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BILL



ANALYSIS

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House Bill 4436 (Substitute H-1 as passed by the House)
Sponsor: Representative Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 4-19-16

CONTENT

The bill would amend the Michigan Vehicle Code to do the following:

- **Expand the circuit court's authority to review and set aside a Secretary of State (SOS) determination regarding a driver license suspension, revocation, or restriction.**
- **Allow a court to determine that certain offenders were eligible for a restricted license.**
- **Require a court that found a petitioner eligible for restricted driving privileges to issue an order that included particular restrictions, including the use of an ignition interlock device on any vehicle that he or she operated.**
- **Specify that the court order would have to require the SOS to revoke the petitioner's restricted license under certain circumstances.**

The bill would take effect 90 days after its enactment.

Appeal to Court

Under Section 323 of the Vehicle Code, a person may appeal to the circuit court a final determination issued by the Secretary of State resulting in a driver license denial, suspension, revocation, or restriction.

Unless the sanction was issued on certain grounds or for certain offenses (as described in BACKGROUND, below), in reviewing that determination, the court must limit 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 not grant restricted driving privileges. (Section 322 involves the appeal of a Secretary of State decision to a hearing officer; Section 625f provides for the SOS or a hearing officer to impose a license suspension or denial for a person's refusal to submit to a chemical test to determine the presence of a controlled substance or an intoxicating substance in the person's blood, urine, or breath; and Section 204a provides for a central file of individual driving records.)

The bill instead would allow the court to determine that the petitioner was eligible for full driving privileges or, if the petitioner were subject to a revocation under Section 303, the court could determine that the petitioner was eligible for restricted driving privileges. (Section 303 requires the SOS to revoke the driver license of a person having convictions for certain offenses or multiple convictions of other offenses within seven or 10 years. The offenses include, for example, negligent homicide resulting from operation of a vehicle; operating under the influence of, or while impaired by, alcohol or a controlled substance; a moving

violation in a work zone that injures or kills another person; and first- and second-degree fleeing and eluding.)

Set Aside of SOS Determination

In cases in which the court's consideration is limited to a review of the record, Section 323 authorizes the court to set aside a Secretary of State determination only if the petitioner's substantial rights have been prejudiced because the determination was any of the following:

- In violation of the U.S. or State Constitution or a statute.
- In excess of the SOS's 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.
- Affected by other substantial and material error of law.

Under the bill, the court could set aside the SOS determination under those circumstances, in determining whether a petitioner was eligible for full driving privileges.

In determining whether a petitioner was eligible for review of a revocation or denial of a driver license under Section 303, or whether a petitioner was eligible for restricted driving privileges, the court could set aside an SOS determination if the petitioner's substantial rights had been prejudiced as described above or if all of the following conditions were satisfied:

- The revocation or denial occurred at least one year after the petitioner's license was revoked or denied, or, if the license were previously revoked or denied within the seven years before the most recent revocation or denial, at least five years after the most recent revocation or denial, whichever was later.
- The court found that the petitioner met the Department of State's requirements for licensure under administrative rules.
- If the revocation or denial were for certain violations identified in Section 303, the petitioner rebutted by clear and convincing evidence the presumption that he or she was a habitual offender, and established to the court's satisfaction that he or she was likely to adhere to court-imposed requirements.

For purposes of the third condition, the conviction that resulted in the revocation and any record of denial of reinstatement by the Department would be prima facie evidence that the petitioner was a habitual offender. (Prima facie evidence is evidence that is sufficient to establish a given fact or raise a presumption unless disproved or rebutted.) For purposes of the second and third conditions, the court could take additional testimony to supplement the record prepared under Section 322 or 625f or the driving record created under Section 204a, but could not expand the record.

Restricted Driving Privileges

If the court determined that a petitioner was eligible for restricted driving privileges as provided above, the court would have to issue an order that included all of the following:

- The court's findings under Section 303 and administrative rules R 257.1 to R 257.1727 (rules governing the operation of vehicles, promulgated by the Departments of State, State Police, Natural Resources, and Licensing and Regulatory Affairs.)
- 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.
- A method by which the court would verify that the petitioner maintained no-fault insurance for each vehicle he or she operated.

- A requirement that a restricted license issued to the petitioner could not permit him or her to operate a commercial motor vehicle that hauled hazardous materials.

The court order also would have to include a provision that the SOS would have to revoke the petitioner's restricted license if any of the following occurred:

- The petitioner violated the restrictions on his or her license.
- The petitioner violated the requirement that each vehicle he or she operated be equipped with an ignition interlock device.
- The petitioner removed, or caused to be removed, a required ignition interlock device, unless the SOS authorized the removal.
- The petitioner committed a "major violation" or consumed alcohol or a controlled substance without a prescription.
- The petitioner was arrested for an impaired driving offense.

("Major violation" would mean that term as defined in R 257.301a of the Michigan Administrative Code. The rule deals with requirements for those using ignition interlock devices.)

The petitioner would have to bear the cost of an ignition interlock device, and a restricted license could not be issued until the SOS had verified that one or more ignition interlock devices, if applicable, had been installed as required.

If the court determined that the petitioner was eligible for restricted driving privileges and the petitioner intended to operate a vehicle owned by his or her employer, the court would have to notify the employer of the petitioner's obligation to have a properly installed and functioning ignition interlock device on each vehicle he or she operated. This provision, however, would not require an employer to install a device on a vehicle. The notice requirement would not apply to a vehicle that was operated by a self-employed individual who used the vehicle for both business and personal use.

If the court determined that the petitioner was eligible for restricted driving privileges, the SOS could not issue a restricted license to the petitioner until he or she had satisfied any other applicable requirements of State or Federal law, and could not issue a restricted license if the order granting eligibility for restricted driving privileges did not comply with the bill's requirements for such an order.

MCL 257.323

BACKGROUND

Under Section 323 of the Michigan Vehicle Code, the court may take testimony and examine all of the facts and circumstances relating to a person's license sanction if it was imposed under any of the following conditions:

- The Secretary of State believes that the person has a physical or mental disability or disease preventing him or her from exercising reasonable and ordinary control over a motor vehicle.
- The person, as a driver, has once or more been involved in an accident resulting in the death of an individual.
- Within a 24-month period, the person has been involved in three accidents resulting in personal injury or property damage, and the police report indicated a moving violation by the driver.
- The person has had 12 or more points charged against his or her driving record within 12 years.

- The person has been convicted of violating restrictions, terms, or conditions of his or her license.
- The person has been convicted of or determined responsible for the unlawful operation of a motor vehicle or a reportable moving violation while his or her license was suspended or revoked, or after a license denial.
- The person was issued a probationary license and committed certain violations during the probation or an extension of the probationary period.
- The license was suspended for a first violation of Section 625f.

In these cases, the court may affirm, modify, or set aside the license restriction, denial, or suspension.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill could have a negative fiscal impact on State and local governments if more individuals brought appeals to circuit court. An increase in hearings could increase resource demands on courts.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.