



HOUSE BILL No. 5186

October 3, 1995, Introduced by Rep. Profit and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 323, 323a, and 323c of Act No. 300 of the Public Acts of 1949, entitled as amended "Michigan vehicle code," section 323 as amended by Act No. 449 of the Public Acts of 1994, section 323a as amended by Act No. 99 of the Public Acts of 1991, and section 323c as amended by Act No. 100 of the Public Acts of 1991, being sections 257.323, 257.323a, and 257.323c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 323, 323a, and 323c of Act No. 300 of
2 the Public Acts of 1949, section 323 as amended by Act No. 449 of
3 the Public Acts of 1994, section 323a as amended by Act No. 99 of
4 the Public Acts of 1991, and section 323c as amended by Act
5 No. 100 of the Public Acts of 1991, being sections 257.323,

1 257.323a, and 257.323c of the Michigan Compiled Laws, are amended
2 to read as follows:

3 Sec. 323. (1) Except as provided in subsections (5) and
4 (9), a person aggrieved by a final determination of the secretary
5 of state denying the person an operator's or chauffeur's license,
6 a vehicle group designation, or an indorsement on a license or
7 revoking, suspending, or restricting an operator's or chauffeur's
8 license, vehicle group designation, or an indorsement may peti-
9 tion for a review of the determination in the ~~circuit~~ DISTRICT
10 court ~~in the county~~ OF THE DISTRICT where the person was
11 arrested if the denial or suspension was imposed pursuant to sec-
12 tion 625f or pursuant to the order of a trial court under section
13 328 or, in all other cases, in the ~~circuit~~ DISTRICT court OF
14 THE DISTRICT in WHICH the ~~person's county of residence~~ PERSON
15 RESIDES. The person shall file the petition within 63 days after
16 the determination is made except that for good cause shown the
17 court may allow the person to file petition within 182 days after
18 the determination is made. As provided in section 625f, a peace
19 officer aggrieved by a determination of a hearing officer in
20 favor of a person who requested a hearing under section 625f may,
21 with the prosecuting attorney's consent, petition for review of
22 the determination in the ~~circuit~~ DISTRICT court ~~in the county~~
23 OF THE DISTRICT where the arrest was made. The peace officer
24 shall file the petition within 63 days after the determination is
25 made except that for good cause shown the court may allow the
26 peace officer to file the petition within 182 days after the
27 determination is made.

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

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

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

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

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

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

10 (a) Section 625, section 625m, former section 625(1) or (2),
11 or former section 625b or a local ordinance substantially corre-
12 sponding to section 625(1), (2), or (3), section 625m, former
13 section 625(1) or (2), or former section 625b.

14 (b) Part 74 or section 17766a of the public health code, Act
15 No. 368 of the Public Acts of 1978, being sections 333.7401 to
16 333.7461 and section 333.17766a of the Michigan Compiled Laws, or
17 a local ordinance that prohibits conduct prohibited under part 74
18 or section 17766a of Act No. 368 of the Public Acts of 1978.

19 (6) In reviewing a determination resulting in a denial or
20 revocation under section 303(1)(d), (e), or (f) or section
21 303(2)(c), (d), (e), or (f), the court shall confine its consid-
22 eration to a review of the record prepared pursuant to section
23 322 or the driving record created under section 204a, and shall
24 not grant relief pursuant to subsection (3). The court shall set
25 aside the secretary of state's determination only if the
26 petitioner's substantial rights have been prejudiced because the
27 determination is any of the following:

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

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

5 (c) Made upon unlawful procedure resulting in material prej-
6 udice to the petitioner.

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

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

11 (f) Affected by other substantial and material error of
12 law.

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

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

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

21 Sec. 323a. (1) A person who is aggrieved by a final deter-
22 mination of the secretary of state suspending or revoking the
23 operator's or chauffeur's license of the person may, within 63
24 days after the determination, petition the ~~circuit~~ DISTRICT
25 court for the ~~county~~ DISTRICT in which the conviction or civil
26 infraction determination resulting in the license being suspended
27 or revoked was entered, or the ~~circuit~~ DISTRICT court for the

1 ~~county of residence of~~ DISTRICT WHERE the person RESIDES if the
2 license was suspended or revoked as provided in section 318, or
3 for the accumulation of 12 or more points as provided in sections
4 320 and 320a, for an order staying the revocation or suspension
5 of the license. Except as provided in subsection (2), the court
6 may enter an ex parte order staying the suspension or revocation
7 subject to terms and conditions prescribed by the court until the
8 determination of an appeal to the secretary of state or of an
9 appeal or a review by the ~~circuit~~ DISTRICT court, or for a
10 lesser time which the court considers proper, except that the
11 court shall not enter an ex parte order staying the suspension or
12 revocation of a person who drives a truck or truck tractor,
13 including a trailer, which hauls hazardous material.

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

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

20 Sec. 323c. (1) A person denied a license to operate a
21 motor vehicle or whose license for that purpose has been sus-
22 pended by the secretary of state under section 625f has a right
23 to a review of the matter in ~~circuit~~ DISTRICT court as provided
24 in sections 323 and 323a. Except as provided in this section,
25 the court may order the secretary of state to issue to the person
26 a restricted license permitting the person to drive only to and
27 from the person's residence and work location; in the course of

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

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

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

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

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