

HOUSE BILL No. 4451

March 6, 1997, Introduced by Rep. Profit and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 323, 323a, and 323c (MCL 257.323, 257.323a,
and 257.323c), section 323 as amended by 1994 PA 449, section
323a as amended by 1991 PA 99, and section 323c as amended by
1991 PA 100.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 323. (1) Except as provided in subsections (5) and
2 (9), a person aggrieved by a final determination of the secretary
3 of state denying the person an operator's or chauffeur's license,
4 a vehicle group designation, or an indorsement on a license or
5 revoking, suspending, or restricting an operator's or chauffeur's
6 license, vehicle group designation, or an indorsement may
7 petition for a review of the determination in the ~~circuit~~
8 DISTRICT court ~~in the county~~ OF THE DISTRICT where the person

1 was arrested if the denial or suspension was imposed pursuant to
2 section 625f or pursuant to the order of a trial court under sec-
3 tion 328 or, in all other cases, in the ~~circuit~~ DISTRICT court
4 OF THE DISTRICT in WHICH the ~~person's county of residence~~
5 PERSON RESIDES. The person shall file the petition within 63
6 days after the determination is made except that for good cause
7 shown the court may allow the person to file petition within 182
8 days after the determination is made. As provided in
9 section 625f, a peace officer aggrieved by a determination of a
10 hearing officer in favor of a person who requested a hearing
11 under section 625f may, with the prosecuting attorney's consent,
12 petition for review of the determination in the ~~circuit~~
13 DISTRICT court ~~in the county~~ OF THE DISTRICT where the arrest
14 was made. The peace officer shall file the petition within 63
15 days after the determination is made except that for good cause
16 shown the court may allow the peace officer to file the petition
17 within 182 days after the determination is made.

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

1 section 625f, the service upon the secretary of state shall be
2 made not less than 50 days before the date set for the hearing.

3 (3) Except as otherwise provided in this section, the court
4 may take testimony and examine all the facts and circumstances
5 relating to the denial, suspension, restriction, or revocation of
6 the person's license. The court may affirm, modify, or set aside
7 the restriction, suspension, revocation, or denial except the
8 court shall not order the secretary of state to issue a
9 restricted or unrestricted chauffeur's license that would permit
10 the person to drive a commercial motor vehicle that hauls a haz-
11 ardous material. The court shall duly enter the order and the
12 petitioner shall file a certified copy of the order with the sec-
13 retary of state's office in Lansing within 7 days after entry of
14 the order.

15 (4) In reviewing a determination under section 625f, the
16 court shall confine its consideration to 1 or both of the
17 following:

18 (a) A review of the record prepared pursuant to section 625f
19 to determine whether the hearing officer properly determined the
20 issues enumerated in section 625f.

21 (b) A determination of whether to order a restricted license
22 issued as provided in section 323c.

23 (5) This section does not apply to a denial, revocation,
24 suspension, or restriction imposed pursuant to a suspension
25 ordered under section 321a or to a court order issued as part of
26 the sentence for a conviction under either of the following:

1 (a) Section 625, section 625m, former section 625(1) or (2),
2 or former section 625b or a local ordinance substantially
3 corresponding to section 625(1), (2), or (3), section 625m,
4 former section 625(1) or (2), or former section 625b.

5 (b) Part 74 or section 17766a of the public health code,
6 ~~Act No. 368 of the Public Acts of 1978, being sections 333.7401~~
7 ~~to 333.7461 and section 333.17766a of the Michigan Compiled Laws~~
8 1978 PA 368, MCL 333.7401 TO 333.7461 AND 333.17766A, or a local
9 ordinance that prohibits conduct prohibited under part 74 or sec-
10 tion 17766a of ~~Act No. 368 of the Public Acts of 1978~~ THE
11 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 TO 333.7461 AND
12 333.17766A.

13 (6) In reviewing a determination resulting in a denial or
14 revocation under section 303(1)(d), (e), or (f) or section
15 303(2)(c), (d), (e), or (f), the court shall confine its consid-
16 eration to a review of the record prepared pursuant to section
17 322 or the driving record created under section 204a, and shall
18 not grant relief pursuant to subsection (3). The court shall set
19 aside the secretary of state's determination only if the
20 petitioner's substantial rights have been prejudiced because the
21 determination is any of the following:

22 (a) In violation of the Constitution of the United States,
23 the state constitution of 1963, or a statute.

24 (b) In excess of the secretary of state's statutory author-
25 ity or jurisdiction.

26 (c) Made upon unlawful procedure resulting in material
27 prejudice to the petitioner.

1 (d) Not supported by competent, material, and substantial
2 evidence on the whole record.

3 (e) Arbitrary, capricious, or clearly an abuse or unwar-
4 ranted exercise of discretion.

5 (f) Affected by other substantial and material error of
6 law.

7 (7) This section does not apply to a denial, revocation,
8 suspension, or restriction imposed pursuant to the financial
9 responsibility act contained in chapter V.

10 (8) This section does not apply to a suspension, revocation,
11 or denial of a vehicle group designation imposed pursuant to
12 section 312f, 319a, or 319b.

13 (9) This section does not apply to a suspension or denial of
14 a license imposed pursuant to section 303(1)(o) or 319e.

15 Sec. 323a. (1) A person who is aggrieved by a final deter-
16 mination of the secretary of state suspending or revoking the
17 operator's or chauffeur's license of the person may, within 63
18 days after the determination, petition the ~~circuit~~ DISTRICT
19 court for the ~~county~~ DISTRICT in which the conviction or civil
20 infraction determination resulting in the license being suspended
21 or revoked was entered, or the ~~circuit~~ DISTRICT court for the
22 ~~county of residence of~~ DISTRICT WHERE the person RESIDES if the
23 license was suspended or revoked as provided in section 318, or
24 for the accumulation of 12 or more points as provided in sections
25 320 and 320a, for an order staying the revocation or suspension
26 of the license. Except as provided in subsection (2), the court
27 may enter an ex parte order staying the suspension or revocation

1 subject to terms and conditions prescribed by the court until the
2 determination of an appeal to the secretary of state or of an
3 appeal or a review by the ~~circuit~~ DISTRICT court, or for a
4 lesser time which the court considers proper, except that the
5 court shall not enter an ex parte order staying the suspension or
6 revocation of a person who drives a truck or truck tractor,
7 including a trailer, which hauls hazardous material.

8 (2) The court shall not enter an ex parte order staying the
9 suspension, denial, or revocation if the order is based upon a
10 claim of undue hardship.

11 (3) This section shall not apply to a suspension for a vio-
12 lation of the financial responsibility act contained in chapter
13 V.

14 Sec. 323c. (1) A person denied a license to operate a
15 motor vehicle or whose license for that purpose has been sus-
16 pended by the secretary of state under section 625f has a right
17 to a review of the matter in ~~circuit~~ DISTRICT court as provided
18 in sections 323 and 323a. Except as provided in this section,
19 the court may order the secretary of state to issue to the person
20 a restricted license permitting the person to drive only to and
21 from the person's residence and work location; in the course of
22 the person's employment or occupation; to and from an alcohol or
23 drug education program or treatment program as ordered by a
24 court; to and from the person's residence and the court probation
25 department, or a court-ordered community service program, or
26 both; to and from the person's residence and an educational
27 institution at which the person is enrolled as a student; or

1 pursuant to a combination of these restrictions. If the denial,
2 suspension, or revocation of a person's license or vehicle group
3 designation under section 625f occurred in connection with the
4 operation of a commercial motor vehicle, the court shall not
5 order the secretary of state to issue a restricted license that
6 would permit the person to operate a commercial motor vehicle.
7 The court shall not order the secretary of state to issue a
8 restricted chauffeur's license that would permit a person to
9 operate a truck or truck tractor, including a trailer, that hauls
10 hazardous material. The court shall not order the secretary of
11 state to issue a restricted license unless the person states
12 under oath and the court finds that the person is unable to take
13 public transportation to and from his or her work location, place
14 of alcohol or drug education or treatment, or educational insti-
15 tution, and does not have a family member or other person able to
16 provide transportation. The court order and license shall indi-
17 cate the person's work location and the approved route or routes
18 and permitted times of travel. For purposes of this section,
19 "work location" includes, as applicable, either or both of the
20 following:

21 (a) The specific place or places of employment.

22 (b) The territory or territories regularly visited by the
23 person in pursuance of the person's occupation.

24 (2) If the person's license has been suspended pursuant to
25 section 625f within the immediately preceding 7-year period, a
26 restricted license shall not be issued.

1 (3) Notwithstanding any other provision of this section, the
2 court shall not issue a restricted license to a person who has
3 accumulated over 24 points, as provided in section 320a, within
4 the 2-year period preceding the date of the suspension of his or
5 her license.