply with respect to a preliminary
19 chemical breath analysis:

20 (a) Only a peace officer who has successfully completed a
21 training course taught by a state-certified instructor in the
22 administration of the preliminary chemical breath analysis may
23 administer that test.

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

26 (c) The results of a preliminary chemical breath analysis are
27 admissible in a criminal prosecution for a crime described in

1 section 80187(1) or in an administrative hearing solely to assist
2 the court or hearing officer in determining a challenge to the
3 validity of an arrest. This subdivision does not limit the
4 introduction of other competent evidence offered to establish the
5 validity of an arrest.

6 (d) A person who submits to a preliminary chemical breath
7 analysis remains subject to the requirements of sections 80187 to
8 80190 for the purposes of chemical tests described in those
9 sections.

10 (e) A person who refuses to submit to a preliminary chemical
11 breath analysis upon a lawful request by a peace officer is
12 responsible for a state civil infraction and may be ordered to pay
13 a civil fine of not more than \$100.00.

14 (3) A peace officer making an arrest under this part shall
15 take measures to assure that the vessel and its occupants are
16 safely returned to shore.

17 (4) If, within 60 days after the issuance of a citation for a
18 state civil infraction under this section, the person to whom the
19 citation is issued is not charged with a violation of section
20 80176(1), (3), (4), or (5) or a local ordinance substantially
21 corresponding to section 80176(1) or (3), the citation issued for
22 the state civil infraction is void. Upon application of the person
23 to whom the citation is issued, money paid by the person as a fine,
24 costs, or otherwise shall be immediately returned.

25 Sec. 80181. (1) The following apply with respect to a chemical
26 test and analysis of a person's blood, urine, or breath, other than
27 a preliminary chemical breath analysis:

1 (a) The amount of alcohol or presence of a controlled
2 substance, or both, in an operator's blood at the time alleged as
3 shown by chemical analysis of the person's blood, urine, or breath
4 is admissible into evidence in any civil or criminal proceeding **AND**
5 **IS PRESUMED TO BE THE SAME AS AT THE TIME THE PERSON OPERATED THE**
6 **VESSEL.**

7 (b) A person arrested for a crime described in section
8 80187(1) shall be advised of all of the following:

9 (i) That if the person takes a chemical test of his or her
10 blood, urine, or breath administered at the request of a peace
11 officer, the person has the right to demand that someone of the
12 person's own choosing administer 1 of the chemical tests; that the
13 results of the test are admissible in a judicial proceeding as
14 provided under this part and shall be considered with other
15 competent evidence in determining the innocence or guilt of the
16 defendant; and that the person is responsible for obtaining a
17 chemical analysis of a test sample obtained pursuant to the
18 person's own request.

19 (ii) That if the person refuses the request of a peace officer
20 to take a test described in subparagraph (i), the test shall not be
21 given without a court order, but the peace officer may seek to
22 obtain such a court order.

23 (iii) That the person's refusal of the request of a peace
24 officer to take a test described in subparagraph (i) will result in
25 issuance of an order that the person not operate a vessel on the
26 waters of this state for at least 6 months.

27 (2) A sample or specimen of urine or breath shall be taken and

1 collected in a reasonable manner. Only a licensed physician, or a
2 licensed nurse or medical technician under the direction of a
3 licensed physician, qualified to withdraw blood and acting in a
4 medical environment, may withdraw blood at the request of a peace
5 officer for the purpose of determining the amount of alcohol or
6 presence of a controlled substance, or both, in a person's blood,
7 as provided in this subsection. A qualified person who withdraws or
8 analyzes blood, or assists in the withdrawal or analysis, in
9 accordance with this part is not liable for a crime or civil
10 damages predicated on the act of withdrawing or analyzing blood and
11 related procedures unless the withdrawal or analysis is performed
12 in a negligent manner.

13 (3) A rule relating to a chemical test for alcohol or a
14 controlled substance promulgated under the Michigan vehicle code,
15 ~~Act No. 300 of the Public Acts of 1949, being sections 257.1 to~~
16 ~~257.923 of the Michigan Compiled Laws 1949 PA 300, MCL 257.1 TO~~
17 **257.923**, applies to a chemical test administered under this part.

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

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

4 (2) If a chemical test described in sections 80181 and 80182
5 is administered, the results of the test shall be made available to
6 the person charged or the person's attorney upon written request to
7 the prosecution, with a copy of the request filed with the court.
8 The prosecution shall furnish the results at least 2 days before
9 the day of the trial. The results of the test shall be offered as
10 evidence by the prosecution in that trial. Failure to fully comply
11 with the request bars the admission of the results into evidence by
12 the prosecution.

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

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

24 ~~—— (b) If at the time defendant had an alcohol content of more~~
25 ~~than 0.07 grams but less than 0.10 grams per 100 milliliters of~~
26 ~~blood, per 210 liters of breath, or per 67 milliliters of urine, it~~
27 ~~shall be presumed that the defendant's ability to operate a vessel~~

1 ~~was impaired within the provisions of section 80176(3) due to the~~
2 ~~consumption of intoxicating liquor.~~

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

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

13 Sec. 80187. (1) A person who operates a vessel on the waters
14 of this state is considered to have given consent to chemical tests
15 of his or her blood, breath, or urine for the purpose of
16 determining the amount of alcohol or presence of a controlled
17 substance, or both, in his or her blood in all of the following
18 circumstances:

19 (a) The person is arrested for a violation of section
20 80176(1), (3), (4), or (5), or a local ordinance substantially
21 corresponding to section 80176(1) or (3).

22 (b) The person is arrested for negligent homicide,
23 manslaughter, or murder resulting from the operation of a vessel,
24 and the peace officer had reasonable grounds to believe that the
25 person was operating the vessel while impaired by, or under the
26 influence of, ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled
27 substance, or both, or while having a blood alcohol content of ~~0.10~~

1 0.08 grams or more per 100 milliliters of blood, per 210 liters of
2 breath, or per 67 milliliters of urine **OR WHILE HAVING IN HIS OR**
3 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**
4 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
5 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**
6 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A) (iv) OF THE PUBLIC**
7 **HEALTH CODE, 1978 PA 368, MCL 333.7214.**

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 80181 and 80182.

14 Sec. 80190. (1) If a person who refuses to submit to a
15 chemical test ~~pursuant to~~ **UNDER** section 80181 or 80182 does not
16 request a hearing within 14 days of the date of notice pursuant to
17 section 80189, the secretary of state shall issue an order that the
18 person not operate a vessel on the waters of this state for ~~6~~
19 ~~months~~ **1 YEAR** or, for a second or subsequent refusal within 7
20 years, for ~~1 year~~ **2 YEARS**.

21 (2) If a hearing is requested, the secretary of state shall
22 hold the hearing in the same manner and under the same conditions
23 as provided in section 322 of the Michigan vehicle code, ~~Act No.~~
24 ~~300 of the Public Acts of 1949, being section 257.322 of the~~
25 ~~Michigan Compiled Laws 1949 PA 300, MCL 257.322.~~ A person shall not
26 order a hearing officer to make a particular finding on any issue
27 enumerated under subdivisions (a) to (d). Not less than 5 days'

1 notice of the hearing shall be mailed to the person requesting the
2 hearing, to the peace officer who filed the report under section
3 80188, and, if the prosecuting attorney requests receipt of the
4 notice, to the prosecuting attorney of the county where the arrest
5 was made. The hearing officer may administer oaths, issue subpoenas
6 for the attendance of necessary witnesses, and grant a reasonable
7 request for an adjournment. Not more than 1 adjournment shall be
8 granted to a party, and the length of an adjournment shall not
9 exceed 14 days. A hearing under this subsection shall be scheduled
10 to be held within 45 days after the date of arrest and, except for
11 delay attributable to the unavailability of the defendant, a
12 witness, or material evidence or to an interlocutory appeal or
13 exceptional circumstances, but not for delay attributable to docket
14 congestion, shall be finally adjudicated within 77 days after the
15 date of arrest. The hearing shall cover only the following issues:

16 (a) Whether the peace officer had reasonable grounds to
17 believe that the person had committed a crime described in section
18 80187(1).

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

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

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

25 (3) The hearing officer shall make a record of proceedings
26 held pursuant subsection (2). The record shall be prepared and
27 transcribed in accordance with section 86 of the administrative

1 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
2 ~~being section 24.286 of the Michigan Compiled Laws 1969 PA 306, MCL~~
3 **24.286**. Upon notification of the filing of a petition for judicial
4 review ~~pursuant to~~ **UNDER** section 80194 and not less than 10 days
5 before the matter is set for review, the hearing officer shall
6 transmit to the court in which the petition is filed the original
7 or a certified copy of the official record of the proceedings. The
8 parties to the proceedings for judicial review may stipulate that
9 the record be shortened. A party unreasonably refusing to stipulate
10 to a shortened record may be taxed by the court in which the
11 petition is filed for the additional costs. The court may permit
12 subsequent corrections to the record.

13 (4) After a hearing, if the person who requested the hearing
14 does not prevail, the secretary of state shall order that the
15 person not operate a vessel on the waters of this state for ~~6~~
16 ~~months~~ **1 YEAR** or, for a second or subsequent refusal within 7
17 years, for ~~1 year~~ **2 YEARS**. The person may file a petition in the
18 circuit court of the county in which the arrest was made to review
19 the order as provided in section 80194. If after the hearing the
20 person who requested the hearing prevails, the peace officer who
21 filed the report under section 80188 may, with the consent of the
22 prosecuting attorney, file a petition in the circuit court of the
23 county in which the arrest was made to review the determination of
24 the hearing officer as provided in section 80194.

25 Enacting section 1. This amendatory act takes effect January
26 1, 2008.