

HOUSE BILL No. 4614

April 14, 2005, Introduced by Reps. Newell, Van Regenmorter and Sak and referred to the Committee on Judiciary.

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 2003 PA 111, 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.

1 **(B)** ~~-(a)-~~ "ATV" means a 3- or 4-wheeled vehicle designed for
2 off-road use that has low-pressure tires, has a seat designed to be
3 straddled by the rider, and is powered by a 50cc to 500cc gasoline
4 engine or an engine of comparable size using other fuels.

5 **(C)** ~~-(b)-~~ "Code" means the Michigan vehicle code, 1949 PA
6 300, MCL 257.1 to 257.923.

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

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

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

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

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

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

1 (J) ~~-(i)-~~ "Late model ORV" means an ORV manufactured in the
2 current model year or the 5 model years immediately preceding the
3 current model year.

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

7 (L) ~~-(k)-~~ "Operate" means to ride in or on, and be in actual
8 physical control of, the operation of an ORV.

9 (M) ~~-(l)-~~ "Operator" means a person who operates or is in
10 actual physical control of the operation of an ORV.

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

27 (O) ~~-(n)-~~ "Owner" means any of the following:

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

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

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

9 **(P)** ~~-(e)-~~ "Person with disabilities" means a person who has 1
10 or more of the following physical characteristics:

11 (i) Blindness.

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

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

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

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

22 (vi) A cardiovascular disease from which the person measures
23 between 3 and 4 on the New York heart classification scale, or from
24 which a marked limitation of physical activity causes fatigue,
25 palpitation, dyspnea, or anginal pain.

26 (vii) Other diagnosed disease or disorder including, but not
27 limited to, severe arthritis or a neurological or orthopedic

1 impairment that creates a severe mobility limitation.

2 (Q) ~~(p)~~ "Personal information" means information that
3 identifies an individual, including an individual's driver
4 identification number, name, address not including zip code, and
5 telephone number, but does not include information on ORV operation
6 or equipment-related violations or civil infractions, operator or
7 vehicle registration status, accidents, or other behaviorally-
8 related information.

9 (R) ~~(q)~~ "Public agency" means the department or a local or
10 federal unit of government.

11 (S) ~~(r)~~ "Roadway" means that portion of a highway improved,
12 designated, or ordinarily used for vehicular travel. If a highway
13 includes 2 or more separate roadways, the term roadway refers to a
14 roadway separately, but not to all roadways collectively.

15 (T) ~~(s)~~ "Route" means a forest road or other road that is
16 designated for purposes of this part by the department.

17 (U) ~~(t)~~ "Safety education fund" means the safety education
18 fund created under section 81118.

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

23 (W) ~~(v)~~ "Trail improvement fund" means the ORV trail
24 improvement fund created pursuant to section 81117.

25 (X) ~~(w)~~ "Visual supervision" means the direct observation
26 of the operator with the unaided or normally corrected eye, where
27 the observer is able to come to the immediate aid of the operator.

1 Sec. 81134. (1) A person who is under the influence of
2 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance, as
3 defined by section 7104 of the public health code, 1978 PA 368, MCL
4 333.7104, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a
5 controlled substance shall not operate an ORV.

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

9 **(3) A PERSON WHO HAS IN HIS OR HER BODY ANY AMOUNT OF A**
10 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**
11 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
12 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
13 **DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA**
14 **368, MCL 333.7214, SHALL NOT OPERATE AN ORV.**

15 **(4) ~~(3)~~ The owner or person in charge or in control of an**
16 **ORV shall not authorize or knowingly permit the ORV to be operated**
17 **by a person ~~who~~ IF ANY OF THE FOLLOWING APPLY:**

18 **(A) THE PERSON** is under the influence of ~~intoxicating~~
19 **ALCOHOLIC** liquor or a controlled substance or a combination of
20 ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled substance.

21 **(B) THE PERSON HAS AN ALCOHOL CONTENT OF 0.08 GRAMS OR MORE**
22 **PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67**
23 **MILLILITERS OF URINE.**

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

27 **(5) ~~(4)~~ Except as otherwise provided in this section, a**

1 person who is convicted of a violation of subsection (1), (2), ~~or~~
2 (3), **OR (4)** is guilty of a misdemeanor, punishable by imprisonment
3 for not more than 93 days, or a fine of not less than \$100.00 or
4 more than \$500.00, or both, together with costs of the prosecution.
5 As part of the sentence for a violation of subsection (1), ~~or~~
6 (2), **OR (3)**, the court shall order the person convicted not to
7 operate an ORV for a period of not less than 6 months or more than
8 2 years.

9 **(6)** ~~—(5)—~~ On a second conviction under subsection (1), ~~or~~
10 (2), **OR (3)** or a local ordinance substantially corresponding to
11 subsection (1), ~~or~~ (2), **OR (3)** within a period of 7 years, a
12 person is guilty of a misdemeanor, punishable by imprisonment for
13 not more than 1 year, or a fine of not more than \$1,000.00, or
14 both. As part of the sentence, the court shall order the person
15 convicted not to operate an ORV for a period of not less than 1
16 year or more than 2 years.

17 **(7)** ~~—(6)—~~ On a third or subsequent conviction within a period
18 of 10 years under subsection (1), ~~or~~ (2), **OR (3)** or a local
19 ordinance substantially corresponding to subsection (1), ~~or~~ (2),
20 **OR (3)**, a person is guilty of a felony and shall be sentenced to
21 imprisonment for not less than 1 year or more than 5 years, or a
22 fine of not less than \$500.00 or more than \$5,000, or both. As part
23 of the sentence, the court shall order the person convicted not to
24 operate an ORV for a period of not less than 1 year or more than 2
25 years.

26 **(8)** ~~—(7)—~~ A person who operates an ORV in violation of
27 subsection (1), ~~or~~ (2), **OR (3)** or section 81135 and by the

1 operation of that ORV causes the death of another person is guilty
 2 of a felony punishable by imprisonment for not more than 15 years
 3 or a fine of not less than \$2,500.00 or more than \$10,000.00, or
 4 both.

5 (9) ~~-(8)-~~ A person who operates an ORV within this state in
 6 violation of subsection (1), ~~or~~ (2), **OR (3)** or section 81135 and
 7 by the operation of that ORV causes a serious impairment of a body
 8 function of another person is guilty of a felony punishable by
 9 imprisonment for not more than 5 years or a fine of not less than
 10 \$1,000.00 or more than \$5,000.00, or both. As used in this
 11 subsection, "serious impairment of a body function" ~~includes, but~~
 12 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**
 13 **DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
 14 **MCL 257.58C.**

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

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

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

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

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

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

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

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

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

25 (10) ~~-(9)-~~ As part of the sentence for a violation of
 26 subsection (1), ~~or~~ (2), **OR (3)**, or a local ordinance
 27 substantially corresponding to subsection (1), ~~or~~ (2), **OR (3)**,

1 the court may order the person to perform service to the community,
2 as designated by the court, without compensation, for a period not
3 to exceed 12 days. The person shall reimburse the state or
4 appropriate local unit of government for the cost of insurance
5 incurred by the state or local unit of government as a result of
6 the person's activities under this subsection.

7 (11) ~~-(10)-~~ Before imposing sentence for a violation of
8 subsection (1), ~~or~~ (2), **OR (3)** or a local ordinance substantially
9 corresponding to subsection (1), ~~or~~ (2), **OR (3)**, the court shall
10 order the person to undergo screening and assessment by a person or
11 agency designated by the office of substance abuse services, to
12 determine whether the person is likely to benefit from
13 rehabilitative services, including alcohol or drug education and
14 alcohol or drug treatment programs. As part of the sentence, the
15 court may order the person to participate in and successfully
16 complete 1 or more appropriate rehabilitative programs. The person
17 shall pay for the costs of the screening, assessment, and
18 rehabilitative services.

19 (12) ~~-(11)-~~ Before accepting a plea of guilty under this
20 section, the court shall advise the accused of the statutory
21 consequences possible as the result of a plea of guilty in respect
22 to suspension of the person's right to operate an ORV and the
23 penalty imposed for violation of this section.

24 (13) ~~-(12)-~~ Each municipal judge and each clerk of a court of
25 record shall keep a full record of every case in which a person is
26 charged with a violation of this section. The municipal judge or
27 clerk of the court of record shall prepare and immediately forward

1 to the secretary of state an abstract of the court of record for
2 each case charging a violation of this section.

3 Sec. 81135. (1) A person shall not operate an ORV if, due to
4 the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor, a controlled
5 substance, as defined by section 7104 of the public health code,
6 1978 PA 368, MCL 333.7104, or a combination of ~~intoxicating~~
7 **ALCOHOLIC** liquor and a controlled substance, the person has visibly
8 impaired his or her ability to operate the ORV. If a person is
9 charged with violating section 81134, a finding of guilty is
10 permissible under this section.

11 (2) Except as otherwise provided in this section, a person
12 convicted of a violation of this section is guilty of a
13 misdemeanor, punishable by imprisonment for not more than 93 days,
14 or a fine of not more than \$300.00, or both, together with costs of
15 the prosecution. As part of the sentence, the court shall order the
16 person convicted not to operate an ORV for a period of not less
17 than 90 days or more than 1 year.

18 (3) A person who violates this section or a local ordinance
19 substantially corresponding to this section, and has 1 or more
20 prior convictions under this section or section 81134 or a local
21 ordinance substantially corresponding to this section or section
22 81134, is guilty of a misdemeanor, punishable by imprisonment for
23 not more than 1 year, or a fine of not more than \$1,000.00, or
24 both. If the person convicted has only 1 prior conviction described
25 in this subsection, as part of the sentence, the court shall order
26 the person not to operate an ORV for a period of not less than 6
27 months or more than 18 months. If the person has 2 or more prior

1 convictions described in this subsection, the court shall order the
2 person not to operate an ORV for a period of not less than 1 year
3 or more than 2 years.

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

12 (5) Before imposing sentence for a violation of this section
13 or a local ordinance substantially corresponding to this section,
14 the court shall order the person to undergo screening and
15 assessment by a person or agency designated by the office of
16 substance abuse services, to determine whether the person is likely
17 to benefit from rehabilitative services, including alcohol or drug
18 education and alcohol or drug treatment programs. As part of the
19 sentence, the court may order the person to participate in and
20 successfully complete 1 or more appropriate rehabilitative
21 programs. The person shall pay for the costs of the screening,
22 assessment, and rehabilitative services.

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

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

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

21 (2) If a chemical test of an operator's blood, urine, or
22 breath is given, the results of the test shall be made available to
23 the person charged with an offense enumerated in subsection (1) or
24 the person's attorney upon written request to the prosecution, with
25 a copy of the request filed with the court. The prosecution shall
26 furnish the report at least 2 days before the day of the trial and
27 the results shall be offered as evidence by the prosecution in a

1 criminal proceeding. Failure to fully comply with the request shall
2 bar the admission of the results into evidence by the prosecution.

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

8 ~~—— (a) If at the time the operator had an alcohol content of 0.07~~
9 ~~grams or less per 100 milliliters of blood, per 210 liters of~~
10 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~
11 ~~the operator was not under the influence of intoxicating liquor.~~

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

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

22 (3) ~~—(4)~~ A sample or specimen of urine or breath shall be
23 taken and collected in a reasonable manner. Only a licensed
24 physician, or a licensed nurse or medical technician under the
25 direction of a licensed physician and qualified to withdraw blood
26 acting in a medical environment, at the request of a peace officer,
27 may withdraw blood for the purpose of determining the alcoholic

1 content of the blood under this part. Liability for a crime or
2 civil damages predicated on the act of withdrawing blood and
3 related procedures shall not attach to a qualified person who
4 withdraws blood or assists in the withdrawal in accordance with
5 this part unless the withdrawal is performed in a negligent manner.

6 (4) ~~-(5)-~~ A person arrested for a crime enumerated in
7 subsection (1) who takes a chemical test administered at the
8 request of a peace officer, as provided in this part, shall be
9 given a reasonable opportunity to have a person of his or her own
10 choosing administer 1 of the chemical tests described in this
11 section within a reasonable time after his or her detention, and
12 the results of the test shall be admissible and shall be considered
13 with other competent evidence in determining the defendant's
14 innocence or guilt of a crime enumerated in subsection (1). If the
15 person arrested is administered a chemical test by a person of his
16 or her own choosing, the person arrested shall be responsible for
17 obtaining a chemical analysis of the test sample. The person shall
18 be informed that he or she has the right to demand that a person of
19 his or her choosing administer 1 of the chemical tests described in
20 this section, that the results of the test shall be admissible and
21 shall be considered with other competent evidence in determining
22 the innocence or guilt of the defendant, and that the person
23 arrested shall be responsible for obtaining a chemical analysis of
24 the test sample.

25 (5) ~~-(6)-~~ A person arrested shall be advised that if the
26 person refuses the request of a peace officer to take a test
27 described in this section, a test shall not be given without a

1 court order. The person arrested shall also be advised that the
2 person's refusal of the request of a peace officer to take a test
3 described in this section shall result in the suspension of the
4 person's right to operate an ORV.

5 (6) ~~-(7)-~~ This section shall not be construed as limiting the
6 introduction of any other competent evidence bearing upon the
7 question of whether or not the defendant was impaired by or under
8 the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled
9 substance, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and
10 a controlled substance, or whether the person had a blood alcohol
11 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood,
12 per 210 liters of breath, or per 67 milliliters of urine.

13 (7) ~~-(8)-~~ If a jury instruction regarding a defendant's
14 refusal to submit to a chemical test under this section is
15 requested by the prosecution or the defendant, the jury instruction
16 shall be given as follows:

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

23 (8) ~~-(9)-~~ If after an accident the operator of an ORV
24 involved in the accident is transported to a medical facility and a
25 sample of the operator's blood is withdrawn at that time for the
26 purpose of medical treatment, the results of a chemical analysis of
27 that sample shall be admissible in a criminal prosecution for a

1 crime described in subsection (1) to show the amount of alcohol or
2 presence of a controlled substance, or both, in the person's blood
3 at the time alleged, regardless of whether the person had been
4 offered or had refused a chemical test. The medical facility or
5 person performing the chemical analysis shall disclose the results
6 of the analysis to a prosecuting attorney who requests the results
7 for use in a criminal prosecution as provided in this subsection. A
8 medical facility or person disclosing information in compliance
9 with this subsection shall not be civilly or criminally liable for
10 making the disclosure.

11 (9) ~~-(10)-~~ If after an accident the operator of an ORV
12 involved in the accident is deceased, a sample of the decedent's
13 blood shall be withdrawn in a manner directed by the medical
14 examiner for the purpose of determining blood alcohol content or
15 presence of a controlled substance, or both. The medical examiner
16 shall give the results of the chemical analysis to the law
17 enforcement agency investigating the accident, and that agency
18 shall forward the results to the department of state police.

19 Sec. 81137. (1) Except as provided in subsection (2), a person
20 who operates an ORV is considered to have given consent to chemical
21 tests of his or her blood, breath, or urine for the purpose of
22 determining the amount of alcohol or presence of a controlled
23 substance or both in his or her blood, and may be requested by a
24 peace officer to submit to chemical tests of his or her blood,
25 breath, or urine for the purpose of determining the amount of
26 alcohol or presence of a controlled substance or both in his or her
27 blood if:

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

5 (b) The person is arrested for negligent homicide or
6 manslaughter resulting from the operation of an ORV, and the peace
7 officer has reasonable grounds to believe that the person was
8 operating the ORV while impaired by or under the influence of
9 ~~intoxicating~~ ALCOHOLIC liquor, a controlled substance, or a
10 combination of ~~intoxicating~~ ALCOHOLIC liquor and a controlled
11 substance.

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

16 Sec. 81140. (1) If a person who refuses to submit to a
17 chemical test ~~pursuant to~~ UNDER section 81138 does not request an
18 administrative hearing within 14 days after the date of notice
19 ~~pursuant to~~ UNDER section 81139, the secretary of state shall
20 suspend the person's right to operate an ORV for a period of ~~6~~
21 ~~months~~ 1 YEAR, or for a second or subsequent refusal within a
22 period of 7 years, for ~~1 year~~ 2 YEARS.

23 (2) If an administrative hearing is requested, the secretary
24 of state shall appoint a hearing officer to conduct the hearing.
25 Not less than 10 days' notice of the hearing shall be provided by
26 mail to the person submitting the request, to the peace officer who
27 filed the report under section 81138, and, if a prosecuting

1 attorney requests receipt of the notice, to the prosecuting
2 attorney of the county where the arrest was made. The hearing
3 officer may administer oaths and issue subpoenas for the attendance
4 of necessary witnesses, and may grant a reasonable request for an
5 adjournment. The hearing shall cover only the following issues:

6 (a) Whether the peace officer had reasonable grounds to
7 believe that the person committed a crime described in section
8 81137(1).

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

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

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

15 (3) An administrative hearing conducted under this section is
16 not a contested case for the purposes of ~~chapter 4~~ **SECTIONS 71 TO**
17 **87** of the administrative procedures act of 1969, ~~Act No. 306 of~~
18 ~~the Public Acts of 1969, being sections 24.271 to 24.287 of the~~
19 ~~Michigan Compiled Laws~~ **1969 PA 306, MCL 24.271 TO 24.287**. The
20 hearing shall be conducted in an impartial manner. A final decision
21 or order of a hearing officer shall be made in writing or stated in
22 the record, and shall include findings of fact based exclusively on
23 the evidence presented and matters officially noticed, and shall
24 specify any sanction to be imposed against the person involved. A
25 copy of the final decision or order shall be delivered or mailed
26 immediately to the person and the peace officer.

27 (4) After the administrative hearing, if the person is found

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

18 (5) The circuit court shall enter an order setting the cause
19 for hearing for a date certain that is not more than 60 days after
20 the date of the order. The order, a copy of the petition, which
21 shall include the person's full name, current address, birth date,
22 and driver's license number, and all supporting affidavits shall be
23 served on the secretary of state's office in Lansing not less than
24 50 days before the date set for the hearing. The department shall
25 cause a record to be made of the proceedings held ~~pursuant to~~
26 **UNDER** subsection (2). The record shall be prepared and transcribed
27 in accordance with section 86 of ~~Act No. 306 of the Public Acts of~~

1 ~~1969, being section 24.286 of the Michigan Compiled Laws~~ THE
2 ADMINISTRATIVE PROCEDURE ACT OF 1969, 1969 PA 306, MCL 24.286. Upon
3 notification of the filing of a petition for judicial review, the
4 department shall transmit to the court in which the petition was
5 filed, not less than 10 days before the matter is set for review,
6 the original or a certified copy of the official record of the
7 proceedings.

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

23 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CIRCUIT
24 COURT SHALL ENTER AN ORDER SETTING THE CAUSE FOR HEARING FOR A DAY
25 CERTAIN THAT IS NOT MORE THAN 63 DAYS AFTER THE DATE OF THE ORDER.
26 THE ORDER, A COPY OF THE PETITION, THAT INCLUDES THE PERSON'S FULL
27 NAME, CURRENT ADDRESS, BIRTH DATE, AND DRIVER'S LICENSE NUMBER, AND

1 ALL SUPPORTING AFFIDAVITS SHALL BE SERVED ON THE SECRETARY OF
2 STATE'S OFFICE IN LANSING NOT LESS THAN 20 DAYS BEFORE THE DATE SET
3 FOR THE HEARING. IF THE PERSON IS SEEKING A REVIEW OF THE RECORD
4 PREPARED UNDER SECTION 81140, THE SERVICE UPON THE SECRETARY OF
5 STATE SHALL BE MADE NOT LESS THAN 50 DAYS BEFORE THE DATE SET FOR
6 THE HEARING.

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

14 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN REVIEWING
15 A DETERMINATION UNDER SECTION 81140, THE COURT SHALL CONFINE ITS
16 CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER SECTION
17 81140 TO DETERMINE WHETHER THE HEARING OFFICER PROPERLY DETERMINED
18 THE ISSUES ENUMERATED IN SECTION 81140.

19 (5) IN REVIEWING A DETERMINATION RESULTING IN ISSUANCE OF AN
20 ORDER UNDER SECTION 81134(6), (7), (8), OR (9), THE COURT SHALL
21 CONFINE ITS CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER
22 SECTION 81140. THE COURT SHALL SET ASIDE THE DETERMINATION OF THE
23 SECRETARY OF STATE ONLY IF SUBSTANTIAL RIGHTS OF THE PETITIONER
24 HAVE BEEN PREJUDICED BECAUSE THE DETERMINATION IS ANY OF THE
25 FOLLOWING:

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

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

3 (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL
4 PREJUDICE TO THE PETITIONER.

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

7 (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED
8 EXERCISE OF DISCRETION.

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

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

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

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

24 (4) A person who submits to a preliminary chemical breath
25 analysis shall remain subject to the requirements of sections
26 81136, 81137, 81138, 81139, and 81140 for the purposes of chemical
27 tests described in those sections.

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

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

19 Enacting section 1. This amendatory act takes effect January
20 1, 2006.