

Act No. 174
Public Acts of 1996
Approved by the Governor
April 18, 1996
Filed with the Secretary of State
April 18, 1996

STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996

Introduced by Reps. Jersevic, Dalman, Cropsey, Lowe, Nye, Ryan, Bush and Galloway

ENROLLED HOUSE BILL No. 5547

AN ACT to amend sections 80142, 80176, 80180, 80183, 80184, and 80187 of Act No. 451 of the Public Acts of 1994, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," as added by Act No. 58 of the Public Acts of 1995, being sections 324.80142, 324.80176, 324.80180, 324.80183, 324.80184, and 324.80187 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 80142, 80176, 80180, 80183, 80184, and 80187 of Act No. 451 of the Public Acts of 1994, as added by Act No. 58 of the Public Acts of 1995, being sections 324.80142, 324.80176, 324.80180, 324.80183, 324.80184, and 324.80187 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 80142. (1) Except as provided in subsection (3), a person shall not operate a vessel on the waters of this state unless each person in an open deck area on board the vessel who is less than 6 years of age is wearing a type I or type II personal flotation device as described in R 281.1234 of the Michigan administrative code.

(2) A parent or guardian of a child less than 6 years of age who accompanies that child on board a vessel that is not a charter boat described in subsection (3) shall ensure that the child is wearing a personal flotation device that complies with this section.

(3) This section does not apply to a charter boat bearing either of the following:

(a) A valid certificate of inspection issued by the United States coast guard that verifies the charter boat's compliance with subchapter H or subchapter T of the code of federal regulations, 46 C.F.R. 70.01-1 to 80.40 and 175.01-1 to 185.30-30.

(b) A valid certificate of inspection issued by the department for a class C vessel that is greater than 45 feet in length.

(4) As used in this section, "charter boat" and "class C vessel" mean those terms as defined in section 44501.

(5) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

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

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

(b) The person has 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.

(2) The owner of a vessel or a person in charge or in control of a vessel shall not authorize or knowingly permit the vessel to be operated on the waters of this state by a person who is under the influence of intoxicating liquor or a controlled substance, or both, or who has 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.

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

(4) A person who operates a vessel 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, and by the operation of that vessel causes the death of another person is guilty of a felony, punishable by imprisonment for not more than 15 years, or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A person who operates a vessel 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, and by the operation of that vessel causes a long-term incapacitating injury to another person is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

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

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

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

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

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

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

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

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

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

Sec. 80183. (1) The provisions of sections 80181 and 80182 relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or whether the person had 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.

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

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

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

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

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

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

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

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

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a vessel, and the peace officer had reasonable grounds to believe that the person was operating the vessel while impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or while having 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.

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

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

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.