

HOUSE BILL No. 5282

November 28, 2017, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending section 323 (MCL 257.323), as amended by 2016 PA 117.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 323. (1) A person aggrieved by a final determination of
2 the secretary of state denying the person an operator's or
3 chauffeur's license, a vehicle group designation, or an indorsement
4 on a license or revoking, suspending, or restricting an operator's
5 or chauffeur's license, vehicle group designation, or an
6 indorsement may petition for a review of the determination in the
7 circuit court in the county where the person was arrested if the
8 denial or suspension was imposed under section 625f or under the
9 order of a trial court under section 328 or, in all other cases, in

1 the circuit court in the person's county of residence. The person
2 shall file the petition within 63 days after the determination is
3 made except that for good cause shown the court may allow the
4 person to file petition within 182 days after the determination is
5 made. As provided in section 625f, a peace officer aggrieved by a
6 determination of a hearing officer in favor of a person who
7 requested a hearing under section 625f may, with the prosecuting
8 attorney's consent, petition for review of the determination in the
9 circuit court in the county where the arrest was made. The peace
10 officer shall file the petition within 63 days after the
11 determination is made except that for good cause shown the court
12 may allow the peace officer to file the petition within 182 days
13 after the determination is made.

14 (2) Except as otherwise provided in this section, the circuit
15 court shall enter an order setting the cause for hearing for a day
16 certain not more than 63 days after the order's date. The order, a
17 copy of the petition that includes the person's full name, current
18 address, birth date, and driver's license number, and all
19 supporting affidavits ~~shall~~**MUST** be served on the secretary of
20 state's office in Lansing not less than 20 days before the date set
21 for the hearing. If the person is seeking a review of the record
22 prepared under section 322 or section 625f, the service upon the
23 secretary of state ~~shall~~**MUST** be made not less than 50 days before
24 the date set for the hearing.

25 (3) The court may take testimony and examine all the facts and
26 circumstances relating to the denial, suspension, or restriction of
27 the person's license under sections 303(1)(d), 320, or 904(10) or

1 (11), a licensing action under section 310d, or a suspension for a
2 first violation under section 625f. The court may affirm, modify,
3 or set aside the restriction, suspension, or denial, except the
4 court shall not order the secretary of state to issue a restricted
5 or unrestricted chauffeur's license that would permit the person to
6 drive a commercial motor vehicle that hauls a hazardous material.
7 The court shall enter the order and the petitioner shall file a
8 certified copy of the order with the secretary of state's office in
9 Lansing within 7 days after entry of the order.

10 (4) Except as otherwise provided in this section, in reviewing
11 a determination resulting in a denial, suspension, restriction, or
12 revocation under this act, the court shall confine its
13 consideration to a review of the record prepared under section 322
14 or 625f or the driving record created under section 204a for a
15 statutory legal issue, and may determine that the petitioner is
16 eligible for full driving privileges or, if the petitioner is
17 subject to a revocation under section 303, may determine that the
18 petitioner is eligible for restricted driving privileges. The court
19 shall set aside the secretary of state's determination only if 1 or
20 more of the following apply:

21 (a) In determining whether a petitioner is eligible for full
22 driving privileges, the petitioner's substantial rights have been
23 prejudiced because the determination is any of the following:

24 (i) In violation of the Constitution of the United States, the
25 state constitution of 1963, or a statute.

26 (ii) In excess of the secretary of state's statutory authority
27 or jurisdiction.

1 (iii) Made upon unlawful procedure resulting in material
2 prejudice to the petitioner.

3 (iv) Not supported by competent, material, and substantial
4 evidence on the whole record.

5 (v) Arbitrary, capricious, or clearly an abuse or unwarranted
6 exercise of discretion.

7 (vi) Affected by other substantial and material error of law.

8 (b) In determining whether a petitioner is eligible for review
9 of a revocation or denial under section 303, or whether a
10 petitioner is eligible for restricted driving privileges, ~~1 or more~~
11 **ALL** of the following apply:

12 (i) The petitioner's substantial rights have been prejudiced
13 as described in subdivision (a).

14 (ii) All of the following are satisfied:

15 (A) The revocation or denial occurred at least 1 year after
16 the petitioner's license was revoked or denied, or, if the
17 petitioner's license was previously revoked or denied within the 7
18 years preceding the most recent revocation or denial, at least 5
19 years after the most recent revocation or denial, whichever is
20 later.

21 (B) The court finds that the petitioner meets the department's
22 requirements under the rules promulgated by the department under
23 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
24 to 24.238. For purposes of this sub-subparagraph only, the court
25 may take additional testimony to supplement the record prepared
26 under section 322 or 625f or the driving record created under
27 section 204a, but shall not expand the record.

1 (C) If the revocation or denial was under section 303(2)(a),
2 (b), (c), or (g), the petitioner rebuts by clear and convincing
3 evidence the presumption that he or she is a habitual offender, and
4 establishes to the court's satisfaction that he or she is likely to
5 adhere to any requirements imposed by the court. For purposes of
6 this sub-subparagraph, the conviction that resulted in the
7 revocation and any record of denial of reinstatement by the
8 department are prima facie evidence that the petitioner is a
9 habitual offender. For purposes of this sub-subparagraph only, the
10 court may take additional testimony to supplement the record
11 prepared under section 322 or 625f or the driving record created
12 under section 204a, but shall not expand the record.

13 (5) If the court determines that a petitioner is eligible for
14 restricted driving privileges under subsection (4)(b), the court
15 shall issue an order that includes, but is not limited to, all of
16 the following:

17 (a) The court's findings under section 303 and R 257.1 to R
18 257.1727 of the Michigan ~~administrative code~~. **ADMINISTRATIVE CODE**.

19 (b) A requirement that each motor vehicle operated by the
20 petitioner be equipped with a properly installed and functioning
21 ignition interlock device for a period of ~~at least~~ **NOT LESS THAN** 1
22 year **BEFORE THE PETITIONER WILL BE ELIGIBLE TO RETURN TO THE**
23 **SECRETARY OF STATE FOR A HEARING**. The petitioner shall bear the
24 cost of an ignition interlock device required under this
25 subdivision. A restricted license ~~shall~~ **MUST** not be issued to the
26 petitioner until the secretary of state has verified that 1 or more
27 ignition interlock devices, if applicable, have been installed as

1 required by this subdivision.

2 (c) A method by which the court will verify that the
3 petitioner maintains no-fault insurance for each vehicle described
4 in subdivision (b) as required by chapter 31 of the insurance code
5 of 1956, 1956 PA 218, MCL ~~500.3103~~**500.3101** to 500.3179.

6 (d) A requirement that a restricted license issued to the
7 petitioner ~~shall~~**MUST** not permit the petitioner to operate a
8 commercial motor vehicle that hauls hazardous materials.

9 (e) A provision that the secretary of state shall revoke the
10 petitioner's restricted license if any of the following occur:

11 (i) The petitioner violates the restrictions on his or her
12 license.

13 (ii) The petitioner violates subdivision (b).

14 (iii) The petitioner removes, or causes to be removed, an
15 ignition interlock device required under subdivision (b), unless
16 the secretary of state has authorized the removal under section
17 322a.

18 (iv) The petitioner commits an act that would be a major
19 violation if the petitioner's license had been issued under section
20 322(6) or consumes alcohol or a controlled substance without a
21 prescription. As used in this subparagraph, "major violation" means
22 that term as defined in R 257.301a of the Michigan ~~administrative~~
23 ~~code~~**ADMINISTRATIVE CODE**.

24 (v) The petitioner is arrested for a violation of section 625
25 or a local ordinance, law of this state or another state, or law of
26 the United States that substantially corresponds to section 625.

27 (6) If the court determines that a petitioner is eligible for

1 restricted driving privileges under this section and the petitioner
2 intends to operate a vehicle owned by his or her employer, the
3 court shall notify the employer of the petitioner's obligation
4 under subsection (5) (b). This subsection does not require an
5 employer who receives a notice under this subsection to install an
6 ignition interlock device on a vehicle. This subsection does not
7 apply to a vehicle that is operated by a self-employed individual
8 who uses the vehicle for both business and personal use.

9 (7) If a court determines that a petitioner is eligible for
10 restricted driving privileges, the secretary of state shall not
11 issue a restricted license to the petitioner until he or she has
12 satisfied any other applicable requirements of state or federal
13 law, and shall not issue a restricted license to the petitioner if
14 the order granting eligibility for restricted driving privileges
15 does not comply with subsection (5).

16 **(8) IF A COURT DETERMINES THAT A PETITIONER IS ELIGIBLE FOR**
17 **RESTRICTED DRIVING PRIVILEGES, THE COURT SHALL NOTIFY THE**
18 **DEPARTMENT OF ITS DETERMINATION THROUGH THE ISSUANCE OF AN ORDER**
19 **UNDER SUBSECTION (5) AND SHALL NOT RETAIN JURISDICTION OVER A**
20 **LICENSE ISSUED UNDER THIS SECTION.**

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.