

SUBSTITUTE FOR  
HOUSE BILL NO. 5131

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 80101, 80171, 80176, 80180, 80183, 80184, 80187, and 80190 (MCL 324.80101, 324.80171, 324.80176, 324.80180, 324.80183, 324.80184, 324.80187, and 324.80190), sections 80101, 80171, and 80190 as added by 1995 PA 58, section 80176 as amended by 2001 PA 12, and sections 80180, 80183, 80184, and 80187 as amended by 1996 PA 174.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 80101. As used in this part:

2       **(a) "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)~~ "Anchored rafts" means all types of nonpowered**  
5 **rafts used for recreational purposes that are anchored seasonally**  
6 **on waters of this state.**

1           **(c)** ~~-(b)-~~ "Associated equipment" means any of the following  
2 that are not radio equipment:

3           *(i)* An original system, part, or component of a boat at the  
4 time that boat was manufactured, or a similar part or component  
5 manufactured or sold for replacement.

6           *(ii)* Repair or improvement of an original or replacement  
7 system, part, or component.

8           *(iii)* An accessory or equipment for, or appurtenance to, a  
9 boat.

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

12          **(d)** ~~-(e)-~~ "Boat" means a vessel.

13          **(e)** ~~-(d)-~~ "Boat livery" means a business that holds a vessel  
14 for renting, leasing, or chartering.

15          **(f)** ~~-(e)-~~ "Controlled substance" means that term as defined  
16 in section 7104 of the public health code, ~~Act No. 368 of the~~  
17 ~~Public Acts of 1978, being section 333.7104 of the Michigan~~  
18 ~~Compiled Laws~~ **1978 PA 368, MCL 333.7104.**

19          **(g)** ~~-(f)-~~ "Conviction" means a final conviction, the payment  
20 of a fine, a plea of guilty or nolo contendere if accepted by the  
21 court, a finding of guilt, or a probate court disposition on a  
22 violation of this part, regardless of whether the penalty is  
23 rebated or suspended.

24          Sec. 80171. Unless otherwise specified under this part, a  
25 violation of this part or rules promulgated under this part is a  
26 misdemeanor. A political subdivision having adopted a local  
27 ordinance in conformity with this part may provide that any

1 violation of the ordinance is a misdemeanor. Any person  
2 convicted of reckless operation of a vessel as defined in section  
3 80147, or of operating a vessel while under the influence of  
4 ~~intoxicating~~ **alcoholic** liquor or narcotic drugs, **or with any**  
5 **amount of a controlled substance listed in schedule 1 under**  
6 **section 7212 of the public health code, 1978 PA 368, MCL**  
7 **333.7212, or a rule promulgated under that section, or of a**  
8 **controlled substance described in section 7214(a)(iv) of the**  
9 **public health code, 1978 PA 368, MCL 333.7214, in his or her**  
10 **body,** in addition to any other penalty, may be refused by the  
11 court having jurisdiction of the violation the right of operating  
12 any vessel on any of the waters of this state for a period of not  
13 more than 2 years.

14 Sec. 80176. (1) A person shall not operate a vessel on the  
15 waters of this state if ~~either~~ **any** of the following ~~applies~~  
16 **apply:**

17 (a) The person is under the influence of ~~intoxicating~~  
18 **alcoholic** liquor or a controlled substance, or both.

19 (b) The person has a blood alcohol content of ~~0.10~~ **0.08**  
20 grams or more per 100 milliliters of blood, per 210 liters of  
21 breath, or per 67 milliliters of urine.

22 (c) **The person has in his or her body any amount of a**  
23 **controlled substance listed in schedule 1 under section 7212 of**  
24 **the public health code, 1978 PA 368, MCL 333.7212, or a rule**  
25 **promulgated under that section, or of a controlled substance**  
26 **described in section 7214(a)(iv) of the public health code, 1978**  
27 **PA 368, MCL 333.7214.**

1           (2) The owner of a vessel or a person in charge or in control  
2 of a vessel shall not authorize or knowingly permit the vessel to  
3 be operated on the waters of this state by a person ~~who~~ **if any**  
4 **of the following apply:**

5           **(a) The person** is under the influence of ~~intoxicating~~  
6 **alcoholic** liquor or a controlled substance, or both. ~~, or who~~

7           **(b) The person** has a blood alcohol content of ~~0.10~~ **0.08**  
8 grams or more per 100 milliliters of blood, per 210 liters of  
9 breath, or per 67 milliliters of urine, **or has in his or her body**  
10 **any amount of a controlled substance listed in schedule 1 under**  
11 **section 7212 of the public health code, 1978 PA 368, MCL**  
12 **333.7212, or a rule promulgated under that section, or of a**  
13 **controlled substance described in section 7214(a)(iv) of the**  
14 **public health code, 1978 PA 368, MCL 333.7214.**

15           **(c) The person's ability to operate the vessel is visibly**  
16 **impaired due to the consumption of alcoholic liquor, a controlled**  
17 **substance, or a combination of alcoholic liquor and a controlled**  
18 **substance.**

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

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

1 ~~0.10~~ **0.08** grams or more per 100 milliliters of blood, per 210  
 2 liters of breath, or per 67 milliliters of urine, **or has in his**  
 3 **or her body any amount of a controlled substance listed in**  
 4 **schedule 1 under section 7212 of the public health code, 1978 PA**  
 5 **368, MCL 333.7212, or a rule promulgated under that section, or**  
 6 **of a controlled substance described in section 7214(a)(iv) of the**  
 7 **public health code, 1978 PA 368, MCL 333.7214, and by the**  
 8 operation of that vessel causes the death of another person is  
 9 guilty of a felony, punishable by imprisonment for not more than  
 10 15 years, or a fine of not less than \$2,500.00 or more than  
 11 \$10,000.00, or both.

12 (5) A person who operates a vessel on the waters of this  
 13 state ~~under the influence of intoxicating liquor or a controlled~~  
 14 ~~substance, or both, or with a blood alcohol content of 0.10 grams~~  
 15 ~~or more per 100 milliliters of blood, per 210 liters of breath,~~  
 16 ~~or per 67 milliliters of urine,~~ **in violation of subsection (1)**  
 17 **or (3)** and by the operation of that vessel causes a serious  
 18 impairment of a body function of another person is guilty of a  
 19 felony, punishable by imprisonment for not more than 5 years, or  
 20 a fine of not less than \$1,000.00 or more than \$5,000.00, or  
 21 both. As used in this subsection, "serious impairment of a body  
 22 function" ~~includes, but is not limited to, 1 or more of the~~  
 23 ~~following:~~ **means that term as defined in section 58c of the**  
 24 **Michigan vehicle code, 1949 PA 300, MCL 257.58c.**

25 ~~(a) Loss of a limb or use of a limb.~~

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

- 1 ~~—— (c) Loss of an eye or ear or use of an eye or ear.~~  
 2 ~~—— (d) Loss or substantial impairment of a bodily function.~~  
 3 ~~—— (e) Serious visible disfigurement.~~  
 4 ~~—— (f) A comatose state that lasts for more than 3 days.~~  
 5 ~~—— (g) Measurable brain damage or mental impairment.~~  
 6 ~~—— (h) A skull fracture or other serious bone fracture.~~  
 7 ~~—— (i) Subdural hemorrhage or subdural hematoma.~~

8       Sec. 80180. (1) A peace officer, without a warrant, may  
 9 arrest a person if the peace officer has reasonable cause to  
 10 believe that the person was, at the time of an accident, the  
 11 operator of a vessel involved in the accident in this state while  
 12 in violation of section 80176(1), (3), (4), or (5) or a local  
 13 ordinance substantially corresponding to section 80176(1) or  
 14 (3).

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

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

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

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

8 (d) A person who submits to a preliminary chemical breath  
9 analysis remains subject to the requirements of sections 80187 to  
10 80190 for the purposes of chemical tests described in those  
11 sections.

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

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

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

27 Sec. 80183. (1) The provisions of sections 80181 and 80182

1 relating to chemical testing do not limit the introduction of any  
2 other competent evidence bearing upon the question of whether or  
3 not a person was impaired by, or under the influence of,  
4 ~~intoxicating~~ **alcoholic** liquor or a controlled substance, or  
5 both, or whether the person had a blood alcohol content of ~~0.10~~  
6 **0.08** grams or more per 100 milliliters of blood, per 210 liters  
7 of breath, or per 67 milliliters of urine, **or whether the person**  
8 **had any amount of a controlled substance listed in schedule 1**  
9 **under section 7212 of the public health code, 1978 PA 368, MCL**  
10 **333.7212, or a rule promulgated under that section, or of a**  
11 **controlled substance described in section 7214(a)(iv) of the**  
12 **public health code, 1978 PA 368, MCL 333.7214, in his or her**  
13 **body.**

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

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



1 ~~—— (a) If at the time defendant had an alcohol content of 0.07~~  
2 ~~grams or less 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's ability to operate a vessel was not impaired due~~  
5 ~~to the consumption of intoxicating liquor and that the defendant~~  
6 ~~was not under the influence of intoxicating liquor.~~

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

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

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

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

1 following circumstances:

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

5 (b) The person is arrested for negligent homicide,  
6 manslaughter, or murder resulting from the operation of a vessel,  
7 and the peace officer had reasonable grounds to believe that the  
8 person was operating the vessel while impaired by, or under the  
9 influence of, ~~intoxicating~~ **alcoholic** liquor or a controlled  
10 substance, or both, or while having a blood alcohol content of  
11 ~~0.10~~ **0.08** grams or more per 100 milliliters of blood, per 210  
12 liters of breath, or per 67 milliliters of urine **or while having**  
13 **in his or her body any amount of a controlled substance listed in**  
14 **schedule 1 under section 7212 of the public health code, 1978 PA**  
15 **368, MCL 333.7212, or a rule promulgated under that section, or**  
16 **of a controlled substance described in section 7214(a)(iv) of the**  
17 **public health code, 1978 PA 368, MCL 333.7214.**

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

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

24 Sec. 80190. (1) If a person who refuses to submit to a  
25 chemical test pursuant to section 80181 or 80182 does not request  
26 a hearing within 14 days of the date of notice pursuant to  
27 section 80189, the secretary of state shall issue an order that

1 the person not operate a vessel on the waters of this state for  
2 ~~6 months~~ **1 year** or, for a second or subsequent refusal within 7  
3 years, for ~~1 year~~ **2 years**.

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

27 (a) Whether the peace officer had reasonable grounds to

1 believe that the person had committed a crime described in  
2 section 80187(1).

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

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

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

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

24 (4) After a hearing, if the person who requested the hearing  
25 does not prevail, the secretary of state shall order that the  
26 person not operate a vessel on the waters of this state for ~~6~~  
27 ~~months~~ **1 year** or, for a second or subsequent refusal within 7

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

10 Enacting section 1. This amendatory act takes effect  
11 January 1, 2004.