

Act No. 175
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. Lowe, Cropsey, Fitzgerald, Dalman, Nye, Ryan, Bush and Jersevic

ENROLLED HOUSE BILL No. 5548

AN ACT to amend sections 81109, 81134, 81136, 81141, and 81147 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 324.81109, 324.81134, 324.81136, 324.81141, and 324.81147 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 81109, 81134, 81136, 81141, and 81147 of Act No. 451 of the Public Acts of 1994, as added by Act No. 58 of the Public Acts of 1995, being sections 324.81109, 324.81134, 324.81136, 324.81141, and 324.81147 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 81109. (1) The purchaser or other transferee of an ORV subject to the titling provisions of this part shall, except as provided in subsection (2), make application to the department of state for issuance of a certificate of title to the ORV. The application shall be filed within 15 days after the date of purchase or transfer.

(2) A dealer selling ORVs at retail, within 15 days after delivering an ORV to a retail purchaser, shall make application for issuance of an ORV certificate of title in the purchaser's name. The purchaser of the ORV shall sign the application and other papers necessary to enable the dealer to secure the title from the department of state. If the ORV was not previously titled, the application shall be accompanied by a manufacturer's certificate of origin.

(3) At the request of the applicant, the department of state shall process an application for an ORV certificate of title on an expedited basis.

(4) An application filed with the department of state pursuant to this section shall be accompanied by the fee or fees prescribed in section 81110.

(5) Beginning January 1, 1992, 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. 81134. (1) A person who is under the influence of intoxicating liquor or a controlled substance, as defined by section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance shall not operate an ORV.

(2) A person who has 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 shall not operate an ORV.

(3) The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person who is under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance.

(4) Except as otherwise provided in this section, a person who is convicted of a violation of subsection (1), (2), or (3) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution. As part of the sentence for a violation of subsection (1) or (2), the court shall order the person convicted not to operate an ORV for a period of not less than 6 months or more than 2 years.

(5) On a second conviction under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2) within a period of 7 years, a person is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(6) On a third or subsequent conviction within a period of 10 years under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), a person is guilty of a felony. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(7) As part of the sentence for a violation of subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

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

(9) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of this section.

Sec. 81136. (1) In a criminal prosecution for violating section 81134 or 81135 or a local ordinance substantially corresponding to section 81134 or 81135, or in a criminal prosecution for negligent homicide or manslaughter resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or to have 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, the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath shall be admissible into evidence.

(2) If a chemical test of an operator's blood, urine, or breath is given, the results of the test shall be made available to the person charged with an offense enumerated in subsection (1) 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 report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

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

(a) If at the time the operator 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 operator was not under the influence of intoxicating liquor.

(b) If at the time the operator 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 operator's ability to operate an ORV was impaired within the provisions of section 81135 due to the consumption of intoxicating liquor.

(c) If at the time the operator 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 operator was under the influence of intoxicating liquor.

(4) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the alcoholic content of the blood under this part. Liability for a crime or civil damages predicated on the

act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or assists in the withdrawal in accordance with this part unless the withdrawal is performed in a negligent manner.

(5) A person arrested for a crime enumerated in subsection (1) who takes a chemical test administered at the request of a peace officer, as provided in this part, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the defendant's innocence or guilt of a crime enumerated in subsection (1). If the person arrested is administered a chemical test by a person of his or her own choosing, the person arrested shall be responsible for obtaining a chemical analysis of the test sample. The person shall be informed that he or she has the right to demand that a person of his or her choosing administer 1 of the chemical tests described in this section, that the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant, and that the person arrested shall be responsible for obtaining a chemical analysis of the test sample.

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

(7) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, 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.

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

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

(9) If after an accident the operator of an ORV involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime described in subsection (1) to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

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

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

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

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

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

(5) 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.

Sec. 81147. (1) Except as otherwise provided in this part, a person who violates a provision of this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$50.00 or more than \$1,000.00, or both, for each violation of the part.

(2) A person who violates sections 81105, 81107, 81115, 81116, 81121, 81130, and 81133(b), (c), (d), (f), (g), (h), (j), (l), and (m) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(3) A person shall not remove, deface, or destroy a sign or marker placed by the department indicating the boundaries of an ORV trail or area or that marks a route.

(4) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.

(5) The department or any other peace officer may impound the ORV of a person who violates a provision of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.

(6) Upon conviction of a person for violation of a provision of this part that is punishable as a misdemeanor or any other provision of this part that results in damage to the particular area in which the ORV was used, a court of competent jurisdiction may order an ORV and any personal property on the ORV seized as a result of the violation returned to the owner or upon recommendation of the local prosecuting attorney turned over to the department. If the ORV and any other property is turned over to the department, they shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the department under this subsection shall first be used to restore areas damaged by ORV use with the balance to be deposited in the ORV trail improvement fund.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.