

HOUSE BILL No. 4441

March 13, 2013, Introduced by Rep. Lori and referred to the Committee on Criminal Justice.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 80101, 80102, 80104, 80171, 80176, 80177, 80178, 80180, 80183, 80184, 80186, 80187, and 80190 (MCL 324.80101, 324.80102, 324.80104, 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 2012 PA 120, sections 80102, 80171, 80186, and 80190 as added by 1995 PA 58, section 80104 as amended by 2012 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, and by adding sections 80178a and 80178b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 80101. As used in this part:

1 (a) "Airboat" means a motorboat that is propelled, wholly or
2 in part, by a propeller projecting above the water surface.

3 (B) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION
4 1D OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1D.

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

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

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

13 (ii) Repair or improvement of an original or replacement
14 system, part, or component.

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

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

18 (E) ~~(d)~~—"Boat" means a vessel.

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

21 (G) ~~(f)~~—"Boating safety certificate" means any of the
22 following:

23 (i) The document issued by the department under part 802 that
24 certifies that the individual named in the document has
25 successfully completed a boating safety course and passed an
26 examination approved and administered as required under section
27 80212.

1 (ii) A document issued by the United States coast guard
2 auxiliary or United States power squadron that certifies that the
3 individual named in the document has successfully completed a
4 United States coast guard auxiliary course concerning boating
5 safety.

6 (iii) A written rental agreement provided to an individual named
7 in the rental agreement entered into under section 44522 only on
8 the date or dates indicated on the rental agreement while the named
9 individual is operating a personal watercraft leased, hired, or
10 rented from a boat livery.

11 (H) ~~(g)~~-"Boating safety course" means a course that meets both
12 of the following requirements:

13 (i) Provides instruction on the safe operation of a personal
14 watercraft that meets or exceeds the minimum course content for
15 boating or personal watercraft education established by the
16 national association of state boating law administrators education
17 committee (October 1996), a province of the commonwealth of Canada,
18 or another country.

19 (ii) Is approved by the department.

20 (I) ~~(h)~~-"Controlled substance" means that term as defined in
21 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

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

27 Sec. 80102. As used in this part:

1 (a) "Dealer" means a person and an authorized representative
2 of that person who annually purchases from a manufacturer, or who
3 is engaged in selling or manufacturing, 6 or more vessels that
4 require certificates of number under this part.

5 (b) "Identification document" means any of the following:

6 (i) A valid Michigan operator's or chauffeur's license.

7 (ii) A valid driver's or chauffeur's license issued by an
8 agency, department, or bureau of the United States or another
9 state.

10 (iii) An official identification card issued by an agency,
11 department, or bureau of the United States, this state, or another
12 state.

13 (iv) An official identification card issued by a political
14 subdivision of this state or another state.

15 (c) "Issuing authority" means the United States coast guard or
16 a state that has a numbering system approved by the United States
17 coast guard.

18 (d) "Law of another state" means a law or ordinance enacted by
19 ~~another state or by a local unit of government in another state.~~ **ANY**
20 **OF THE FOLLOWING:**

21 (i) **ANOTHER STATE.**

22 (ii) **A LOCAL UNIT OF GOVERNMENT IN ANOTHER STATE.**

23 (iii) **CANADA OR A PROVINCE OR TERRITORY OF CANADA.**

24 (iv) **A LOCAL UNIT OF GOVERNMENT IN A PROVINCE OR TERRITORY OF**
25 **CANADA.**

26 (e) "Lifeboat" means a small boat designated and used solely
27 for lifesaving purposes, and does not include a dinghy, tender,

1 speedboat, or other type of craft that is not carried aboard a
2 vessel for lifesaving purposes.

3 (f) "Long-term incapacitating injury" means an injury that
4 causes serious impairment of a body function.

5 Sec. 80104. As used in this part:

6 (a) "Highly restricted personal information" means an
7 individual's photograph or image, social security number, digitized
8 signature, and medical and disability information.

9 (b) "Passenger" means a person carried on board, attached to,
10 or towed by a vessel, other than the operator.

11 (c) "Peace officer" means any of the following:

12 (i) A sheriff.

13 (ii) A sheriff's deputy.

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

17 (iv) A village or township marshal.

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

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

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

22 (d) "Personal information" means information that identifies
23 an individual, including an individual's driver identification
24 number, name, address not including zip code, and telephone number,
25 but does not include information on watercraft operation and
26 equipment-related violations or civil infractions, operator or
27 vehicle registration status, accidents, or other behaviorally-

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 1 related information.

2 (e) "Personal watercraft" means ~~[a vessel that meets all of the~~
 3 ~~following requirements:~~

4 ~~— (i) Uses a motor driven propeller or an internal combustion~~
 5 ~~engine powering a water jet pump as its primary source of~~
 6 ~~propulsion.~~

7 ~~— (ii) Is designed without an open load carrying area that would~~
 8 ~~retain water.~~

9 ~~— (iii) Is designed to be operated by 1 or more persons positioned~~
 10 ~~on, rather than within, the confines of the hull. THAT TERM AS DEFINED~~
 11 ~~IN 40 CFR 1045.801.]~~

12 (f) "Political subdivision" means any county, metropolitan
 13 authority, municipality, or combination of those entities in this
 14 state. If a body of water is located in more than 1 political
 15 subdivision, all of the subdivisions shall act individually in
 16 order to comply with this part, except that if the problem is
 17 confined to a specific area of the body of water, only the
 18 political subdivision in which the problem waters lie shall act.

19 (g) "Port" means left, and reference is to the port side of a
 20 vessel or to the left side of the vessel.

21 (H) "PRIOR CONVICTION" MEANS A CONVICTION FOR ANY OF THE
 22 FOLLOWING, WHETHER UNDER A LAW OF THIS STATE, A LOCAL ORDINANCE
 23 SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE, A LAW OF THE
 24 UNITED STATES SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE,
 25 OR A LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A LAW OF
 26 THIS STATE:

27 (i) A VIOLATION OR AN ATTEMPTED VIOLATION OF SECTION 80176(1),
 (3), (4), (5), (6), OR (7), EXCEPT THAT ONLY 1 VIOLATION OR

1 ATTEMPTED VIOLATION OF SECTION 80176(6), A LOCAL ORDINANCE
2 SUBSTANTIALLY CORRESPONDING TO SECTION 80176(6), OR A LAW OF
3 ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO SECTION 80176(6), OR A
4 LAW OF THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO SECTION
5 80176(6) MAY BE USED AS A PRIOR CONVICTION OTHER THAN FOR
6 ENHANCEMENT PURPOSES AS PROVIDED IN SECTION 80178A(1)(B).

7 (ii) NEGLIGENT HOMICIDE, MANSLAUGHTER, OR MURDER RESULTING FROM
8 THE OPERATION OF A VESSEL OR AN ATTEMPT TO COMMIT ANY OF THOSE
9 CRIMES.

10 (iii) FORMER SECTION 73, 73B, OR 171(1) OF THE MARINE SAFETY
11 ACT.

12 (I) ~~(h)~~—"Probate court or family division disposition" means
13 the entry of a probate court order of disposition or family
14 division order of disposition for a child found to be within the
15 provisions of chapter XIIA of the probate code of 1939, 1939 PA
16 288, MCL 712A.1 to 712A.32.

17 (J) ~~(i)~~—"Prosecuting attorney", except as the context requires
18 otherwise, means the attorney general, the prosecuting attorney of
19 a county, or the attorney representing a political subdivision of
20 government.

21 (K) ~~(j)~~—"Regatta", "boat race", "marine parade", "tournament",
22 or "exhibition" means an organized water event of limited duration
23 that is conducted according to a prearranged schedule.

24 (L) ~~(k)~~—"Slow-no wake speed" means a very slow speed whereby
25 the wake or wash created by the vessel would be minimal.

26 (M) ~~(l)~~—"Starboard" means right, and reference is to the
27 starboard side of a vessel or to the right side of the vessel.

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1 (N) ~~(m)~~—"State aid" means payment made by the state to a
2 county for the conduct of a marine safety program.

3 (O) ~~(n)~~—"Undocumented vessel" means a vessel that does not
4 have, and is not required to have, a valid marine document issued
5 by the United States coast guard or federal agency successor to the
6 United States coast guard.

7 (P) ~~(o)~~—"Uniform inspection decal" means an adhesive-backed
8 sticker created by the department that is color-coded to indicate
9 the year that it expires and is attached to a vessel in the manner
10 prescribed for decals in section 80122 when a peace officer
11 inspects and determines that the vessel complies with this part.

12 (Q) ~~(p)~~—"Use" means operate, navigate, or employ.

13 (R) ~~(q)~~—"Vessel" means every description of watercraft used or
14 capable of being used as a means of transportation on water.

15 (S) ~~(r)~~—"Waters of this state" means any waters within the
16 territorial limits of this state, and includes those waters of the
17 Great Lakes that are under the jurisdiction of this state.

18 (T) ~~(s)~~—"Waterways account" means the waterways account
19 established in section 2035.

20 Sec. 80171. Unless otherwise specified under this part, a
21 violation of this part or rules promulgated under this part is a
22 misdemeanor. A political subdivision having adopted a local
23 ordinance in conformity with this part may provide that any
24 violation of the ordinance is a misdemeanor. Any person convicted
25 of reckless operation of a vessel as defined in section 80147, or
26 of operating a ~~vessel~~ **MOTORBOAT** while under the influence of
~~intoxicating~~

27 **ALCOHOLIC** liquor or narcotic drugs, **OR WITH ANY AMOUNT OF A**

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1 CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE
 2 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE
 3 PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE
 4 DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA
 5 368, MCL 333.7214, IN HIS OR HER BODY, in addition to any other
 6 penalty, may be refused by the court having jurisdiction of the
 7 violation the right of operating any [~~vessel~~-MOTORBOAT] on any of the
 waters of
 8 this state for a period of not more than 2 years.

9 Sec. 80176. (1) A person shall not operate a [~~vessel~~-MOTORBOAT] on
 the

10 waters of this state if ~~either~~-ANY of the following ~~applies~~-APPLY:

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

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

16 (C) THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A
 17 CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE
 18 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE
 19 PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE
 20 DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA
 21 368, MCL 333.7214.

22 (2) The owner of a [~~vessel~~-MOTORBOAT] or a person in charge or in
 control

23 of a [~~vessel~~-MOTORBOAT] shall not authorize or knowingly permit the
 [~~vessel~~-MOTORBOAT] to

24 be operated on the waters of this state by a person ~~who~~-IF ANY OF
 25 THE FOLLOWING APPLY:

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

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

4 **(C) THE PERSON'S ABILITY TO OPERATE THE [MOTORBOAT] IS VISIBLY**
5 **IMPAIRED DUE TO THE CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED**
6 **SUBSTANCE, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED**
7 **SUBSTANCE.**

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

16 (4) A person who operates a [~~vessel~~**MOTORBOAT**] on the waters of
17 this state
18 ~~under the influence of intoxicating liquor or a controlled~~
19 ~~substance, or both, or with a blood alcohol content of 0.10 grams~~
20 ~~or more per 100 milliliters of blood, per 210 liters of breath, or~~
21 ~~per 67 milliliters of urine, **IN VIOLATION OF SUBSECTION (1) OR (3)**~~
22 and by the operation of that [~~vessel~~**MOTORBOAT**] causes the death of
23 another
24 person is guilty of a felony, punishable by imprisonment for not
25 more than 15 years, or a fine of not less than \$2,500.00 or more
26 than \$10,000.00, or both.

27 (5) A person who operates a [~~vessel~~**MOTORBOAT**] on the waters of
this state
~~under the influence of intoxicating liquor or a controlled~~
~~substance, or both, or with a blood alcohol content of 0.10 grams~~
~~or more per 100 milliliters of blood, per 210 liters of breath, or~~
~~per 67 milliliters of urine, **IN VIOLATION OF SUBSECTION (1) OR (3)**~~

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1 and by the operation of that [~~vessel~~**MOTORBOAT**] causes a serious impairment of

2 a body function of another person is guilty of a felony, punishable
3 by imprisonment for not more than 5 years, or a fine of not less
4 than \$1,000.00 or more than \$5,000.00, or both. As used in this
5 subsection, "serious impairment of a body function" ~~includes, but~~
6 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**
7 **DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
8 **MCL 257.58C.**

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

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

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

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

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

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

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

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

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

19 (6) A PERSON WHO IS LESS THAN 21 YEARS OF AGE, WHETHER
20 LICENSED OR NOT, SHALL NOT OPERATE A [**MOTORBOAT**] ON THE WATERS OF THIS
21 STATE IF THE PERSON HAS ANY BODILY ALCOHOL CONTENT. AS USED IN THIS
22 SUBSECTION, "ANY BODILY ALCOHOL CONTENT" MEANS EITHER OF THE
23 FOLLOWING:

24 (A) AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN
25 0.08 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,
26 OR PER 67 MILLILITERS OF URINE.

27 (B) ANY PRESENCE OF ALCOHOL WITHIN A PERSON'S BODY RESULTING

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1 FROM THE CONSUMPTION OF ALCOHOLIC LIQUOR, OTHER THAN CONSUMPTION OF
 2 ALCOHOLIC LIQUOR AS A PART OF A GENERALLY RECOGNIZED RELIGIOUS
 3 SERVICE OR CEREMONY.

4 (7) A PERSON, WHETHER LICENSED OR NOT, IS SUBJECT TO THE
 5 FOLLOWING REQUIREMENTS:

6 (A) HE OR SHE SHALL NOT OPERATE A [MOTORBOAT] IN VIOLATION OF
 7 SUBSECTION (1), (3), (4), OR (5) WHILE ANOTHER PERSON WHO IS LESS
 8 THAN 16 YEARS OF AGE IS OCCUPYING THE [MOTORBOAT].

9 (B) HE OR SHE SHALL NOT OPERATE A [MOTORBOAT] IN VIOLATION OF
 10 SUBSECTION (6) WHILE ANOTHER PERSON WHO IS LESS THAN 16 YEARS OF
 11 AGE IS OCCUPYING THE [MOTORBOAT].

[(8) AS USED IN THIS SECTION, "OPERATE" MEANS TO BE IN CONTROL OF A
 VESSEL PROPELLED WHOLLY OR IN PART BY MACHINERY WHILE THE VESSEL IS
 UNDERWAY AND IS NOT DOCKED, AT ANCHOR, IDLE, OR OTHERWISE SECURED.]

12 Sec. 80177. (1) If a person is convicted of violating section
 13 80176(1), the following apply:

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

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

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

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

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

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

26 (ii) Imprisonment for not less than 48 consecutive hours or
 27 more than 1 year, and may be sentenced to community service for not

1 more than 90 days.

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

8 (2) A term of imprisonment imposed under ~~subdivision (b) (ii)~~
9 **SUBSECTION (1) (B) (ii)** shall not be suspended. A person sentenced to
10 perform service to the community under this section shall not
11 receive compensation and shall reimburse the state or appropriate
12 local unit of government for the cost of supervision incurred by
13 the state or local unit of government as a result of the person's
14 activities in that service.

15 (3) In addition to the sanctions prescribed under subsection
16 (1) and section 80176(4) and (5), the court may, ~~pursuant to~~ **UNDER**
17 the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69,
18 order the person to pay the costs of the prosecution. The court
19 shall also impose sanctions under sections 80185 and 80186.

20 (4) A person who is convicted of violating section 80176(2) is
21 guilty of a misdemeanor, punishable by imprisonment for not more
22 than 93 days, or a fine of not less than \$100.00 or more than
23 \$500.00, or both.

24 ~~— (5) As used in this section, "prior conviction" means a~~
25 ~~conviction for a violation of any of the following:~~

26 ~~— (a) Section 80176(1), (4), or (5).~~

27 ~~— (b) Former section 171(1), (4), or (5) of the marine safety~~

1 act.

2 ~~—— (c) Former section 73 of the marine safety act.~~

3 ~~—— (d) A local ordinance substantially corresponding to section~~
 4 ~~80176(1) or former section 73 of the marine safety act.~~

5 ~~—— (e) A law of another state substantially corresponding to~~
 6 ~~section 80176(1), (4), or (5) or former section 73 of the marine~~
 7 ~~safety act.~~

8 Sec. 80178. (1) If a person is convicted of violating section
 9 80176(3), the following apply:

10 (a) Except as otherwise provided in subdivisions (b) and (c),
 11 the person is guilty of a misdemeanor punishable by 1 or more of
 12 the following:

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

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

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

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

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

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

25 (c) If the violation occurs ~~within 10 years of~~ **AFTER** 2 or more
 26 prior convictions **REGARDLESS OF THE NUMBER OF YEARS THAT HAVE**
 27 **ELAPSED SINCE ANY PRIOR CONVICTION**, the person shall be sentenced

1 to both a fine of not less than \$200.00 or more than \$1,000.00, and
2 either of the following:

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

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

8 (2) In addition to the sanctions prescribed in subsection (1),
9 the court may, ~~pursuant to~~ **UNDER** the code of criminal procedure,
10 1927 PA 175, MCL 760.1 to 777.69, order the person to pay the costs
11 of the prosecution. The court shall also impose sanctions under
12 sections 80185 and 80186.

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

18 ~~—— (4) As used in this section, "prior conviction" means a~~
19 ~~conviction for a violation of any of the following:~~

20 ~~—— (a) Section 80176(1), (3), (4), or (5).~~

21 ~~—— (b) Former section 171(1) of the marine safety act.~~

22 ~~—— (c) Former section 73 of the marine safety act.~~

23 ~~—— (d) Former section 73b of the marine safety act.~~

24 ~~—— (e) A local ordinance substantially corresponding to section~~
25 ~~80176(1), former section 73 of the marine safety act, or former~~
26 ~~section 73b of the marine safety act.~~

27 ~~—— (f) A law of another state substantially corresponding to~~

1 ~~section 80176(1), (3), (4), or (5), former section 73 of the marine~~
2 ~~safety act, or former section 73b of the marine safety act.~~

3 SEC. 80178A. (1) IF A PERSON IS CONVICTED OF VIOLATING SECTION
4 80176(6), ALL OF THE FOLLOWING APPLY:

5 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), THE
6 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR BOTH OF THE
7 FOLLOWING:

8 (i) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

9 (ii) A FINE OF NOT MORE THAN \$250.00.

10 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF 1 OR MORE PRIOR
11 CONVICTIONS, INCLUDING A PRIOR CONVICTION FOR SECTION 80176(6), THE
12 PERSON MAY BE SENTENCED TO 1 OR MORE OF THE FOLLOWING:

13 (i) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

14 (ii) A FINE OF NOT MORE THAN \$500.00.

15 (iii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

16 (2) IN ADDITION TO IMPOSING THE SANCTIONS PRESCRIBED UNDER
17 THIS SECTION, THE COURT MAY ORDER THE PERSON TO PAY THE COSTS OF
18 THE PROSECUTION UNDER THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
19 MCL 760.1 TO 777.69.

20 (3) A PERSON SENTENCED TO PERFORM COMMUNITY SERVICE UNDER THIS
21 SECTION SHALL NOT RECEIVE COMPENSATION AND SHALL REIMBURSE THE
22 STATE OR APPROPRIATE LOCAL UNIT OF GOVERNMENT FOR THE COST OF
23 SUPERVISION INCURRED BY THE STATE OR LOCAL UNIT OF GOVERNMENT AS A
24 RESULT OF THE PERSON'S ACTIVITIES IN THAT SERVICE.

25 SEC. 80178B. (1) A PERSON WHO VIOLATES SECTION 80176(7)(A) IS
26 GUILTY OF A CRIME PUNISHABLE AS FOLLOWS:

27 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), A PERSON WHO

1 VIOLATES SECTION 80176(7) (A) IS GUILTY OF A MISDEMEANOR AND SHALL
2 BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$200.00 OR MORE THAN
3 \$1,000.00 AND TO 1 OR MORE OF THE FOLLOWING:

4 (i) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
5 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED
6 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

7 (ii) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN
8 90 DAYS.

9 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
10 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE
11 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A
12 PERSON WHO VIOLATES SECTION 80176(7) (A) IS GUILTY OF A FELONY AND
13 SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$500.00 OR MORE
14 THAN \$5,000.00 AND TO EITHER OF THE FOLLOWING:

15 (i) IMPRISONMENT UNDER THE JURISDICTION OF THE DEPARTMENT OF
16 CORRECTIONS FOR NOT LESS THAN 1 YEAR OR MORE THAN 5 YEARS.

17 (ii) PROBATION WITH IMPRISONMENT IN THE COUNTY JAIL FOR NOT
18 LESS THAN 30 DAYS OR MORE THAN 1 YEAR AND COMMUNITY SERVICE FOR NOT
19 LESS THAN 60 DAYS OR MORE THAN 180 DAYS. NOT LESS THAN 48 HOURS OF
20 THIS IMPRISONMENT SHALL BE SERVED CONSECUTIVELY. THIS TERM OF
21 IMPRISONMENT SHALL NOT BE SUSPENDED.

22 (2) A PERSON WHO VIOLATES SECTION 80176(7) (B) IS GUILTY OF A
23 MISDEMEANOR PUNISHABLE AS FOLLOWS:

24 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), A PERSON WHO
25 VIOLATES SECTION 80176(7) (B) MAY BE SENTENCED TO 1 OR MORE OF THE
26 FOLLOWING:

27 (i) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

1 (ii) A FINE OF NOT MORE THAN \$500.00.

2 (iii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

3 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
4 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE
5 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A
6 PERSON WHO VIOLATES SECTION 80176(7)(B) SHALL BE SENTENCED TO PAY A
7 FINE OF NOT LESS THAN \$200.00 OR MORE THAN \$1,000.00 AND TO 1 OR
8 MORE OF THE FOLLOWING:

9 (i) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
10 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED
11 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

12 (ii) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN
13 90 DAYS.

14 (3) IN ADDITION TO IMPOSING THE SANCTIONS PRESCRIBED UNDER
15 THIS SECTION, THE COURT MAY ORDER THE PERSON TO PAY THE COSTS OF
16 THE PROSECUTION UNDER THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
17 MCL 760.1 TO 777.69.

18 (4) A PERSON SENTENCED TO PERFORM COMMUNITY SERVICE UNDER THIS
19 SECTION SHALL NOT RECEIVE COMPENSATION AND SHALL REIMBURSE THE
20 STATE OR APPROPRIATE LOCAL UNIT OF GOVERNMENT FOR THE COST OF
21 SUPERVISION INCURRED BY THE STATE OR LOCAL UNIT OF GOVERNMENT AS A
22 RESULT OF THE PERSON'S ACTIVITIES IN THAT SERVICE.

23 Sec. 80180. (1) A peace officer, without a warrant, may arrest
24 a person if the peace officer has reasonable cause to believe that
25 the person was, at the time of an accident, the operator of a
26 vessel involved in the accident in this state while in violation of
27 section 80176(1), (3), (4), ~~or~~(5), (6), OR (7) or a local

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1 ordinance substantially corresponding to section 80176(1), ~~or~~(3),
2 OR (6).

3 (2) A peace officer who has reasonable cause to believe that a
4 person was operating a [~~vessel~~MOTORBOAT] on the waters of this state,
and
5 that, by the consumption of ~~intoxicating~~ALCOHOLIC liquor, the
6 person may have affected his or her ability to operate a [~~vessel~~
MOTORBOAT],
7 may require the person to submit to a preliminary chemical breath
8 analysis. The following apply with respect to a preliminary
9 chemical breath analysis:

10 (a) Only a peace officer who has successfully completed a
11 training course taught by a state-certified instructor in the
12 administration of the preliminary chemical breath analysis may
13 administer that test.

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

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

23 (d) A person who submits to a preliminary chemical breath
24 analysis remains subject to the requirements of sections 80187 to
25 80190 for the purposes of chemical tests described in those
26 sections.

27 (e) A person who refuses to submit to a preliminary chemical

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1 breath analysis upon a lawful request by a peace officer is
 2 responsible for a state civil infraction and may be ordered to pay
 3 a civil fine of not more than \$500.00.

4 (3) A peace officer making an arrest under this part shall
 5 take measures to assure that the [~~vessel~~MOTORBOAT] and its occupants are
 6 safely returned to shore.

7 (4) If, not more than 60 days after the issuance of a citation
 8 for a state civil infraction under this section, the person to whom
 9 the citation is issued is not charged with a violation of section
 10 80176(1), (3), (4), ~~or~~(5), (6), OR (7) or a local ordinance
 11 substantially corresponding to section 80176(1), ~~or~~(3), OR (6),
 12 the citation issued for the state civil infraction is void. Upon
 13 application of the person to whom the citation is issued, money
 14 paid by the person as a fine, costs, or otherwise shall be
 15 immediately returned.

16 Sec. 80183. (1) The provisions of sections 80181 and 80182
 17 relating to chemical testing do not limit the introduction of any
 18 other competent evidence bearing upon the question of whether or
 19 not a person was impaired by, or under the influence of,
 20 ~~intoxicating~~ALCOHOLIC liquor or a controlled substance, or both,
 21 or whether the person had a blood alcohol content of ~~0.10~~0.08
 22 grams or more per 100 milliliters of blood, per 210 liters of
 23 breath, or per 67 milliliters of urine, **OR WHETHER THE PERSON HAD**
 24 **ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER**
 25 **SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,**
 26 **OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED**
 27 **SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH**

1 CODE, 1978 PA 368, MCL 333.7214, IN HIS OR HER BODY.

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

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

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

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

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

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

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

22 (a) For a conviction under section 80176(4) or (5), the court
23 shall order with no expiration date that the person not operate a
24 ~~[vessel~~ **MOTORBOAT** on the waters of this state.

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

27 (i) If the court finds that the person has no prior convictions

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1 within 7 years, ~~for a violation of section 80176(1), (3), (4), or~~
 2 ~~(5), former section 171(1), (3), (4), or (5), or another boating~~
 3 ~~[substance abuse offense, or that the person has 1 prior conviction~~
 4 ~~within 7 years,]~~ ~~for a violation of section 80176(3); former section~~
 5 ~~171(3) of the marine safety act; former section 73b of the marine~~
 6 ~~safety act; a local ordinance substantially corresponding to~~
 7 ~~section 80176(3) or former section 73b of the marine safety act; or~~
 8 ~~a law of another state substantially corresponding to section~~
 9 ~~80176(3) or former section 73b of the marine safety act, the court~~
 10 may order that the person not operate a [vessel-MOTORBOAT] on the waters
 of
 11 this state for not less than 1 year or more than 2 years.

12 (ii) If the court finds that the person has 1 or more prior
 13 convictions within 7 years, ~~for a violation of section 80176(1),~~
 14 ~~(3), (4), or (5); former section 73 of the marine safety act; a~~
 15 ~~local ordinance substantially corresponding to section 80176(1) or~~
 16 ~~former section 73 of the marine safety act; or a law of another~~
 17 ~~state substantially corresponding to section 80176(1), (4), or (5)~~
 18 ~~or former section 73 of the marine safety act, the court shall~~
 19 order that the person not operate a [vessel-MOTORBOAT] on the waters of
 this
 20 state for not less than 2 years.

21 (iii) If the court finds that the person has 2 or more prior
 22 convictions within 10 years, ~~for a violation of section 80176(1),~~
 23 ~~(3), (4), or (5) or former section 171(1), (3), (4), or (5) or~~
 24 ~~another boating substance abuse offense, the court shall order with~~
 25 no expiration date that the person not operate a [vessel-MOTORBOAT] on
 the
 26 waters of this state.

27 (c) For a conviction under section 80176(3) or a local

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1 ordinance substantially corresponding to section 80176(3):

2 (i) If the court finds that the convicted person has no prior
3 conviction within 7 years, ~~for a violation of section 80176(1),~~
4 ~~(3), (4), or (5) or former section 171(1), (3), (4), or (5) or~~
5 ~~another boating substance abuse offense,~~ the court may order that
6 the person not operate a ~~[vessel-MOTORBOAT]~~ on the waters of this state
for not
7 less than 6 months or more than 1 year.

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

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

20 ~~—— (2) As used in this section, "another boating substance abuse~~
21 ~~offense" means former section 73 or 73b of the marine safety act, a~~
22 ~~local ordinance substantially corresponding to section 80176(1) or~~
23 ~~(3) or former section 73 or 73b of the marine safety act, or a law~~
24 ~~of another state substantially corresponding to section 80176(1),~~
25 ~~(3), (4), or (5) or former section 73 or 73b of the marine safety~~
26 ~~act.~~

27 Sec. 80187. (1) A person who operates a ~~[vessel-MOTORBOAT]~~ on the
waters

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1 of this state is considered to have given consent to chemical tests
 2 of his or her blood, breath, or urine for the purpose of
 3 determining the amount of alcohol or presence of a controlled
 4 substance, or both, in his or her blood in all of the following
 5 circumstances:

6 (a) The person is arrested for a violation of section
 7 80176(1), (3), (4), ~~or~~(5), (6), OR (7), or a local ordinance
 8 substantially corresponding to section 80176(1), ~~or~~(3), OR (6).

9 (b) The person is arrested for negligent homicide,
 10 manslaughter, or murder resulting from the operation of a [~~vessel~~
 11 ~~MOTORBOAT~~],
 12 and the peace officer had reasonable grounds to believe that the
 13 person was operating the [~~vessel~~~~MOTORBOAT~~] while impaired by, or under
 14 the
 15 influence of, intoxicating liquor or a controlled substance, or
 16 both, or while having a blood alcohol content of 0.10 grams or more
 17 per 100 milliliters of blood, per 210 liters of breath, or per 67
 18 milliliters of urine **IN VIOLATION OF SECTION 80176.**

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

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

25 Sec. 80190. (1) If a person who refuses to submit to a
 26 chemical test ~~pursuant to~~ **UNDER** section 80181 or 80182 does not
 27 request a hearing within 14 days of the date of notice ~~pursuant to~~
UNDER section 80189, the secretary of state shall issue an order
 that the person not operate a [~~vessel~~~~MOTORBOAT~~] on the waters of this
 state

1 for ~~6 months~~ **1 YEAR** or, for a second or subsequent refusal within 7
2 years, for ~~1 year~~ **2 YEARS**.

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

25 (a) Whether the peace officer had reasonable grounds to
26 believe that the person had committed a crime described in section
27 80187(1).

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

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

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

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

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

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

7 [
8]