

HOUSE BILL No. 4436

April 14, 2015, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

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,
10 in all other cases, in the circuit court in the person's county of
11 residence. The person shall file the petition within 63 days after

1 the determination is made except that for good cause shown the
2 court may allow the person to file petition within 182 days after
3 the determination is made. As provided in section 625f, a peace
4 officer aggrieved by a determination of a hearing officer in favor
5 of a person who requested a hearing under section 625f may, with
6 the prosecuting attorney's consent, petition for review of the
7 determination in the circuit court in the county where the arrest
8 was made. The peace officer shall file the petition within 63 days
9 after the determination is made except that for good cause shown
10 the court may allow the peace officer to file the petition within
11 182 days after the determination is made.

12 (2) Except as otherwise provided in this section, the circuit
13 court shall enter an order setting the cause for hearing for a day
14 certain not more than 63 days after the order's date. The order, a
15 copy of the petition that includes the person's full name, current
16 address, birth date, and driver's license number, and all
17 supporting affidavits shall be served on the secretary of state's
18 office in Lansing not less than 20 days before the date set for the
19 hearing. If the person is seeking a review of the record prepared
20 ~~pursuant to~~ **UNDER** section 322 or section 625f, the service upon the
21 secretary of state shall be made not less than 50 days before the
22 date set for the hearing.

23 (3) The court may take testimony and examine all the facts and
24 circumstances relating to the denial, suspension, or restriction of
25 the person's license under sections 303(1)(d), 320, or 904(10) or
26 (11), a licensing action under section 310d, or a suspension for a
27 first violation under section 625f. The court may affirm, modify,

1 or set aside the restriction, suspension, or denial, except the
2 court shall not order the secretary of state to issue a restricted
3 or unrestricted chauffeur's license that would permit the person to
4 drive a commercial motor vehicle that hauls a hazardous material.
5 The court shall enter the order and the petitioner shall file a
6 certified copy of the order with the secretary of state's office in
7 Lansing within 7 days after entry of the order.

8 (4) Except as otherwise provided in this section, in reviewing
9 a determination resulting in a denial, suspension, restriction, or
10 revocation under this act, the court shall confine its
11 consideration to a review of the record prepared ~~pursuant to~~ **UNDER**
12 section 322 or 625f or the driving record created under section
13 204a for a statutory legal issue, and ~~shall not~~ **MAY** grant
14 restricted driving privileges. The court shall set aside the
15 secretary of state's determination only if the petitioner's
16 substantial rights have been prejudiced because the determination
17 is any of the following:

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

20 (b) In excess of the secretary of state's statutory authority
21 or jurisdiction.

22 (c) Made upon unlawful procedure resulting in material
23 prejudice to the petitioner.

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

26 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
27 exercise of discretion.

1 (f) Affected by other substantial and material error of law.
2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.