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BILL ANALYSIS



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House Bill 5282 (as passed by the House)
Sponsor: Representative Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 3-13-18

CONTENT

The bill would amend the Michigan Vehicle Code to do the following:

- **Require a court to notify the Department of State after determining that a petitioner was eligible for restricted driving privileges, and prohibit the court from retaining jurisdiction over the restricted license.**
- **Allow a court to set aside a Secretary of State (SOS) determination regarding license revocation or denial, or restricted driving privileges, only if the petitioner's substantial rights had been prejudiced and all other listed conditions were met.**
- **Specify that a court order granting restricted driving privileges would have to require each motor vehicle operated by the petitioner to be equipped with an ignition interlock device for at least one year before the petitioner would be eligible to return to the Secretary of State for a hearing.**

The bill would take effect 90 days after its enactment.

Set Aside of SOS Determination

Under Section 323 of the Vehicle Code, a person may appeal to the circuit court a final determination issued by the SOS resulting in a driver license denial, suspension, revocation, or restriction. If the petitioner is subject to a revocation under Section 303, the court may determine that the petitioner is eligible for restricted driving privileges. (Section 303 requires the SOS to revoke the driver license of a person having convictions for certain offenses, e.g., negligent homicide resulting from operation of a vehicle, or multiple convictions of other offenses within seven or 10 years.)

In determining whether a petitioner is eligible for review of a revocation or denial of a driver license under Section 303, or whether a petitioner is eligible for restricted driving privileges, the court may set aside an SOS determination if the petitioner's substantial rights have been prejudiced *or* if all of the following conditions are satisfied:

- The revocation or denial occurred at least one year after the petitioner's license was revoked or denied, or, if the license was previously revoked or denied within the seven years before the most recent revocation or denial, at least five years after the most recent revocation or denial, whichever is later.
- The court finds that the petitioner meets the Department of State's requirements for licensure under administrative rules.

- If the revocation or denial was for certain violations identified in Section 303, the petitioner rebuts by clear and convincing evidence the presumption that he or she is a habitual offender, and establishes to the court's satisfaction that he or she is likely to adhere to court-imposed requirements.

Under the bill, the court could set aside the SOS determination only if the petitioner's substantial rights had been prejudiced *and* all of the above conditions were satisfied.

(A petitioner's substantial rights have been prejudiced if the SOS determination was any of the following: a) in violation of the United States Constitution, the Michigan Constitution, or a statute; b) in excess of the SOS's statutory authority or jurisdiction; c) made under unlawful procedure resulting in material prejudice to the petitioner; d) not supported by competent, material, and substantial evidence on the whole record; e) arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; or f) affected by other substantial and material error of law.)

Restricted Driving Privileges

If the court determines that a petitioner is eligible for restricted driving privileges, the court must issue an order that includes all of the following:

- The court's findings under Section 303 and administrative rules R 257.1 to R 257.1727 (rules governing the operation of vehicles, promulgated by the Departments of State, State Police, Natural Resources, and Licensing and Regulatory Affairs).
- A method by which the court will verify that the petitioner maintains no-fault insurance for each vehicle he or she operates.
- A requirement that a restricted license issued to the petitioner does not permit him or her to operate a commercial motor vehicle that hauls hazardous materials.
- A provision that SOS must revoke the restricted license if the petitioner violates the restrictions on his or her license, or various requirements related to the installation and use of an ignition interlock device.

The order also must include a requirement that that each motor vehicle operated by the petitioner be equipped with a properly installed and functioning ignition interlock device for at least one year. Under the bill, instead, each motor vehicle operated by the petitioner would have to be equipped with a properly installed and functioning ignition interlock device for at least one year before the petitioner would be eligible to return to the SOS for a hearing.

Also, if a court determined that a petitioner was eligible for restricted driving privileges, it would have to notify the Department of State of its determination through the issuance of an order described above, and could not retain jurisdiction over a license issued under Section 323.

MCL 257.323

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.