

1998 PUBLIC AND LOCAL ACTS

[No. 355]

(SB 268)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 81134 (MCL 324.81134), as amended by 1996 PA 175.

The People of the State of Michigan enact:

324.81134 Operation of ORV by person under influence of intoxicating liquor or controlled substance; authorizing or permitting operation; violation as misdemeanor; penalty; subsequent convictions; violation as felony; screening, assessment, and rehabilitative service; duty of court before accepting guilty plea.
[M.S.A. 13A.81134]

Sec. 81134. (1) A person who is under the influence of intoxicating liquor or a controlled substance, as defined by section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of intoxicating liquor and a controlled substance shall not operate an ORV.

(2) A person who has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate an ORV.

(3) The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person who is under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance.

(4) Except as otherwise provided in this section, a person who is convicted of a violation of subsection (1), (2), or (3) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution. As part of the sentence for a violation of subsection (1) or (2), the court shall order the person convicted not to operate an ORV for a period of not less than 6 months or more than 2 years.

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

(6) On a third or subsequent conviction within a period of 10 years under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), a person is guilty of a felony. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

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

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

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

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

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

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

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 1999.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 269.
- (b) Senate Bill No. 625.
- (c) Senate Bill No. 627.
- (d) Senate Bill No. 869.
- (e) Senate Bill No. 870.
- (f) Senate Bill No. 953.
- (g) House Bill No. 4210.

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- (h) House Bill No. 4576.
- (i) House Bill No. 4959.
- (j) House Bill No. 4960.
- (k) House Bill No. 4961.
- (l) House Bill No. 5122.
- (m) House Bill No. 5123.
- (n) House Bill No. 5951.
- (o) House Bill No. 5952.
- (p) House Bill No. 5953.
- (q) House Bill No. 5954.
- (r) House Bill No. 5955.
- (s) House Bill No. 5956.

This act is ordered to take immediate effect.

Approved October 16, 1998.

Filed with Secretary of State October 16, 1998.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 269 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 345, Eff. Oct. 1, 1999.
Senate Bill No. 625 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 346, Eff. Oct. 1, 1999.
Senate Bill No. 627 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 347, Eff. Oct. 1, 1999.
Senate Bill No. 869 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 348, Eff. Oct. 1, 1999.
Senate Bill No. 870 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 350, Eff. Oct. 1, 1999.
Senate Bill No. 953 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 351, Eff. Oct. 1, 1999.
House Bill No. 4210 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 340, Eff. Oct. 1, 1999.
House Bill No. 4576 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 357, Eff. Oct. 1, 1999.
House Bill No. 4959 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 349, Eff. Oct. 1, 1999.
House Bill No. 4960 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 359, Eff. Oct. 1, 1999.
House Bill No. 4961 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 358, Eff. Oct. 1, 1999.
House Bill No. 5122 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 342, Eff. Oct. 1, 1999.
House Bill No. 5123 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 341, Eff. Oct. 1, 1999.
House Bill No. 5951 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 356, Eff. Oct. 1, 1999.
House Bill No. 5952 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 343, Eff. Oct. 1, 1999.
House Bill No. 5953 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 344, Eff. Oct. 1, 1999.
House Bill No. 5954 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 352, Eff. Oct. 1, 1999.
House Bill No. 5955 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 353, Eff. Oct. 1, 1999.
House Bill No. 5956 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 354, Eff. Oct. 1, 1999.
