

HOUSE BILL No. 5028

September 28, 2011, Introduced by Rep. Kandrevas 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, 81136, 81137, 81140, 81141, and
81144 (MCL 324.81101, 324.81134, 324.81136, 324.81137, 324.81140,
324.81141, and 324.81144), section 81101 as amended by 2009 PA 200,
section 81134 as amended by 2001 PA 12, 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; and to repeal
acts and parts of acts.

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-, 4-, or 6-wheeled vehicle designed
2 for off-road use that has low-pressure tires, has a seat designed
3 to be straddled by the rider, and is powered by a 50cc to 1,000cc
4 gasoline engine or an engine of comparable size using other fuels.

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

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

15 *(i)* An implement of husbandry as that term is defined in
16 section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

17 *(ii)* A vehicle used in connection with a farm operation as that
18 term is defined in section 2 of the Michigan right to farm act,
19 1981 PA 93, MCL 286.472.

20 **(G)** ~~(f)~~—"Forest road" means a hard surfaced road, gravel or
21 dirt road, or other route capable of travel by a 2-wheel drive, 4-
22 wheel conventional vehicle designed for highway use, except an
23 interstate, state, or county highway.

24 **(H)** ~~(g)~~—"Forest trail" means a designated path or way capable
25 of travel only by a vehicle less than 50 inches in width.

26 **(I)** ~~(h)~~—"Highway" means the entire width between the boundary
27 lines of a way publicly maintained when any part of the way is open

1 to the use of the public for purposes of vehicular travel.

2 (J) ~~(i)~~—"Highly restricted personal information" means an
3 individual's photograph or image, social security number, digitized
4 signature, and medical and disability information.

5 (K) ~~(j)~~—"Late model ORV" means an ORV manufactured in the
6 current model year or the 5 model years immediately preceding the
7 current model year.

8 (L) ~~(k)~~—"Manufacturer" means a person, partnership,
9 corporation, or association engaged in the production and
10 manufacture of ORVs as a regular business.

11 (M) ~~(l)~~—"Off-road vehicle account" means the off-road vehicle
12 account of the Michigan conservation and recreation legacy fund
13 established in section 2015.

14 (N) ~~(m)~~—"Operate" means to ride in or on, and be in actual
15 physical control of, the operation of an ORV.

16 (O) ~~(n)~~—"Operator" means a person who operates or is in actual
17 physical control of the operation of an ORV.

18 (P) ~~(o)~~—"ORV" or "vehicle" means a motor-driven off-road
19 recreation vehicle capable of cross-country travel without benefit
20 of a road or trail, on or immediately over land, snow, ice, marsh,
21 swampland, or other natural terrain. ORV or vehicle includes, but
22 is not limited to, a multitrack or multiwheel drive vehicle, an
23 ATV, a motorcycle or related 2-wheel, 3-wheel, 4-wheel, or 6-wheel
24 vehicle, an amphibious machine, a ground effect air cushion
25 vehicle, or other means of transportation deriving motive power
26 from a source other than muscle or wind. ORV or vehicle does not
27 include a registered snowmobile, a farm vehicle being used for

1 farming, a vehicle used for military, fire, emergency, or law
2 enforcement purposes, a vehicle owned and operated by a utility
3 company or an oil or gas company when performing maintenance on its
4 facilities or on property over which it has an easement, a
5 construction or logging vehicle used in performance of its common
6 function, or a registered aircraft.

7 (Q) ~~(p)~~ "Owner" means any of the following:

8 (i) A vendee or lessee of an ORV that is the subject of an
9 agreement for the conditional sale or lease of the ORV, with the
10 right of purchase upon performance of the conditions stated in the
11 agreement, and with an immediate right of possession vested in the
12 conditional vendee or lessee.

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

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

16 (R) ~~(q)~~ "Person with disabilities" means a person who has 1 or
17 more of the following physical characteristics:

18 (i) Blindness.

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

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

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

25 (v) A lung disease from which the person's expiratory volume
26 for 1 second, when measured by spirometry, is less than 1 liter, or
27 from which the person's arterial oxygen tension is less than 60

1 mm/hg of room air at rest.

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

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

9 (S) ~~(r)~~—"Personal information" means information that
10 identifies an individual, including an individual's driver
11 identification number, name, address not including zip code, and
12 telephone number, but does not include information on ORV operation
13 or equipment-related violations or civil infractions, operator or
14 vehicle registration status, accidents, or other behaviorally-
15 related information.

16 (T) ~~(s)~~—"Public agency" means the department or a local or
17 federal unit of government.

18 (U) ~~(t)~~—"Roadway" means that portion of a highway improved,
19 designated, or ordinarily used for vehicular travel. If a highway
20 includes 2 or more separate roadways, the term roadway refers to a
21 roadway separately, but not to all roadways collectively.

22 (V) ~~(u)~~—"Route" means a forest road or other road that is
23 designated for purposes of this part by the department.

24 (W) ~~(v)~~—"Safety chief instructor" means a person who has been
25 certified by a nationally recognized ATV and ORV organization to
26 certify instructors and to do on-sight evaluations of instructors.

27 (X) ~~(w)~~—"Visual supervision" means the direct observation of

1 the operator with the unaided or normally corrected eye, where the
 2 observer is able to come to the immediate aid of the operator.

3 Sec. 81134. (1) A person ~~who~~ **SHALL NOT OPERATE AN ORV IF ANY**
 4 **OF THE FOLLOWING APPLY:**

5 (A) **THE PERSON** is under the influence of ~~intoxicating~~
 6 **ALCOHOLIC** liquor or a controlled substance, as defined by section
 7 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a
 8 combination of intoxicating liquor and a controlled substance.
 9 ~~shall not operate an ORV.~~

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

13 (C) **THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A**
 14 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**
 15 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**
 16 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**
 17 **DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA**
 18 **368, MCL 333.7214.**

19 (2) ~~(3)~~ The owner or person in charge or in control of an ORV
 20 shall not authorize or knowingly permit the ORV to be operated by a
 21 person ~~who~~ **IF ANY OF THE FOLLOWING APPLY:**

22 (A) **THE PERSON** is under the influence of ~~intoxicating~~
 23 **ALCOHOLIC** liquor or a controlled substance or a combination of
 24 ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled substance.

25 (B) **THE PERSON HAS A BLOOD ALCOHOL CONTENT OF 0.08 GRAMS OR**
 26 **MORE PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER**
 27 **67 MILLILITERS OF URINE.**

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

5 (3) A PERSON SHALL NOT OPERATE AN ORV IF, DUE TO THE
6 CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, AS DEFINED
7 BY SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
8 333.7104, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED
9 SUBSTANCE, THE PERSON'S ABILITY TO OPERATE AN ORV IS VISIBLY
10 IMPAIRED. IF A PERSON IS CHARGED WITH VIOLATING SUBSECTION (1), A
11 FINDING OF GUILTY IS PERMISSIBLE UNDER THIS SUBSECTION.

12 (4) Except as otherwise provided in this section, a person who
13 is convicted of a violation of subsection (1) ~~, (2), or (3)~~ is
14 guilty of a misdemeanor ~~, punishable by imprisonment for not more~~
15 ~~than 93 days~~ ~~, or a fine of not less than \$100.00 or more than~~
16 ~~\$500.00, or both, together with costs of the prosecution. As part~~
17 ~~of the sentence for a violation of subsection (1), or (2), the~~
18 court shall order the person convicted not to operate an ORV for a
19 period of not less than 6 months or more than 2 years. **A PERSON WHO**
20 **IS CONVICTED OF VIOLATING SUBSECTION (3) IS GUILTY OF A MISDEMEANOR**
21 **PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF**
22 **NOT MORE THAN \$300.00, OR BOTH, TOGETHER WITH THE COSTS OF**
23 **PROSECUTION. AS PART OF THE SENTENCE FOR A VIOLATION OF SUBSECTION**
24 **(3), THE COURT SHALL ORDER THE PERSON CONVICTED NOT TO OPERATE AN**
25 **ORV FOR A PERIOD OF NOT LESS THAN 93 DAYS OR MORE THAN 1 YEAR.**

26 (5) On a second conviction under subsection (1) or ~~(2)~~ (3) or
27 a local ordinance substantially corresponding to subsection (1) or

1 ~~(2)~~-(3) within a period of 7 years, a person is guilty of a
2 misdemeanor ~~7~~-punishable by imprisonment for not more than 1 year ~~7~~
3 or a fine of not more than \$1,000.00, or both. As part of the
4 sentence **FOR A VIOLATION OF SUBSECTION (1)**, the court shall order
5 the person convicted not to operate an ORV for a period of not less
6 than 1 year or more than 2 years. **AS PART OF THE SENTENCE FOR A**
7 **VIOLATION OF SUBSECTION (3), THE COURT SHALL ORDER THE PERSON**
8 **CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6**
9 **MONTHS OR MORE THAN 18 MONTHS.**

10 (6) On a third or subsequent conviction within a ~~ANY~~ period of
11 ~~10~~-years under subsection (1) or ~~(2)~~-(3) or a local ordinance
12 substantially corresponding to subsection (1) or ~~(2)~~-(3), a person
13 is guilty of a felony and shall be sentenced to imprisonment for
14 not less than 1 year or more than 5 years ~~7~~-or a fine of not less
15 than \$500.00 or more than ~~\$5,000~~-\$5,000.00, or both. As part of the
16 sentence **FOR A VIOLATION OF SUBSECTION (1)**, the court shall order
17 the person convicted not to operate an ORV for a period of not less
18 than 1 year or more than 2 years. **AS PART OF THE SENTENCE FOR A**
19 **VIOLATION OF SUBSECTION (3), THE COURT SHALL ORDER THE PERSON**
20 **CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1**
21 **YEAR OR MORE THAN 2 YEARS.**

22 (7) A person who operates an ORV in violation of subsection
23 (1) or ~~(2)~~-~~or section 81135~~-(3) and by the operation of that ORV
24 causes the death of another person is guilty of a felony punishable
25 by imprisonment for not more than 15 years or a fine of not less
26 than \$2,500.00 or more than \$10,000.00, or both.

27 (8) A person who operates an ORV within this state in

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

- 10 ~~—— (a) Loss of a limb or use of a limb.~~
 11 ~~—— (b) Loss of a hand, foot, finger, or thumb or use of a hand,~~
 12 ~~foot, finger, or thumb.~~
 13 ~~—— (c) Loss of an eye or ear or use of an eye or ear.~~
 14 ~~—— (d) Loss or substantial impairment of a bodily function.~~
 15 ~~—— (e) Serious visible disfigurement.~~
 16 ~~—— (f) A comatose state that lasts for more than 3 days.~~
 17 ~~—— (g) Measurable brain damage or mental impairment.~~
 18 ~~—— (h) A skull fracture or other serious bone fracture.~~
 19 ~~—— (i) Subdural hemorrhage or subdural hematoma.~~

20 (9) A PERSON WHO IS CONVICTED OF VIOLATING SUBSECTION (2) IS
 21 GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
 22 THAN 93 DAYS OR A FINE OF NOT LESS THAN \$100.00 OR MORE THAN
 23 \$500.00, OR BOTH.

24 (10) ~~(9)~~ As part of the sentence for a violation of subsection
 25 (1), ~~or~~ (2), OR (3) or a local ordinance substantially
 26 corresponding to subsection (1), ~~or~~ (2), OR (3), the court may
 27 order the person to perform service to the community, as designated

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

6 (11) ~~(10)~~—Before imposing sentence for a violation of
7 subsection (1) or ~~(2)~~—(3) or a local ordinance substantially
8 corresponding to subsection (1) or ~~(2)~~—(3), the court shall order
9 the person to undergo screening and assessment by a person or
10 agency designated by the office of substance abuse services, to
11 determine whether the person is likely to benefit from
12 rehabilitative services, including alcohol or drug education and
13 alcohol or drug treatment programs. As part of the sentence, the
14 court may order the person to participate in and successfully
15 complete 1 or more appropriate rehabilitative programs. The person
16 shall pay for the costs of the screening, assessment, and
17 rehabilitative services.

18 (12) ~~(11)~~—Before accepting a plea of guilty under this
19 section, the court shall advise the accused of the statutory
20 consequences possible as the result of a plea of guilty in respect
21 to suspension of the person's right to operate an ORV and the
22 penalty imposed for violation of this section.

23 (13) ~~(12)~~—Each municipal judge and each clerk of a court of
24 record shall keep a full record of every case in which a person is
25 charged with a violation of this section. The municipal judge or
26 clerk of the court of record shall prepare and immediately forward
27 to the secretary of state an abstract of the court of record for

1 each case charging a violation of this section.

2 Sec. 81136. (1) In a criminal prosecution for violating
3 section 81134 ~~or 81135~~ or a local ordinance substantially
4 corresponding to section 81134, ~~or 81135~~, or in a criminal
5 prosecution for negligent homicide, ~~or manslaughter~~, **OR MURDER**
6 resulting from the operation of an ORV while the operator is
7 alleged to have been impaired by or under the influence of
8 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance or a
9 combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled
10 substance, or to have had a blood alcohol content of ~~0.10~~ **0.08**
11 grams or more per 100 milliliters of blood, per 210 liters of
12 breath, or per 67 milliliters of urine, **OR TO HAVE HAD IN HIS OR**
13 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**
14 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
15 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**
16 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC**
17 **HEALTH CODE, 1978 PA 368, MCL 333.7214, the amount of alcohol OR**
18 **CONTROLLED SUBSTANCE** in the operator's blood at the time alleged as
19 shown by chemical analysis of the operator's blood, urine, or
20 breath ~~shall be~~ **IS** admissible into 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 taken
23 and collected in a reasonable manner. Only a licensed physician, or
24 a licensed nurse or medical technician under the direction of a
25 licensed physician and qualified to withdraw blood acting in a
26 medical environment, at the request of a peace officer, may
27 withdraw blood for the purpose of determining the alcoholic content

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

6 (4) ~~(5)~~—A person arrested for a crime enumerated in subsection
7 (1) who takes a chemical test administered at the request of a
8 peace officer ~~—~~as provided in this part ~~—~~shall be given a
9 reasonable opportunity to have a person of his or her own choosing
10 administer 1 of the chemical tests described in this section within
11 a reasonable time after his or her detention, and the results of
12 the test shall be admissible and shall be considered with other
13 competent evidence in determining the defendant's innocence or
14 guilt of a crime enumerated in subsection (1). If the person
15 arrested is administered a chemical test by a person of his or her
16 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 person
26 refuses the request of a peace officer to take a test described in
27 this section, a test shall not be given without a court order. The

1 person arrested shall also be advised that the person's refusal of
2 the request of a peace officer to take a test described in this
3 section shall result in the suspension of the person's right to
4 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 a
10 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 **OR HAD IN**
13 **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 OF**
16 **A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE**
17 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214.**

18 (7) ~~(8)~~—If a jury instruction regarding a defendant's refusal
19 to submit to a chemical test under this section is requested by the
20 prosecution or the defendant, the jury instruction shall be given
21 as follows:

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

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

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

24 Sec. 81137. (1) Except as provided in subsection (2), a person
25 who operates an ORV is considered to have given consent to chemical
26 tests of his or her blood, breath, or urine for the purpose of
27 determining the amount of alcohol or presence of a controlled

1 substance or both in his or her blood, and may be requested by a
 2 peace officer to submit to chemical tests of his or her blood,
 3 breath, or urine for the purpose of determining the amount of
 4 alcohol or presence of a controlled substance or both in his or her
 5 blood if:

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

10 (b) The person is arrested for negligent homicide, ~~or~~
 11 manslaughter, **OR MURDER** resulting from the operation of an ORV, and
 12 the peace officer has reasonable grounds to believe that the person
 13 was operating the ORV ~~while impaired by or under the influence of~~
 14 ~~intoxicating liquor, a controlled substance, or a combination of~~
 15 ~~intoxicating liquor and a controlled substance.~~ **IN VIOLATION OF**
 16 **SECTION 81134.**

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

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

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

11 (a) Whether the peace officer had reasonable grounds to
12 believe that the person committed a crime described in section
13 81137(1).

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

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

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

20 (3) An administrative hearing conducted under this section is
21 not a contested case for the purposes of chapter 4 of the
22 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
23 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
24 ~~Compiled Laws 1969 PA 306, MCL 24.271 TO 24.287.~~ The hearing shall
25 be conducted in an impartial manner. A final decision or order of a
26 hearing officer shall be made in writing or stated in the record,
27 and shall include findings of fact based exclusively on the

1 evidence presented and matters officially noticed, and shall
2 specify any sanction to be imposed against the person involved. A
3 copy of the final decision or order shall be delivered or mailed
4 immediately to the person and the peace officer.

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

22 (5) The circuit court shall enter an order setting the cause
23 for hearing for a date certain that is not more than 60 days after
24 the date of the order. The order, a copy of the petition, which
25 shall include the person's full name, current address, birth date,
26 and driver's license number, and all supporting affidavits shall be
27 served on the secretary of state's office in Lansing not less than

1 50 days before the date set for the hearing. The department shall
2 cause a record to be made of the proceedings held ~~pursuant to~~ **UNDER**
3 subsection (2). The record shall be prepared and transcribed in
4 accordance with section 86 of ~~Act No. 306 of the Public Acts of~~
5 ~~1969, being section 24.286 of the Michigan Compiled Laws~~ **THE**
6 **ADMINISTRATIVE PROCEDURE ACT OF 1969, 1969 PA 306, MCL 24.286.** Upon
7 notification of the filing of a petition for judicial review, the
8 department shall transmit to the court in which the petition was
9 filed, not less than 10 days before the matter is set for review,
10 the original or a certified copy of the official record of the
11 proceedings.

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

27 **(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CIRCUIT**

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

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

18 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN REVIEWING
19 A DETERMINATION UNDER SECTION 81140, THE COURT SHALL CONFINE ITS
20 CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER SECTION
21 81140 TO DETERMINE WHETHER THE HEARING OFFICER PROPERLY DETERMINED
22 THE ISSUES ENUMERATED IN SECTION 81140.

23 (5) IN REVIEWING A DETERMINATION RESULTING IN ISSUANCE OF AN
24 ORDER UNDER SECTION 81134, THE COURT SHALL CONFINE ITS
25 CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER SECTION
26 81140. THE COURT SHALL SET ASIDE THE DETERMINATION OF THE SECRETARY
27 OF STATE ONLY IF SUBSTANTIAL RIGHTS OF THE PETITIONER HAVE BEEN

1 PREJUDICED BECAUSE THE DETERMINATION IS ANY OF THE FOLLOWING:

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

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

6 (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL
7 PREJUDICE TO THE PETITIONER.

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

10 (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED
11 EXERCISE OF DISCRETION.

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

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

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

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

27 (4) A person who submits to a preliminary chemical breath

1 analysis ~~shall remain~~ **REMAINS** subject to the requirements of
2 sections 81136, 81137, 81138, 81139, and 81140 for the purposes of
3 chemical tests described in those sections.

4 (5) A person who refuses to submit to a preliminary chemical
5 breath analysis upon a lawful request by a peace officer is
6 responsible for a state civil infraction and may be ordered to pay
7 a civil fine of not more than ~~\$100.00~~ **\$500.00**.

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

21 Enacting section 1. Section 81135 of the natural resources and
22 environmental protection act, 1994 PA 451, MCL 324.81135, is
23 repealed.

24 Enacting section 2. This amendatory act takes effect January
25 1, 2012.