

HOUSE BILL No. 6431

September 14, 2010, Introduced by Reps. Meadows, Rick Jones, Slavens, Ball and Liss and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 80104, 80180, 80181, 81141, 82136, and 82137
(MCL 324.80104, 324.80180, 324.80181, 324.81141, 324.82136, and
324.82137), section 80104 as amended by 2004 PA 587, section 80180
as amended by 2007 PA 8, sections 80181, 82136, and 82137 as added
by 1995 PA 58, and section 81141 as amended by 1996 PA 175.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 80104. As used in this part:

2 (a) "Highly restricted personal information" means an
3 individual's photograph or image, social security number, digitized
4 signature, and medical and disability information.

5 (b) "Passenger" means a person carried on board a vessel other
6 than any of the following:

1 (i) The owner or his or her representative.

2 (ii) The operator.

3 (c) "Peace officer" means any of the following:

4 (i) A sheriff.

5 (ii) A sheriff's deputy.

6 (iii) A deputy who is authorized by a sheriff to enforce this
7 part and who has satisfactorily completed at least 40 hours of law
8 enforcement training, including training specific to this part.

9 (iv) A village or township marshal.

10 (v) An officer of the police department of any municipality.

11 (vi) An officer of the Michigan state police.

12 (vii) The director and conservation officers employed by the
13 department.

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

21 (e) "Personal watercraft" means a vessel that meets all of the
22 following requirements:

23 (i) Uses a motor-driven propeller or an internal combustion
24 engine powering a water jet pump as its primary source of
25 propulsion.

26 (ii) Is designed without an open load carrying area that would
27 retain water.

1 (iii) Is designed to be operated by 1 or more persons positioned
2 on, rather than within, the confines of the hull.

3 (f) "Political subdivision" means any county, metropolitan
4 authority, municipality, or combination of those entities in this
5 state. Whenever a body of water is located in more than 1 political
6 subdivision, all of the subdivisions shall act individually in
7 order to comply with this part, except that if the problem is
8 confined to a specific area of the body of water, only the
9 political subdivision in which the problem waters lie shall act.

10 (g) "Port" means left, and reference is to the port side of a
11 vessel or to the left side of the vessel.

12 (H) "PRELIMINARY CHEMICAL ANALYSIS" MEANS EITHER OF THE
13 FOLLOWING:

14 (i) A PRELIMINARY CHEMICAL BREATH ANALYSIS. AS USED IN THIS
15 SUBDIVISION, PRELIMINARY CHEMICAL BREATH ANALYSIS MEANS THE ON-SITE
16 TAKING AND ANALYSIS OF A PERSON'S BREATH TO DETERMINE THE PRESENCE
17 OF ALCOHOL IN THE PERSON'S BODY.

18 (ii) PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS. AS USED IN THIS
19 SUBDIVISION:

20 (A) "IMMUNOCHEMICAL ASSAY" MEANS A SCIENTIFIC TECHNIQUE THAT
21 USES SPECIFIC BINDING BETWEEN AN ANTIGEN AND ITS HOMOLOGOUS
22 ANTIBODY TO IDENTIFY AND QUANTIFY A SUBSTANCE IN A SAMPLE.

23 (B) "PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS" MEANS THE ON-
24 SITE TAKING AND ANALYSIS BY IMMUNOCHEMICAL ASSAY OF THE ORAL FLUIDS
25 OF A PERSON FOR THE PURPOSE OF DETECTING THE PRESENCE OF CONTROLLED
26 SUBSTANCES WITHIN THE PERSON'S BODY.

27 (I) ~~(h)~~—"Probate court or family division disposition" means

1 the entry of a probate court order of disposition or family
2 division order of disposition for a child found to be within the
3 provisions of chapter XIIIA of the probate code of 1939, 1939 PA
4 288, MCL 712A.1 to 712A.32.

5 (J) ~~(i)~~—"Prosecuting attorney", except as the context requires
6 otherwise, means the attorney general, the prosecuting attorney of
7 a county, or the attorney representing a political subdivision of
8 government.

9 (K) ~~(j)~~—"Regatta", "boat race", "marine parade", "tournament",
10 or "exhibition" means an organized water event of limited duration
11 that is conducted according to a prearranged schedule.

12 (L) ~~(k)~~—"Slow-no wake speed" means a very slow speed whereby
13 the wake or wash created by the vessel would be minimal.

14 (M) ~~(l)~~—"Starboard" means right, and reference is to the
15 starboard side of a vessel or to the right side of the vessel.

16 (N) ~~(m)~~—"State aid" means payment made by the state to a
17 county for the conduct of a marine safety program.

18 (O) ~~(n)~~—"Undocumented vessel" means a vessel that does not
19 have, and is not required to have, a valid marine document issued
20 by the United States coast guard or federal agency successor to the
21 United States coast guard.

22 (P) ~~(o)~~—"Uniform inspection decal" means an adhesive-backed
23 sticker created by the department that is color-coded to indicate
24 the year that it expires and is attached to a vessel in the manner
25 prescribed for decals in section 80122 when a peace officer
26 inspects and determines that the vessel complies with this part.

27 (Q) ~~(p)~~—"Use" means operate, navigate, or employ.

1 (R) ~~(q)~~—"Vessel" means every description of watercraft used or
2 capable of being used as a means of transportation on water.

3 (S) ~~(r)~~—"Waters of this state" means any waters within the
4 territorial limits of this state, and includes those waters of the
5 Great Lakes that are under the jurisdiction of this state.

6 (T) ~~(s)~~—"Waterways account" means the waterways account of the
7 Michigan conservation and recreation legacy fund provided for in
8 section 2035.

9 Sec. 80180. (1) A peace officer, without a warrant, may arrest
10 a person if the peace officer has reasonable cause to believe that
11 the person was, at the time of an accident, the operator of a
12 vessel involved in the accident in this state while in violation of
13 section 80176(1), (3), (4), or (5) or a local ordinance
14 substantially corresponding to section 80176(1) or (3).

15 (2) A peace officer who has reasonable cause to believe that a
16 person was operating a vessel on the waters of this state, and
17 that, by the consumption of intoxicating liquor **OR A CONTROLLED**
18 **SUBSTANCE, OR BOTH**, the person may have affected his or her ability
19 to operate a vessel, may require the person to submit to a
20 preliminary chemical ~~breath~~-analysis. The following apply with
21 respect to a preliminary chemical ~~breath~~-analysis:

22 (a) Only a peace officer who has successfully completed a
23 training course taught by a state-certified instructor in the
24 administration of the preliminary chemical ~~breath~~-analysis may
25 administer that test.

26 (b) A peace officer may arrest a person based in whole or in
27 part upon the results of a preliminary chemical ~~breath~~-analysis.

1 (c) ~~The~~ **SUBJECT TO ADMISSIBILITY UNDER THE MICHIGAN RULES OF**
2 **EVIDENCE, THE** results of a preliminary chemical ~~breath~~-analysis are
3 admissible in a criminal prosecution for a crime described in
4 section 80187(1) or in an administrative hearing solely to assist
5 the court or hearing officer in determining a challenge to the
6 validity of an arrest. This subdivision does not limit the
7 introduction of other competent evidence offered to establish the
8 validity of an arrest.

9 (D) **THE RESULTS OF A PRELIMINARY CHEMICAL ANALYSIS ARE**
10 **ADMISSIBLE AS EVIDENCE FOR PURPOSES OTHER THAN THE PURPOSES LISTED**
11 **UNDER SUBDIVISION (C) ONLY IF THE RESULTS OF THE PRELIMINARY**
12 **CHEMICAL TEST ARE CONFIRMED BY LIQUID CHROMATOGRAPHY WITH MASS**
13 **SPECTROMETRY X 2 IN A LABORATORY APPROVED BY THE DEPARTMENT OF**
14 **STATE POLICE.**

15 (E) ~~(d)~~-A person who submits to a preliminary chemical ~~breath~~
16 analysis remains subject to the requirements of sections 80187 to
17 80190 for the purposes of chemical tests described in those
18 sections.

19 (F) ~~(e)~~-A person who refuses to submit to a preliminary
20 chemical ~~breath~~-analysis upon a lawful request by a peace officer
21 is responsible for a state civil infraction and may be ordered to
22 pay a civil fine of not more than \$500.00.

23 (3) A peace officer making an arrest under this part shall
24 take measures to assure that the vessel and its occupants are
25 safely returned to shore.

26 (4) If, not more than 60 days after the issuance of a citation
27 for a state civil infraction under this section, the person to whom

1 the citation is issued is not charged with a violation of section
2 80176(1), (3), (4), or (5) or a local ordinance substantially
3 corresponding to section 80176(1) or (3), the citation issued for
4 the state civil infraction is void. Upon application of the person
5 to whom the citation is issued, money paid by the person as a fine,
6 costs, or otherwise shall be immediately returned.

7 Sec. 80181. (1) The following apply with respect to a chemical
8 test and analysis of a person's blood, urine, or breath, other than
9 a preliminary chemical ~~breath~~-analysis:

10 (a) The amount of alcohol or presence of a controlled
11 substance, or both, in an operator's blood at the time alleged as
12 shown by chemical analysis of the person's blood, urine, or breath
13 is admissible into evidence in any civil or criminal proceeding.

14 (b) A person arrested for a crime described in section
15 80187(1) shall be advised of all of the following:

16 (i) That if the person takes a chemical test of his or her
17 blood, urine, or breath administered at the request of a peace
18 officer, the person has the right to demand that someone of the
19 person's own choosing administer 1 of the chemical tests; that the
20 results of the test are admissible in a judicial proceeding as
21 provided under this part and shall be considered with other
22 competent evidence in determining the innocence or guilt of the
23 defendant; and that the person is responsible for obtaining a
24 chemical analysis of a test sample obtained pursuant to the
25 person's own request.

26 (ii) That if the person refuses the request of a peace officer
27 to take a test described in subparagraph (i), the test shall not be

1 given without a court order, but the peace officer may seek to
2 obtain such a court order.

3 (iii) That the person's refusal of the request of a peace
4 officer to take a test described in subparagraph (i) will result in
5 issuance of an order that the person not operate a vessel on the
6 waters of this state for at least 6 months.

7 (2) A sample or specimen of urine or breath shall be taken and
8 collected in a reasonable manner. Only a licensed physician, or a
9 licensed nurse or medical technician under the direction of a
10 licensed physician, qualified to withdraw blood and acting in a
11 medical environment, may withdraw blood at the request of a peace
12 officer for the purpose of determining the amount of alcohol or
13 presence of a controlled substance, or both, in a person's blood,
14 as provided in this subsection. A qualified person who withdraws or
15 analyzes blood, or assists in the withdrawal or analysis, in
16 accordance with this part is not liable for a crime or civil
17 damages predicated on the act of withdrawing or analyzing blood and
18 related procedures unless the withdrawal or analysis is performed
19 in a negligent manner.

20 (3) A rule relating to a chemical test for alcohol or a
21 controlled substance promulgated under the Michigan vehicle code,
22 ~~Act No. 300 of the Public Acts of 1949, being sections 257.1 to~~
23 ~~257.923 of the Michigan Compiled Laws 1949 PA 300, MCL 257.1 TO~~
24 **257.923**, applies to a chemical test administered under this part.

25 Sec. 81141. (1) A peace officer who has reasonable cause to
26 believe that a person was operating an ORV and that the person by
27 the consumption of intoxicating liquor **OR A CONTROLLED SUBSTANCE**,

1 OR BOTH, may have affected his or her ability to operate the ORV,
2 may require the person to submit to a preliminary chemical ~~breath~~
3 analysis.

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

6 (3) ~~The~~ **SUBJECT TO ADMISSIBILITY UNDER THE MICHIGAN RULES OF**
7 **EVIDENCE, THE** results of a preliminary chemical ~~breath~~-analysis
8 shall be admissible in a criminal prosecution for a crime
9 enumerated in section 81136(1) or in an administrative hearing held
10 under section 81140, solely to assist the court or hearing officer
11 in determining a challenge to the validity of an arrest. This
12 subsection does not limit the introduction of other competent
13 evidence offered to establish the validity of an arrest. **THE**
14 **RESULTS OF A PRELIMINARY CHEMICAL ANALYSIS ARE ADMISSIBLE AS**
15 **EVIDENCE FOR PURPOSES OTHER THAN THE PURPOSES LISTED UNDER THIS**
16 **SUBSECTION ONLY IF THE RESULTS OF THE PRELIMINARY CHEMICAL TEST ARE**
17 **CONFIRMED BY LIQUID CHROMATOGRAPHY WITH MASS SPECTROMETRY X 2 IN A**
18 **LABORATORY APPROVED BY THE DEPARTMENT OF STATE POLICE.**

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

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

27 Sec. 82136. (1) A peace officer, without a warrant, may arrest

1 a person if the peace officer has reasonable cause to believe that
2 the person was, at the time of an accident, the operator of a
3 snowmobile involved in the accident in this state while in
4 violation of section 82127(1), (3), (4), or (5) or a local
5 ordinance substantially corresponding to section 82127(1) or (3).

6 (2) A peace officer who has reasonable cause to believe that a
7 person was operating a snowmobile and that, by the consumption of
8 intoxicating liquor **OR A CONTROLLED SUBSTANCE, OR BOTH**, the person
9 may have affected his or her ability to operate a snowmobile may
10 require the person to submit to a preliminary chemical ~~breath~~
11 analysis. The following apply with respect to a preliminary
12 chemical ~~breath~~-analysis:

13 (a) A peace officer may arrest a person based in whole or in
14 part upon the results of a preliminary chemical ~~breath~~-analysis.

15 (b) ~~The~~ **SUBJECT TO ADMISSIBILITY UNDER THE MICHIGAN RULES OF**
16 **EVIDENCE, THE** results of a preliminary chemical ~~breath~~-analysis are
17 admissible in a criminal prosecution for a crime enumerated in
18 section 82143(1) or in an administrative hearing solely to assist
19 the court or hearing officer in determining a challenge to the
20 validity of an arrest. This subdivision does not limit the
21 introduction of other competent evidence offered to establish the
22 validity of an arrest.

23 (C) **THE RESULTS OF A PRELIMINARY CHEMICAL ANALYSIS ARE**
24 **ADMISSIBLE AS EVIDENCE FOR PURPOSES OTHER THAN THE PURPOSES LISTED**
25 **UNDER SUBDIVISION (B) ONLY IF THE RESULTS OF THE PRELIMINARY**
26 **CHEMICAL TEST ARE CONFIRMED BY LIQUID CHROMATOGRAPHY WITH MASS**
27 **SPECTROMETRY X 2 IN A LABORATORY APPROVED BY THE DEPARTMENT OF**

1 **STATE POLICE.**

2 (D) ~~(c)~~—A person who submits to a preliminary chemical ~~breath~~
3 analysis remains subject to the requirements of sections 82143 to
4 82146 for the purposes of chemical tests described in those
5 sections.

6 (E) ~~(d)~~—A person who refuses to submit to a preliminary
7 chemical ~~breath~~ analysis upon a lawful request by a peace officer
8 is guilty of a misdemeanor.

9 Sec. 82137. (1) The following apply with respect to a chemical
10 test and analysis of a person's blood, urine, or breath, other than
11 a preliminary chemical ~~breath~~ analysis:

12 (a) The amount of alcohol or presence of a controlled
13 substance, or both, in an operator's blood at the time alleged as
14 shown by chemical analysis of the person's blood, urine, or breath
15 is admissible into evidence in any civil or criminal proceeding.

16 (b) A person arrested for a crime described in section
17 82143(1) shall be advised of all of the following:

18 (i) That if the person takes a chemical test of his or her
19 blood, urine, or breath administered at the request of a peace
20 officer, the person has the right to demand that someone of the
21 person's own choosing administer 1 of the chemical tests; that the
22 results of the test are admissible in a judicial proceeding as
23 provided under this part and shall be considered with other
24 competent evidence in determining the innocence or guilt of the
25 defendant; and that the person is responsible for obtaining a
26 chemical analysis of a test sample obtained pursuant to the
27 person's own request.

1 (ii) That if the person refuses the request of a peace officer
2 to take a test described in subparagraph (i), the test shall not be
3 given without a court order, but the peace officer may seek to
4 obtain such a court order.

5 (iii) That the person's refusal of the request of a peace
6 officer to take a test described in subparagraph (i) will result in
7 issuance of an order that the person not operate a snowmobile.

8 (2) A sample or specimen of urine or breath shall be taken and
9 collected in a reasonable manner. Only a licensed physician, or a
10 licensed nurse or medical technician under the direction of a
11 licensed physician, qualified to withdraw blood and acting in a
12 medical environment, may withdraw blood at the request of a peace
13 officer for the purpose of determining the amount of alcohol or
14 presence of a controlled substance, or both, in a person's blood,
15 as provided in this subsection. A qualified person who withdraws or
16 analyzes blood, or assists in the withdrawal or analysis, in
17 accordance with this part is not liable for a crime or civil
18 damages predicated on the act of withdrawing or analyzing blood and
19 related procedures unless the withdrawal or analysis is performed
20 in a negligent manner.

21 (3) A rule relating to a chemical test for alcohol or a
22 controlled substance promulgated under the Michigan vehicle code,
23 ~~Act No. 300 of the Public Acts of 1949, being sections 257.1 to~~
24 ~~257.923 of the Michigan Compiled Laws 1949 PA 300, MCL 257.1 TO~~
25 ~~257.923~~, applies to a chemical test administered under this part.