

MICHIGAN VEHICLE CODE (EXCERPT)
Act 300 of 1949

***** 257.323.amended THIS AMENDED SECTION IS EFFECTIVE JULY 1, 2018 *****

257.323.amended Denial, revocation, suspension, or restriction of operator or chauffeur's license, vehicle group designation, or indorsement; final determination; petition for review of determination; order setting cause for hearing; service of order, petition, and affidavits on secretary of state's office; testimony and examination; order affirming, modifying, or setting aside restriction, suspension, or denial; conditions; restricted driving privileges; vehicle owned by employer; notification; other requirements.

Sec. 323. (1) A person aggrieved by a final determination of the secretary of state denying the person an operator's or chauffeur's license, a vehicle group designation, or an indorsement on a license or revoking, suspending, or restricting an operator's or chauffeur's license, vehicle group designation, or an indorsement may petition for a review of the determination in the circuit court in the county where the person was arrested if the denial or suspension was imposed under section 625f or under the order of a trial court under section 328 or, in all other cases, in the circuit court in the person's county of residence. The person shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the person to file petition within 182 days after the determination is made. As provided in section 625f, a peace officer aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 625f may, with the prosecuting attorney's consent, petition for review of the determination in the circuit court in the county where the arrest was made. The peace officer shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the peace officer to file the petition within 182 days after the determination is made.

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

(3) The court may take testimony and examine all the facts and circumstances relating to the denial, suspension, or restriction of the person's license under sections 303(1)(d), 320, or 904(10) or (11), a licensing action under section 310d, or a suspension for a first violation under section 625f. The court may affirm, modify, or set aside the restriction, suspension, or denial, except the court shall not order the secretary of state to issue a restricted or unrestricted chauffeur's license that would permit the person to drive a commercial motor vehicle that hauls a hazardous material. The court shall enter the order and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

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

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

- (i) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.
- (ii) In excess of the secretary of state's statutory authority or jurisdiction.
- (iii) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (iv) Not supported by competent, material, and substantial evidence on the whole record.
- (v) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (vi) Affected by other substantial and material error of law.

(b) In determining whether a petitioner is eligible for review of a revocation or denial under section 303, or whether a petitioner is eligible for restricted driving privileges, all of the following apply:

- (i) The petitioner's substantial rights have been prejudiced as described in subdivision (a).
- (ii) All of the following are satisfied:

(A) The revocation or denial occurred at least 1 year after the petitioner's license was revoked or denied, or, if the petitioner's license was previously revoked or denied within the 7 years preceding the most recent

revocation or denial, at least 5 years after the most recent revocation or denial, whichever is later.

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

(C) If the revocation or denial was under section 303(2)(a), (b), (c), or (g), 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 any requirements imposed by the court. For purposes of this sub-subparagraph, the conviction that resulted in the revocation and any record of denial of reinstatement by the department are prima facie evidence that the petitioner is a habitual offender. For purposes of this sub-subparagraph only, the court may take additional testimony to supplement the record prepared under section 322 or 625f or the driving record created under section 204a, but shall not expand the record.

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

(a) The court's findings under section 303 and R 257.1 to R 257.1727 of the Michigan Administrative Code.

(b) A requirement that each motor vehicle operated by the petitioner be equipped with a properly installed and functioning ignition interlock device for a period of not less than 1 year before the petitioner will be eligible to return to the secretary of state for a hearing. The petitioner shall bear the cost of an ignition interlock device required under this subdivision. A restricted license must not be issued to the petitioner until the secretary of state has verified that 1 or more ignition interlock devices, if applicable, have been installed as required by this subdivision.

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

(d) A requirement that a restricted license issued to the petitioner must not permit the petitioner to operate a commercial motor vehicle that hauls hazardous materials.

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

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

(ii) The petitioner violates subdivision (b).

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

(iv) The petitioner commits an act that would be a major violation if the petitioner's license had been issued under section 322(6) or consumes alcohol or a controlled substance without a prescription. As used in this subparagraph, "major violation" means that term as defined in R 257.301a of the Michigan Administrative Code.

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

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

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

(8) If a court determines that a petitioner is eligible for restricted driving privileges, the court shall notify the department of its determination through the issuance of an order under subsection (5) and shall not retain jurisdiction over a license issued under this section.

History: 1949, Act 300, Eff. Sept. 23, 1949;—Am. 1951, Act 270, Eff. Sept. 28, 1951;—Am. 1953, Act 120, Eff. Oct. 2, 1953;—Am. 1958, Act 113, Eff. Sept. 13, 1958;—Am. 1978, Act 57, Imd. Eff. Mar. 10, 1978;—Am. 1978, Act 510, Eff. Aug. 1, 1979;—Am. 1981, Act 71, Imd. Eff. June 30, 1981;—Am. 1982, Act 310, Eff. Mar. 30, 1983;—Am. 1988, Act 346, Eff. Jan. 1, 1990;—Am. 1991, Act 99, Eff. Jan. 1, 1992;—Am. 1991, Act 100, Eff. Jan. 1, 1993;—Am. 1993, Act 359, Eff. Sept. 1, 1994;—Am. 1994, Act 449, Eff. May 1, 1995;—Am. 1998, Act 346, Eff. Oct. 1, 1999;—Am. 1999, Act 73, Eff. Oct. 1, 1999;—Am. 2001, Act 159, Imd. Eff. Nov. 6, 2001;—Am. 2018, Act 336, Eff. Aug. 28, 2018.

2001;—Am. 2016, Act 117, Eff. Aug. 15, 2016;—Am. 2018, Act 99, Eff. July 1, 2018.

Compiler's note: Section 2 of Act 310 of 1982 provides: “All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or initiated before the effective date of this amendatory act, or initiated after the effective date of this amendatory act for an offense committed before that effective date.”

Section 2 of Act 346 of 1988 provides:

“(1) Except as otherwise provided in this section, this amendatory act shall take effect October 1, 1989.

“(2) Sections 634, 710g, 722, 723, 724, 802, and 907 of this amendatory act shall take effect January 1, 1989.

“(3) Sections 4B and 801 of this amendatory act shall take effect upon the date of enactment of this amendatory act.”

Section 2 of Act 173 of 1989 provides:

“(1) The amendments made to sections 8b, 57, 67a, 301, 303, 305, 306, 307, 309, 310, 312d, 312e, 312f, 312g, 312h, 314, 314b, 319a, 321a, 323, 728, 732, 743, and 907 of Act No. 300 of the Public Acts of 1949, being sections 257.8b, 257.57, 257.67a, 257.301, 257.303, 257.305, 257.306, 257.307, 257.309, 257.310, 257.312d, 257.312e, 257.312f, 257.312g, 257.312h, 257.314, 257.314b, 257.319a, 257.321a, 257.323, 257.728, 257.732, 257.743, and 257.907 of the Michigan Compiled Laws, by Act No. 346 of the Public Acts of 1988 shall take effect January 1, 1990.

“(2) Enacting section 2 of Act No. 346 of the Public Acts of 1988 is repealed.”

Transfer of powers: See MCL 16.129.