

# HOUSE BILL No. 5007

May 26, 2009, Introduced by Reps. Kandrevas, Slezak, Geiss, Haugh, Scripps, Walsh, Tyler, Barnett, Bauer, Bledsoe, Mayes, Kowall, Rogers, Lori, Proos, Dean, Schuitmaker, Meadows and Wayne Schmidt 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 2004 PA 587, 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.

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

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

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

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

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

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

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

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

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

25 (J) ~~(i)~~—"Late model ORV" means an ORV manufactured in the  
26 current model year or the 5 model years immediately preceding the  
27 current model year.

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

4           **(L)** ~~(k)~~—"Off-road vehicle account" means the off-road vehicle  
5 account of the Michigan conservation and recreation legacy fund  
6 provided for in section 2015.

7           **(M)** ~~(l)~~—"Operate" means to ride in or on, and be in actual  
8 physical control of, the operation of an ORV.

9           **(N)** ~~(m)~~—"Operator" means a person who operates or is in actual  
10 physical control of the operation of an ORV.

11           **(O)** ~~(n)~~—"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           **(P)** ~~(o)~~—"Owner" means any of the following:

1           (i) A vendee or lessee of an ORV which is the subject of an  
2 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           (Q) ~~(p)~~—"Person with disabilities" means a person who has 1 or  
10 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 (R) ~~(q)~~—"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 (S) ~~(r)~~—"Public agency" means the department or a local or  
 10 federal unit of government.

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

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

20 (W) ~~(v)~~—"Visual supervision" means the direct observation of  
 21 the operator with the unaided or normally corrected eye, where the  
 22 observer is able to come to the immediate aid of the operator.

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

25 (A) **THE PERSON** is under the influence of ~~intoxicating~~  
 26 **ALCOHOLIC** liquor or a controlled substance, as defined by section  
 27 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a

1 combination of intoxicating liquor and a controlled substance.  
2 ~~shall not operate an ORV.~~

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

6 (C) **THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A**  
7 **CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE**  
8 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE**  
9 **PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**  
10 **DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA**  
11 **368, MCL 333.7214.**

12 (2) ~~(3)~~ **The owner or person in charge or in control of an ORV**  
13 **shall not authorize or knowingly permit the ORV to be operated by a**  
14 **person who** **IF ANY OF THE FOLLOWING APPLY:**

15 (A) **THE PERSON** is under the influence of ~~intoxicating~~  
16 **ALCOHOLIC** liquor or a controlled substance or a combination of  
17 ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled substance.

18 (B) **THE PERSON HAS A BLOOD ALCOHOL CONTENT OF 0.08 GRAMS OR**  
19 **MORE PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER**  
20 **67 MILLILITERS OF URINE.**

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

25 (3) **A PERSON SHALL NOT OPERATE AN ORV IF, DUE TO THE**  
26 **CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, AS DEFINED**  
27 **BY SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**

1 333.7104, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED  
2 SUBSTANCE, THE PERSON'S ABILITY TO OPERATE AN ORV IS VISIBLY  
3 IMPAIRED. IF A PERSON IS CHARGED WITH VIOLATING SUBSECTION (1), A  
4 FINDING OF GUILTY IS PERMISSIBLE UNDER THIS SUBSECTION.

5 (4) Except as otherwise provided in this section, a person who  
6 is convicted of a violation of subsection (1) ~~, (2), or (3)~~ is  
7 guilty of a misdemeanor  ~~punishable by imprisonment for not more~~  
8  ~~than 93 days or a fine of not less than \$100.00 or more than~~  
9  ~~\$500.00, or both, together with costs of the prosecution. As part~~  
10  ~~of the sentence for a violation of subsection (1), or (2), the~~  
11  ~~court shall order the person convicted not to operate an ORV for a~~  
12  ~~period of not less than 6 months or more than 2 years. A PERSON WHO~~  
13  ~~IS CONVICTED OF VIOLATING SUBSECTION (3) IS GUILTY OF A MISDEMEANOR~~  
14  ~~PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF~~  
15  ~~NOT MORE THAN \$300.00, OR BOTH, TOGETHER WITH THE COSTS OF~~  
16  ~~PROSECUTION. AS PART OF THE SENTENCE FOR A VIOLATION OF SUBSECTION~~  
17  ~~(3), THE COURT SHALL ORDER THE PERSON CONVICTED NOT TO OPERATE AN~~  
18  ~~ORV FOR A PERIOD OF NOT LESS THAN 93 DAYS OR MORE THAN 1 YEAR.~~

19 (5) On a second conviction under subsection (1) or ~~(2)~~ ~~(3)~~ or  
20 a local ordinance substantially corresponding to subsection (1) or  
21 ~~(2)~~ ~~(3)~~ within a period of 7 years, a person is guilty of a  
22 misdemeanor  ~~punishable by imprisonment for not more than 1 year or~~  
23  ~~or a fine of not more than \$1,000.00, or both. As part of the~~  
24  ~~sentence FOR A VIOLATION OF SUBSECTION (1), the court shall order~~  
25  ~~the person convicted not to operate an ORV for a period of not less~~  
26  ~~than 1 year or more than 2 years. AS PART OF THE SENTENCE FOR A~~  
27  ~~VIOLATION OF SUBSECTION (3), THE COURT SHALL ORDER THE PERSON~~

1 CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6  
2 MONTHS OR MORE THAN 18 MONTHS.

3 (6) On a third or subsequent conviction within a ~~ANY~~ period of  
4 ~~10~~ years under subsection (1) or ~~(2)~~ (3) or a local ordinance  
5 substantially corresponding to subsection (1) or ~~(2)~~ (3), a person  
6 is guilty of a felony and shall be sentenced to imprisonment for  
7 not less than 1 year or more than 5 years ~~,~~ or a fine of not less  
8 than \$500.00 or more than ~~\$5,000~~ \$5,000.00, or both. As part of the  
9 sentence **FOR A VIOLATION OF SUBSECTION (1)**, the court shall order  
10 the person convicted not to operate an ORV for a period of not less  
11 than 1 year or more than 2 years. **AS PART OF THE SENTENCE FOR A**  
12 **VIOLATION OF SUBSECTION (3), THE COURT SHALL ORDER THE PERSON**  
13 **CONVICTED NOT TO OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1**  
14 **YEAR OR MORE THAN 2 YEARS.**

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

20 (8) A person who operates an ORV within this state in  
21 violation of subsection (1) or ~~(2) or section 81135~~ (3) and by the  
22 operation of that ORV causes a serious impairment of a body  
23 function of another person is guilty of a felony punishable by  
24 imprisonment for not more than 5 years or a fine of not less than  
25 \$1,000.00 or more than \$5,000.00, or both. As used in this  
26 subsection, "serious impairment of a body function" ~~includes, but~~  
27 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**

1 DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,  
2 MCL 257.58C.

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

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

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

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

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

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

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

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

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

13 (9) A PERSON WHO IS CONVICTED OF VIOLATING SUBSECTION (2) 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.

17 (10) ~~(9)~~ As part of the sentence for a violation of subsection  
18 (1), ~~or~~ (2), OR (3) or a local ordinance substantially  
19 corresponding to subsection (1), ~~or~~ (2), OR (3), the court may  
20 order the person to perform service to the community, as designated  
21 by the court, without compensation, for a period not to exceed 12  
22 days. The person shall reimburse the state or appropriate local  
23 unit of government for the cost of insurance incurred by the state  
24 or local unit of government as a result of the person's activities  
25 under this subsection.

26 (11) ~~(10)~~ Before imposing sentence for a violation of  
27 subsection (1) or ~~(2)~~ (3) or a local ordinance substantially

1 corresponding to subsection (1) or ~~(2)~~**(3)**, the court shall order  
2 the person to undergo screening and assessment by a person or  
3 agency designated by the office of substance abuse services, to  
4 determine whether the person is likely to benefit from  
5 rehabilitative services, including alcohol or drug education and  
6 alcohol or drug treatment programs. As part of the sentence, the  
7 court may order the person to participate in and successfully  
8 complete 1 or more appropriate rehabilitative programs. The person  
9 shall pay for the costs of the screening, assessment, and  
10 rehabilitative services.

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

16 **(13)** ~~(12)~~—Each municipal judge and each clerk of a court of  
17 record shall keep a full record of every case in which a person is  
18 charged with a violation of this section. The municipal judge or  
19 clerk of the court of record shall prepare and immediately forward  
20 to the secretary of state an abstract of the court of record for  
21 each case charging a violation of this section.

22 Sec. 81136. (1) In a criminal prosecution for violating  
23 section 81134 ~~or 81135~~ or a local ordinance substantially  
24 corresponding to section 81134, ~~or 81135,~~ or in a criminal  
25 prosecution for negligent homicide, ~~or manslaughter,~~ **OR MURDER**  
26 resulting from the operation of an ORV while the operator is  
27 alleged to have been impaired by or under the influence of

1 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance or a  
2 combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled  
3 substance, or to have had a blood alcohol content of ~~0.10~~ **0.08**  
4 grams or more per 100 milliliters of blood, per 210 liters of  
5 breath, or per 67 milliliters of urine, **OR TO HAVE HAD IN HIS OR**  
6 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**  
7 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**  
8 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**  
9 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC**  
10 **HEALTH CODE, 1978 PA 368, MCL 333.7214, the amount of alcohol OR**  
11 **CONTROLLED SUBSTANCE** in the operator's blood at the time alleged as  
12 shown by chemical analysis of the operator's blood, urine, or  
13 breath ~~shall be~~ **IS** admissible into evidence.

14 (2) If a chemical test of an operator's blood, urine, or  
15 breath is given, the results of the test shall be made available to  
16 the person charged with an offense enumerated in subsection (1) or  
17 the person's attorney upon written request to the prosecution, with  
18 a copy of the request filed with the court. The prosecution shall  
19 furnish the report at least 2 days before the day of the trial and  
20 the results shall be offered as evidence by the prosecution in a  
21 criminal proceeding. Failure to fully comply with the request shall  
22 bar the admission of the results into evidence by the prosecution.

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

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

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

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

15 (3) ~~(4)~~—A sample or specimen of urine or breath shall be taken  
16 and collected in a reasonable manner. Only a licensed physician, or  
17 a licensed nurse or medical technician under the direction of a  
18 licensed physician and qualified to withdraw blood acting in a  
19 medical environment, at the request of a peace officer, may  
20 withdraw blood for the purpose of determining the alcoholic content  
21 of the blood under this part. Liability for a crime or civil  
22 damages predicated on the act of withdrawing blood and related  
23 procedures shall not attach to a qualified person who withdraws  
24 blood or assists in the withdrawal in accordance with this part  
25 unless the withdrawal is performed in a negligent manner.

26 (4) ~~(5)~~—A person arrested for a crime enumerated in subsection  
27 (1) who takes a chemical test administered at the request of a

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

18 (5) ~~(6)~~—A person arrested shall be advised that if the person  
19 refuses the request of a peace officer to take a test described in  
20 this section, a test shall not be given without a court order. The  
21 person arrested shall also be advised that the person's refusal of  
22 the request of a peace officer to take a test described in this  
23 section shall result in the suspension of the person's right to  
24 operate an ORV.

25 (6) ~~(7)~~—This section shall not be construed as limiting the  
26 introduction of any other competent evidence bearing upon the  
27 question of whether or not the defendant was impaired by or under

1 the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled  
2 substance, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a  
3 controlled substance, or whether the person had a blood alcohol  
4 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood,  
5 per 210 liters of breath, or per 67 milliliters of urine **OR HAD IN**  
6 **HIS OR HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN**  
7 **SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA**  
8 **368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF**  
9 **A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A) (iv) OF THE**  
10 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214.**

11 (7) ~~(8)~~—If a jury instruction regarding a defendant's refusal  
12 to submit to a chemical test under this section is requested by the  
13 prosecution or the defendant, the jury instruction shall be given  
14 as follows:

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

21 (8) ~~(9)~~—If after an accident the operator of an ORV involved  
22 in the accident is transported to a medical facility and a sample  
23 of the operator's blood is withdrawn at that time for the purpose  
24 of medical treatment, the results of a chemical analysis of that  
25 sample shall be admissible in a criminal prosecution for a crime  
26 described in subsection (1) to show the amount of alcohol or  
27 presence of a controlled substance, or both, in the person's blood

1 at the time alleged, regardless of whether the person had been  
2 offered or had refused a chemical test. The medical facility or  
3 person performing the chemical analysis shall disclose the results  
4 of the analysis to a prosecuting attorney who requests the results  
5 for use in a criminal prosecution as provided in this subsection. A  
6 medical facility or person disclosing information in compliance  
7 with this subsection shall not be civilly or criminally liable for  
8 making the disclosure.

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

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

26 (a) The person is arrested for a violation of section  
27 81134(1), ~~or (2) or 81135(3), (7), OR (8)~~ or a local ordinance

1 substantially corresponding to section 81134(1) or ~~(2) or 81135~~  
2 (3).

3 (b) The person is arrested for negligent homicide, ~~or~~  
4 manslaughter, **OR MURDER** resulting from the operation of an ORV, and  
5 the peace officer has reasonable grounds to believe that the person  
6 was operating the ORV ~~while impaired by or under the influence of~~  
7 ~~intoxicating liquor, a controlled substance, or a combination of~~  
8 ~~intoxicating liquor and a controlled substance.~~ **IN VIOLATION OF**  
9 **SECTION 81134.**

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

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

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

1 officer may administer oaths and issue subpoenas for the attendance  
2 of necessary witnesses, and may grant a reasonable request for an  
3 adjournment. The hearing shall cover only the following issues:

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

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

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

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

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

25 (4) After the administrative hearing, if the person is found  
26 to have unreasonably refused to submit to a chemical test, the  
27 secretary of state shall suspend the person's right to operate an

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

15 (5) The circuit court shall enter an order setting the cause  
16 for hearing for a date certain that is not more than 60 days after  
17 the date of the order. The order, a copy of the petition, which  
18 shall include the person's full name, current address, birth date,  
19 and driver's license number, and all supporting affidavits shall be  
20 served on the secretary of state's office in Lansing not less than  
21 50 days before the date set for the hearing. The department shall  
22 cause a record to be made of the proceedings held ~~pursuant to~~ **UNDER**  
23 subsection (2). The record shall be prepared and transcribed in  
24 accordance with section 86 of ~~Act No. 306 of the Public Acts of~~  
25 ~~1969, being section 24.286 of the Michigan Compiled Laws~~ **THE**  
26 **ADMINISTRATIVE PROCEDURE ACT OF 1969, 1969 PA 306, MCL 24.286.** Upon  
27 notification of the filing of a petition for judicial review, the

1 department shall transmit to the court in which the petition was  
2 filed, not less than 10 days before the matter is set for review,  
3 the original or a certified copy of the official record of the  
4 proceedings.

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

20           (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CIRCUIT  
21 COURT SHALL ENTER AN ORDER SETTING THE CAUSE FOR HEARING FOR A DAY  
22 CERTAIN THAT IS NOT MORE THAN 63 DAYS AFTER THE DATE OF THE ORDER.  
23 THE ORDER, A COPY OF THE PETITION, THAT INCLUDES THE PERSON'S FULL  
24 NAME, CURRENT ADDRESS, BIRTH DATE, AND DRIVER'S LICENSE NUMBER, AND  
25 ALL SUPPORTING AFFIDAVITS SHALL BE SERVED ON THE SECRETARY OF  
26 STATE'S OFFICE IN LANSING NOT LESS THAN 20 DAYS BEFORE THE DATE SET  
27 FOR THE HEARING. IF THE PERSON IS SEEKING A REVIEW OF THE RECORD

1 PREPARED UNDER SECTION 81140, THE SERVICE UPON THE SECRETARY OF  
2 STATE SHALL BE MADE NOT LESS THAN 50 DAYS BEFORE THE DATE SET FOR  
3 THE HEARING.

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

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

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

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

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

26 (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL  
27 PREJUDICE TO THE PETITIONER.

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

3 (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED  
4 EXERCISE OF DISCRETION.

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

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

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

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

20 (4) A person who submits to a preliminary chemical breath  
21 analysis ~~shall remain~~ **REMAINS** subject to the requirements of  
22 sections 81136, 81137, 81138, 81139, and 81140 for the purposes of  
23 chemical tests described in those sections.

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

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

14           Enacting section 1. Section 81135 of the natural resources and  
15 environmental protection act, 1994 PA 451, MCL 324.81135, is  
16 repealed.

17           Enacting section 2. This amendatory act takes effect January  
18 1, 2010.