

**SUBSTITUTE FOR
HOUSE BILL NO. 4436**

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending section 323 (MCL 257.323), as amended by 2001 PA 159.

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 ~~pursuant to~~**UNDER** section 625f or
9 ~~pursuant to~~**UNDER** the order of a trial court under section 328 or,

1 in all other cases, in the circuit court in the person's county of
2 residence. The person shall file the petition within 63 days after
3 the determination is made except that for good cause shown the
4 court may allow the person to file petition within 182 days after
5 the determination is made. As provided in section 625f, a peace
6 officer aggrieved by a determination of a hearing officer in favor
7 of a person who requested a hearing under section 625f may, with
8 the prosecuting attorney's consent, petition for review of the
9 determination in the circuit court in the county where the arrest
10 was made. The peace officer shall file the petition within 63 days
11 after the determination is made except that for good cause shown
12 the court may allow the peace officer to file the petition within
13 182 days 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 be served on the secretary of state's
20 office in Lansing not less than 20 days before the date set for the
21 hearing. If the person is seeking a review of the record prepared
22 ~~pursuant to~~ **UNDER** section 322 or section 625f, the service upon the
23 secretary of state shall be made not less than 50 days before the
24 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 ~~pursuant to~~ **UNDER**
14 section 322 or 625f or the driving record created under section
15 204a for a statutory legal issue, and ~~shall not grant~~ **MAY DETERMINE**
16 **THAT THE PETITIONER IS ELIGIBLE FOR FULL DRIVING PRIVILEGES OR, IF**
17 **THE PETITIONER IS SUBJECT TO A REVOCATION UNDER SECTION 303, MAY**
18 **DETERMINE THAT THE PETITIONER IS ELIGIBLE FOR** restricted driving
19 privileges. The court shall set aside the secretary of state's
20 determination only if ~~the petitioner's substantial rights have been~~
21 ~~prejudiced because the determination is any~~ **1 OR MORE** of the
22 following **APPLY**:

23 (A) **IN DETERMINING WHETHER A PETITIONER IS ELIGIBLE FOR FULL**
24 **DRIVING PRIVILEGES, THE PETITIONER'S SUBSTANTIAL RIGHTS HAVE BEEN**
25 **PREJUDICED BECAUSE THE DETERMINATION IS ANY OF THE FOLLOWING:**

26 (i) ~~(a)~~ In violation of the Constitution of the United States,
27 the state constitution of 1963, or a statute.

1 (ii) ~~(b)~~—In excess of the secretary of state's statutory
2 authority or jurisdiction.

3 (iii) ~~(c)~~—Made upon unlawful procedure resulting in material
4 prejudice to the petitioner.

5 (iv) ~~(d)~~—Not supported by competent, material, and substantial
6 evidence on the whole record.

7 (v) ~~(e)~~—Arbitrary, capricious, or clearly an abuse or
8 unwarranted exercise of discretion.

9 (vi) ~~(f)~~—Affected by other substantial and material error of
10 law.

11 (B) IN DETERMINING WHETHER A PETITIONER IS ELIGIBLE FOR REVIEW
12 OF A REVOCATION OR DENIAL UNDER SECTION 303, OR WHETHER A
13 PETITIONER IS ELIGIBLE FOR RESTRICTED DRIVING PRIVILEGES, 1 OR MORE
14 OF THE FOLLOWING APPLY:

15 (i) THE PETITIONER'S SUBSTANTIAL RIGHTS HAVE BEEN PREJUDICED
16 AS DESCRIBED IN SUBDIVISION (A).

17 (ii) ALL OF THE FOLLOWING ARE SATISFIED:

18 (A) THE REVOCATION OR DENIAL OCCURRED AT LEAST 1 YEAR AFTER
19 THE PETITIONER'S LICENSE WAS REVOKED OR DENIED, OR, IF THE
20 PETITIONER'S LICENSE WAS PREVIOUSLY REVOKED OR DENIED WITHIN THE 7
21 YEARS PRECEDING THE MOST RECENT REVOCATION OR DENIAL, AT LEAST 5
22 YEARS AFTER THE MOST RECENT REVOCATION OR DENIAL, WHICHEVER IS
23 LATER.

24 (B) THE COURT FINDS THAT THE PETITIONER MEETS THE DEPARTMENT'S
25 REQUIREMENTS UNDER THE RULES PROMULGATED BY THE DEPARTMENT UNDER
26 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201
27 TO 24.238. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH ONLY, THE COURT

1 MAY TAKE ADDITIONAL TESTIMONY TO SUPPLEMENT THE RECORD PREPARED
2 UNDER SECTION 322 OR 625F OR THE DRIVING RECORD CREATED UNDER
3 SECTION 204A, BUT SHALL NOT EXPAND THE RECORD.

4 (C) IF THE REVOCATION OR DENIAL WAS UNDER SECTION 303(2)(A),
5 (B), (C), OR (G), THE PETITIONER REBUTS BY CLEAR AND CONVINCING
6 EVIDENCE THE PRESUMPTION THAT HE OR SHE IS A HABITUAL OFFENDER, AND
7 ESTABLISHES TO THE COURT'S SATISFACTION THAT HE OR SHE IS LIKELY TO
8 ADHERE TO ANY REQUIREMENTS IMPOSED BY THE COURT. FOR PURPOSES OF
9 THIS SUB-SUBPARAGRAPH, THE CONVICTION THAT RESULTED IN THE
10 REVOCATION AND ANY RECORD OF DENIAL OF REINSTATEMENT BY THE
11 DEPARTMENT ARE PRIMA FACIE EVIDENCE THAT THE PETITIONER IS A
12 HABITUAL OFFENDER. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH ONLY, THE
13 COURT MAY TAKE ADDITIONAL TESTIMONY TO SUPPLEMENT THE RECORD
14 PREPARED UNDER SECTION 322 OR 625F OR THE DRIVING RECORD CREATED
15 UNDER SECTION 204A, BUT SHALL NOT EXPAND THE RECORD.

16 (5) IF THE COURT DETERMINES THAT A PETITIONER IS ELIGIBLE FOR
17 RESTRICTED DRIVING PRIVILEGES UNDER SUBSECTION (4)(B), THE COURT
18 SHALL ISSUE AN ORDER THAT INCLUDES, BUT IS NOT LIMITED TO, ALL OF
19 THE FOLLOWING:

20 (A) THE COURT'S FINDINGS UNDER SECTION 303 AND R 257.1 TO R
21 257.1727 OF THE MICHIGAN ADMINISTRATIVE CODE.

22 (B) A REQUIREMENT THAT EACH MOTOR VEHICLE OPERATED BY THE
23 PETITIONER BE EQUIPPED WITH A PROPERLY INSTALLED AND FUNCTIONING
24 IGNITION INTERLOCK DEVICE FOR A PERIOD OF AT LEAST 1 YEAR. THE
25 PETITIONER SHALL BEAR THE COST OF AN IGNITION INTERLOCK DEVICE
26 REQUIRED UNDER THIS SUBDIVISION. A RESTRICTED LICENSE SHALL NOT BE
27 ISSUED TO THE PETITIONER UNTIL THE SECRETARY OF STATE HAS VERIFIED

1 THAT 1 OR MORE IGNITION INTERLOCK DEVICES, IF APPLICABLE, HAVE BEEN
2 INSTALLED AS REQUIRED BY THIS SUBDIVISION.

3 (C) A METHOD BY WHICH THE COURT WILL VERIFY THAT THE
4 PETITIONER MAINTAINS NO-FAULT INSURANCE FOR EACH VEHICLE DESCRIBED
5 IN SUBDIVISION (B) AS REQUIRED BY CHAPTER 31 OF THE INSURANCE CODE
6 OF 1956, 1956 PA 218, MCL 500.3103 TO 500.3179.

7 (D) A REQUIREMENT THAT A RESTRICTED LICENSE ISSUED TO THE
8 PETITIONER SHALL NOT PERMIT THE PETITIONER TO OPERATE A COMMERCIAL
9 MOTOR VEHICLE THAT HAULS HAZARDOUS MATERIALS.

10 (E) A PROVISION THAT THE SECRETARY OF STATE SHALL REVOKE THE
11 PETITIONER'S RESTRICTED LICENSE IF ANY OF THE FOLLOWING OCCUR:

12 (i) THE PETITIONER VIOLATES THE RESTRICTIONS ON HIS OR HER
13 LICENSE.

14 (ii) THE PETITIONER VIOLATES SUBDIVISION (B).

15 (iii) THE PETITIONER REMOVES, OR CAUSES TO BE REMOVED, AN
16 IGNITION INTERLOCK DEVICE REQUIRED UNDER SUBDIVISION (B), UNLESS
17 THE SECRETARY OF STATE HAS AUTHORIZED THE REMOVAL UNDER SECTION
18 322A.

19 (iv) THE PETITIONER COMMITS AN ACT THAT WOULD BE A MAJOR
20 VIOLATION IF THE PETITIONER'S LICENSE HAD BEEN ISSUED UNDER SECTION
21 322(6) OR CONSUMES ALCOHOL OR A CONTROLLED SUBSTANCE WITHOUT A
22 PRESCRIPTION. AS USED IN THIS SUBPARAGRAPH, "MAJOR VIOLATION" MEANS
23 THAT TERM AS DEFINED IN R 257.301A OF THE MICHIGAN ADMINISTRATIVE
24 CODE.

25 (v) THE PETITIONER IS ARRESTED FOR A VIOLATION OF SECTION 625
26 OR A LOCAL ORDINANCE, LAW OF THIS STATE OR ANOTHER STATE, OR LAW OF
27 THE UNITED STATES THAT SUBSTANTIALLY CORRESPONDS TO SECTION 625.

1 (6) IF THE COURT DETERMINES THAT A PETITIONER IS ELIGIBLE FOR
2 RESTRICTED DRIVING PRIVILEGES UNDER THIS SECTION AND THE PETITIONER
3 INTENDS TO OPERATE A VEHICLE OWNED BY HIS OR HER EMPLOYER, THE
4 COURT SHALL NOTIFY THE EMPLOYER OF THE PETITIONER'S OBLIGATION
5 UNDER SUBSECTION (5) (B). THIS SUBSECTION DOES NOT REQUIRE AN
6 EMPLOYER WHO RECEIVES A NOTICE UNDER THIS SUBSECTION TO INSTALL AN
7 IGNITION INTERLOCK DEVICE ON A VEHICLE. THIS SUBSECTION DOES NOT
8 APPLY TO A VEHICLE THAT IS OPERATED BY A SELF-EMPLOYED INDIVIDUAL
9 WHO USES THE VEHICLE FOR BOTH BUSINESS AND PERSONAL USE.

10 (7) IF A COURT DETERMINES THAT A PETITIONER IS ELIGIBLE FOR
11 RESTRICTED DRIVING PRIVILEGES, THE SECRETARY OF STATE SHALL NOT
12 ISSUE A RESTRICTED LICENSE TO THE PETITIONER UNTIL HE OR SHE HAS
13 SATISFIED ANY OTHER APPLICABLE REQUIREMENTS OF STATE OR FEDERAL
14 LAW, AND SHALL NOT ISSUE A RESTRICTED LICENSE TO THE PETITIONER IF
15 THE ORDER GRANTING ELIGIBILITY FOR RESTRICTED DRIVING PRIVILEGES
16 DOES NOT COMPLY WITH SUBSECTION (5).

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