

# HOUSE BILL No. 6157

June 8, 2006, Introduced by Reps. Nitz, Shaffer, Booher, Sheltroun, Proos, Stahl, Newell, Ball and Schuitmaker and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 80101, 80171, 80176, 80180, 80181, 80183,  
80184, 80187, and 80190 (MCL 324.80101, 324.80171, 324.80176,  
324.80180, 324.80181, 324.80183, 324.80184, 324.80187, and  
324.80190), section 80101 as amended by 2004 PA 547, sections  
80171, 80181, and 80190 as added by 1995 PA 58, section 80176 as  
amended by 2001 PA 12, and sections 80180, 80183, 80184, and 80187  
as amended by 1996 PA 174.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 80101. As used in this part:

2       (a) "Airboat" means a motorboat that is propelled, wholly or

1 in part, by a propeller projecting above the water surface.

2 (B) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION  
3 1D OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1D.

4 (C) ~~-(b)-~~ "Anchored rafts" means all types of nonpowered rafts  
5 used for recreational purposes that are anchored seasonally on  
6 waters of this state.

7 (D) ~~-(e)-~~ "Associated equipment" means any of the following  
8 that are not radio equipment:

9 (i) An original system, part, or component of a boat at the  
10 time that boat was manufactured, or a similar part or component  
11 manufactured or sold for replacement.

12 (ii) Repair or improvement of an original or replacement  
13 system, part, or component.

14 (iii) An accessory or equipment for, or appurtenance to, a boat.

15 (iv) A marine safety article, accessory, or equipment intended  
16 for use by a person on board a boat.

17 (E) ~~-(d)-~~ "Boat" means a vessel.

18 (F) ~~-(e)-~~ "Boat livery" means a business that holds a vessel  
19 for renting, leasing, or chartering.

20 (G) ~~-(f)-~~ "Controlled substance" means that term as defined in  
21 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

22 (H) ~~-(g)-~~ "Conviction" means a final conviction, the payment  
23 of a fine, a plea of guilty or nolo contendere if accepted by the  
24 court, a finding of guilt, or a probate court disposition on a  
25 violation of this part, regardless of whether the penalty is  
26 rebated or suspended.

27 Sec. 80171. Unless otherwise specified under this part, a

violation of this part or rules promulgated under this part is a misdemeanor. A political subdivision having adopted a local ordinance in conformity with this part may provide that any violation of the ordinance is a misdemeanor. Any person convicted of reckless operation of a vessel as ~~defined~~ **DESCRIBED** in section 80147, or of operating a vessel while under the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or narcotic drugs, **OR WITH ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214, IN HIS OR HER BODY,** in addition to any other penalty, may be refused by the court having jurisdiction of the violation the right of operating any vessel on any of the waters of this state for a period of not more than 2 years.

Sec. 80176. (1) A person shall not operate a vessel on the waters of this state if ~~either~~ **ANY** of the following ~~applies~~ **APPLY:**

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

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

**(C) THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE**

1 DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA  
2 368, MCL 333.7214.

3 (2) The owner of a vessel or a person in charge or in control  
4 of a vessel shall not authorize or knowingly permit the vessel to  
5 be operated on the waters of this state by a person ~~who~~ **IF ANY OF**  
6 **THE FOLLOWING APPLY:**

7 (A) **THE PERSON** is under the influence of ~~intoxicating~~  
8 **ALCOHOLIC** liquor or a controlled substance, or both. ~~—, or who~~

9 (B) **THE PERSON** has a blood alcohol content of ~~0.10~~ **0.08**  
10 grams or more per 100 milliliters of blood, per 210 liters of  
11 breath, or per 67 milliliters of urine, **OR HAS IN HIS OR HER BODY**  
12 **ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER**  
13 **SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,**  
14 **OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED**  
15 **SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH**  
16 **CODE, 1978 PA 368, MCL 333.7214.**

17 (C) **THE PERSON'S ABILITY TO OPERATE THE VESSEL IS VISIBLY**  
18 **IMPAIRED DUE TO THE CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED**  
19 **SUBSTANCE, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED**  
20 **SUBSTANCE.**

21 (3) A person shall not operate a vessel on the waters of this  
22 state when, due to the consumption of an ~~intoxicating~~ **ALCOHOLIC**  
23 liquor or a controlled substance, or both, the person's ability to  
24 operate the vessel is visibly impaired. If a person is charged with  
25 violating subsection (1), a finding of guilty under this subsection  
26 may be rendered.

27 (4) A person who operates a vessel on the waters of this state

under the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance, or both, or with a blood alcohol content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, **OR HAS IN HIS OR HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214,** and by the operation of that vessel 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.

(5) A person who operates a vessel on the waters of this state ~~under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine,~~ **IN VIOLATION OF SUBSECTION (1) OR (3)** and by the operation of that vessel 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:~~ **MEANS THAT TERM AS DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.58C.**

~~—— (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.~~

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

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

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

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

1 (c) The results of a preliminary chemical breath analysis are  
2 admissible in a criminal prosecution for a crime described in  
3 section 80187(1) or in an administrative hearing solely to assist  
4 the court or hearing officer in determining a challenge to the  
5 validity of an arrest. This subdivision does not limit the  
6 introduction of other competent evidence offered to establish the  
7 validity of an arrest.

8 (d) A person who submits to a preliminary chemical breath  
9 analysis remains subject to the requirements of sections 80187 to  
10 80190 for the purposes of chemical tests described in those  
11 sections.

12 (e) A person who refuses to submit to a preliminary chemical  
13 breath analysis upon a lawful request by a peace officer is  
14 responsible for a state civil infraction and may be ordered to pay  
15 a civil fine of not more than \$100.00.

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

19 (4) If, within 60 days after the issuance of a citation for a  
20 state civil infraction under this section, the person to whom the  
21 citation is issued is not charged with a violation of section  
22 80176(1), (3), (4), or (5) or a local ordinance substantially  
23 corresponding to section 80176(1) or (3), the citation issued for  
24 the state civil infraction is void. Upon application of the person  
25 to whom the citation is issued, money paid by the person as a fine,  
26 costs, or otherwise shall be immediately returned.

27 Sec. 80181. (1) The following apply with respect to a chemical

1 test and analysis of a person's blood, urine, or breath, other than  
2 a preliminary chemical breath analysis:

3 (a) The amount of alcohol or presence of a controlled  
4 substance, or both, in an operator's blood at the time alleged as  
5 shown by chemical analysis of the person's blood, urine, or breath  
6 is admissible into evidence in any civil or criminal proceeding **AND**  
7 **IS PRESUMED TO BE THE SAME AS AT THE TIME THE PERSON OPERATED THE**  
8 **VESSEL.**

9 (b) A person arrested for a crime described in section  
10 80187(1) shall be advised of all of the following:

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

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

25 (iii) That the person's refusal of the request of a peace  
26 officer to take a test described in subparagraph (i) will result in  
27 issuance of an order that the person not operate a vessel on the



1 waters of this state for at least 6 months.

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

15 (3) A rule relating to a chemical test for alcohol or a  
16 controlled substance promulgated under the Michigan vehicle code,  
17 ~~Act No. 300 of the Public Acts of 1949, being sections 257.1 to~~  
18 ~~257.923 of the Michigan Compiled Laws~~ **1949 PA 300, MCL 257.1 TO**  
19 **257.923**, applies to a chemical test administered under this part.

20 Sec. 80183. (1) The provisions of sections 80181 and 80182  
21 relating to chemical testing do not limit the introduction of any  
22 other competent evidence bearing upon the question of whether or  
23 not a person was impaired by, or under the influence of,  
24 ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled substance, or both,  
25 or whether the person had a blood alcohol content of ~~0.10~~ **0.08**  
26 grams or more per 100 milliliters of blood, per 210 liters of  
27 breath, or per 67 milliliters of urine, **OR WHETHER THE PERSON HAD**

1 ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER  
2 SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,  
3 OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED  
4 SUBSTANCE DESCRIBED IN SECTION 7214(A)(iv) OF THE PUBLIC HEALTH  
5 CODE, 1978 PA 368, MCL 333.7214, IN HIS OR HER BODY.

6 (2) If a chemical test described in sections 80181 and 80182  
7 is administered, the results of the test shall be made available to  
8 the person charged or the person's attorney upon written request to  
9 the prosecution, with a copy of the request filed with the court.  
10 The prosecution shall furnish the results at least 2 days before  
11 the day of the trial. The results of the test shall be offered as  
12 evidence by the prosecution in that trial. Failure to fully comply  
13 with the request bars the admission of the results into evidence by  
14 the prosecution.

15 Sec. 80184. ~~—(1) Except in a prosecution relating solely to a~~  
16 ~~violation of section 80176(1)(b), the amount of alcohol in the~~  
17 ~~operator's blood at the time alleged as shown by chemical analysis~~  
18 ~~of the person's blood, urine, or breath gives rise to the following~~  
19 ~~presumptions:~~

20 ~~—— (a) If at the time defendant had an alcohol content of 0.07~~  
21 ~~grams or less per 100 milliliters of blood, per 210 liters of~~  
22 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~  
23 ~~the defendant's ability to operate a vessel was not impaired due to~~  
24 ~~the consumption of intoxicating liquor and that the defendant was~~  
25 ~~not under the influence of intoxicating liquor.~~

26 ~~—— (b) If at the time defendant had an alcohol content of more~~  
27 ~~than 0.07 grams but less than 0.10 grams per 100 milliliters of~~

~~1 blood, per 210 liters of breath, or per 67 milliliters of urine, it~~  
~~2 shall be presumed that the defendant's ability to operate a vessel~~  
~~3 was impaired within the provisions of section 80176(3) due to the~~  
~~4 consumption of intoxicating liquor.~~

~~5 ——— (c) If at the time defendant had an alcohol content of 0.10~~  
~~6 grams or more per 100 milliliters of blood, per 210 liters of~~  
~~7 breath, or per 67 milliliters of urine, it shall be presumed that~~  
~~8 the defendant was under the influence of intoxicating liquor.~~

~~9 ——— (2) A person's refusal to submit to a chemical test as~~  
~~10 provided in sections 80181 and 80182 is admissible in a criminal~~  
~~11 prosecution for a crime described in section 80187(1) only for the~~  
~~12 purpose of showing that a test was offered to the defendant, but~~  
~~13 not as evidence in determining innocence or guilt of the defendant.~~  
~~14 The jury shall be instructed accordingly.~~

15       Sec. 80187. (1) A person who operates a vessel on the waters  
16 of this state is considered to have given consent to chemical tests  
17 of his or her blood, breath, or urine for the purpose of  
18 determining the amount of alcohol or presence of a controlled  
19 substance, or both, in his or her blood in all of the following  
20 circumstances:

21       (a) The person is arrested for a violation of section  
22 80176(1), (3), (4), or (5), or a local ordinance substantially  
23 corresponding to section 80176(1) or (3).

24       (b) The person is arrested for negligent homicide,  
25 manslaughter, or murder resulting from the operation of a vessel,  
26 and the peace officer had reasonable grounds to believe that the  
27 person was operating the vessel while impaired by, or under the

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

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 (3) A chemical test described in subsection (1) shall be  
 15 administered as provided in sections 80181 and 80182.

16 Sec. 80190. (1) If a person who refuses to submit to a  
 17 chemical test pursuant to section 80181 or 80182 does not request a  
 18 hearing within 14 days of the date of notice pursuant to section  
 19 80189, the secretary of state shall issue an order that the person  
 20 not operate a vessel on the waters of this state for ~~6 months~~ **1**  
 21 **YEAR** or, for a second or subsequent refusal within 7 years, for ~~1~~  
 22 ~~year~~ **2 YEARS**.

23 (2) If a hearing is requested, the secretary of state shall  
 24 hold the hearing in the same manner and under the same conditions  
 25 as provided in section 322 of the Michigan vehicle code, ~~Act No.~~  
 26 ~~300 of the Public Acts of 1949, being section 257.322 of the~~  
 27 ~~Michigan Compiled Laws~~ **1949 PA 300, MCL 257.322**. A person shall

1 not order a hearing officer to make a particular finding on any  
2 issue enumerated under subdivisions (a) to (d). Not less than 5  
3 days' notice of the hearing shall be mailed to the person  
4 requesting the hearing, to the peace officer who filed the report  
5 under section 80188, and, if the prosecuting attorney requests  
6 receipt of the notice, to the prosecuting attorney of the county  
7 where the arrest was made. The hearing officer may administer  
8 oaths, issue subpoenas for the attendance of necessary witnesses,  
9 and grant a reasonable request for an adjournment. Not more than 1  
10 adjournment shall be granted to a party, and the length of an  
11 adjournment shall not exceed 14 days. A hearing under this  
12 subsection shall be scheduled to be held within 45 days after the  
13 date of arrest and, except for delay attributable to the  
14 unavailability of the defendant, a witness, or material evidence or  
15 to an interlocutory appeal or exceptional circumstances, but not  
16 for delay attributable to docket congestion, shall be finally  
17 adjudicated within 77 days after the date of arrest. The hearing  
18 shall cover only the following issues:

19 (a) Whether the peace officer had reasonable grounds to  
20 believe that the person had committed a crime described in section  
21 80187(1).

22 (b) Whether the person was placed under arrest for a crime  
23 described in section 80187(1).

24 (c) If the person refused to submit to the test upon the  
25 request of the officer, whether the refusal was reasonable.

26 (d) Whether the person was advised of his or her rights under  
27 section 80181.

1 (3) The hearing officer shall make a record of proceedings  
2 held pursuant subsection (2). The record shall be prepared and  
3 transcribed in accordance with section 86 of the administrative  
4 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~  
5 ~~being section 24.286 of the Michigan Compiled Laws~~ **1969 PA 306,**  
6 **MCL 24.286.** Upon notification of the filing of a petition for  
7 judicial review pursuant to section 80194 and not less than 10 days  
8 before the matter is set for review, the hearing officer shall  
9 transmit to the court in which the petition is filed the original  
10 or a certified copy of the official record of the proceedings. The  
11 parties to the proceedings for judicial review may stipulate that  
12 the record be shortened. A party unreasonably refusing to stipulate  
13 to a shortened record may be taxed by the court in which the  
14 petition is filed for the additional costs. The court may permit  
15 subsequent corrections to the record.

16 (4) After a hearing, if the person who requested the hearing  
17 does not prevail, the secretary of state shall order that the  
18 person not operate a vessel on the waters of this state for ~~6~~  
19 ~~months~~ **1 YEAR** or, for a second or subsequent refusal within 7  
20 years, for ~~1 year~~ **2 YEARS**. The person may file a petition in the  
21 circuit court of the county in which the arrest was made to review  
22 the order as provided in section 80194. If after the hearing the  
23 person who requested the hearing prevails, the peace officer who  
24 filed the report under section 80188 may, with the consent of the  
25 prosecuting attorney, file a petition in the circuit court of the  
26 county in which the arrest was made to review the determination of  
27 the hearing officer as provided in section 80194.

1           Enacting section 1. This amendatory act takes effect January  
2   1, 2007.