

**SUBSTITUTE FOR
HOUSE BILL NO. 4614**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81101, 81134, 81135, 81136, 81137, 81140,
81141, and 81144 (MCL 324.81101, 324.81134, 324.81135, 324.81136,
324.81137, 324.81140, 324.81141, and 324.81144), section 81101 as
amended by 2004 PA 587, section 81134 as amended by 2001 PA 12,
section 81135 as amended by 1999 PA 22, sections 81136 and 81141 as
amended by 1996 PA 175, and sections 81137, 81140, and 81144 as
added by 1995 PA 58, and by adding section 81140b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81101. As used in this part:

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

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

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

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

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

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

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

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

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

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

27 (J) ~~-(i)-~~ "Late model ORV" means an ORV manufactured in the

1 current model year or the 5 model years immediately preceding the
2 current model year.

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

6 (L) ~~-(k)-~~ "Off-road vehicle account" means the off-road vehicle
7 account of the Michigan conservation and recreation legacy fund
8 provided for in section 2015. **THIS SUBDIVISION DOES NOT APPLY**
9 **UNLESS HOUSE RESOLUTION Z OF THE 92ND LEGISLATURE BECOMES PART OF**
10 **THE STATE CONSTITUTION OF 1963.**

11 (M) ~~-(l)-~~ "Operate" means to ride in or on, and be in actual
12 physical control of, the operation of an ORV.

13 (N) ~~-(m)-~~ "Operator" means a person who operates or is in
14 actual physical control of the operation of an ORV.

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

1 on property over which it has an easement, a construction or
2 logging vehicle used in performance of its common function, or a
3 registered aircraft.

4 (P) ~~(e)~~ "Owner" means any of the following:

5 (i) A vendee or lessee of an ORV ~~which~~ **THAT** is the subject of
6 an agreement for the conditional sale or lease of the ORV, with the
7 right of purchase upon performance of the conditions stated in the
8 agreement, and with an immediate right of possession vested in the
9 conditional vendee or lessee.

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

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

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

15 (i) Blindness.

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

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

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

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

26 (vi) A cardiovascular disease from which the person measures
27 between 3 and 4 on the New York heart classification scale, or from

1 which a marked limitation of physical activity causes fatigue,
2 palpitation, dyspnea, or anginal pain.

3 (vii) Other diagnosed disease or disorder including, but not
4 limited to, severe arthritis or a neurological or orthopedic
5 impairment that creates a severe mobility limitation.

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

13 (S) ~~(r)~~ "Public agency" means the department or a local or
14 federal unit of government.

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

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

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

25 (W) **"SAFETY EDUCATION FUND" MEANS THE SAFETY EDUCATION FUND**
26 **CREATED UNDER SECTION 81118. THIS SUBDIVISION DOES NOT APPLY IF**
27 **HOUSE RESOLUTION Z OF THE 92ND LEGISLATURE BECOMES PART OF THE**

1 STATE CONSTITUTION OF 1963.

2 (X) "TRAIL IMPROVEMENT FUND" MEANS THE ORV TRAIL IMPROVEMENT
3 FUND CREATED UNDER SECTION 81117. THIS SUBDIVISION DOES NOT APPLY
4 IF HOUSE RESOLUTION Z OF THE 92ND LEGISLATURE BECOMES PART OF THE
5 STATE CONSTITUTION OF 1963.

6 (Y) ~~-(v)-~~ "Visual supervision" means the direct observation of
7 the operator with the unaided or normally corrected eye, where the
8 observer is able to come to the immediate aid of the operator.

9 Sec. 81134. (1) A person who is under the influence of
10 ~~intoxicating~~ ALCOHOLIC liquor or a controlled substance, as
11 defined by section 7104 of the public health code, 1978 PA 368, MCL
12 333.7104, or a combination of ~~intoxicating~~ ALCOHOLIC liquor and a
13 controlled substance shall not operate an ORV.

14 (2) A person who has an alcohol content of ~~0.10~~ 0.08 grams
15 or more per 100 milliliters of blood, per 210 liters of breath, or
16 per 67 milliliters of urine shall not operate an ORV.

17 (3) A PERSON WHO HAS IN HIS OR HER BODY ANY AMOUNT OF A
18 CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE
19 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE
20 PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE
21 DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA
22 368, MCL 333.7214, SHALL NOT OPERATE AN ORV.

23 (4) ~~-(3)-~~ The owner or person in charge or in control of an
24 ORV shall not authorize or knowingly permit the ORV to be operated
25 by a person ~~who~~ IF ANY OF THE FOLLOWING APPLY:

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

1 ~~intoxicating~~ ALCOHOLIC liquor and a controlled substance.

2 (B) THE PERSON HAS AN ALCOHOL CONTENT OF 0.08 GRAMS OR MORE
3 PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67
4 MILLILITERS OF URINE.

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

8 (5) ~~(4)~~ Except as otherwise provided in this section, a
9 person who is convicted of a violation of subsection (1), (2), ~~or~~
10 (3), OR (4) is guilty of a misdemeanor, punishable by imprisonment
11 for not more than 93 days, or a fine of not less than \$100.00 or
12 more than \$500.00, or both, together with costs of the prosecution.
13 As part of the sentence for a violation of subsection (1), ~~or~~
14 (2), OR (3), the court shall order the person convicted not to
15 operate an ORV for a period of not less than 6 months or more than
16 2 years.

17 (6) ~~(5)~~ On a second conviction under subsection (1), ~~or~~
18 (2), OR (3) or a local ordinance substantially corresponding to
19 subsection (1), ~~or~~ (2), OR (3) within a period of 7 years, a
20 person is guilty of a misdemeanor, punishable by imprisonment for
21 not more than 1 year, or a fine of not more than \$1,000.00, or
22 both. As part of the sentence, the court shall order the person
23 convicted not to operate an ORV for a period of not less than 1
24 year or more than 2 years.

25 (7) ~~(6)~~ On a third or subsequent conviction within a period
26 of 10 years under subsection (1), ~~or~~ (2), OR (3) or a local
27 ordinance substantially corresponding to subsection (1), ~~or~~ (2),

1 **OR (3)**, a person is guilty of a felony and shall be sentenced to
 2 imprisonment for not less than 1 year or more than 5 years, or a
 3 fine of not less than \$500.00 or more than \$5,000, or both. As part
 4 of the sentence, the court shall order the person convicted not to
 5 operate an ORV for a period of not less than 1 year or more than 2
 6 years.

7 **(8)** ~~—(7)—~~ A person who operates an ORV in violation of
 8 subsection (1), ~~—or—~~ (2), **OR (3)** or section 81135 and by the
 9 operation of that ORV causes the death of another person is guilty
 10 of a felony punishable by imprisonment for not more than 15 years
 11 or a fine of not less than \$2,500.00 or more than \$10,000.00, or
 12 both.

13 **(9)** ~~—(8)—~~ A person who operates an ORV within this state in
 14 violation of subsection (1), ~~—or—~~ (2), **OR (3)** or section 81135 and
 15 by the operation of that ORV causes a serious impairment of a body
 16 function of another person is guilty of a felony punishable by
 17 imprisonment for not more than 5 years or a fine of not less than
 18 \$1,000.00 or more than \$5,000.00, or both. As used in this
 19 subsection, "serious impairment of a body function" ~~includes, but~~
 20 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**
 21 **DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
 22 **MCL 257.58C.**

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

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

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

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

1 ~~(c) Serious visible disfigurement.~~

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

3 ~~(g) Measurable brain damage or mental impairment.~~

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

5 ~~(i) Subdural hemorrhage or subdural hematoma.~~

6 **(10)** ~~(9)~~ As part of the sentence for a violation of
7 subsection (1), ~~or~~ (2), **OR (3)**, or a local ordinance
8 substantially corresponding to subsection (1), ~~or~~ (2), **OR (3)**,
9 the court may order the person to perform service to the community,
10 as designated by the court, without compensation, for a period not
11 to exceed 12 days. The person shall reimburse the state or
12 appropriate local unit of government for the cost of insurance
13 incurred by the state or local unit of government as a result of
14 the person's activities under this subsection.

15 **(11)** ~~(10)~~ Before imposing sentence for a violation of
16 subsection (1), ~~or~~ (2), **OR (3)** or a local ordinance substantially
17 corresponding to subsection (1), ~~or~~ (2), **OR (3)**, the court shall
18 order the person to undergo screening and assessment by a person or
19 agency designated by the office of substance abuse services, to
20 determine whether the person is likely to benefit from
21 rehabilitative services, including alcohol or drug education and
22 alcohol or drug treatment programs. As part of the sentence, the
23 court may order the person to participate in and successfully
24 complete 1 or more appropriate rehabilitative programs. The person
25 shall pay for the costs of the screening, assessment, and
26 rehabilitative services.

27 **(12)** ~~(11)~~ Before accepting a plea of guilty under this

1 section, the court shall advise the accused of the statutory
2 consequences possible as the result of a plea of guilty in respect
3 to suspension of the person's right to operate an ORV and the
4 penalty imposed for violation of this section.

5 (13) ~~(12)~~ Each municipal judge and each clerk of a court of
6 record shall keep a full record of every case in which a person is
7 charged with a violation of this section. The municipal judge or
8 clerk of the court of record shall prepare and immediately forward
9 to the secretary of state an abstract of the court of record for
10 each case charging a violation of this section.

11 Sec. 81135. (1) A person shall not operate an ORV if, due to
12 the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor, a controlled
13 substance, as defined by section 7104 of the public health code,
14 1978 PA 368, MCL 333.7104, or a combination of ~~intoxicating~~
15 **ALCOHOLIC** liquor and a controlled substance, the person has visibly
16 impaired his or her ability to operate the ORV. If a person is
17 charged with violating section 81134, a finding of guilty is
18 permissible under this section.

19 (2) Except as otherwise provided in this section, a person
20 convicted of a violation of this section is guilty of a
21 misdemeanor, punishable by imprisonment for not more than 93 days,
22 or a fine of not more than \$300.00, or both, together with costs of
23 the prosecution. As part of the sentence, the court shall order the
24 person convicted not to operate an ORV for a period of not less
25 than 90 days or more than 1 year.

26 (3) A person who violates this section or a local ordinance
27 substantially corresponding to this section, and has 1 or more

1 prior convictions under this section or section 81134 or a local
2 ordinance substantially corresponding to this section or section
3 81134, is guilty of a misdemeanor, punishable by imprisonment for
4 not more than 1 year, or a fine of not more than \$1,000.00, or
5 both. If the person convicted has only 1 prior conviction described
6 in this subsection, as part of the sentence, the court shall order
7 the person not to operate an ORV for a period of not less than 6
8 months or more than 18 months. If the person has 2 or more prior
9 convictions described in this subsection, the court shall order the
10 person not to operate an ORV for a period of not less than 1 year
11 or more than 2 years.

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

20 (5) Before imposing sentence for a violation of this section
21 or a local ordinance substantially corresponding to this section,
22 the court shall order the person to undergo screening and
23 assessment by a person or agency designated by the office of
24 substance abuse services, to determine whether the person is likely
25 to benefit from rehabilitative services, including alcohol or drug
26 education and alcohol or drug treatment programs. As part of the
27 sentence, the court may order the person to participate in and

1 successfully complete 1 or more appropriate rehabilitative
2 programs. The person shall pay for the costs of the screening,
3 assessment, and rehabilitative services.

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

9 (7) Each municipal judge and each clerk of a court of record
10 shall keep a full record of every case in which a person is charged
11 with a violation of this section. The municipal judge or clerk of
12 the court of record shall prepare and immediately forward to the
13 secretary of state an abstract of the court of record for each case
14 charging a violation of this section.

15 Sec. 81136. (1) In a criminal prosecution for violating
16 section 81134 or 81135 or a local ordinance substantially
17 corresponding to section 81134 or 81135, or in a criminal
18 prosecution for negligent homicide or manslaughter resulting from
19 the operation of an ORV while the operator is alleged to have been
20 impaired by or under the influence of ~~intoxicating~~ **ALCOHOLIC**
21 liquor or a controlled substance or a combination of ~~intoxicating~~
22 **ALCOHOLIC** liquor and a controlled substance, or to have had a blood
23 alcohol content of ~~0.10~~ **0.08** grams or more per 100 milliliters of
24 blood, per 210 liters of breath, or per 67 milliliters of urine,
25 the amount of alcohol **OR PRESENCE OF A CONTROLLED SUBSTANCE** in the
26 operator's blood at the time alleged as shown by chemical analysis
27 of the operator's blood, urine, or breath shall be admissible into

1 evidence.

2 (2) If a chemical test of an operator's blood, urine, or
3 breath is given, the results of the test shall be made available to
4 the person charged with an offense enumerated in subsection (1) or
5 the person's attorney upon written request to the prosecution, with
6 a copy of the request filed with the court. The prosecution shall
7 furnish the report at least 2 days before the day of the trial and
8 the results shall be offered as evidence by the prosecution in a
9 criminal proceeding. Failure to fully comply with the request shall
10 bar the admission of the results into evidence by the prosecution.

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

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

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

26 ~~—— (c) If at the time the operator had an alcohol content of 0.10~~
27 ~~grams or more per 100 milliliters of blood, per 210 liters of~~

1 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~
2 ~~the operator was under the influence of intoxicating liquor.~~

3 (3) ~~-(4)-~~ A sample or specimen of urine or breath shall be
4 taken and collected in a reasonable manner. Only a licensed
5 physician, or a licensed nurse or medical technician under the
6 direction of a licensed physician and qualified to withdraw blood
7 acting in a medical environment, at the request of a peace officer,
8 may withdraw blood for the purpose of determining the alcoholic
9 content of the blood under this part. Liability for a crime or
10 civil damages predicated on the act of withdrawing blood and
11 related procedures shall not attach to a qualified person who
12 withdraws blood or assists in the withdrawal in accordance with
13 this part unless the withdrawal is performed in a negligent manner.

14 (4) ~~-(5)-~~ A person arrested for a crime enumerated in
15 subsection (1) who takes a chemical test administered at the
16 request of a peace officer, as provided in this part, shall be
17 given a reasonable opportunity to have a person of his or her own
18 choosing administer 1 of the chemical tests described in this
19 section within a reasonable time after his or her detention, and
20 the results of the test shall be admissible and shall be considered
21 with other competent evidence in determining the defendant's
22 innocence or guilt of a crime enumerated in subsection (1). If the
23 person arrested is administered a chemical test by a person of his
24 or her own choosing, the person arrested shall be responsible for
25 obtaining a chemical analysis of the test sample. The person shall
26 be informed that he or she has the right to demand that a person of
27 his or her choosing administer 1 of the chemical tests described in

1 this section, that the results of the test shall be admissible and
2 shall be considered with other competent evidence in determining
3 the innocence or guilt of the defendant, and that the person
4 arrested shall be responsible for obtaining a chemical analysis of
5 the test sample.

6 (5) ~~-(6)-~~ A person arrested shall be advised that if the
7 person refuses the request of a peace officer to take a test
8 described in this section, a test shall not be given without a
9 court order. The person arrested shall also be advised that the
10 person's refusal of the request of a peace officer to take a test
11 described in this section shall result in the suspension of the
12 person's right to operate an ORV.

13 (6) ~~-(7)-~~ This section shall not be construed as limiting the
14 introduction of any other competent evidence bearing upon the
15 question of whether or not the defendant was impaired by or under
16 the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled
17 substance, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and
18 a controlled substance, or whether the person had a blood alcohol
19 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood,
20 per 210 liters of breath, or per 67 milliliters of urine.

21 (7) ~~-(8)-~~ If a jury instruction regarding a defendant's
22 refusal to submit to a chemical test under this section is
23 requested by the prosecution or the defendant, the jury instruction
24 shall be given as follows:

25 "Evidence was admitted in this case which, if believed by the
26 jury, could prove that the defendant had exercised his or her right
27 to refuse a chemical test. You are instructed that such a refusal

1 is within the statutory rights of the defendant and is not evidence
2 of the defendant's guilt. You are not to consider such a refusal in
3 determining the guilt or innocence of the defendant.".

4 (8) ~~-(9)-~~ If after an accident the operator of an ORV
5 involved in the accident is transported to a medical facility and a
6 sample of the operator's blood is withdrawn at that time for the
7 purpose of medical treatment, the results of a chemical analysis of
8 that sample shall be admissible in a criminal prosecution for a
9 crime described in subsection (1) to show the amount of alcohol or
10 presence of a controlled substance, or both, in the person's blood
11 at the time alleged, regardless of whether the person had been
12 offered or had refused a chemical test. The medical facility or
13 person performing the chemical analysis shall disclose the results
14 of the analysis to a prosecuting attorney who requests the results
15 for use in a criminal prosecution as provided in this subsection. A
16 medical facility or person disclosing information in compliance
17 with this subsection shall not be civilly or criminally liable for
18 making the disclosure.

19 (9) ~~-(10)-~~ If after an accident the operator of an ORV
20 involved in the accident is deceased, a sample of the decedent's
21 blood shall be withdrawn in a manner directed by the medical
22 examiner for the purpose of determining blood alcohol content or
23 presence of a controlled substance, or both. The medical examiner
24 shall give the results of the chemical analysis to the law
25 enforcement agency investigating the accident, and that agency
26 shall forward the results to the department of state police.

27 Sec. 81137. (1) Except as provided in subsection (2), a person

1 who operates an ORV is considered to have given consent to chemical
2 tests 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, and may be requested by a
5 peace officer to submit to chemical tests of his or her blood,
6 breath, or urine for the purpose of determining the amount of
7 alcohol or presence of a controlled substance or both in his or her
8 blood if:

9 (a) The person is arrested for a violation of section
10 81134(1), ~~or~~ (2), (3), (6), (7), (8), OR (9) or 81135 or a local
11 ordinance substantially corresponding to section 81134(1), ~~or~~
12 (2), OR (3) or 81135.

13 (b) The person is arrested for negligent homicide or
14 manslaughter resulting from the operation of an ORV, and the peace
15 officer has reasonable grounds to believe that the person was
16 operating the ORV while impaired by or under the influence of
17 ~~intoxicating~~ **ALCOHOLIC** liquor, a controlled substance, or a
18 combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled
19 substance.

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

24 Sec. 81140. (1) If a person who refuses to submit to a
25 chemical test ~~pursuant to~~ **UNDER** section 81138 does not request an
26 administrative hearing within 14 days after the date of notice
27 ~~pursuant to~~ **UNDER** section 81139, the secretary of state shall

1 suspend the person's right to operate an ORV for a period of ~~6~~
2 ~~months~~ **1 YEAR**, or for a second or subsequent refusal within a
3 period of 7 years, for ~~1 year~~ **2 YEARS**.

4 (2) If an administrative hearing is requested, the secretary
5 of state shall appoint a hearing officer to conduct the hearing.
6 Not less than 10 days' notice of the hearing shall be provided by
7 mail to the person submitting the request, to the peace officer who
8 filed the report under section 81138, and, if a prosecuting
9 attorney requests receipt of the notice, to the prosecuting
10 attorney of the county where the arrest was made. The hearing
11 officer may administer oaths and issue subpoenas for the attendance
12 of necessary witnesses, and may grant a reasonable request for an
13 adjournment. The hearing shall cover only the following issues:

14 (a) Whether the peace officer had reasonable grounds to
15 believe that the person committed a crime described in section
16 81137(1).

17 (b) Whether the person was placed under arrest for a crime
18 described in section 81137(1).

19 (c) Whether the person reasonably refused to submit to a
20 chemical test upon request of the officer.

21 (d) Whether the person was advised of his or her rights under
22 section 81136.

23 (3) An administrative hearing conducted under this section is
24 not a contested case for the purposes of ~~chapter 4~~ **SECTIONS 71 TO**
25 **87** of the administrative procedures act of 1969, ~~Act No. 306 of~~
26 ~~the Public Acts of 1969, being sections 24.271 to 24.287 of the~~
27 ~~Michigan Compiled Laws~~ **1969 PA 306, MCL 24.271 TO 24.287**. The

1 hearing shall be conducted in an impartial manner. A final decision
2 or order of a hearing officer shall be made in writing or stated in
3 the record, and shall include findings of fact based exclusively on
4 the evidence presented and matters officially noticed, and shall
5 specify any sanction to be imposed against the person involved. A
6 copy of the final decision or order shall be delivered or mailed
7 immediately to the person and the peace officer.

8 (4) After the administrative hearing, if the person is found
9 to have unreasonably refused to submit to a chemical test, the
10 secretary of state shall suspend the person's right to operate an
11 ORV for a period of ~~6 months~~ **1 YEAR**, or for a second or
12 subsequent refusal within a period of 7 years, for ~~1 year~~ **2**
13 **YEARS**. Within 60 days after the final decision or order is issued
14 by the hearing officer, the person may file a petition in the
15 circuit court of the county in which the arrest was made to review
16 the suspension. **IF AFTER THE HEARING THE PERSON WHO REQUESTED THE**
17 **HEARING PREVAILS, THE PEACE OFFICER WHO FILED THE REPORT UNDER**
18 **SECTION 81138 MAY, WITH THE CONSENT OF THE PROSECUTING ATTORNEY,**
19 **FILE A PETITION IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE**
20 **ARREST WAS MADE TO REVIEW THE DETERMINATION OF THE HEARING OFFICER**
21 **AS PROVIDED IN SECTION 81140B.** The scope of the court's review
22 shall be limited to the issues provided in section 106 of ~~Act No.~~
23 ~~306 of the Public Acts of 1969, being section 24.306 of the~~
24 ~~Michigan Compiled Laws~~ **THE ADMINISTRATIVE PROCEDURE ACT OF 1969,**
25 **1969 PA 306, MCL 24.306.**

26 (5) The circuit court shall enter an order setting the cause
27 for hearing for a date certain that is not more than 60 days after

1 the date of the order. The order, a copy of the petition, which
2 shall include the person's full name, current address, birth date,
3 and driver's license number, and all supporting affidavits shall be
4 served on the secretary of state's office in Lansing not less than
5 50 days before the date set for the hearing. The department shall
6 cause a record to be made of the proceedings held ~~pursuant to~~
7 **UNDER** subsection (2). The record shall be prepared and transcribed
8 in accordance with section 86 of ~~Act No. 306 of the Public Acts of~~
9 ~~1969, being section 24.286 of the Michigan Compiled Laws~~ **THE**
10 **ADMINISTRATIVE PROCEDURE ACT OF 1969, 1969 PA 306, MCL 24.286.** Upon
11 notification of the filing of a petition for judicial review, the
12 department shall transmit to the court in which the petition was
13 filed, not less than 10 days before the matter is set for review,
14 the original or a certified copy of the official record of the
15 proceedings.

16 **SEC. 81140B. (1) A PERSON WHO IS AGGRIEVED BY A FINAL**
17 **DETERMINATION OF THE SECRETARY OF STATE UNDER THIS PART MAY**
18 **PETITION FOR A REVIEW OF THE DETERMINATION IN THE CIRCUIT COURT IN**
19 **THE COUNTY WHERE THE PERSON WAS ARRESTED. THE PETITION SHALL BE**
20 **FILED WITHIN 63 DAYS AFTER THE DETERMINATION IS MADE EXCEPT THAT,**
21 **FOR GOOD CAUSE SHOWN, THE COURT MAY ALLOW THE PETITION TO BE FILED**
22 **WITHIN 182 DAYS AFTER THE DETERMINATION IS MADE. AS PROVIDED IN**
23 **SECTION 81140, A PEACE OFFICER WHO IS AGGRIEVED BY A DETERMINATION**
24 **OF A HEARING OFFICER IN FAVOR OF A PERSON WHO REQUESTED A HEARING**
25 **UNDER SECTION 81140 MAY, WITH THE CONSENT OF THE PROSECUTING**
26 **ATTORNEY, PETITION FOR REVIEW OF THE DETERMINATION IN THE CIRCUIT**
27 **COURT IN THE COUNTY WHERE THE ARREST WAS MADE. THE PETITION SHALL**

1 BE FILED WITHIN 63 DAYS AFTER THE DETERMINATION IS MADE EXCEPT
2 THAT, FOR GOOD CAUSE SHOWN, THE COURT MAY ALLOW THE PETITION TO BE
3 FILED WITHIN 182 DAYS AFTER THE DETERMINATION IS MADE.

4 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CIRCUIT
5 COURT SHALL ENTER AN ORDER SETTING THE CAUSE FOR HEARING FOR A DAY
6 CERTAIN THAT IS NOT MORE THAN 63 DAYS AFTER THE DATE OF THE ORDER.
7 THE ORDER, A COPY OF THE PETITION, THAT INCLUDES THE PERSON'S FULL
8 NAME, CURRENT ADDRESS, BIRTH DATE, AND DRIVER'S LICENSE NUMBER, AND
9 ALL SUPPORTING AFFIDAVITS SHALL BE SERVED ON THE SECRETARY OF
10 STATE'S OFFICE IN LANSING NOT LESS THAN 20 DAYS BEFORE THE DATE SET
11 FOR THE HEARING. IF THE PERSON IS SEEKING A REVIEW OF THE RECORD
12 PREPARED UNDER SECTION 81140, THE SERVICE UPON THE SECRETARY OF
13 STATE SHALL BE MADE NOT LESS THAN 50 DAYS BEFORE THE DATE SET FOR
14 THE HEARING.

15 (3) THE COURT MAY TAKE TESTIMONY AND EXAMINE ALL THE FACTS AND
16 CIRCUMSTANCES INCIDENT TO THE ORDER THAT THE PERSON NOT OPERATE AN
17 ORV IN THIS STATE. THE COURT MAY AFFIRM, MODIFY, OR SET ASIDE THE
18 ORDER. THE ORDER OF THE COURT SHALL BE DULY ENTERED, AND THE
19 PETITIONER SHALL FILE A CERTIFIED COPY OF THE ORDER WITH THE
20 SECRETARY OF STATE'S OFFICE IN LANSING WITHIN 7 DAYS AFTER ENTRY OF
21 THE ORDER.

22 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN REVIEWING
23 A DETERMINATION UNDER SECTION 81140, THE COURT SHALL CONFINE ITS
24 CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER SECTION
25 81140 TO DETERMINE WHETHER THE HEARING OFFICER PROPERLY DETERMINED
26 THE ISSUES ENUMERATED IN SECTION 81140.

27 (5) IN REVIEWING A DETERMINATION RESULTING IN ISSUANCE OF AN

1 ORDER UNDER SECTION 81134(6), (7), (8), OR (9), THE COURT SHALL
2 CONFINE ITS CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER
3 SECTION 81140. THE COURT SHALL SET ASIDE THE DETERMINATION OF THE
4 SECRETARY OF STATE ONLY IF SUBSTANTIAL RIGHTS OF THE PETITIONER
5 HAVE BEEN PREJUDICED BECAUSE THE DETERMINATION IS ANY OF THE
6 FOLLOWING:

7 (A) IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, THE
8 STATE CONSTITUTION OF 1963, OR A STATUTE.

9 (B) IN EXCESS OF THE SECRETARY OF STATE'S STATUTORY AUTHORITY
10 OR JURISDICTION.

11 (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL
12 PREJUDICE TO THE PETITIONER.

13 (D) NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL
14 EVIDENCE ON THE WHOLE RECORD.

15 (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED
16 EXERCISE OF DISCRETION.

17 (F) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF LAW.

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

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

25 (3) The results of a preliminary chemical breath analysis
26 shall be admissible in a criminal prosecution for a crime
27 enumerated in section 81136(1) or in an administrative hearing held

1 under section 81140, solely to assist the court or hearing officer
2 in determining a challenge to the validity of an arrest. This
3 subsection does not limit the introduction of other competent
4 evidence offered to establish the validity of an arrest.

5 (4) A person who submits to a preliminary chemical breath
6 analysis shall remain subject to the requirements of sections
7 81136, 81137, 81138, 81139, and 81140 for the purposes of chemical
8 tests described in those sections.

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

13 Sec. 81144. If a peace officer has reasonable cause to believe
14 that a person was, at the time of an accident, the operator of an
15 ORV involved in the accident and was operating the ORV while under
16 the influence of an ~~intoxicating~~ **ALCOHOLIC** liquor, a controlled
17 substance as defined in section 7104 of the public health code,
18 ~~Act No. 368 of the Public Acts of 1978, being section 333.7104 of~~
19 ~~the Michigan Compiled Laws 1978 PA 368, MCL 333.7104,~~ or a
20 combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled
21 substance, or was operating the ORV while his or her ability to
22 operate an ORV was impaired due to the consumption of ~~intoxicating~~
23 **ALCOHOLIC** liquor, a controlled substance, or a combination of
24 ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled substance, the
25 peace officer may arrest the alleged operator of the ORV without a
26 warrant.

27 Enacting section 1. This amendatory act takes effect January

1 1, 2006.