

# HOUSE BILL No. 4445

March 13, 2013, Introduced by Rep. Kandrevas 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 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 2012 PA 246, 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-, 4-, or 6-wheeled vehicle designed  
5 for off-road use that has low-pressure tires, has a seat designed

1 to be straddled by the rider, and is powered by a 50cc to 1,000cc  
2 gasoline engine or an engine of comparable size using other fuels.

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

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

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

12 (F) ~~(e)~~-"Farm vehicle" means either of the following:

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

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

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

22 (H) ~~(g)~~-"Forest trail" means a designated path or way capable  
23 of travel only by a vehicle less than 50 inches in width.

24 (I) ~~(h)~~-"Highway" means the entire width between the boundary  
25 lines of a way publicly maintained when any part of the way is open  
26 to the use of the public for purposes of vehicular travel.

27 (J) ~~(i)~~-"Highly restricted personal information" means an

1 individual's photograph or image, social security number, digitized  
2 signature, and medical and disability information.

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

6 (L) "LAW OF ANOTHER STATE" MEANS A LAW OR ORDINANCE ENACTED BY  
7 ANY OF THE FOLLOWING:

8 (i) ANOTHER STATE.

9 (ii) A LOCAL UNIT OF GOVERNMENT IN ANOTHER STATE.

10 (iii) CANADA OR A PROVINCE OR TERRITORY OF CANADA.

11 (iv) A LOCAL UNIT OF GOVERNMENT IN A PROVINCE OR TERRITORY OF  
12 CANADA.

13 (M) ~~(k)~~—"Manufacturer" means a person, partnership,  
14 corporation, or association engaged in the production and  
15 manufacture of ORVs as a regular business.

16 (N) ~~(l)~~—"Off-road vehicle account" means the off-road vehicle  
17 account of the Michigan conservation and recreation legacy fund  
18 established in section 2015.

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

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

23 (Q) ~~(o)~~—"ORV" or "vehicle" means a motor-driven off-road  
24 recreation vehicle capable of cross-country travel without benefit  
25 of a road or trail, on or immediately over land, snow, ice, marsh,  
26 swampland, or other natural terrain. ORV or vehicle includes, but  
27 is not limited to, a multitrack or multiwheel drive vehicle, an

1 ATV, a motorcycle or related 2-wheel, 3-wheel, 4-wheel, or 6-wheel  
2 vehicle, an amphibious machine, a ground effect air cushion  
3 vehicle, or other means of transportation deriving motive power  
4 from a source other than muscle or wind. ORV or vehicle does not  
5 include a registered snowmobile, a farm vehicle being used for  
6 farming, a vehicle used for military, fire, emergency, or law  
7 enforcement purposes, a vehicle owned and operated by a utility  
8 company or an oil or gas company when performing maintenance on its  
9 facilities or on property over which it has an easement, a  
10 construction or logging vehicle used in performance of its common  
11 function, or a registered aircraft.

12 (R) ~~(p)~~ "Owner" means any of the following:

13 (i) A vendee or lessee of an ORV that is the subject of an  
14 agreement for the conditional sale or lease of the ORV, with the  
15 right of purchase upon performance of the conditions stated in the  
16 agreement, and with an immediate right of possession vested in the  
17 conditional vendee or lessee.

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

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

21 (S) ~~(q)~~ "Person with a disability" means a person who has 1 or  
22 more of the following physical characteristics:

23 (i) Blindness.

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

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

27 (iv) Inability to ambulate without the prolonged use of a

1 wheelchair, walker, crutches, braces, or other device required to  
2 aid mobility.

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

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

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

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

21 (U) "PRIOR CONVICTION" MEANS A CONVICTION FOR ANY OF THE  
22 FOLLOWING, WHETHER UNDER A LAW OF THIS STATE, A LOCAL ORDINANCE  
23 SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE, A LAW OF THE  
24 UNITED STATES SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE,  
25 OR A LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A LAW OF  
26 THIS STATE:

27 (i) A VIOLATION OR AN ATTEMPTED VIOLATION OF SECTION 81134(1),

1 (3), (4), (5), (6), OR (7), EXCEPT THAT ONLY 1 VIOLATION OR  
 2 ATTEMPTED VIOLATION OF SECTION 81134(6), A LOCAL ORDINANCE  
 3 SUBSTANTIALLY CORRESPONDING TO SECTION 81134(6), A LAW OF ANOTHER  
 4 STATE SUBSTANTIALLY CORRESPONDING TO SECTION 81134(6), OR A LAW OF  
 5 THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO SECTION 81134(6)  
 6 MAY BE USED AS A PRIOR CONVICTION OTHER THAN FOR ENHANCEMENT  
 7 PURPOSES AS PROVIDED IN SECTION 81134(11)(B).

8 (ii) NEGLIGENT HOMICIDE, MANSLAUGHTER, OR MURDER RESULTING FROM  
 9 THE OPERATION OF AN ORV, OR AN ATTEMPT TO COMMIT ANY OF THOSE  
 10 CRIMES.

11 (iii) FORMER SECTION 81135.

12 (V) ~~(s)~~—"Public agency" means the department or a local or  
 13 federal unit of government.

14 (W) ~~(t)~~—"Roadway" means that portion of a highway improved,  
 15 designated, or ordinarily used for vehicular travel. If a highway  
 16 includes 2 or more separate roadways, the term roadway refers to a  
 17 roadway separately, but not to all roadways collectively.

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

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

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

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

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

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

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

15           **(2) ~~(3)~~**The owner or person in charge or in control of an ORV  
16 shall not authorize or knowingly permit the ORV to be operated by a  
17 person ~~who~~ **IF ANY OF THE FOLLOWING APPLY:**

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

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

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

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

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

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

24 **(3) A PERSON SHALL NOT OPERATE AN ORV IF, DUE TO THE**  
25 **CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, AS DEFINED**  
26 **BY SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**  
27 **333.7104, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED**

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

4 (4) ~~(7)~~—A person who operates an ORV in violation of  
 5 subsection (1) or ~~(2) or section 81135~~ (3) and by the operation of  
 6 that ORV causes the death of another person is guilty of a felony  
 7 punishable by imprisonment for not more than 15 years or a fine of  
 8 not less than \$2,500.00 or more than \$10,000.00, or both.

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

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 ~~—— (9) As part of the sentence for a violation of subsection (1)~~  
3 ~~or (2), or a local ordinance substantially corresponding to~~  
4 ~~subsection (1) or (2), the court may order the person to perform~~  
5 ~~service to the community, as designated by the court, without~~  
6 ~~compensation, for a period not to exceed 12 days. The person shall~~  
7 ~~reimburse the state or appropriate local unit of government for the~~  
8 ~~cost of insurance incurred by the state or local unit of government~~  
9 ~~as a result of the person's activities under this subsection.~~

10 (6) A PERSON WHO IS LESS THAN 21 YEARS OF AGE, WHETHER  
11 LICENSED OR NOT, SHALL NOT OPERATE AN ORV IF THE PERSON HAS ANY  
12 BODILY ALCOHOL CONTENT. AS USED IN THIS SUBSECTION, "ANY BODILY  
13 ALCOHOL CONTENT" MEANS EITHER OF THE FOLLOWING:

14 (A) AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN  
15 0.08 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,  
16 OR PER 67 MILLILITERS OF URINE, OR, BEGINNING OCTOBER 1, 2013, AN  
17 ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN 0.10 GRAMS PER  
18 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67  
19 MILLILITERS OF URINE.

20 (B) ANY PRESENCE OF ALCOHOL WITHIN A PERSON'S BODY RESULTING  
21 FROM THE CONSUMPTION OF ALCOHOLIC LIQUOR, OTHER THAN CONSUMPTION OF  
22 ALCOHOLIC LIQUOR AS A PART OF A GENERALLY RECOGNIZED RELIGIOUS  
23 SERVICE OR CEREMONY.

24 (7) A PERSON SHALL NOT OPERATE AN ORV IN VIOLATION OF  
25 SUBSECTION (1), (3), (4), (5), OR (6) WHILE ANOTHER PERSON WHO IS  
26 LESS THAN 16 YEARS OF AGE IS OCCUPYING THE ORV.

27 (8) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (1)(A) OR

1 (B), ALL OF THE FOLLOWING APPLY:

2 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),  
3 THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR MORE OF  
4 THE FOLLOWING:

5 (i) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

6 (ii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

7 (iii) A FINE OF NOT LESS THAN \$100.00 OR MORE THAN \$500.00.

8 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR  
9 CONVICTION, THE PERSON SHALL BE SENTENCED TO PAY A FINE OF NOT LESS  
10 THAN \$200.00 OR MORE THAN \$1,000.00 AND TO 1 OR MORE OF THE  
11 FOLLOWING:

12 (i) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.  
13 NOT LESS THAN 48 HOURS OF THE TERM OF IMPRISONMENT IMPOSED UNDER  
14 THIS SUBPARAGRAPH SHALL BE SERVED CONSECUTIVELY.

15 (ii) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN  
16 90 DAYS.

17 (C) IF THE VIOLATION OCCURS AFTER 2 OR MORE PRIOR CONVICTIONS,  
18 REGARDLESS OF THE NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR  
19 CONVICTION, THE PERSON IS GUILTY OF A FELONY AND SHALL BE SENTENCED  
20 TO PAY A FINE OF NOT LESS THAN \$500.00 OR MORE THAN \$5,000.00 AND  
21 TO EITHER OF THE FOLLOWING:

22 (i) IMPRISONMENT UNDER THE JURISDICTION OF THE DEPARTMENT OF  
23 CORRECTIONS FOR NOT LESS THAN 1 YEAR OR MORE THAN 5 YEARS.

24 (ii) PROBATION WITH IMPRISONMENT IN THE COUNTY JAIL FOR NOT  
25 LESS THAN 30 DAYS OR MORE THAN 1 YEAR AND COMMUNITY SERVICE FOR NOT  
26 LESS THAN 60 DAYS OR MORE THAN 180 DAYS. NOT LESS THAN 48 HOURS OF  
27 THE IMPRISONMENT IMPOSED UNDER THIS SUBPARAGRAPH SHALL BE SERVED

1 CONSECUTIVELY.

2 (D) A TERM OF IMPRISONMENT IMPOSED UNDER SUBDIVISION (B) OR  
3 (C) SHALL NOT BE SUSPENDED.

4 (9) A PERSON WHO IS CONVICTED OF VIOLATING SUBSECTION (2) IS  
5 GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE  
6 THAN 93 DAYS OR A FINE OF NOT LESS THAN \$100.00 OR MORE THAN  
7 \$500.00, OR BOTH.

8 (10) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (3), ALL  
9 OF THE FOLLOWING APPLY:

10 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),  
11 THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR MORE OF  
12 THE FOLLOWING:

13 (i) COMMUNITY SERVICE FOR NOT MORE THAN 45 DAYS.

14 (ii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

15 (iii) A FINE OF NOT MORE THAN \$300.00.

16 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF 1 PRIOR  
17 CONVICTION, THE PERSON SHALL BE SENTENCED TO BOTH A FINE OF NOT  
18 LESS THAN \$200.00 OR MORE THAN \$1,000.00, AND EITHER OF THE  
19 FOLLOWING:

20 (i) COMMUNITY SERVICE FOR NOT LESS THAN 10 DAYS OR MORE THAN 90  
21 DAYS, AND MAY BE SENTENCED TO IMPRISONMENT FOR NOT MORE THAN 1  
22 YEAR.

23 (ii) IMPRISONMENT FOR NOT MORE THAN 1 YEAR, AND MAY BE  
24 SENTENCED TO COMMUNITY SERVICE FOR NOT MORE THAN 90 DAYS.

25 (C) IF THE VIOLATION OCCURS AFTER 2 OR MORE PRIOR CONVICTIONS  
26 REGARDLESS OF THE NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR  
27 CONVICTION, THE PERSON SHALL BE SENTENCED TO BOTH A FINE OF NOT

1 LESS THAN \$200.00 OR MORE THAN \$1,000.00, AND EITHER OF THE  
2 FOLLOWING:

3 (i) COMMUNITY SERVICE FOR A PERIOD OF NOT LESS THAN 10 DAYS OR  
4 MORE THAN 90 DAYS, AND MAY BE SENTENCED TO IMPRISONMENT FOR NOT  
5 MORE THAN 1 YEAR.

6 (ii) IMPRISONMENT FOR NOT MORE THAN 1 YEAR, AND MAY BE  
7 SENTENCED TO COMMUNITY SERVICE FOR NOT MORE THAN 90 DAYS.

8 (11) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (6), ALL  
9 OF THE FOLLOWING APPLY:

10 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), THE  
11 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR BOTH OF THE  
12 FOLLOWING:

13 (i) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

14 (ii) A FINE OF NOT MORE THAN \$250.00.

15 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF 1 OR MORE PRIOR  
16 CONVICTIONS, THE PERSON MAY BE SENTENCED TO 1 OR MORE OF THE  
17 FOLLOWING:

18 (i) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

19 (ii) A FINE OF NOT MORE THAN \$500.00.

20 (iii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

21 (12) A PERSON WHO VIOLATES SUBSECTION (7) IS GUILTY OF A CRIME  
22 AS FOLLOWS:

23 (A) A PERSON WHO OPERATES AN ORV IN VIOLATION OF SUBSECTION  
24 (1), (3), (4), OR (5) WHILE ANOTHER PERSON WHO IS LESS THAN 16  
25 YEARS OF AGE IS OCCUPYING THE ORV IS GUILTY OF A CRIME AS FOLLOWS:

26 (i) EXCEPT AS PROVIDED IN SUBDIVISION (B), A PERSON WHO  
27 VIOLATES THIS SUBDIVISION IS GUILTY OF A MISDEMEANOR AND SHALL BE

1 SENTENCED TO PAY A FINE OF NOT LESS THAN \$200.00 OR MORE THAN  
2 \$1,000.00 AND TO 1 OR MORE OF THE FOLLOWING:

3 (A) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.  
4 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED  
5 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

6 (B) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN  
7 90 DAYS.

8 (ii) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR  
9 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE  
10 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A  
11 PERSON WHO VIOLATES THIS SUBDIVISION IS GUILTY OF A FELONY AND  
12 SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$500.00 OR MORE  
13 THAN \$5,000.00 AND TO EITHER OF THE FOLLOWING:

14 (A) IMPRISONMENT UNDER THE JURISDICTION OF THE DEPARTMENT OF  
15 CORRECTIONS FOR NOT LESS THAN 1 YEAR OR MORE THAN 5 YEARS.

16 (B) PROBATION WITH IMPRISONMENT IN THE COUNTY JAIL FOR NOT  
17 LESS THAN 30 DAYS OR MORE THAN 1 YEAR AND COMMUNITY SERVICE FOR NOT  
18 LESS THAN 60 DAYS OR MORE THAN 180 DAYS. NOT LESS THAN 48 HOURS OF  
19 THIS IMPRISONMENT SHALL BE SERVED CONSECUTIVELY. THIS TERM OF  
20 IMPRISONMENT SHALL NOT BE SUSPENDED.

21 (B) A PERSON WHO OPERATES AN ORV IN VIOLATION OF SUBSECTION  
22 (6) WHILE ANOTHER PERSON WHO IS LESS THAN 16 YEARS OF AGE IS  
23 OCCUPYING THE ORV IS GUILTY OF A MISDEMEANOR PUNISHABLE AS FOLLOWS:

24 (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii), A PERSON WHO  
25 VIOLATES THIS SUBDIVISION MAY BE SENTENCED TO 1 OR MORE OF THE  
26 FOLLOWING:

27 (A) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

1 (B) A FINE OF NOT MORE THAN \$500.00.

2 (C) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

3 (ii) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR  
4 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE  
5 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A  
6 PERSON WHO VIOLATES THIS SUBDIVISION SHALL BE SENTENCED TO PAY A  
7 FINE OF NOT LESS THAN \$200.00 OR MORE THAN \$1,000.00 AND TO 1 OR  
8 MORE OF THE FOLLOWING:

9 (A) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.  
10 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED  
11 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

12 (B) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN  
13 90 DAYS.

14 (13) FOR A CONVICTION UNDER SUBSECTION (4) OR (5), THE COURT  
15 SHALL ORDER, WITHOUT AN EXPIRATION DATE, THAT THE PERSON NOT  
16 OPERATE AN ORV.

17 (14) AS PART OF THE SENTENCE FOR A VIOLATION OF SUBSECTION (1)  
18 OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SUBSECTION (1),  
19 THE COURT SHALL DO THE FOLLOWING:

20 (A) IF THE COURT FINDS THAT THE PERSON HAS NO PRIOR  
21 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON  
22 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6 MONTHS OR MORE  
23 THAN 2 YEARS.

24 (B) IF THE COURT FINDS THAT THE PERSON HAS 1 OR MORE PRIOR  
25 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON  
26 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1 YEAR OR MORE  
27 THAN 2 YEARS.

1 (C) IF THE COURT FINDS THAT THE PERSON HAS 2 OR MORE PRIOR  
2 CONVICTIONS WITHIN A PERIOD OF 10 YEARS, THE COURT SHALL ORDER THAT  
3 THE PERSON NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1 YEAR  
4 OR MORE THAN 2 YEARS.

5 (15) AS PART OF THE SENTENCE FOR A VIOLATION OF SUBSECTION (3)  
6 OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SUBSECTION (3),  
7 THE COURT SHALL DO THE FOLLOWING:

8 (A) IF THE COURT FINDS THAT THE PERSON HAS NO PRIOR  
9 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON  
10 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 90 DAYS OR MORE  
11 THAN 1 YEAR.

12 (B) IF THE COURT FINDS THAT THE PERSON HAS 1 OR MORE PRIOR  
13 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON  
14 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6 MONTHS OR MORE  
15 THAN 18 MONTHS.

16 (C) IF THE COURT FINDS THAT THE PERSON HAS 2 OR MORE PRIOR  
17 CONVICTIONS WITHIN A PERIOD OF 10 YEARS, THE COURT SHALL ORDER THAT  
18 THE PERSON NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1 YEAR  
19 OR MORE THAN 2 YEARS.

20 (16) IN ADDITION TO IMPOSING THE SANCTIONS PRESCRIBED UNDER  
21 THIS SECTION, THE COURT MAY ORDER THE PERSON TO PAY THE COSTS OF  
22 THE PROSECUTION UNDER THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,  
23 MCL 760.1 TO 777.69.

24 (17) A PERSON SENTENCED TO PERFORM COMMUNITY SERVICE UNDER  
25 THIS SECTION SHALL NOT RECEIVE COMPENSATION AND SHALL REIMBURSE THE  
26 STATE OR APPROPRIATE LOCAL UNIT OF GOVERNMENT FOR THE COST OF  
27 SUPERVISION INCURRED BY THE STATE OR LOCAL UNIT OF GOVERNMENT AS A

1 **RESULT OF THE PERSON'S ACTIVITIES IN THAT SERVICE.**

2 (18) ~~(10)~~ Before imposing sentence for a violation of  
3 subsection (1), ~~or (2) (3)~~, (6), OR (7) or a local ordinance  
4 substantially corresponding to subsection (1), ~~or (2) (3)~~, OR (6),  
5 the court shall order the person to undergo screening and  
6 assessment by a person or agency designated by the office of  
7 substance abuse services, to determine whether the person is likely  
8 to benefit from rehabilitative services, including alcohol or drug  
9 education and alcohol or drug treatment programs. As part of the  
10 sentence, the court may order the person to participate in and  
11 successfully complete 1 or more appropriate rehabilitative  
12 programs. The person shall pay for the costs of the screening,  
13 assessment, and rehabilitative services.

14 (19) ~~(11)~~ Before accepting a plea of guilty under this  
15 section, the court shall advise the accused of the statutory  
16 consequences possible as the result of a plea of guilty in respect  
17 to suspension of the person's right to operate an ORV and the  
18 penalty imposed for violation of this section.

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

25 Sec. 81136. (1) In a criminal prosecution for violating  
26 section 81134 ~~or 81135~~ or a local ordinance substantially  
27 corresponding to section ~~81134 or 81135~~, **81134(1), (3), OR (6)** or

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

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

26 ~~—— (3) Except in a prosecution relating solely to a violation of~~  
27 ~~section 81134(2), the amount of alcohol in the operator's blood at~~

1 ~~the time alleged as shown by chemical analysis of the operator's~~  
2 ~~blood, urine, or breath shall give rise to the following~~  
3 ~~presumptions:~~

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

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

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

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

1 unless the withdrawal is performed in a negligent manner.

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

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

1           (6) ~~(7)~~—This section shall not be construed as limiting the  
2 introduction of any other competent evidence bearing upon the  
3 question of whether or not the defendant was impaired by or under  
4 the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled  
5 substance, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a  
6 controlled substance, or whether the person had a blood alcohol  
7 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood,  
8 per 210 liters of breath, or per 67 milliliters of urine **OR HAD IN**  
9 **HIS OR HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN**  
10 **SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA**  
11 **368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF**  
12 **A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE**  
13 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214.**

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

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

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

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

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

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

1 blood if:

2 (a) The person is arrested for a violation of section  
3 81134(1), ~~or (2) or 81135(3)~~, (4), (5), (6), OR (7) or a local  
4 ordinance substantially corresponding to section 81134(1), ~~or (2)~~  
5 ~~or 81135(3)~~, OR (6).

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

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

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

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

1 filed the report under section 81138, and, if a prosecuting  
2 attorney requests receipt of the notice, to the prosecuting  
3 attorney of the county where the arrest was made. The hearing  
4 officer may administer oaths and issue subpoenas for the attendance  
5 of necessary witnesses, and may grant a reasonable request for an  
6 adjournment. The hearing shall cover only the following issues:

7 (a) Whether the peace officer had reasonable grounds to  
8 believe that the person committed a crime described in section  
9 81137(1).

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

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

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

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

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

19 (5) The circuit court shall enter an order setting the cause  
20 for hearing for a date certain that is not more than 60 days after  
21 the date of the order. The order, a copy of the petition, which  
22 shall include the person's full name, current address, birth date,  
23 and driver's license number, and all supporting affidavits shall be  
24 served on the secretary of state's office in Lansing not less than  
25 50 days before the date set for the hearing. The department shall  
26 cause a record to be made of the proceedings held ~~pursuant to~~ **UNDER**  
27 subsection (2). The record shall be prepared and transcribed in

1 accordance with section 86 of ~~Act No. 306 of the Public Acts of~~  
2 ~~1969, being section 24.286 of the Michigan Compiled Laws~~ **THE**  
3 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.286.**

4 Upon notification of the filing of a petition for judicial review,  
5 the department shall transmit to the court in which the petition  
6 was filed, not less than 10 days before the matter is set for  
7 review, the original or a certified copy of the official record of  
8 the proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           Enacting section 1. Section 81135 of the natural resources and  
19 environmental protection act, 1994 PA 451, MCL 324.81135, is  
20 repealed.

21           Enacting section 2. This amendatory act takes effect November  
22 1, 2013.