

HOUSE BILL No. 4789

May 17, 2007, Introduced by Reps. Scott, Bieda, Condino, Hood, Angerer, Vagnozzi, Jackson, Kathleen Law, LeBlanc, Bauer, Alma Smith, Lahti, Clemente, Cheeks, Polidori, Hune, Rick Jones and Johnson and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 81101, 81134, 81136, 81137, 81141, and 81144 (MCL 324.81101, 324.81134, 324.81136, 324.81137, 324.81141, and 324.81144), section 81101 as amended by 2004 PA 587, section 81134 as amended by 2001 PA 12, sections 81136 and 81141 as amended by 1996 PA 175, and sections 81137 and 81144 as added by 1995 PA 58; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81101. As used in this part:

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

4 (B) ~~(a)~~"ATV" means a 3- or 4-wheeled vehicle designed for

1 off-road use that has low-pressure tires, has a seat designed to be
2 straddled by the rider, and is powered by a 50cc to 500cc gasoline
3 engine or an engine of comparable size using other fuels.

4 (C) ~~(b)~~—"Code" means the Michigan vehicle code, 1949 PA 300,
5 MCL 257.1 to 257.923.

6 (D) ~~(e)~~—"Dealer" means a person engaged in the sale, lease, or
7 rental of an ORV as a regular business or, for purposes of selling
8 licenses under section 81116, any other person authorized by the
9 department to sell licenses or permits, or both, under this act.

10 (E) ~~(d)~~—"Designated", unless the context implies otherwise,
11 means posted open for ORV use with appropriate signs by the
12 department.

13 (F) ~~(e)~~—"Forest road" means a hard surfaced road, gravel or
14 dirt road, or other route capable of travel by a 2-wheel drive, 4-
15 wheel conventional vehicle designed for highway use, except an
16 interstate, state, or county highway.

17 (G) ~~(f)~~—"Forest trail" means a designated path or way capable
18 of travel only by a vehicle less than 50 inches in width.

19 (H) ~~(g)~~—"Highway" means the entire width between the boundary
20 lines of a way publicly maintained when any part of the way is open
21 to the use of the public for purposes of vehicular travel.

22 (I) ~~(h)~~—"Highly restricted personal information" means an
23 individual's photograph or image, social security number, digitized
24 signature, and medical and disability information.

25 (J) ~~(i)~~—"Late model ORV" means an ORV manufactured in the
26 current model year or the 5 model years immediately preceding the
27 current model year.

1 **(K)** ~~(j)~~—"Manufacturer" means a person, partnership,
2 corporation, or association engaged in the production and
3 manufacture of ORVs as a regular business.

4 **(L)** ~~(k)~~—"Off-road vehicle account" means the off-road vehicle
5 account of the Michigan conservation and recreation legacy fund
6 provided for in section 2015.

7 **(M)** ~~(l)~~—"Operate" means to ride in or on, and be in actual
8 physical control of, the operation of an ORV.

9 **(N)** ~~(m)~~—"Operator" means a person who operates or is in actual
10 physical control of the operation of an ORV.

11 **(O)** ~~(n)~~—"ORV" or "vehicle" means a motor driven off-road
12 recreation vehicle capable of cross-country travel without benefit
13 of a road or trail, on or immediately over land, snow, ice, marsh,
14 swampland, or other natural terrain. ORV or vehicle includes, but
15 is not limited to, a multitrack or multiwheel drive vehicle, an
16 ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle,
17 an amphibious machine, a ground effect air cushion vehicle, or
18 other means of transportation deriving motive power from a source
19 other than muscle or wind. ORV or vehicle does not include a
20 registered snowmobile, a farm vehicle being used for farming, a
21 vehicle used for military, fire, emergency, or law enforcement
22 purposes, a vehicle owned and operated by a utility company or an
23 oil or gas company when performing maintenance on its facilities or
24 on property over which it has an easement, a construction or
25 logging vehicle used in performance of its common function, or a
26 registered aircraft.

27 **(P)** ~~(o)~~—"Owner" means any of the following:

1 (i) A vendee or lessee of an ORV which is the subject of an
2 agreement for the conditional sale or lease of the ORV, with the
3 right of purchase upon performance of the conditions stated in the
4 agreement, and with an immediate right of possession vested in the
5 conditional vendee or lessee.

6 (ii) A person renting an ORV, or having the exclusive use of an
7 ORV, for more than 30 days.

8 (iii) A person who holds legal ownership of an ORV.

9 (Q) ~~(p)~~—"Person with disabilities" means a person who has 1 or
10 more of the following physical characteristics:

11 (i) Blindness.

12 (ii) Inability to ambulate more than 200 feet without having to
13 stop and rest during any time of the year.

14 (iii) Loss of use of 1 or both legs or feet.

15 (iv) Inability to ambulate without the prolonged use of a
16 wheelchair, walker, crutches, braces, or other device required to
17 aid mobility.

18 (v) A lung disease from which the person's expiratory volume
19 for 1 second, when measured by spirometry, is less than 1 liter, or
20 from which the person's arterial oxygen tension is less than 60
21 mm/hg of room air at rest.

22 (vi) A cardiovascular disease from which the person measures
23 between 3 and 4 on the New York heart classification scale, or from
24 which a marked limitation of physical activity causes fatigue,
25 palpitation, dyspnea, or anginal pain.

26 (vii) Other diagnosed disease or disorder including, but not
27 limited to, severe arthritis or a neurological or orthopedic

1 impairment that creates a severe mobility limitation.

2 (R) ~~(q)~~—"Personal information" means information that
3 identifies an individual, including an individual's driver
4 identification number, name, address not including zip code, and
5 telephone number, but does not include information on ORV operation
6 or equipment-related violations or civil infractions, operator or
7 vehicle registration status, accidents, or other behaviorally-
8 related information.

9 (S) ~~(r)~~—"Public agency" means the department or a local or
10 federal unit of government.

11 (T) ~~(s)~~—"Roadway" means that portion of a highway improved,
12 designated, or ordinarily used for vehicular travel. If a highway
13 includes 2 or more separate roadways, the term roadway refers to a
14 roadway separately, but not to all roadways collectively.

15 (U) ~~(t)~~—"Route" means a forest road or other road that is
16 designated for purposes of this part by the department.

17 (V) ~~(u)~~—"Safety chief instructor" means a person who has been
18 certified by a nationally recognized ATV and ORV organization to
19 certify instructors and to do on-sight evaluations of instructors.

20 (W) ~~(v)~~—"Visual supervision" means the direct observation of
21 the operator with the unaided or normally corrected eye, where the
22 observer is able to come to the immediate aid of the operator.

23 Sec. 81134. (1) A person ~~who~~ **SHALL NOT OPERATE AN ORV IF ANY**
24 **OF THE FOLLOWING APPLY:**

25 (A) **THE PERSON** is under the influence of ~~intoxicating~~
26 **ALCOHOLIC** liquor or a controlled substance, as defined by section
27 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a

1 combination of intoxicating liquor and a controlled substance.
2 ~~shall not operate an ORV.~~

3 (B) ~~(2) A~~ **THE** person ~~who~~ has an 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. ~~shall not operate an ORV.~~

6 (C) **THE PERSON HAS IN HIS OR HER BODY 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.**

12 (2) ~~(3)~~ **The owner or person in charge or in control of an ORV**
13 **shall not authorize or knowingly permit the ORV to be operated by a**
14 **person who** **IF ANY OF THE FOLLOWING APPLY:**

15 (A) **THE PERSON** is under the influence of ~~intoxicating~~
16 **ALCOHOLIC** liquor or a controlled substance or a combination of
17 ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled substance.

18 (B) **THE PERSON HAS A BLOOD ALCOHOL CONTENT OF 0.08 GRAMS OR**
19 **MORE PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER**
20 **67 MILLILITERS OF URINE.**

21 (C) **THE PERSON'S ABILITY TO OPERATE AN ORV IS VISIBLY IMPAIRED**
22 **DUE TO THE CONSUMPTION OF AN ALCOHOLIC LIQUOR, A CONTROLLED**
23 **SUBSTANCE, OR A COMBINATION OF AN ALCOHOLIC LIQUOR AND A CONTROLLED**
24 **SUBSTANCE.**

25 (3) **A PERSON SHALL NOT OPERATE AN ORV IF, DUE TO THE**
26 **CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, AS DEFINED**
27 **BY SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**

1 333.7104, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED
2 SUBSTANCE, THE PERSON'S ABILITY TO OPERATE AN ORV IS VISIBLY
3 IMPAIRED. IF A PERSON IS CHARGED WITH VIOLATING SUBSECTION (1), A
4 FINDING OF GUILTY IS PERMISSIBLE UNDER THIS SUBSECTION.

5 (4) Except as otherwise provided in this section, a person who
6 is convicted of a violation of subsection (1) ~~, (2),~~ or (3) is
7 guilty of a misdemeanor ~~punishable by imprisonment for not more~~
8 than 93 days ~~or a fine of not less than \$100.00 or more than~~
9 \$500.00, or both, together with costs of the prosecution. As part
10 of the sentence for a violation of subsection (1), ~~or (2),~~ the
11 court shall order the person convicted not to operate an ORV for a
12 period of not less than 6 months or more than 2 years. **AS PART OF**
13 **THE SENTENCE FOR A VIOLATION OF SUBSECTION (3), THE COURT SHALL**
14 **ORDER THE PERSON CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF**
15 **NOT LESS THAN 93 DAYS OR MORE THAN 1 YEAR.**

16 (5) On a second conviction under subsection (1) or ~~(2)~~ (3) or
17 a local ordinance substantially corresponding to subsection (1) or
18 ~~(2)~~ (3) within a period of 7 years, a person is guilty of a
19 misdemeanor ~~punishable by imprisonment for not more than 1 year~~ ~~or~~
20 or a fine of not more than \$1,000.00, or both. As part of the
21 sentence **FOR A VIOLATION OF SUBSECTION (1),** the court shall order
22 the person convicted not to operate an ORV for a period of not less
23 than 1 year or more than 2 years. **AS PART OF THE SENTENCE FOR A**
24 **VIOLATION OF SUBSECTION (3), THE COURT SHALL ORDER THE PERSON**
25 **CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6**
26 **MONTHS OR MORE THAN 18 MONTHS.**

27 (6) On a third or subsequent conviction within a ~~ANY~~ period of

1 ~~10~~ years under subsection (1) or ~~(2)~~ **(3)** or a local ordinance
 2 substantially corresponding to subsection (1) or ~~(2)~~ **(3)**, a person
 3 is guilty of a felony and shall be sentenced to imprisonment for
 4 not less than 1 year or more than 5 years ~~,~~ or a fine of not less
 5 than \$500.00 or more than ~~\$5,000~~ **\$5,000.00**, or both. As part of the
 6 sentence **FOR A VIOLATION OF SUBSECTION (1)**, the court shall order
 7 the person convicted not to operate an ORV for a period of not less
 8 than 1 year or more than 2 years. **AS PART OF THE SENTENCE FOR A**
 9 **VIOLATION OF SUBSECTION (3), THE COURT SHALL ORDER THE PERSON**
 10 **CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1**
 11 **YEAR OR MORE THAN 2 YEARS.**

12 (7) A person who operates an ORV in violation of subsection
 13 (1) or ~~(2)~~ ~~or section 81135~~ **(3)** and by the operation of that ORV
 14 causes the death of another person is guilty of a felony punishable
 15 by imprisonment for not more than 15 years or a fine of not less
 16 than \$2,500.00 or more than \$10,000.00, or both.

17 (8) A person who operates an ORV within this state in
 18 violation of subsection (1) or ~~(2)~~ ~~or section 81135~~ **(3)** and by the
 19 operation of that ORV causes a serious impairment of a body
 20 function of another person is guilty of a felony punishable by
 21 imprisonment for not more than 5 years or a fine of not less than
 22 \$1,000.00 or more than \$5,000.00, or both. As used in this
 23 subsection, "serious impairment of a body function" ~~includes, but~~
 24 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**
 25 **DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
 26 **MCL 257.58C.**

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

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

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

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

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

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

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

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

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

10 (9) A PERSON WHO IS CONVICTED OF VIOLATING SUBSECTION (2) IS
 11 GUILTY OF A CRIME AS FOLLOWS:

12 (A) EXCEPT AS PROVIDED IN SUBDIVISIONS (B) AND (C), A
 13 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR
 14 A FINE OF NOT LESS THAN \$100.00 OR MORE THAN \$500.00, OR BOTH.

15 (B) IF THE PERSON OPERATING THE ORV VIOLATED SUBSECTION (7), A
 16 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
 17 FINE OF NOT LESS THAN \$1,500.00 OR MORE THAN \$5,000.00, OR BOTH.

18 (C) IF THE PERSON OPERATING THE ORV VIOLATED SUBSECTION (8), A
 19 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A
 20 FINE OF NOT LESS THAN \$1,000.00 OR MORE THAN \$5,000.00, OR BOTH.

21 (10) ~~(9)~~As part of the sentence for a violation of subsection
 22 (1), ~~or~~ (2), OR (3) or a local ordinance substantially
 23 corresponding to subsection (1), ~~or~~ (2), OR (3), the court may
 24 order the person to perform service to the community, as designated
 25 by the court, without compensation, for a period not to exceed 12
 26 days. The person shall reimburse the state or appropriate local
 27 unit of government for the cost of insurance incurred by the state

1 or local unit of government as a result of the person's activities
2 under this subsection.

3 (11) ~~(10)~~—Before imposing sentence for a violation of
4 subsection (1) or ~~(2)~~—(3) or a local ordinance substantially
5 corresponding to subsection (1) or ~~(2)~~—(3), the court shall order
6 the person to undergo screening and assessment by a person or
7 agency designated by the office of substance abuse services, to
8 determine whether the person is likely to benefit from
9 rehabilitative services, including alcohol or drug education and
10 alcohol or drug treatment programs. As part of the sentence, the
11 court may order the person to participate in and successfully
12 complete 1 or more appropriate rehabilitative programs. The person
13 shall pay for the costs of the screening, assessment, and
14 rehabilitative services.

15 (12) ~~(11)~~—Before accepting a plea of guilty under this
16 section, the court shall advise the accused of the statutory
17 consequences possible as the result of a plea of guilty in respect
18 to suspension of the person's right to operate an ORV and the
19 penalty imposed for violation of this section.

20 (13) ~~(12)~~—Each municipal judge and each clerk of a court of
21 record shall keep a full record of every case in which a person is
22 charged with a violation of this section. The municipal judge or
23 clerk of the court of record shall prepare and immediately forward
24 to the secretary of state an abstract of the court of record for
25 each case charging a violation of this section.

26 Sec. 81136. (1) In a criminal prosecution for violating
27 section 81134 ~~or 81135~~ or a local ordinance substantially

1 corresponding to section 81134, ~~or 81135,~~ or in a criminal
2 prosecution for negligent homicide or manslaughter resulting from
3 the operation of an ORV while the operator is alleged to have been
4 impaired by or under the influence of ~~intoxicating~~ **ALCOHOLIC** liquor
5 or a controlled substance or a combination of ~~intoxicating~~
6 **ALCOHOLIC** liquor and a controlled substance, or to have had a blood
7 alcohol content of ~~0.10~~ **0.08** grams or more per 100 milliliters of
8 blood, per 210 liters of breath, or per 67 milliliters of urine,
9 the amount of alcohol in the operator's blood at the time alleged
10 as shown by chemical analysis of the operator's blood, urine, or
11 breath ~~shall be~~ **IS** admissible into evidence.

12 (2) If a chemical test of an operator's blood, urine, or
13 breath is given, the results of the test shall be made available to
14 the person charged with an offense enumerated in subsection (1) or
15 the person's attorney upon written request to the prosecution, with
16 a copy of the request filed with the court. The prosecution shall
17 furnish the report at least 2 days before the day of the trial and
18 the results shall be offered as evidence by the prosecution in a
19 criminal proceeding. Failure to fully comply with the request ~~shall~~
20 ~~bar~~ **BARS** the admission of the results into evidence by the
21 prosecution.

22 ~~— (3) Except in a prosecution relating solely to a violation of~~
23 ~~section 81134(2), the amount of alcohol in the operator's blood at~~
24 ~~the time alleged as shown by chemical analysis of the operator's~~
25 ~~blood, urine, or breath shall give rise to the following~~
26 ~~presumptions:~~

27 ~~— (a) If at the time the operator had an alcohol content of 0.07~~

1 ~~grams or less per 100 milliliters of blood, per 210 liters of~~
2 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~
3 ~~the operator was not under the influence of intoxicating liquor.~~

4 ~~—— (b) If at the time the operator had an alcohol content of more~~
5 ~~than 0.07 grams but less than 0.10 grams per 100 milliliters of~~
6 ~~blood, per 210 liters of breath, or per 67 milliliters of urine, it~~
7 ~~shall be presumed that the operator's ability to operate an ORV was~~
8 ~~impaired within the provisions of section 81135 due to the~~
9 ~~consumption of intoxicating liquor.~~

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

14 (3) ~~(4)~~—A sample or specimen of urine or breath shall be taken
15 and collected in a reasonable manner. Only a licensed physician, or
16 a licensed nurse or medical technician under the direction of a
17 licensed physician and qualified to withdraw blood acting in a
18 medical environment, at the request of a peace officer, may
19 withdraw blood for the purpose of determining the alcoholic content
20 of the blood under this part. Liability for a crime or civil
21 damages predicated on the act of withdrawing blood and related
22 procedures shall not attach to a qualified person who withdraws
23 blood or assists in the withdrawal in accordance with this part
24 unless the withdrawal is performed in a negligent manner.

25 (4) ~~(5)~~—A person arrested for a crime enumerated in subsection
26 (1) who takes a chemical test administered at the request of a
27 peace officer, as provided in this part, shall be given a

1 reasonable opportunity to have a person of his or her own choosing
2 administer 1 of the chemical tests described in this section within
3 a reasonable time after his or her detention, and the results of
4 the test shall be admissible and shall be considered with other
5 competent evidence in determining the defendant's innocence or
6 guilt of a crime enumerated in subsection (1). If the person
7 arrested is administered a chemical test by a person of his or her
8 own choosing, the person arrested shall be responsible for
9 obtaining a chemical analysis of the test sample. The person shall
10 be informed that he or she has the right to demand that a person of
11 his or her choosing administer 1 of the chemical tests described in
12 this section, that the results of the test shall be admissible and
13 shall be considered with other competent evidence in determining
14 the innocence or guilt of the defendant, and that the person
15 arrested shall be responsible for obtaining a chemical analysis of
16 the test sample.

17 (5) ~~(6)~~—A person arrested shall be advised that if the person
18 refuses the request of a peace officer to take a test described in
19 this section, a test shall not be given without a court order. The
20 person arrested shall also be advised that the person's refusal of
21 the request of a peace officer to take a test described in this
22 section shall result in the suspension of the person's right to
23 operate an ORV.

24 (6) ~~(7)~~—This section shall not be construed as limiting the
25 introduction of any other competent evidence bearing upon the
26 question of whether or not the defendant was impaired by or under
27 the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled

1 substance, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a
2 controlled substance ~~—~~ or whether the person had a blood alcohol
3 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood,
4 per 210 liters of breath, or per 67 milliliters of urine.

5 (7) ~~(8)~~—If a jury instruction regarding a defendant's refusal
6 to submit to a chemical test under this section is requested by the
7 prosecution or the defendant, the jury instruction shall be given
8 as follows:

9 "Evidence was admitted in this case which, if believed by the
10 jury, could prove that the defendant had exercised his or her right
11 to refuse a chemical test. You are instructed that such a refusal
12 is within the statutory rights of the defendant and is not evidence
13 of the defendant's guilt. You are not to consider such a refusal in
14 determining the guilt or innocence of the defendant."

15 (8) ~~(9)~~—If after an accident the operator of an ORV involved
16 in the accident is transported to a medical facility and a sample
17 of the operator's blood is withdrawn at that time for the purpose
18 of medical treatment, the results of a chemical analysis of that
19 sample shall be admissible in a criminal prosecution for a crime
20 described in subsection (1) to show the amount of alcohol or
21 presence of a controlled substance, or both, in the person's blood
22 at the time alleged, regardless of whether the person had been
23 offered or had refused a chemical test. The medical facility or
24 person performing the chemical analysis shall disclose the results
25 of the analysis to a prosecuting attorney who requests the results
26 for use in a criminal prosecution as provided in this subsection. A
27 medical facility or person disclosing information in compliance

1 with this subsection ~~shall~~**IS** not ~~be~~ civilly or criminally liable
2 for making the disclosure.

3 (9) ~~(10)~~—If after an accident the operator of an ORV involved
4 in the accident is deceased, a sample of the decedent's blood shall
5 be withdrawn in a manner directed by the medical examiner for the
6 purpose of determining blood alcohol content or presence of a
7 controlled substance, or both. The medical examiner shall give the
8 results of the chemical analysis to the law enforcement agency
9 investigating the accident, and that agency shall forward the
10 results to the department of state police.

11 Sec. 81137. (1) Except as provided in subsection (2), a person
12 who operates an ORV is considered to have given consent to chemical
13 tests of his or her blood, breath, or urine for the purpose of
14 determining the amount of alcohol or presence of a controlled
15 substance or both in his or her blood, and may be requested by a
16 peace officer to submit to chemical tests of his or her blood,
17 breath, or urine for the purpose of determining the amount of
18 alcohol or presence of a controlled substance or both in his or her
19 blood if:

20 (a) The person is arrested for a violation of section 81134(1)
21 or (2) or 81135 or a local ordinance substantially corresponding to
22 section 81134(1) or (2) or 81135.

23 (b) The person is arrested for negligent homicide or
24 manslaughter resulting from the operation of an ORV, and the peace
25 officer has reasonable grounds to believe that the person was
26 operating the ORV while impaired by or under the influence of
27 ~~intoxicating~~**ALCOHOLIC** liquor, a controlled substance, or a

1 combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled
2 substance.

3 (2) A person who is afflicted with hemophilia, diabetes, or a
4 condition requiring the use of an anticoagulant under the direction
5 of a physician ~~shall~~ **IS** not ~~be~~ considered to have given consent to
6 the withdrawal of blood.

7 Sec. 81141. (1) A peace officer who has reasonable cause to
8 believe that a person was operating an ORV and that the person by
9 the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor may have affected
10 his or her ability to operate the ORV, may require the person to
11 submit to a preliminary chemical breath analysis.

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

14 (3) The results of a preliminary chemical breath analysis
15 ~~shall be~~ **ARE** admissible in a criminal prosecution for a crime
16 enumerated in section 81136(1) or in an administrative hearing held
17 under section 81140, solely to assist the court or hearing officer
18 in determining a challenge to the validity of an arrest. This
19 subsection does not limit the introduction of other ~~competent~~
20 **RELEVANT** evidence offered to establish the validity of an arrest.

21 (4) A person who submits to a preliminary chemical breath
22 analysis ~~shall remain~~ **REMAINS** subject to the requirements of
23 sections 81136, 81137, 81138, 81139, and 81140 for the purposes of
24 chemical tests described in those sections.

25 (5) A person who refuses to submit to a preliminary chemical
26 breath analysis upon a lawful request by a peace officer is
27 responsible for a state civil infraction and may be ordered to pay

1 a civil fine of not more than \$100.00.

2 Sec. 81144. If a peace officer has reasonable cause to believe
3 that a person was, at the time of an accident, the operator of an
4 ORV involved in the accident and was operating the ORV while under
5 the influence of an ~~intoxicating~~**ALCOHOLIC** liquor, a controlled
6 substance as defined in section 7104 of the public health code, ~~Act~~
7 ~~No. 368 of the Public Acts of 1978, being section 333.7104 of the~~
8 ~~Michigan Compiled Laws 1978 PA 368, MCL 333.7104~~, or a combination
9 of ~~intoxicating~~**ALCOHOLIC** liquor and a controlled substance, or was
10 operating the ORV while his or her ability to operate an ORV was
11 impaired due to the consumption of ~~intoxicating~~**ALCOHOLIC** liquor, a
12 controlled substance, or a combination of ~~intoxicating~~**ALCOHOLIC**
13 liquor and a controlled substance, the peace officer may arrest the
14 alleged operator of the ORV without a warrant.

15 Enacting section 1. Section 81135 of the natural resources and
16 environmental protection act, 1994 PA 451, MCL 324.81135, is
17 repealed.

18 Enacting section 2. This amendatory act takes effect January
19 1, 2008.