

## RAILROADS (EXCERPT)

### Act 300 of 1909

#### **462.26 Appeal to court of appeals; injunction; equitable powers; preliminary injunction; additional evidence; judgment on amended order or original order; appeal to circuit court; burden of proof.**

Sec. 26. (1) Except as otherwise provided in section 7 of Act No. 299 of the Public Acts of 1972, being section 460.117 of the Michigan Compiled Laws, section 5 of Act No. 246 of the Public Acts of 1921, being section 460.205 of the Michigan Compiled Laws, section 12 of Act No. 165 of the Public Acts of 1969, being section 483.162 of the Michigan Compiled Laws, section 20 of Act No. 19 of the Public Acts of 1967, being section 486.570 of the Michigan Compiled Laws, and except as otherwise provided in this section, any common carrier or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within 30 days from the issuance and notice of that order file an appeal as of right in the court of appeals. The court of appeals shall not have jurisdiction over any appeal that is filed later than the 30-day appeal period provided for in this subsection.

(2) An appeal of any decision or order of the Michigan public service commission that is pending in the circuit court on the effective date of this subsection shall proceed and be decided in that court and appealed pursuant to the applicable law in effect immediately prior to the effective date of this subsection, if on that date, the appeal has progressed beyond the filing of a complaint and answer. All other pending cases shall be transferred promptly by the circuit court to the court of appeals.

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

(4) No injunction shall issue except upon application to the court of appeals following notice to the commission and a hearing. The court of appeals shall have the same equitable powers as possessed by the circuit court in chancery in the county of Ingham prior to the effective date of subsection (2).

(5) Beginning on the effective date of this subsection and until December 31, 1988, and within the time for filing an appeal, a party seeking a preliminary injunction may apply for such relief pursuant to subsection (4) and may request that the court of appeals transfer such application to the circuit court for the county of Ingham. Upon request, the court of appeals shall transfer an application for a preliminary injunction to the circuit court for a determination. The circuit court shall have the same equitable powers as possessed by the circuit court in chancery in the county of Ingham prior to the effective date of this subsection. The circuit court shall grant or deny an application within the time period prescribed by the court of appeals. An order of the circuit court granting or denying an application shall be transferred by that court to the court of appeals and made part of the record in the pending appeal. An appeal of a circuit court order issued under this subsection shall not be necessary to confer upon the court of appeals full and complete jurisdiction to enforce, vacate, or modify an order of the circuit court.

(6) Within 28 days from the filing of an appeal, a party may make application to the commission to present additional evidence. A copy of the application for additional evidence shall be filed in the court of appeals and the court shall stay further appellate proceedings pending the commission's receipt and consideration of the proposed evidence. If the commission finds that the proposed evidence is different from or in addition to the evidence presented at the original hearing, the commission shall receive the additional evidence. After considering the additional evidence, the commission may alter, modify, amend, or rescind its order relating to the rate or rates, fares, charges, classifications, joint rate or rates, regulations, practice, or service complained of, and shall report its decision to the court of appeals within the time period prescribed by the court. If the commission rescinds its order, the appeal shall be dismissed. If the commission alters, modifies, or amends its order, that amended order shall take the place of the original order, and the court of appeals shall render its decision based on the amended order. If the original order is not rescinded or amended by the commission, judgment shall be rendered upon the original order.

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

(8) In all appeals under this section the burden of proof shall be upon the appellant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable.

**History:** 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1915, Act 145, Eff. Aug. 24, 1915;—CL 1915, 8134;—CL 1929, 11042;—CL 1948, 462.26;—Am. 1951, Act 129, Eff. Sept. 28, 1951;—Am. 1986, Act 312, Eff. Apr. 1, 1987;—Am. 1987, Act 12, Imd. Eff. Mar. 31, 1987.