

# HOUSE BILL No. 5132

October 7, 2003, Introduced by Reps. Condino and Van Regenmorter and referred to the Committee on Criminal Justice.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 82127, 82128, 82140, and 82143 (MCL 324.82127, 324.82128, 324.82140, and 324.82143), section 82127 as amended by 2001 PA 12, section 82128 as amended by 1999 PA 22, and sections 82140 and 82143 as amended by 1996 PA 183.

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

1       Sec. 82127. (1) A person shall not operate a snowmobile in  
2 this state if ~~either~~ **any** of the following ~~applies~~ **apply**:

3       (a) The person is under the influence of intoxicating liquor  
4 or a controlled substance, or both.

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

8       (c) **The person has in his or her body any amount of a**

1 controlled substance listed in schedule 1 under section 7212 of  
2 the public health code, 1978 PA 368, MCL 333.7212, or a rule  
3 promulgated under that section, or of a controlled substance  
4 described in section 7214(a)(iv) of the public health code, 1978  
5 PA 368, MCL 333.7214.

6 (2) The owner of a snowmobile or a person in charge or in  
7 control of a snowmobile shall not authorize or knowingly permit  
8 the snowmobile to be driven or operated by a person ~~who~~ **if any**  
9 **of the following apply:**

10 (a) **The person** is under the influence of intoxicating liquor  
11 or a controlled substance, or both. ~~—, or who~~

12 (b) **The person** has ~~a blood~~ **an** alcohol content of ~~0.10~~  
13 **0.08** grams or more per 100 milliliters of blood, per 210 liters  
14 of breath, or per 67 milliliters of urine.

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

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

25 (4) A person who operates a snowmobile ~~under the influence~~  
26 ~~of intoxicating liquor or a controlled substance, or both, or~~  
27 ~~with a blood alcohol content of 0.10 grams or more per 100~~

1 ~~milliliters of blood, per 210 liters of breath, or per 67~~  
2 ~~milliliters of urine,~~ **in violation of subsection (1) or (3)** and  
3 by the operation of that snowmobile causes the death of another  
4 person is guilty of a felony punishable by imprisonment for not  
5 more than 15 years — or a fine of not less than \$2,500.00 or  
6 more than \$10,000.00, or both.

7 (5) A person who operates a snowmobile ~~under the influence~~  
8 ~~of intoxicating liquor or a controlled substance, or both, or~~  
9 ~~with a blood alcohol content of 0.10 grams or more per 100~~  
10 ~~milliliters of blood, per 210 liters of breath, or per 67~~  
11 ~~milliliters of urine,~~ **in violation of subsection (1) or (3)** and  
12 by the operation of that snowmobile causes a serious impairment  
13 of a body function of another person is guilty of a felony  
14 punishable by imprisonment for not more than 5 years — or a  
15 fine of not less than \$1,000.00 or more than \$5,000.00, or both.  
16 As used in this subsection, "serious impairment of a body  
17 function" includes, but is not limited to, 1 or more of the  
18 following:

- 19 (a) Loss of a limb or use of a limb.  
20 (b) Loss of a hand, foot, finger, or thumb or use of a hand,  
21 foot, finger, or thumb.  
22 (c) Loss of an eye or ear or use of an eye or ear.  
23 (d) Loss or substantial impairment of a bodily function.  
24 (e) Serious visible disfigurement.  
25 (f) A comatose state that lasts for more than 3 days.  
26 (g) Measurable brain damage or mental impairment.  
27 (h) A skull fracture or other serious bone fracture.

1 (i) Subdural hemorrhage or subdural hematoma.

2 Sec. 82128. (1) If a person is convicted of violating  
3 section 82127(1) **or a local ordinance substantially corresponding**  
4 **to section 82127(1)**, the following apply:

5 (a) Except as otherwise provided in subdivisions (b) and (c),  
6 the person is guilty of a misdemeanor and may be punished by 1 or  
7 more of the following:

8 (i) Community service for not more than 45 days.

9 (ii) Imprisonment for not more than 93 days.

10 (iii) A fine of not less than \$100.00 or more than \$500.00.

11 (b) If the violation occurs within 7 years of a prior  
12 conviction, the person shall be sentenced to both a fine of not  
13 less than \$200.00 or more than \$1,000.00 and either of the  
14 following:

15 (i) Community service for not less than 10 days or more than  
16 90 days, and may be imprisoned for not more than 1 year.

17 (ii) Imprisonment for not less than 48 consecutive hours or  
18 more than 1 year, and may be sentenced to community service for  
19 not more than 90 days.

20 (c) If the violation occurs within 10 years of 2 or more  
21 prior convictions, the person is guilty of a felony and shall be  
22 sentenced to imprisonment for not less than 1 year or more than 5  
23 years, or a fine of not less than \$500.00 or more than \$5,000.00,  
24 or both.

25 (2) A term of imprisonment imposed under subsection  
26 (1)(b)(ii) shall not be suspended.

27 (3) A person sentenced to perform service to the community

1 under this section shall not receive compensation and shall  
2 reimburse the state or appropriate local unit of government for  
3 the cost of supervision incurred by the state or local unit of  
4 government as a result of the person's activities in that service  
5 if ordered by the court.

6 (4) In addition to the sanctions prescribed under  
7 subsection (1) and section 82127(4) and (5), the court may,  
8 pursuant to the code of criminal procedure, 1927 PA 175, MCL  
9 760.1 to 777.69, order the person to pay the costs of the  
10 prosecution. The court shall also impose sanctions under section  
11 82142.

12 (5) A person who is convicted of violating section 82127(2)  
13 is guilty of a misdemeanor, punishable by imprisonment for not  
14 more than 93 days, or a fine of not less than \$100.00 or more  
15 than \$500.00, or both.

16 (6) As used in this section, "prior conviction" means a  
17 conviction for a violation of section 82127(1), (4), or (5),  
18 former section 15a(1), (4), or (5) of 1968 PA 74, or former  
19 section 15a, a local ordinance substantially corresponding to  
20 section 82127(1) or former section 15a, or a law of another state  
21 substantially corresponding to section 82127(1), (4), or (5) or  
22 former section 15a.

23 Sec. 82140. ~~(1) Except in a prosecution relating solely to~~  
24 ~~a violation of section 82127(1)(b), the amount of alcohol in the~~  
25 ~~driver's blood at the time alleged as shown by chemical analysis~~  
26 ~~of the person's blood, urine, or breath gives rise to the~~  
27 ~~following presumptions:~~

1 ~~—— (a) If at the time the defendant had a blood alcohol content~~  
2 ~~of 0.07 grams or less per 100 milliliters of blood, per 210~~  
3 ~~liters of breath, or per 67 milliliters of urine, it shall be~~  
4 ~~presumed that the defendant's ability to operate a snowmobile was~~  
5 ~~not impaired due to the consumption of intoxicating liquor and~~  
6 ~~that the defendant was not under the influence of intoxicating~~  
7 ~~liquor.~~

8 ~~—— (b) If at the time the defendant had a blood alcohol content~~  
9 ~~of more than 0.07 grams but less than 0.10 grams per 100~~  
10 ~~milliliters of blood, per 210 liters of breath, or per 67~~  
11 ~~milliliters of urine, it shall be presumed that the defendant's~~  
12 ~~ability to operate a snowmobile was impaired within the~~  
13 ~~provisions of section 82127(3) due to the consumption of~~  
14 ~~intoxicating liquor.~~

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

20 ~~(2)~~ A person's refusal to submit to a chemical test as  
21 provided in sections 82137 and 82138 is admissible in a criminal  
22 prosecution for a crime described in section 82143(1) only for  
23 the purpose of showing that a test was offered to the defendant,  
24 but not as evidence in determining innocence or guilt of the  
25 defendant. The jury shall be instructed accordingly.

26 Sec. 82143. (1) A person who operates a snowmobile is  
27 considered to have given consent to chemical tests of his or her

1 blood, breath, or urine for the purpose of determining the amount  
2 of alcohol or presence of a controlled substance, or both, in his  
3 or her blood in all of the following circumstances:

4 (a) The person is arrested for a violation of section  
5 82127(1), (3), (4), or (5) or a local ordinance substantially  
6 corresponding to section 82127(1) or (3).

7 (b) The person is arrested for negligent homicide,  
8 manslaughter, or murder resulting from the operation of a  
9 snowmobile, and the peace officer had reasonable grounds to  
10 believe that the person was operating the snowmobile ~~while~~  
11 ~~impaired by, or under the influence of, intoxicating liquor or a~~  
12 ~~controlled substance, or both, or while having a blood alcohol~~  
13 ~~content of 0.10 grams or more per 100 milliliters of blood, per~~  
14 ~~210 liters of breath, or per 67 milliliters of urine~~ **in**  
15 **violation of section 82127.**

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

20 (3) A chemical test described in subsection (1) shall be  
21 administered as provided in sections 82137 and 82138.

22 Enacting section 1. This amendatory act takes effect  
23 January 1, 2004.