

HOUSE BILL No. 4436

March 14, 1989, Introduced by Reps. Rocca, DeMars, Weeks, Maynard, Perry Bullard and Clack and referred to the Committee on Tourism, Fisheries and Wildlife.

A bill to amend Act No. 328 of the Public Acts of 1931, entitled

"The Michigan penal code,"

as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, by adding sections 236a, 236b, 236c, 236d, 236e, and 236f; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 328 of the Public Acts of 1931, as
2 amended, being sections 750.1 to 750.568 of the Michigan Compiled
3 Laws, is amended by adding sections 236a, 236b, 236c, 236d, 236e,
4 and 236f to read as follows:

5 SEC. 236A. (1) A PERSON WHO IS UNDER THE INFLUENCE OF
6 INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, AS DEFINED BY
7 SECTION 7104 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC
8 ACTS OF 1978, BEING SECTION 333.7104 OF THE MICHIGAN COMPILED

1 LAWS, OR A COMBINATION OF INTOXICATING LIQUOR AND A CONTROLLED
2 SUBSTANCE, WHETHER LICENSED OR NOT, SHALL NOT HUNT WITH A FIREARM
3 OR A BOW AND ARROW.

4 (2) A PEACE OFFICER MAY ARREST A PERSON WITHOUT A WARRANT
5 WHEN THE PEACE OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT THE
6 PERSON WAS, AT THE TIME OF A HUNTING ACCIDENT, UNDER THE INFLU-
7 ENCE OF INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, OR A COM-
8 BINATION OF AN INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR
9 WAS HUNTING WHILE THE PERSON'S ABILITY WAS VISIBLY IMPAIRED DUE
10 TO THE CONSUMPTION OF INTOXICATING LIQUOR OR A CONTROLLED SUB-
11 STANCE OR A COMBINATION OF INTOXICATING LIQUOR AND A CONTROLLED
12 SUBSTANCE.

13 (3) A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION
14 (1) IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR
15 NOT MORE THAN 90 DAYS, OR A FINE OF NOT LESS THAN \$100.00 NOR
16 MORE THAN \$500.00, OR BOTH, TOGETHER WITH COSTS OF THE
17 PROSECUTION. A SUBSEQUENT OFFENSE IS PUNISHABLE AS FOLLOWS:

18 (A) UPON A SECOND CONVICTION UNDER THIS SECTION, A PERSON IS
19 GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE
20 THAN 1 YEAR, OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.

21 (B) UPON A THIRD OR SUBSEQUENT CONVICTION WITHIN A PERIOD OF
22 10 YEARS UNDER THIS SECTION, A PERSON IS GUILTY OF A FELONY.

23 (4) UPON CONVICTION OF A PERSON UNDER THIS SECTION, THE
24 COURT, IN ADDITION TO THE PENALTY IMPOSED UNDER SUBSECTION (3)
25 AND AS PART OF THE SENTENCE, SHALL ORDER THAT THE PERSON NOT
26 OBTAIN OR POSSESS A LICENSE TO HUNT IN THIS STATE FOR THE
27 REMAINDER OF THE YEAR IN WHICH CONVICTED AND FOR THE NEXT 3

1 SUCCEEDING CALENDAR YEARS. THE COURT MAY ALSO ORDER THE PERSON
2 TO PARTICIPATE IN AN ALCOHOL TRAINING PROGRAM. IN ADDITION, THE
3 COURT SHALL REPORT A CONVICTION UNDER THIS SECTION OR
4 SECTION 236C TO THE DEPARTMENT OF NATURAL RESOURCES.

5 SEC. 236B. (1) IN A CRIMINAL PROSECUTION FOR HUNTING WHILE
6 UNDER THE INFLUENCE OF INTOXICATING LIQUOR, FOR HUNTING WHILE
7 VISIBLY IMPAIRED, OR IN A CRIMINAL PROSECUTION PERTAINING TO MAN-
8 SLAUGHTER RESULTING FROM HUNTING, WHILE THE PERSON IS ALLEGED TO
9 HAVE BEEN UNDER THE INFLUENCE OF INTOXICATING LIQUOR, THE AMOUNT
10 OF ALCOHOL IN THE PERSON'S BLOOD AT THE TIME ALLEGED AS SHOWN BY
11 CHEMICAL ANALYSIS OF THE PERSON'S BLOOD, URINE, OR BREATH SHALL
12 BE ADMISSIBLE INTO EVIDENCE. IF SUCH A TEST IS GIVEN, THE
13 RESULTS OF THE TEST SHALL BE MADE AVAILABLE TO THE PERSON CHARGED
14 OR THE PERSON'S ATTORNEY UPON WRITTEN REQUEST TO THE PROSECUTION,
15 WITH A COPY OF THE REQUEST FILED WITH THE COURT. THE PROSECUTION
16 SHALL FURNISH THE REPORT AT LEAST 2 DAYS BEFORE THE DAY OF THE
17 TRIAL AND THE RESULTS SHALL BE OFFERED AS EVIDENCE BY THE PROSE-
18 CUTION IN A CRIMINAL PROCEEDING. FAILURE TO FULLY COMPLY WITH
19 THE REQUEST SHALL BAR THE ADMISSION OF THE RESULTS INTO EVIDENCE
20 BY THE PROSECUTION. THE AMOUNT OF ALCOHOL IN THE PERSON'S BLOOD
21 AT THE TIME ALLEGED AS SHOWN BY CHEMICAL ANALYSIS OF THE PERSON'S
22 BLOOD, URINE, OR BREATH SHALL GIVE RISE TO THE FOLLOWING
23 PRESUMPTIONS:

24 (A) IF THERE WAS AT THE TIME 0.07% OR LESS BY WEIGHT OF
25 ALCOHOL IN THE DEFENDANT'S BLOOD, IT SHALL BE PRESUMED THAT THE
26 DEFENDANT WAS NOT UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

1 (B) IF THERE WAS AT THE TIME IN EXCESS OF 0.07% BUT LESS
2 THAN 0.10% BY WEIGHT OF ALCOHOL IN THE DEFENDANT'S BLOOD, IT
3 SHALL BE PRESUMED THAT THE DEFENDANT'S ABILITY TO HUNT WAS
4 IMPAIRED WITHIN THE PROVISIONS OF SECTION 236C DUE TO THE CON-
5 SUMPTION OF INTOXICATING LIQUOR.

6 (C) IF THERE WAS AT THE TIME 0.10% OR MORE BY WEIGHT OF
7 ALCOHOL IN THE DEFENDANT'S BLOOD, IT SHALL BE PRESUMED THAT THE
8 DEFENDANT WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

9 (2) A SAMPLE OR SPECIMEN OF URINE OR BREATH SHALL BE TAKEN
10 AND COLLECTED IN A REASONABLE MANNER. ONLY A LICENSED PHYSICIAN,
11 OR A LICENSED NURSE OR MEDICAL TECHNICIAN UNDER THE DIRECTION OF
12 A LICENSED PHYSICIAN AND QUALIFIED TO WITHDRAW BLOOD ACTING IN A
13 MEDICAL ENVIRONMENT, AT THE REQUEST OF A PEACE OFFICER, MAY WITH-
14 DRAW BLOOD FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC CONTENT
15 OF THE BLOOD UNDER THIS SECTION. LIABILITY FOR A CRIME OR CIVIL
16 DAMAGES PREDICATED ON THE ACT OF WITHDRAWING BLOOD AND RELATED
17 PROCEDURES SHALL NOT ATTACH TO A QUALIFIED PERSON WHO WITHDRAWS
18 BLOOD OR ASSISTS IN THE WITHDRAWAL IN ACCORDANCE WITH THIS ACT
19 UNLESS THE WITHDRAWAL IS PERFORMED IN A NEGLIGENT MANNER.

20 (3) A PERSON CHARGED WITH A CRIME ENUMERATED IN SUBSECTION
21 (1) WHO TAKES A CHEMICAL TEST ADMINISTERED AT THE REQUEST OF A
22 PEACE OFFICER, AS PROVIDED IN SUBSECTIONS (1) AND (2), SHALL BE
23 INFORMED THAT THE PERSON WILL BE GIVEN A REASONABLE OPPORTUNITY
24 TO HAVE A PERSON OF HIS OR HER OWN CHOOSING ADMINISTER 1 OF THE
25 CHEMICAL TESTS, AS PROVIDED IN THIS SECTION, WITHIN A REASONABLE
26 TIME AFTER HIS OR HER DETENTION, AND THE RESULTS OF THE TEST
27 SHALL BE ADMISSIBLE AND SHALL BE CONSIDERED WITH OTHER COMPETENT

1 EVIDENCE IN DETERMINING THE INNOCENCE OR GUILT OF THE DEFENDANT.
2 A PERSON CHARGED WITH A CRIME ENUMERATED IN SUBSECTION (1) WHO IS
3 REQUESTED BY THE PEACE OFFICER TO TAKE A CHEMICAL TEST AS PRO-
4 VIDED IN SUBSECTIONS (1) AND (2) SHALL BE INFORMED THAT HE OR SHE
5 HAS THE RIGHT TO DEMAND THAT 1 OF THE TESTS PROVIDED FOR IN SUB-
6 SECTION (1) SHALL BE GIVEN HIM OR HER, AND THE RESULTS OF THE
7 TEST SHALL BE ADMISSIBLE AND SHALL BE CONSIDERED WITH OTHER COM-
8 PETENT EVIDENCE IN DETERMINING THE INNOCENCE OR GUILT OF THE
9 DEFENDANT.

10 (4) THE PERSON CHARGED SHALL BE ADVISED THAT THE PERSON MAY
11 REFUSE TO TAKE A TEST AS PROVIDED IN THIS SECTION AND, EXCEPT AS
12 PROVIDED IN SECTION 236D(2), THAT THE REFUSAL IS ADMISSIBLE IN
13 EVIDENCE AS PROVIDED IN SUBSECTION (7).

14 (5) THIS SECTION SHALL NOT BE CONSTRUED AS LIMITING THE
15 INTRODUCTION OF ANY OTHER COMPETENT EVIDENCE BEARING UPON THE
16 QUESTION OF WHETHER OR NOT THE DEFENDANT WAS UNDER THE INFLUENCE
17 OF INTOXICATING LIQUOR.

18 (6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, A
19 PERSON REQUESTED TO TAKE A TEST SHALL BE ADVISED THAT HE OR SHE
20 HAS THE OPTION TO DEMAND THAT ONLY A BREATH TEST SHALL BE GIVEN,
21 IN WHICH CASE HIS OR HER REFUSAL TO SUBMIT TO ANOTHER TEST SHALL
22 NOT CONSTITUTE A REFUSAL.

23 (7) IF A JURY INSTRUCTION REGARDING A DEFENDANT'S REFUSAL TO
24 SUBMIT TO A CHEMICAL TEST UNDER THIS SECTION IS REQUESTED BY THE
25 PROSECUTION OR THE DEFENDANT, THE JURY INSTRUCTION SHALL BE GIVEN
26 AS FOLLOWS:

1 "EVIDENCE WAS ADMITTED IN THIS CASE WHICH, IF BELIEVED BY
2 THE JURY, COULD PROVE THAT THE DEFENDANT HAD EXERCISED HIS OR HER
3 RIGHT TO REFUSE A CHEMICAL TEST. YOU ARE INSTRUCTED THAT SUCH A
4 REFUSAL IS WITHIN THE STATUTORY RIGHTS OF THE DEFENDANT AND IS
5 NOT EVIDENCE OF THE DEFENDANT'S GUILT. YOU ARE NOT TO CONSIDER
6 SUCH A REFUSAL IN DETERMINING THE GUILT OR INNOCENCE OF THE
7 DEFENDANT."

8 SEC. 236C. (1) A PERSON SHALL NOT HUNT WHEN, DUE TO THE
9 CONSUMPTION OF AN INTOXICATING LIQUOR, A CONTROLLED SUBSTANCE, OR
10 A COMBINATION OF AN INTOXICATING LIQUOR AND A CONTROLLED SUB-
11 STANCE, THE PERSON HAS VISIBLY IMPAIRED HIS OR HER ABILITY TO
12 HUNT SAFELY WITH A FIREARM OR BOW AND ARROW. IF A PERSON IS
13 CHARGED WITH VIOLATING SECTION 236A, A FINDING OF GUILTY IS PER-
14 MISSIBLE UNDER THIS SECTION.

15 (2) A PERSON CONVICTED OF A VIOLATION OF THIS SECTION IS
16 GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE
17 THAN 90 DAYS, OR A FINE OF NOT MORE THAN \$300.00, OR BOTH,
18 TOGETHER WITH COSTS OF THE PROSECUTION. ON A SECOND AND SUBSE-
19 QUENT CONVICTION UNDER THIS SECTION, OR A LOCAL ORDINANCE SUB-
20 STANTIALLY CORRESPONDING TO THIS SECTION, THE PERSON IS GUILTY OF
21 A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1
22 YEAR, OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH. UPON CON-
23 VICTION OF A PERSON UNDER THIS SECTION, THE COURT SHALL ORDER
24 THAT THE PERSON NOT OBTAIN OR POSSESS A HUNTING LICENSE DURING
25 THE REMAINDER OF THE YEAR IN WHICH CONVICTED AND THE NEXT 3 SUC-
26 CEEDING CALENDAR YEARS.

1 SEC. 236D. (1) A PERSON WHO HUNTS WITH A FIREARM OR A BOW
2 AND ARROW WITHIN THIS STATE MAY BE REQUESTED BY A PEACE OFFICER
3 TO SUBMIT TO CHEMICAL TESTS OF HIS OR HER BLOOD, BREATH, OR URINE
4 FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC CONTENT OF HIS OR
5 HER BLOOD IF:

6 (A) THE PERSON IS ARRESTED FOR A VIOLATION OF SECTION 236A
7 OR 236C OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SEC-
8 TION 236A OR 236C.

9 (B) THE PERSON IS ARRESTED FOR MANSLAUGHTER RESULTING FROM
10 HUNTING AND THE PEACE OFFICER HAD REASONABLE GROUNDS TO BELIEVE
11 THAT THE PERSON WAS HUNTING WHILE UNDER THE INFLUENCE OF INTOXI-
12 CATING LIQUOR, OR WHILE HIS OR HER ABILITY TO HUNT WAS IMPAIRED
13 DUE TO THE CONSUMPTION OF INTOXICATING LIQUOR.

14 (2) A PERSON WHO IS AFFLICTED WITH HEMOPHILIA, DIABETES, OR
15 A CONDITION REQUIRING THE USE OF AN ANTICOAGULANT UNDER THE
16 DIRECTION OF A PHYSICIAN AND WHO REFUSES A CHEMICAL TEST SHALL
17 NOT BE CONSIDERED TO HAVE REFUSED A CHEMICAL TEST IF THE TEST
18 REQUIRES THE WITHDRAWAL OF BLOOD. THIS REFUSAL IS NOT ADMISSIBLE
19 IN EVIDENCE UNDER SECTION 236B.

20 (3) IF AFTER AN ACCIDENT THE HUNTER INVOLVED IN THE ACCIDENT
21 IS DECEASED, A SAMPLE OF THE DECEDENT'S BLOOD SHALL BE WITHDRAWN
22 IN A MANNER DIRECTED BY THE MEDICAL EXAMINER FOR THE PURPOSE OF
23 DETERMINING BLOOD ALCOHOL CONTENT. THE RESULTS OF AN EXAMINATION
24 OF THE BLOOD OF A DECEASED HUNTER SHALL BE USED FOR STATISTICAL
25 PURPOSES ONLY.

26 SEC. 236E. A PERSON WHO IS REQUESTED PURSUANT TO SECTION
27 236D(1) TO TAKE A CHEMICAL TEST SHALL BE ADVISED OF THE RIGHT TO

1 REFUSE TO SUBMIT TO CHEMICAL TESTS; AND IF THE PERSON REFUSES THE
2 REQUEST OF A PEACE OFFICER TO SUBMIT TO CHEMICAL TESTS, A TEST
3 SHALL NOT BE GIVEN WITHOUT A COURT ORDER.

4 SEC. 236F. (1) A PEACE OFFICER WHO HAS REASONABLE CAUSE TO
5 BELIEVE THAT A PERSON WAS HUNTING IN THE STATE WITH A FIREARM OR
6 BOW AND ARROW, AND THAT THE PERSON BY THE CONSUMPTION OF INTOXI-
7 CATING LIQUOR MAY HAVE AFFECTED HIS OR HER ABILITY TO HUNT, MAY
8 REQUIRE THE PERSON TO SUBMIT TO A PRELIMINARY CHEMICAL BREATH
9 ANALYSIS.

10 (2) A PEACE OFFICER MAY ARREST A PERSON BASED IN WHOLE OR IN
11 PART UPON THE RESULTS OF A PRELIMINARY CHEMICAL BREATH ANALYSIS.

12 (3) THE RESULTS OF A PRELIMINARY CHEMICAL BREATH ANALYSIS
13 SHALL BE ADMISSIBLE IN A CRIMINAL PROSECUTION FOR A CRIME OR IN
14 AN ADMINISTRATIVE HEARING, SOLELY TO ASSIST THE COURT OR HEARING
15 OFFICER IN DETERMINING A CHALLENGE TO THE VALIDITY OF AN ARREST.
16 THIS SUBSECTION DOES NOT LIMIT THE INTRODUCTION OF OTHER COMPE-
17 TENT EVIDENCE OFFERED TO ESTABLISH THE VALIDITY OF AN ARREST.

18 (4) A PERSON WHO SUBMITS TO A PRELIMINARY CHEMICAL BREATH
19 ANALYSIS SHALL REMAIN SUBJECT TO THE REQUIREMENTS OF SECTIONS
20 236B, 236D, AND 236E FOR THE PURPOSES OF CHEMICAL TESTS DESCRIBED
21 IN THOSE SECTIONS.

22 (5) A PERSON WHO REFUSES TO SUBMIT TO A PRELIMINARY CHEMICAL
23 BREATH ANALYSIS UPON A LAWFUL REQUEST BY A PEACE OFFICER SHALL
24 FORFEIT ANY LICENSE TO HUNT IN THIS STATE AND SHALL NOT OBTAIN OR
25 POSSESS A LICENSE TO HUNT IN THIS STATE FOR THE REMAINDER OF THE
26 YEAR IN WHICH THE REFUSAL OCCURRED AND FOR THE NEXT 3 SUCCEEDING
27 CALENDAR YEARS.

1 Section 2. Sections 167a and 167c of Act No. 328 of the
2 Public Acts of 1931, being sections 750.167a and 750.167c of the
3 Michigan Compiled Laws, are repealed.