

HOUSE BILL No. 4649

May 24, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 80180, 80181, 82136, and 82137 (MCL 324.80180, 324.80181, 324.82136, and 324.82137), section 80180 as amended by 2014 PA 402, sections 80181 and 82137 as added by 1995 PA 58, and section 82136 as amended by 2014 PA 404; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 80180. (1) A peace officer, without a warrant, may arrest
2 a person if the peace officer has reasonable cause to believe that
3 the person was, at the time of an accident, the operator of a
4 vessel involved in the accident in this state while in violation of
5 section 80176(1), (3), (4), (5), (6), or (7) or a local ordinance
6 substantially corresponding to section 80176(1), (3), or (6).

7 ~~(2) A peace officer who has reasonable cause to believe that a~~

1 ~~person was operating a motorboat on the waters of this state, and~~
2 ~~that, by the consumption of alcoholic liquor, the person may have~~
3 ~~affected his or her ability to operate a motorboat, may require the~~
4 ~~person to submit to a preliminary chemical breath analysis. The~~
5 ~~following apply with respect to a preliminary chemical breath~~
6 ~~analysis:~~

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

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

13 ~~—— (c) The results of a preliminary chemical breath analysis are~~
14 ~~admissible in a criminal prosecution for a crime described in~~
15 ~~section 80187(1) or in an administrative hearing solely to assist~~
16 ~~the court or hearing officer in determining a challenge to the~~
17 ~~validity of an arrest. This subdivision does not limit the~~
18 ~~introduction of other competent evidence offered to establish the~~
19 ~~validity of an arrest.~~

20 ~~—— (d) A person who submits to a preliminary chemical breath~~
21 ~~analysis remains subject to the requirements of sections 80187 to~~
22 ~~80190 for the purposes of chemical tests described in those~~
23 ~~sections.~~

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

1 (2) ~~(3)~~—A peace officer making an arrest under this part shall
2 take measures to assure that the motorboat and its occupants are
3 safely returned to shore.

4 (3) ~~(4)~~—If, not more than 60 days after the issuance of a
5 citation for a state civil infraction under this section, the
6 person to whom the citation is issued is not charged with a
7 violation of section 80176(1), (3), (4), (5), (6), or (7) or a
8 local ordinance substantially corresponding to section 80176(1),
9 (3), or (6), the citation issued for the state civil infraction is
10 void. Upon application of the person to whom the citation is
11 issued, money paid by the person as a fine, costs, or otherwise
12 ~~shall~~**MUST** be immediately returned.

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

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

20 (b) A person arrested for a crime described in section
21 80187(1) shall be advised of all of the following:

22 (i) That if the person takes a chemical test of his or her
23 blood, urine, or breath administered at the request of a peace
24 officer, the person has the right to demand that someone of the
25 person's own choosing administer 1 of the chemical tests; that the
26 results of the test are admissible in a judicial proceeding as
27 provided under this part and ~~shall~~**MUST** be considered with other

1 competent evidence in determining the innocence or guilt of the
2 defendant; and that the person is responsible for obtaining a
3 chemical analysis of a test sample obtained pursuant to the
4 person's own request.

5 (ii) That if the person refuses the request of a peace officer
6 to take a test described in subparagraph (i), the test ~~shall~~**MUST**
7 not be given without a court order, but the peace officer may seek
8 to obtain such a court order.

9 (iii) That the person's refusal of the request of a peace
10 officer to take a test described in subparagraph (i) will result in
11 issuance of an order that the person not operate a vessel on the
12 waters of this state for ~~at least~~**NOT LESS THAN** 6 months.

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

26 (3) A rule relating to a chemical test for alcohol or a
27 controlled substance promulgated under the Michigan vehicle code,

1 ~~Act No. 300 of the Public Acts of 1949, being sections 257.1 to~~
2 ~~257.923 of the Michigan Compiled Laws, 1949 PA 300, MCL 257.1 TO~~
3 ~~257.923, applies to a chemical test administered under this part.~~

4 Sec. 82136. ~~(1)~~A peace officer, without a warrant, may arrest
5 a person if the peace officer has reasonable cause to believe that
6 the person was, at the time of an accident, the operator of a
7 snowmobile involved in the accident in this state while in
8 violation of section 82127(1), (3), (4), (5), (6), or (7) or a
9 local ordinance substantially corresponding to section 82127(1),
10 (3), or (6).

11 ~~—— (2) A peace officer who has reasonable cause to believe that a~~
12 ~~person was operating a snowmobile and that, by the consumption of~~
13 ~~alcoholic liquor, the person may have affected his or her ability~~
14 ~~to operate a snowmobile may require the person to submit to a~~
15 ~~preliminary chemical breath analysis. The following apply with~~
16 ~~respect to a preliminary chemical breath analysis:~~

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

19 ~~—— (b) The results of a preliminary chemical breath analysis are~~
20 ~~admissible in a criminal prosecution for a crime enumerated in~~
21 ~~section 82143(1) or in an administrative hearing solely to assist~~
22 ~~the court or hearing officer in determining a challenge to the~~
23 ~~validity of an arrest. This subdivision does not limit the~~
24 ~~introduction of other competent evidence offered to establish the~~
25 ~~validity of an arrest.~~

26 ~~—— (c) A person who submits to a preliminary chemical breath~~
27 ~~analysis remains subject to the requirements of sections 82143 to~~

1 ~~82146 for the purposes of chemical tests described in those~~
2 ~~sections.~~

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

7 Sec. 82137. (1) The following apply with respect to a chemical
8 test and analysis of a person's blood, urine, or breath: ~~, other~~
9 ~~than 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 82143(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~~**MUST** 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~~**MUST**

1 not be given without a court order, but the peace officer may seek
2 to 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 snowmobile.

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

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

24 Enacting section 1. Section 81141 of the natural resources and
25 environmental protection act, 1994 PA 451, MCL 324.81141, is
26 repealed.

27 Enacting section 2. This amendatory act takes effect January

1 5, 2018.

2 Enacting section 3. This amendatory act does not take effect
3 unless all of the following bills of the 99th Legislature are
4 enacted into law:

5 (a) Senate Bill No. ____ or House Bill No. 4648 (request no.
6 02915'17).

7 (b) Senate Bill No. ____ or House Bill No. 4650 (request no.
8 02917'17).