

ALLOW COURT TO GRANT RESTRICTED DRIVER LICENSE

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House Bill 4436 (Substitute H-1 as reported)

Sponsor: Rep. Peter J. Lucido

Committee: Judiciary

Complete to (2-29-16)

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 117 of 2016)

BRIEF SUMMARY: The bill would expand the instances in which a person who has lost driving privileges, and who has exhausted the SOS appeals process, may access the circuit court to have full driving privileges restored or, for certain offenses, receive a restricted license.

FISCAL IMPACT: The bill may have fiscal implications for the Department of State and the judiciary as noted in more detail later in the analysis.

THE APPARENT PROBLEM:

At one time, a person whose driving privileges were restricted or taken away could appeal to either the Secretary of State (SOS) or to the circuit court for a hearing. Currently, a person first must petition for a hearing before a SOS hearing officer, and may petition the circuit court for a review of the final determination of the SOS denying, suspending, revoking, or restricting a license. If the sanction was for certain listed violations of the Vehicle Code (e.g., operating a motor vehicle on a suspended or revoked license, being involved in an accident resulting in death, or receiving 12 or more points from violations within two years, among others), the court may take testimony and examine all the facts and circumstances relating to the license sanction and may affirm, modify, or set aside the restriction, suspension, or denial. The court cannot order the SOS to issue a restricted or unrestricted chauffeur's license that would allow the person to drive a commercial motor vehicle that hauls a hazardous material.

However, in cases involving other violations of the Vehicle Code, including drunk or drugged driving, the court must confine its consideration to a review of the record for a statutory legal issue when reviewing the SOS determination (e.g., the SOS determination was unconstitutional or violated a state law), and is prohibited from granting a restricted license.

Some critics say the current system is burdensome, slow, difficult to access, and makes it difficult if not impossible for some to obtain restricted licenses that would enable them to stay employed, attend 12-step programs, further their education, or get to medical appointments. Moreover, say some, it creates unfairness for offenses leading to a license sanction. For example, persons facing criminal charges for drunk or drugged driving may be sent to a Sobriety Court, which enables them to obtain a restricted license, whereas persons who lose their licenses for other offenses can only have the license sanction set aside if there is a constitutional or other legal issue and are not eligible for a restricted license at all.

It has been suggested that the law be amended to allow greater review by the courts of SOS final determinations, and to allow the courts, under certain circumstances, to issue restricted licenses in cases for which they are currently prohibited.

THE CONTENT OF THE BILL:

Under Section 323 of the Michigan Vehicle Code, a person may appeal to the circuit court a final determination issued by the Secretary of State pertaining to a driver license suspension, revocation, or restriction. If the sanction was issued for certain offenses, a court can set aside the Secretary of State's determination, but in other circumstances, the court is restricted as to the actions it can take.

Currently, except as otherwise provided in Section 323, in reviewing a SOS determination that resulted in a denial, suspension, restriction, or revocation, the court must confine its consideration to a review of the record prepared under Section 322 (the appeal to a SOS hearing officer) or Section 625f (refusal to submit to a chemical test) or the driving record created under Section 204a (central file record) and is prohibited from granting a restricted license. The court can only set aside the SOS determination if the petitioner's substantial rights have been prejudiced because the determination is:

- In violation of the U.S. or state Constitution or a statute;
- In excess of the SOS statutory authority or jurisdiction;
- Made upon unlawful procedure resulting in material prejudice to the petitioner;
- Not supported by competent, material, and substantial evidence on the whole record;
- Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion;
and/or,
- Affected by other substantial and material error of law.

House Bill 4436 would amend Section 323 of the Michigan Vehicle Code to instead allow the circuit court to determine that the petitioner is eligible for full driving privileges or, if the petitioner is subject to a revocation under Section 303 of the code, determine that the petitioner is eligible for restricted driving privileges. The court could only set aside the SOS's determination if one or more of the following applied:

- ❖ In determining whether a petitioner is eligible for full driving privileges, the petitioner's substantial rights have been prejudiced because the determination meets any of the circumstances listed above (contained in current law).
- ❖ 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, and one or more of the following apply:
 - The petitioner's substantial rights have been prejudiced as described above, and/or,
 - **All** of the following are satisfied:

- The revocation or denial occurred at least one year after the license was revoked or denied or, if the license had been previously revoked or denied within the seven years preceding the most recent revocation or denial, at least five years after the most recent revocation or denial, whichever is later.
- The court finds that the petitioner meets the SOS requirements under the rules promulgated under the Administrative Procedures Act. For the purposes of this provision only, the court could take additional testimony to supplement the record prepared under Sections 322, 625f, or 204a, but could not expand the record.
- 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 of being a habitual offender, and establishes to the court's satisfaction that he or she is likely to adhere to any court-imposed requirements. For purposes of this provision only, the conviction that resulted in the revocation and any record of denial of reinstatement by the SOS are prima facie evidence that the petitioner is a habitual offender. In addition, the court could take additional testimony to supplement the record prepared under Sections 322, 625f, or 204a, but could not expand the record. [The offenses cited involve multiple convictions of a particular offense within a state time period, or multiple convictions of any combination of certain offenses. The offenses include such things as reckless driving, drunk or drugged driving, a felony in which a motor vehicle was used, fleeing and eluding, and driving on a suspended or revoked license causing death or serious impairment, among others.]

If the court determines that a petitioner is eligible for restricted driving privileges under this provision [(the new (4)(b))], the court must issue an order that includes, but is not limited to, **all** of the following:

- The court's findings under Section 303 and SOS departmental rules.
- A requirement that each motor vehicle operated by the petitioner be equipped with a properly installed and functioning ignition interlock device for at least one year, the cost of which would be borne by the petitioner. The SOS would have to verify the device or devices were installed prior to issuing the restricted license.
- A method by which the court will verify that the petitioner maintains no-fault insurance for each vehicle operated.
- A requirement that the restricted license not permit the petitioner to operate a commercial motor vehicle that hauls hazardous materials.
- A provision that the SOS shall revoke the restricted license if the petitioner does **any** of the following:
 - Violates the restrictions on the license.
 - Does not equip each vehicle with an ignition interlock device.

- Removes, or causes to be removed, an ignition interlock device required under the bill, unless the SOS authorizes the removal.
- Commits an act that would be a major violation, as defined in departmental rules, if the license had been issued under Section 322(6) [a restricted license issued by a hearing officer for certain violations] **or** consumes alcohol or a controlled substance without a prescription.
- Is arrested for a violation of the drunk or drugged driving laws or a local ordinance, law of this state or another state, or federal law substantially corresponding to the drunk or drugged driving statute.

If a court determined that a petitioner is eligible for a restricted license under the bill's provisions, the court would have to notify the petitioner's employer regarding the requirement that any vehicle the petitioner operates must have an ignition interlock device installed. The bill would not require the employer to install a device on a vehicle. This provision would not apply to a vehicle operated by a self-employed individual who uses the vehicle for business and/or personal use.

If a court determines that a petitioner is eligible for restricted driving privileges, the SOS could not issue a restricted license until the petitioner satisfied any other applicable requirements of state or federal law, and could not issue a restricted license if the court order granting eligibility for restricted driving privileges did not comply with the conditions described above that the bill requires to be included in the order.

MCL 257.323

FISCAL INFORMATION:

The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

The bill would have an indeterminate fiscal impact for the Department of State. The department would have to pay for attorneys to represent the department in court hearings, which could lead to an increase in costs. There could be a potential reduction in costs by having fewer FTEs dedicated to the appeals process, but any potential savings or cost increases cannot be determined at this time.

ARGUMENTS:

For:

Currently, for many violations of the Vehicle Code that result in loss of driving privileges, a person can petition for a hearing before a SOS hearing officer. If the officer affirms the license sanction, a person can appeal to the circuit court to have the SOS determination set aside, but the court is limited to reviewing the case for violations of the person's

constitutional rights or a few other legal issues. In addition, the court cannot issue a restricted license.

The bill addresses the issue by expanding the circumstances under which a court could modify or affirm the SOS determination on license sanctions, and could issue a restricted license. If a judge requested supplemental information about the person's driving record or hearing record, the information could be provided, though it would not become part of that record.

It is hoped that greater access to review by a neutral third party may, if certain safeguards are in place (such as requiring ignition interlock devices that would prevent a car from starting if the driver had been drinking), enable a person to obtain a restricted license that would in turn enable them to remain employed or obtain employment. Loss of employment can have many negative implications for the individual and family members.

Against:

No arguments in opposition to the substitute bill were offered.

POSITIONS:

The Michigan Judges Association indicated support for the bill. (2-16-16)

The Department of State (Secretary of State) indicated a neutral position on the bill.
(2-16-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.