



HOUSE BILL No. 5871

May 9, 1996, Introduced by Rep. Dobb and referred to the Committee on Public Utilities.

A bill to amend section 26 of Act No. 300 of the Public Acts of 1909, entitled as amended

"An act to define and regulate common carriers and the receiving, transportation, and delivery of persons and property; to prevent the imposition of unreasonable rates; to prevent unjust discrimination; to insure adequate service; to provide for certain powers and duties of certain state agencies and officials; to provide for the promulgation of rules; and to prescribe penalties for violations of this act,"

as amended by Act No. 12 of the Public Acts of 1987, being section 462.26 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 26 of Act No. 300 of the Public Acts of
2 1909, as amended by Act No. 12 of the Public Acts of 1987, being
3 section 462.26 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 26. (1) Except as otherwise provided in section 7 of
6 Act No. 299 of the Public Acts of 1972, being section 460.117 of

1 the Michigan Compiled Laws, section 5 of Act No. 246 of the
 2 Public Acts of 1921, being section 460.205 of the Michigan
 3 Compiled Laws, AND section 12 of Act No. 165 of the Public Acts
 4 of 1969, being section 483.162 of the Michigan Compiled Laws,
 5 ~~section 20 of Act No. 19 of the Public Acts of 1967, being sec-~~
 6 ~~tion 486.570 of the Michigan Compiled Laws,~~ and except as other-
 7 wise provided in this section, ~~any common carrier or other~~ A
 8 party in interest, ~~being~~ WHO IS dissatisfied with any FINAL
 9 ORDER OF THE COMMISSION, OR WITH AN INTERIM OR INTERLOCUTORY
 10 order of the commission fixing any rate or rates, fares, charges,
 11 classifications, joint rate or rates, or any order fixing any
 12 regulations, practices, or services, may, within 30 days from the
 13 issuance and notice of that order, file an appeal as of right in
 14 the court of appeals. A PARTY IN INTEREST WHO IS DISSATISFIED
 15 WITH ANY OTHER INTERIM OR INTERLOCUTORY ORDER OF THE COMMISSION
 16 MAY WITHIN 30 DAYS FROM ISSUANCE AND NOTICE OF THAT ORDER, FILE
 17 AN APPLICATION FOR LEAVE TO APPEAL IN THE COURT OF APPEALS. The
 18 court of appeals shall not have jurisdiction over any appeal that
 19 is filed later than the 30-day appeal period provided for in this
 20 subsection.

21 (2) An appeal of ~~any~~ AN ORDER, decision, or ~~order~~
 22 OPINION of the ~~Michigan public service~~ commission that is pend-
 23 ing in the circuit court on ~~the effective date of this~~
 24 ~~subsection~~ APRIL 1, 1987 shall proceed and be decided in that
 25 court and appealed pursuant to the applicable law in effect imme-
 26 diately prior to ~~the effective date of this subsection, if on~~
 27 ~~that date, the appeal has progressed beyond the filing of a~~

1 ~~complaint and answer. All other pending cases shall be~~
2 ~~transferred promptly by the circuit court to the court of~~
3 ~~appeals.~~ APRIL 1, 1987.

4 (3) An appeal from any commission order that is filed in a
5 timely manner but is incorrectly initiated in either the circuit
6 court for the county of Ingham or the court of appeals shall be
7 transferred by that court, on its own motion or on motion of a
8 party, to the proper court and shall proceed as if timely filed
9 in that court.

10 (4) ~~No~~ AN injunction, STAY, OR TEMPORARY RESTRAINING ORDER
11 shall NOT issue except upon application to the court of appeals
12 following notice to the commission and a hearing. The court of
13 appeals shall have the same equitable powers as possessed by the
14 circuit court ~~in chancery in the~~ INGHAM county. ~~of Ingham~~
15 ~~prior to the effective date of subsection (2).~~ THE COURT OF
16 APPEALS MAY TRANSFER THE APPLICATION TO THE CIRCUIT COURT IN
17 INGHAM COUNTY FOR A FACT-FINDING HEARING, AFTER WHICH THE APPLI-
18 CATION SHALL BE RETURNED TO THE COURT OF APPEALS FOR A
19 DETERMINATION.

20 ~~(5) Beginning on the effective date of this subsection and~~
21 ~~until December 31, 1988, and within the time for filing an~~
22 ~~appeal, a party seeking a preliminary injunction may apply for~~
23 ~~such relief pursuant to subsection (4) and may request that the~~
24 ~~court of appeals transfer such application to the circuit court~~
25 ~~for the county of Ingham. Upon request, the court of appeals~~
26 ~~shall transfer an application for a preliminary injunction to the~~
27 ~~circuit court for a determination. The circuit court shall have~~

1 ~~the same equitable powers as possessed by the circuit court in~~
2 ~~chancery in the county of Ingham prior to the effective date of~~
3 ~~this subsection. The circuit court shall grant or deny an appli-~~
4 ~~cation within the time period prescribed by the court of~~
5 ~~appeals. An order of the circuit court granting or denying an~~
6 ~~application shall be transferred by that court to the court of~~
7 ~~appeals and made part of the record in the pending appeal. An~~
8 ~~appeal of a circuit court order issued under this subsection~~
9 ~~shall not be necessary to confer upon the court of appeals full~~
10 ~~and complete jurisdiction to enforce, vacate, or modify an order~~
11 ~~of the circuit court.~~

12 (5) ~~-(6)-~~ Within 28 days from the filing of an appeal OF A
13 FINAL ORDER, a party may ~~make application~~ APPLY to the commis-
14 sion to present additional evidence. A copy of the application
15 for additional evidence shall be filed in the court of appeals
16 and the court shall stay further appellate proceedings pending
17 the commission's receipt and consideration of the proposed
18 evidence. If the commission finds that the proposed evidence is
19 different from or in addition to the evidence presented at the
20 original hearing, IS NOT MERELY CUMULATIVE, AND THE PARTY HAS
21 GOOD CAUSE FOR NOT HAVING PRESENTED THE EVIDENCE AT THE ORIGINAL
22 HEARING, the commission shall receive the additional evidence.
23 After considering the additional evidence, the commission may
24 alter, modify, amend, or rescind its order ~~relating to the rate~~
25 ~~or rates, fares, charges, classifications, joint rate or rates,~~
26 ~~regulations, practice, or service complained of,~~ and shall
27 report its decision to the court of appeals within the time

1 period prescribed by the court. If the commission rescinds its
2 order, the appeal shall be dismissed. If the commission alters,
3 modifies, or amends its order, that amended order shall take the
4 place of the original order, and the court of appeals shall
5 render its decision based on the amended order. If the original
6 order is not rescinded or amended by the commission, judgment
7 shall be rendered upon the original order.

8 (6) ~~-(7)-~~ An appeal from a commission order pertaining to
9 the application of existing commission rules, tariffs, or rate
10 schedules to an individual customer in a contested case shall be
11 filed in the circuit court for ~~the~~ INGHAM county ~~of Ingham~~
12 within 30 days of the issuance and notice of an order.

13 (7) ~~-(8)-~~ In all appeals under this section the burden of
14 proof shall be upon the appellant to show by clear and satisfac-
15 tory evidence that the order of the commission complained of is
16 unlawful or unreasonable.