

CHAPTER 462. RAILROADS

RAILROADS Act 300 of 1909

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.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1984, Act 10, Imd. Eff. Feb. 16, 1984.

The People of the State of Michigan enact:

462.2 Michigan railroad commission; qualifications and duties of commissioners; removal; pecuniary interest prohibited; oath; compensation and expenses; chairperson; meetings; quorum; vacancy; investigations, inquiries, and hearings; employees and appointments; offices; rules; conferences.

Sec. 2. (1) The commissioners shall have the following qualifications: One shall be an attorney having knowledge of and experience in law relating to common carriers; the others shall have knowledge of traffic and transportation matters. Each of the commissioners shall devote to the duties of his office all the time necessary to insure the prompt and complete performance of all official duties, and the commission shall, so far as possible, arrange so that at all times during business hours, at least 1 member shall be in attendance at the principal office of the commission every business day in the year.

(2) The governor may at any time remove a commissioner for any neglect of duty or malfeasance in office. Before such removal, he shall give the commissioner a copy of the charges against him, and shall fix a time when he can be heard in his own defense, which shall not be less than 10 days thereafter, and the hearing shall be open to the public. If he shall be removed, the governor shall file in the office of the secretary of state a complete statement of the charges made against the commissioner and his finding thereon, with a record of the proceedings, it being herein provided and declared that such discretionary power in the governor to make such removal is a sound and reasonable discretion to be exercised for the good of the state, and not arbitrarily.

(3) A person so appointed shall not be pecuniarily interested in a railroad or in the business of transporting persons or property in this state or elsewhere, and if a commissioner shall voluntarily become so interested, his office shall ipso facto, become vacant. If a commissioner becomes so interested otherwise than voluntarily, he shall, within a reasonable time, divest himself of such interests; failing so to do, his office shall become vacant, and the governor shall proceed as provided for in subsection (2).

(4) Before entering upon the duties of his office, each of the commissioners shall take and subscribe the constitutional oath of office.

(5) The compensation of commissioners and the schedule for reimbursement of expenses shall be established annually by the legislature.

(6) The commissioners appointed under this act shall forthwith, after their appointment and qualification, meet at the city of Lansing and organize by electing 1 of their members chairman. On January 15 in each odd numbered year the commissioners shall meet at the offices of the commission and elect a chairman, who shall serve for 2 years and until his successor is elected. A majority of the commissioners shall constitute a quorum to transact business, and a vacancy shall not impair the right of the remaining commissioners to exercise all of the powers of the commission so long as the majority remains. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner when so directed by the commission or its chairman. All such investigations, inquiries or hearings of a commissioner shall be and be deemed to be the investigations, inquiries, and hearings of the commission, and every decision and order made by a commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the decision and order of the commission. An interested party shall be entitled to a rehearing before the full commission on request served upon the commission within 5 days after service of the order upon the party. In the absence of a quorum of the commission at the time appointed for a hearing before the commission, the hearing may be continued to a later date by a single member of the commission present or, in the absence of a member, by the secretary.

(7) The commission may appoint a secretary at a salary to be established annually by the legislature and a chief clerk at a salary to be established annually by the legislature, and employ not more than 5 clerks, and such inspectors, examiners and experts as may be necessary to perform what may be required of them, and

shall fix their compensation. It shall be the duty of any such inspector, on the order of the commission, and he shall have the right to inspect all equipment, cars, power houses, trolley lines, tracks, and property of every common carrier as defined in this act. Each such inspector shall likewise have the right to inspect freight in cars or warehouses of those common carriers, and all waybills, bills of lading, and shipping receipts of such transportation companies, so that they may determine whether the classification and rating of the freight is in conformity with the published tariffs and classifications of the transportation companies. The inspectors shall be employed at a fixed compensation.

(8) The secretary shall take and subscribe to an oath similar to that of the commissioners, and shall keep full and correct records of all transactions and proceedings of the commission, and shall perform such other duties as may be required by the commission. Any person ineligible to the office of a commissioner shall be ineligible to the office of secretary. The secretary shall devote his entire time to the office.

(9) The commission may appoint a chief inspecting engineer at a salary to be established annually by the legislature, to be fixed by the commission, whose duty it shall be under the instructions of the commission, to make such inspections and reports as may be ordered by the commission as regards the public safety, health, and convenience, and which the commission may deem essential to full and thorough information as to physical condition of the properties of the various common carriers of the state and the proper enforcement of the police regulations enacted for the control and management of the same. The engineer shall have such general knowledge of the requirements of railroad operation, signal appliances, and safety devices as shall fit him to perform the duties imposed upon him by the provisions of this act.

(10) The commission shall be known collectively as "Michigan railroad commission," and in that name may sue and be sued. It shall have a seal with the words "Michigan railroad commission," and such other design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the court may take judicial notice.

(11) The commission shall have its offices at Lansing, and shall be provided suitable offices, necessary office furniture, supplies, stationery, books, periodicals, maps, printing, and all its necessary expenses shall be audited and paid as other necessary state expenses are audited and paid. The commission may hold meetings at other places than its offices when the convenience of the parties so requires. The commissioners, secretary, clerks, and inspectors and such experts as may be employed, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the commission, such expenditures to be sworn to by the person who incurred the expense and to be approved by the chairman of the commission. Members of the commission, when traveling on official business of the commission pertaining to railroads, and employees of the commission when traveling on official business of the commission pertaining to railroads and by the direction of the commission, shall be carried free in performance of their duties, on all railroads within this state, upon all trains and cars, and upon any parts of those trains or cars. Any such person who shall suffer himself to be carried free on any train or car by any such railroad company, when not traveling on official business of the commission and not by direction of the commission, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than \$100.00 nor more than \$500.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

(12) The commission shall have the power to adopt and publish rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of common carriers and other parties before it, and all hearings shall be open to the public.

(13) The commission may confer by correspondence, by attending conventions, or otherwise, with the railroad commissioners of other states, with the interstate commerce commission, or with any other bodies considering any matters pertaining to common carriers.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8110;—CL 1929, 11018;—CL 1948, 462.2;—Am. 1975, Act 73, Imd. Eff. May 20, 1975.

Administrative rules: R 247.3101 et seq.; R 460.1 et seq.; R 460.2011 et seq.; and R 460.2051 et seq. of the Michigan Administrative Code.

462.2a Applicability of act.

Sec. 2a. This act does not apply to a railroad or a railroad, bridge, or tunnel company regulated by the railroad code of 1993, Act No. 354 of the Public Acts of 1993, being sections 462.101 to 462.451 of the Michigan Compiled Laws. In case of a conflict between this act and Act No. 354 of the Public Acts of 1993 with respect to the regulation of railroads and railroad, bridge, and tunnel companies, Act No. 354 of the Public Acts of 1993 shall control.

History: Add. 1994, Act 316, Imd. Eff. Oct. 6, 1994.

462.3 Definitions; scope.

Sec. 3. (a) The term "common carrier" as used in this act shall be construed to mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers appointed by any court whatsoever who now or may hereafter own, operate, manage or control as a common carrier in this state, any railroad or part of any railroad, whether operated by steam, electricity or other motive power, or cars or any other equipment used thereon, or bridges, switches, spurs, tracks, sidetracks, terminal facilities, or any docks, wharves or storage elevators used in connection therewith or any kind of terminal facilities used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards and grounds used or necessary for the transportation or delivery of any said property and whether the same are owned by said railroad or otherwise; or any express company, car loaning companies, freight or freight line companies and all associations or persons, whether incorporated or otherwise, that shall do business as common carriers upon or over any line of railroads in this state, or any common carrier engaged in the transportation of passengers and property wholly by rail or partly by rail and partly by water.

(b) The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment, or carriage, irrespective of ownership, or of any contract expressed or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, switching and transfer in transit, ventilation, refrigeration or icing, storage and handling of persons or property transported.

(c) The term "railroad" as used in this act shall be construed to mean all railroads, whether operated by steam, electric or other motive power: Provided, That the provision of this act shall not apply to any logging or other private railroad not doing business as a common carrier: Provided further, Nothing in this act contained shall be construed to authorize the commission to interfere with, lessen or impair or to authorize the impairment of any franchise provision, contract or agreement as to rate of fare now existing between any municipality, city, village, or township and any tram railway, street railway, interurban or suburban railway company, or to increase or lessen the rate of fare fixed by such franchise, contract or agreement, or to deprive any tram railway, street railway, interurban or suburban railway company of the right to charge for the carriage of passengers the rate of fare authorized and fixed by any franchise, grant or contract made or entered into between any municipality, city, village or township and any such tram railway, street railway, interurban or suburban railway company; Provided further, That nothing in this act contained shall apply to street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of 5 miles of the boundaries thereof.

(d) The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing and mileage charges: Provided, however, That this provision shall not be construed as a limitation on the authority of the commission created by this act to prescribe car service and demurrage rules applicable to all traffic beginning or ending within this state.

(e) Express companies and sleeping car companies doing business for hire within this state are hereby defined to be common carriers.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1911, Act 173, Eff. Aug. 1, 1911;—CL 1915, 8111;—CL 1929, 11019;—CL 1948, 462.3.

462.4 Common carrier; duty to serve; rates; through routes; rates; joint rates.

Sec. 4. (a) Every common carrier is hereby required to furnish reasonably adequate service and facilities and shall provide and furnish transportation of passengers and property upon reasonable requests therefor, and all charges made for any service in connection therewith, or for the receiving, switching, delivering, storing, transporting or handling of such persons or property shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful;

(b) All railroads incorporated under the general railroad law of this state, as between themselves, and all electric railroads, as between themselves, shall establish through routes and just and reasonable rates applicable thereto, except as hereinafter provided;

(c) Whenever passengers or property are transported over 2 or more connecting lines of railroad between points in this state, and the railroad companies have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable, and every unjust and unreasonable charge is prohibited and declared to be unlawful: Provided, That a less charge by such railroads for their proportion of such joint rates than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of the provisions of this act, nor render such railroads liable to any of the penalties hereof.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8112;—CL 1929, 11020;—CL 1948, 462.4.

462.5 Free transportation; penalty; freight; tickets.

Sec. 5. (a) No common carrier, subject to the provisions of this act shall hereafter, directly or indirectly, issue or give any free ticket, free pass, or free transportation for passengers, except to its employees or their families, its officers, agents, surgeons, physicians or attorneys at law and members of their families; or to former railroad employees and members of their families, when such employees have become disabled in the railway service, or retired upon pension, and to the members of the families of deceased employees; to ministers of religion, traveling secretaries of railroad young men's christian associations, persons engaged exclusively in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes or homes for disabled volunteer soldiers, and sailors' homes, including those about to enter and those returning home after discharge, boards of managers of such homes; to necessary caretakers of live stock, poultry, fruit and vegetables; to employees on sleeping cars and express cars; to linemen of telegraph and telephone companies and others engaged in the care and operation of telegraph and telephone lines; to railroad postal employees, post office inspectors, custom inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured or killed in accidents and members of the families of the same, and physicians and nurses attending such persons, and dependent relatives of injured or deceased employees, and such other persons as the commission may from time to time by special order designate: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, attorneys and employees of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or otherwise calamitous visitation: Provided further, That nothing shall be construed to prohibit the exchange of mileage for advertising in publications of general circulation. Any common carrier wilfully violating this provision shall be deemed guilty of a misdemeanor and for such offense, on conviction, shall pay to the state of Michigan a penalty of not less than 100 dollars nor more than 500 dollars, and any person, other than persons excepted in this provision, who uses any such free ticket, free pass or free transportation, shall be subjected to a like penalty;

(b) Nothing herein shall prevent the carriage, storage or handling of freight free, or at reduced rates for the United States, the state or any political subdivision thereof, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods, or other personal property of railroad employees, or the interchange of franks for the free transportation of personal property of the officers, agents, attorneys and employees of common carriers and their families; nor to prohibit any common carrier from carrying property free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitations, or the issuance of mileage, commutation, excursion passengers' or party tickets: Provided, That such tickets shall be obtainable by all persons applying therefor under like circumstances and conditions without discrimination.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8113;—CL 1929, 11021;—CL 1948, 462.5.

462.6 Switch connection with private side track; order of commission; rules; spur track; payment of cost and expenses; disagreement.

Sec. 6. (a) Any railroad, subject to the provisions of this act, upon application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any private side track, when such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of same, and shall furnish cars and transport to the best of its ability any traffic tendered to, over or from such private side track, without discrimination in favor of or against any such shipper: Provided, This shall not be construed to compel a railroad to remove from or deliver on a private side track traffic tendered in less than car lots: Provided further, That shipments of live stock, perishable property and explosives shall have precedence over all other classes of merchandise. If any railroad shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, any shipper may make complaint to the commission, as provided by section 22 of this act, and the commission shall make investigation of the same, and it shall determine as to the safety, practicability and justification thereof, and shall fix a reasonable compensation therefor, and the commission shall make an order as provided in section 22 of this act, directing the railroads to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money. The commission shall have power, and is hereby authorized, to fix and establish reasonable switching rules and regulations, and establish reasonable limits for said switching and

reasonable rates therefor, including rules and regulations regarding absorption of switching rates;

(b) Every railroad shall provide a reasonable, adequate and suitable spur track to and to and upon the grounds of any mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock or other industry or enterprise, wherever such spur track does not necessarily exceed 2 miles in length and is practically indispensable to the successful operation of any such industry or enterprise, and shall connect such spur track with its main track and operate the same in connection therewith: Provided, That such railroad may require the person or persons, firm, corporation or association primarily to be served thereby, to pay the legitimate cost and expense of acquiring by condemnation or purchase where necessary the rights of way for such spur track, and of constructing the same, in which case the total estimated cost thereof shall be deposited with the railroad before the railroad shall be required to incur any expense whatever therefor. No railroad shall, however, be required to provide a spur track where it is unusually unsafe and dangerous: Provided, That in the event of the failure of said shipper and the said railroad to agree, the necessity for, reasonableness of, and practical safety of such spur track and connection and the operation thereof shall be decided by the said public utilities commission upon complaint and hearing as provided in section 22 of this act.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8114;—Am. 1921, Act 390, Eff. Aug. 18, 1921;—CL 1929, 11022;—CL 1948, 462.6.

Compiler's note: For provisions of section 22, referred to in this section, see MCL 462.22.

462.7 Interchange of traffic; preferred freight; routing by shippers or initial carrier; steam railroads and interurban and suburban railroads; drawing cars and merchandise of connecting lines; local traffic; intrastate traffic.

Sec. 7. (a) All railroads subject to the provisions of this act shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: Provided, Precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business, except that carload traffic shall be received and transported from any junction point or transfer point or intersection with another railroad in any city or town, destined to team tracks or other sidings in the same city or town as hereinafter provided. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper. When freight is shipped in intrastate commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight as to give the property the benefit of the lowest rate published between points of origin and destination;

(b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine and such suburban and interurban railroads may be used for handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;

(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and

interests of the corporation or corporations and the public to be accommodated thereby and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised;

(d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: Provided, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held waiting the opportunity for delivery upon the siding originally designated as the destination;

(e) That any common carrier, railroad or transportation company receiving property for transportation from a point in the state of Michigan to another point within the state of Michigan, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which said property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation, shall exempt such common carrier, railroad or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law: Provided further, That the property so received for transportation shall move entirely within the boundaries of the state of Michigan between the points of shipment and its destination: And provided further, That the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company, on whose line or lines the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury as it may be required to pay to the owners of such property as may be evidenced by any receipt, judgment or transcript thereof.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1911, Act 139, Imd. Eff. Apr. 25, 1911;—Am. 1913, Act 370, Eff. Aug. 14, 1913;—Am. 1913, Act 389, Eff. Aug. 14, 1913;—Am. 1915, Act 278, Eff. Aug. 24, 1915;—CL 1915, 8115;—Am. 1917, Act 387, Eff. Aug. 10, 1917;—CL 1929, 11023;—CL 1948, 462.7.

462.8 Railroads to furnish cars; shortage, preference, regulation by commission; demurrage.

Sec. 8. Every railroad shall, when within its power so to do, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. Every common carrier shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor without discrimination between shippers or between points of shipment, whether competitive or non-competitive: Provided, Preference may be given to shipments of live-stock and perishable property. The commission shall have power to make and enforce, and shall make and enforce reasonable regulations for the furnishing and distribution of freight cars to shippers and switching the same, and for the loading and unloading thereof, and for the weighing of the cars and the freight offered for shipment over any line of railroad and shall fix a reasonable per diem demurrage to be paid for the detention of cars by shipper or consignee (which said car service and demurrage rules and regulations shall be applicable to all traffic whether the same begin or end within the state of Michigan), and for the failure or delay of the railroad in the furnishing of such cars and for the failure of the railroad to move the cars the number of miles per day as ordered by the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1911, Act 173, Eff. Aug. 1, 1911;—CL 1915, 8116;—CL 1929, 11024;—CL 1948, 462.8.

462.9 Charges for longer and shorter hauls; governing rate.

Sec. 9. It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater fare or rate for the transportation of passengers or like kinds of property under substantially similar circumstances and conditions for a shorter than a longer distance over the same line, in the same

direction, the shorter being included within the longer distance, but this act shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter distance as for a longer distance: Provided, however, That upon application to the commission appointed under the provisions of this act such common carrier may, in special cases after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which a designated common carrier may be relieved from the operation of this section of this act. When there are 2 or more rates in effect between the same points, via the same route, the lowest published rate shall be the only legal rate applicable in this state. In the event a published through rate exceed any combination of 2 or more local rates between the same points within the state, the combination forming the lowest rate shall govern.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1915, Act 277, Eff. Aug. 24, 1915;—CL 1915, 8117;—CL 1929, 11025;—CL 1948, 462.9.

462.10 Schedule of rates; filing with commission; public inspection; rate change; joint tariff; form of schedules; filing and publication of rates required; complaints; military traffic.

Sec. 10. (a) Every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation, both of passengers and property, between different points on its own route, and between points on its own route and on the route of any other carrier, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any common carrier, shall plainly state the places between which property and passengers will be carried and shall contain the classification of freight in force and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part of or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passengers, shipper or consignee: Provided, That where local switching tariffs are in effect at a competitive point, it shall be sufficient if the schedule state that the terminal charges shall be subject to the rules of such local switching tariffs. Such schedules shall be printed plainly in large type, and copies for the use of the public shall be kept on file for public inspection in every depot, station or office of such carrier where passengers or freight respectively are received for transportation or where tickets are sold, in such form that they will be accessible to the public and can conveniently be inspected. The provisions of this section shall apply to all traffic and transportation and facilities defined in this act;

(b) No change shall be made in the schedule of rates, fares or charges or joint rates, fares or charges which have been filed and published by common carriers in compliance with the requirements of this section, except after 30 days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule of rates, fares or charges or joint rates, fares or charges then in force and the time when such changed rates, fares or charges or joint rates, fares or charges will go into effect, and no such rates, fares or charges or joint rates, fares or charges shall be discontinued, except after giving such notice as is required for changing rates, fares or charges or joint rates, fares or charges, and the proposed changes in such rates, fares or charges or joint rates, fares or charges shall be shown by printing and filing new tariffs thereto or by showing such changes or discontinuance by issuing and filing of supplements in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may, in its discretion and for good cause shown, allow changes upon less time than the notice herein specified, or modify the requirements in this section in respect to publishing, posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions: Provided further, That upon the filing with the commission by a common carrier of any tariff or supplement showing any change in rates, fares or charges or joint rates, fares or charges or a discontinuance of any rate or rates, fares or charges or joint rates, fares or charges, it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such new rate or rates or joint rates, fares or charges or discontinuance of rate or rates or joint rates, fares or charges, shall become effective to such time not to exceed in all 45 days as shall give the said commission opportunity to investigate the reasonableness of such proposed rate or rates or discontinuance of rate or rates, and it shall thereupon be lawful for said commission and it is hereby authorized to proceed with all convenient speed with an investigation upon at least 5 days' notice to said common carrier either upon its own initiative or upon complaint as to the reasonableness of said rate or rates or the discontinuance of said rate or rates, follow the procedure as near as may be, and make its order therein in the manner hereinafter provided in section 22 of

this act, such investigation to take precedence of all matters of a different nature pending before the commission;

(c) The names of the several carriers which are parties to any joint tariff shall be specified therein and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties;

(d) The commission may determine and prescribe the form in which the schedules required by this section to be kept open to the public inspection shall be prepared and arranged and may change the form from time to time as may be found expedient;

(e) Such schedules shall, so far as is practicable, conform to the forms prescribed by the interstate commerce commission;

(f) No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act, nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between the points named in such fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of persons or property, except such as are specified in such tariff;

(g) Within 2 years after the delivery of any shipment of freight at destination, and not after, any person aggrieved may complain to the commission that the charge exacted for the transportation of such freight between points in Michigan is irregular or exorbitant, and thereupon the commission shall have power to investigate such complaint, and to hear the same and to decide upon the merits thereof, in the manner provided by section 22 of this act. If, upon such hearing, the commission shall decide that the rate or charge exacted is irregular or exorbitant it shall find what, in its judgment, would have been a reasonable rate or charge for the service complained of. If the rate or charge so found shall be less than the charge exacted and the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the commission shall make an order authorizing and directing the carrier to pay the complainant the sum to which he is entitled on or before a day named. In case of the refusal of the carrier to make such refund, the party aggrieved thereby may maintain an action in the courts of this state to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be prima facie evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself in the defense of such action that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state on account of making such refund;

(h) In time of war or threatened war preference and precedence shall, upon the demand of the governor of the state, be given over all other traffic to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic;

(i) Every common carrier within this state shall within 90 days, unless further time be granted by the commission, file in the office of the commission copies of all schedules of rates, including joint rates in force on its line or lines between points within this state on the date this act takes effect, not previously filed by such carrier with the Michigan railroad commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1911, Act 139, Imd. Eff. Apr. 25, 1911;—CL 1915, 8118;—Am. 1923, Act 256, Eff. Aug. 30, 1923;—CL 1929, 11026;—CL 1948, 462.10.

462.11 Special contract rates.

Sec. 11. Nothing in this act shall be construed to prevent concentration, commodity, transit and other special contract rates, but all such rates shall be open to all shippers for a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this act as to the printing and the filing of the same: Provided, All such rates shall be under the supervision and regulation of the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8119;—CL 1929, 11027;—CL 1948, 462.11.

462.12 Freight classification.

Sec. 12. The classification of freight in this state shall be uniform on all railroads.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8120;—CL 1929, 11028;—CL 1948, 462.12.

462.13 Maintenance of depot facilities; joint maintenance by connecting railroads; discontinuance of passenger service; approval of commission; appeal of order of commission.

Sec. 13. (a) Every railroad, unless excused therefrom by the order of the commission made after petition and hearing, shall provide and maintain adequate depots and depot buildings, including facilities for checking baggage and the sale of tickets at its regular stations and at such other points as the commission shall direct, for the accommodation of passengers, which buildings shall be kept clean, well-lighted and warm for the accommodation of the traveling public. All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroads. Upon the filing of complaint with the commission and hearing thereon as provided in section 22, the commission is authorized to make full inquiry in the matter of station facilities, train service, name of station, etc., at the station in question, and make such orders in regard to the building of depots, interurban railway shelters, name of station, stopping of trains or cars, necessary sidings and other track accommodations as it shall deem for the public interest and shall be just and reasonable. No order shall be made by the commission with reference to the name of a station until the change so ordered shall have been asked for by a majority vote of the citizens of the township, incorporated village or city in which such station is located.

(b) Where 2 or more railroads connect they shall, if so ordered by the commission after hearing, provide at the junction point a joint depot and suitable accommodations for passengers and merchandise. If the railroads cannot agree in providing such accommodations and for the maintenance thereof, the commission may determine the character of the accommodations to be provided and apportion the cost thereof and the expense of the maintenance of the same between the several roads.

(c) Passenger service shall not be discontinued in this state without the permission of the commission and unless the railroad desiring to discontinue such service shall first file a petition with the commission, and hearing is held thereon as provided in section 22. The commission at such hearing shall inquire into the convenience and necessity of the service to the public and shall render its decision thereon. At any hearing upon such petition any person, association, corporation, municipality or governmental unit whose interests shall be adversely affected by the discontinuance of the service, may petition the commission for leave to intervene in said proceedings and participate therein as a party. If it shall appear to the commission from the state of the applicant's interests that the interests may be adversely affected by the discontinuance of service, the commission shall grant permission to intervene. The provisions of this act shall not apply to temporary or seasonal trains.

(d) Any common carrier, or other party in interest, being dissatisfied with any order of the commission made under the provisions of this section, shall have the same rights to appeal and review as provided under section 26, as amended.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8121;—CL 1929, 11029;—Am. 1941, Act 134, Imd. Eff. May 26, 1941;—CL 1948, 462.13;—Am. 1965, Act 15, Imd. Eff. Apr. 16, 1965.

462.14 Sidetracks, spurs and branches; control by commission; abandonment or removal, procedure.

Sec. 14. The commission shall have control and jurisdiction over all sidetracks, spurs and branches insofar as the same are used or operated by common carriers. No change or discontinuance in the service from, to or on such sidetracks, spurs and branches or abandonment or removal of said sidetracks, spurs or branches, except sidetracks or spurs solely required for the convenient operation of its engines and trains and private industrial sidetracks, shall be made except after 10 days' notice to the commission and to the public published as aforesaid, which shall plainly state the change or discontinuance proposed to be made in such service or the sidetrack, spur or branch proposed to be abandoned or removed and the time when such change, discontinuance or abandonment or removal will go into effect; and the proposed change, discontinuance or abandonment or removal shall be shown by printing and filing new tariffs or notice thereof or by showing such change, discontinuance or abandonment or removal by issuing and filing supplements or notice in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may allow changes upon less time than the notice herein specified or modify the requirements in this section in respect to publishing and posting of tariffs either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: Provided further, That it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such change, discontinuance or abandonment or removal shall become effective to such time not to exceed in all 45 days as shall give the said commission opportunity to investigate the reasonableness of such

proposed change, discontinuance or abandonment or removal, and it shall thereupon be lawful for such commission, and it is hereby authorized to proceed with all convenient speed with an investigation upon at least 5 days' notice to said common carrier, either upon its own initiative or upon complaint as to the reasonableness of said change, discontinuance or abandonment or removal, and shall follow the proceedings as near as may be and make its orders thereon either approving or refusing such change, discontinuance or abandonment or removal or prescribing the terms and conditions upon which such change, discontinuance or abandonment or removal shall be made, in the manner hereinafter provided in section 22 of this act, such investigation to take precedence of all matters of a different nature pending before the commission, except investigations as to change or discontinuance of rates, fares or charges or joint rates, fares or charges then pending before said commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1911, Act 139, Imd. Eff. Apr. 25, 1911;—CL 1915, 8122;—CL 1929, 11030;—CL 1948, 462.14.

Compiler's note: For provisions of section 22, referred to in this section, see MCL 462.22.

462.15 Continuous carriage of freight; unlawful acts.

Sec. 15. It shall be unlawful for any common carrier to enter into any combination, contract or agreement, express or implied, to prevent by change of time, schedule, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage or interruptions by such common carrier shall prevent the carriage of freight from being and being treated as 1 continuous carriage from place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8123;—CL 1929, 11031;—CL 1948, 462.15.

462.16 Rate discrimination unlawful; compensation for incidental service.

Sec. 16. If any common carrier or any agent or officer thereof shall, directly or indirectly, by any special rate, rebate, drawback, or by any means of false billing, false classification, false weighing, or by any other device whatsoever, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered by it for the transportation of persons or property or for any service in connection therewith than that prescribed in the public tariffs then in force, or established as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, or shall knowingly and willfully assist or willfully suffer and permit such greater or less compensation to be charged, demanded, collected or received, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. It shall be unlawful for any common carrier to demand, charge, collect or receive from any person, firm or corporation a less compensation for the transportation of property or for any service rendered or to be rendered by said common carrier in consideration of said person, firm or corporation furnishing any part of the facilities incident thereto: Provided, Nothing shall be construed as prohibiting any common carrier from procuring any facilities or service incident to transportation and paying a reasonable compensation therefor.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8124;—CL 1929, 11032;—CL 1948, 462.16.

462.17 Traffic discrimination unlawful.

Sec. 17. It shall be unlawful for any common carrier, subject to the provisions of this act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable disadvantage or prejudice in any respect whatsoever.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8125;—CL 1929, 11033;—CL 1948, 462.17.

462.18 Receiving rebate or discrimination; penalty.

Sec. 18. It shall be unlawful for any person, firm or corporation knowingly to accept or to receive any rebate concession or discrimination in respect to transportation of any property wholly in this state or for any service in connection therewith, whereby any such property shall, by false billing, false classification, false weighing or any other device whatsoever, be transported at a less rate than that named in the published tariffs in force as provided herein or whereby any service or advantage is received, other than is therein specified. Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a

misdemeanor, and on conviction thereof shall be punished by a fine of not more than 500 dollars or by imprisonment in the county jail for a term of not to exceed 3 months, or by both in the discretion of the court for each offense.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8126;—CL 1929, 11034;—CL 1948, 462.18.

462.19 Civil liability.

Sec. 19. If any common carrier shall do, or cause to be done, or permit to be done, any matter, act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, or by any lawful order made under the provisions of this act by the Michigan railroad commission, such common carrier shall be liable to the person, firm or corporation injured thereby in double the amount of damages sustained in consequence of such violation: Provided, That any recovery as is in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8127;—CL 1929, 11035;—CL 1948, 462.19.

462.20 Failure to report unlawful.

Sec. 20. It shall be unlawful for any officer, agent or employee of any common carrier to willfully fail or refuse to fill out and return any blank or make any report as required by this act, or to willfully fail or refuse to answer any questions therein propounded, or to knowingly or willfully give a false answer to any such question or to evade the answer to any such question where the fact inquired of is within his knowledge, or to, upon proper demand, willfully fail or refuse to exhibit to any commissioner or any commissioners, or any person authorized to examine the same, any book, paper or account of such common carrier which is in his possession or under his control.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8128;—CL 1929, 11036;—CL 1948, 462.20.

462.21 Fees; disposition.

Sec. 21. The commission shall charge and collect the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, 10 cents for each folio; for certified copies of official documents and orders filed in its office, 15 cents for each folio; for certifying a copy of any report made by a corporation to the commission, 50 cents; for each certified copy or the annual report of the commission, for certified copies of evidence and proceedings before the commission not required by this act to be furnished gratis, 15 cents for each folio. No fees shall be charged or collected for copies of papers, records or official documents furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distribution. All fees charged and collected by the commission shall belong to the people of the state, and shall be paid monthly, accompanied with a detailed statement thereof, into the treasury of the state to the credit of the general fund.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8129;—CL 1929, 11037;—CL 1948, 462.21.

462.22 Rate investigation on complaint; hearing, order for change in schedules; separate hearings; dismissal; rate investigation on motion of commission; order; complaint by common carrier; through rates; joint rates.

Sec. 22. (a) Upon complaint in writing of any person, firm or corporation or association, or of any mercantile, agricultural or manufacturing society, or of any body politic or municipal organization, that any of the rates, fares, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property or any service in connection therewith, is in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission shall notify the common carrier complained of that complaint has been made and shall furnish a copy of the said complaint with said notice, and 20 days after such notice has been given the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make the investigation, the commission shall give the said common carrier and the complainants at least 10 days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. Such hearings may be continued from time to time in the discretion of the commission. If, upon such investigation, the rate or rates, joint rate or rates, fares, charges or classifications, regulation, practice or service complained of shall be found to be unreasonable, inadequate or unjustly discriminatory, the commission shall have power to and it shall determine and by order fix and order substituted therefor, such rate or rates, joint rate or rates, fares and charges, as is or are just and reasonable, and which shall be the maximum to be charged in the future, and such classifications, regulation, practice or service as is or are just, reasonable and adequate, and which shall be imposed and followed or service rendered in future in lieu of that

found to be unreasonable, inadequate or unjustly discriminatory, and in either case the commission shall make an order that the common carrier cease and desist from such violation, and shall conform to the regulation and practice so prescribed, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the common carrier affected thereby, which order shall, of its own force, take effect and become operative 20 days after the service thereof. All common carriers to which the order applies shall, on or before the date when such order becomes effective, make such changes in schedules on file as shall be necessary to make the same conform to such order, and no change shall within 2 years thereafter be made by any such common carrier in any such rates, fares or charges, or in any such joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the common carriers thereby affected in like manner, and the same shall take effect within such times thereafter as the commission shall prescribe;

(b) The commission may, when the complaint is made of more than 1 rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant;

(c) Whenever the commission shall believe that any rate or rates or charge or charges may be unreasonable or unjustly discriminatory, or that any service is inadequate, and that any investigation relating thereto should be made, it may, upon its own motion, investigate the same. Before making such investigation, it shall present to the common carrier a statement in writing, setting forth the rate or charge to be investigated. Thereafter, on 10 days' notice to the common carrier of the time and place of such investigation, the commission may proceed to investigate such rate or charge in the same manner and make like orders in respect thereto as if such investigation had been made upon complaint;

(d) This section shall be construed to permit any common carrier to make complaint of like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization;

(e) The commission may, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and the terms and conditions under which such through routes shall be operated when the common carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates: Provided, No reasonably satisfactory through route and joint rate exist. Whenever the common carrier or common carriers, in obedience to an order of the commission or otherwise, in respect to joint rates, fares or charges, shall fail to agree among themselves upon the apportionment or division thereof, the commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate, fare or charge to be received by each common carrier party thereto, which order shall take effect as part of the original order.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8130;—CL 1929, 11038;—CL 1948, 462.22.

462.23 Commissioners; powers; issuance of subpoena by court; witness fees; depositions; record of proceedings.

Sec. 23. (a) Each of the commissioners, for the purposes mentioned in this act, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of papers, way bills, books, accounts, documents and testimony. In case of disobedience on the part of any person or persons, or willful failure to comply with any order of the commission or any commissioner or any subpoena, or upon the refusal of any witness to testify regarding any matter upon which he may be lawfully interrogated, or to produce any books or papers in his custody or control which he shall have been required by any commissioner to produce, it shall be the duty of the circuit court or any court, or a judge thereof, upon application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein, and in addition said commissioner shall have the powers vested in justices of the peace and notaries public to compel witnesses to testify and to produce books and papers;

(b) Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in circuit court, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission: Provided, That no witnesses subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance and travel, unless the commission shall certify that his testimony was material and necessary to the matter investigated;

(c) The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in

the circuit courts;

(d) A full and complete record shall be kept of all proceedings had before the commission on any investigation had under section 22 of this act and all testimony shall be taken down by a stenographer appointed by the commission. When any complaint is served upon the commission under the provisions of section 26 of this act the commission shall, before said action is reached for trial, cause the certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the clerk of the circuit court of the county where the action is pending. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, taken by the stenographer, certified by him to be a true and correct transcript of all the testimony on the investigation or of a particular witness, or of any specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed shall be received in evidence with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished upon demand, free of cost, to any party to such investigations, and to all other persons on payment of a reasonable amount therefor.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8131;—CL 1929, 11039;—CL 1948, 462.23.

462.24 Orders of commission; rescission or amendment.

Sec. 24. The commission may, at any time upon application of any person or any common carrier, and upon at least 10 days' notice to the parties interested, including the common carrier, and after opportunity to be heard as provided in section 22, rescind, alter or amend any order fixing any rate or rates, fares, charges or classifications, or any other order made by the commission, and certified copies shall be served and take effect as herein provided for original orders.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8132;—CL 1929, 11040;—CL 1948, 462.24.

462.25 Rates; classification and regulations prescribed by commission to be prima facie lawful; express companies.

Sec. 25. All rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section 26 of this act, or until changed or modified by the commission as provided for in section 24 of this act.

(a) It shall be unlawful for any express company operating or doing business in the state of Michigan to charge or collect a greater amount for the transportation of merchandise or other property within this state than the rates and charges set forth and contained in the schedule of rates, tariffs and classifications on file at each station and office to or from which said rates, tariffs and classifications are intended to apply; a copy of which said schedule of rates, tariffs and classifications shall be filed with the railroad commission by the issuing carrier or some duly authorized agent or representative of such carrier;

(b) It shall be unlawful for any express company operating and doing business in the state of Michigan to discriminate in favor of or against any shipper or shippers or to refuse or fail to receive and transport proffered merchandise or other property, providing such merchandise or other property is a proper subject for shipment by express and in proper condition at the time of presentation for shipment from any point where such express company shall maintain or conduct an office or station, or to or from any junction point or points where the line of such express company intersects with the line of any other express company or to or from any common terminal to any point on its own line, and the charge and compensation for the transportation of such merchandise or other property by 2 or more express companies shall not exceed by 30 per cent the maximum charge for the same distance on any 1 line, such maximum charge being determined as hereinafter prescribed;

(c) All express companies operating within this state shall publish and continue in force and effect through or joint rates between all points at which offices are maintained on the line of all express companies operating within the state of Michigan: Provided, That such express companies may divide charges for transportation in such a manner as to allow participating carriers an agreed minimum proportion when the division of such charges on a mileage basis would not allow a sufficient minimum;

(d) The following schedule of rates shall be the present maximum basic general merchandise schedule chargeable within the state of Michigan:

1 to 55 miles inclusive, 50 cents per 100 pounds;
56 to 75 miles inclusive, 55 cents per 100 pounds;
76 to 85 miles inclusive, 60 cents per 100 pounds;
86 to 95 miles inclusive, 65 cents per 100 pounds;
96 to 105 miles inclusive, 70 cents per 100 pounds;

106 to 130 miles inclusive, 75 cents per 100 pounds;
131 to 150 miles inclusive, 80 cents per 100 pounds;
151 to 170 miles inclusive, 85 cents per 100 pounds;
171 to 190 miles inclusive, 90 cents per 100 pounds;
191 to 210 miles inclusive, 1 dollar per 100 pounds;
211 to 230 miles inclusive, 1 dollar 10 cents per 100 pounds;
231 to 250 miles inclusive, 1 dollar 20 cents per 100 pounds;
251 to 275 miles inclusive, 1 dollar 30 cents per 100 pounds;
276 to 300 miles inclusive, 1 dollar 40 cents per 100 pounds;

(e) The graduated table or schedule of charges now in force relating to shipments of merchandise or other property in quantities less than 100 pounds shall continue in operation except as hereinafter provided;

(f) The Michigan railroad commission shall have control and supervision over all express companies operating within this state, and upon complaint made to it or upon its own motion and after hearing had thereon, in accordance with the rules now in force relative to hearings on complaints by and against common carriers, may from time to time within its discretion change, alter and amend the maximum schedule of rates hereinbefore set forth, and may from time to time upon proper application or upon its own motion and hearing had thereon, as above prescribed, change, alter and amend any graduated table or schedule of charges on merchandise or other property transported or to be transported, the weight of which is less than 100 pounds;

(g) Any express company operating or doing business within the state of Michigan, upon receipt of any property or merchandise, providing such property or merchandise is a proper subject for shipment by express and in proper condition at time of presentation, shall unless otherwise requested by the shipper forward same via the nearest and most practical route, having in mind the frequency of train service at different junction points.

History: 1909, Act 300, Eff. Sept. 1, 1909;—Am. 1911, Act 139, Imd. Eff. Apr. 25, 1911;—CL 1915, 8133;—CL 1929, 11041;—CL 1948, 462.25.

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.

462.27 Process; practice and evidence; incriminating testimony; perjury; immunity; orders as evidence.

Sec. 27. (a) In all actions and proceedings in court arising under this act all such process shall be served and the practice and rules of evidence shall be the same as in actions in equity, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil process shall execute any process issued under the provisions of this act, and shall receive such compensation therefor as may be prescribed by law for similar services;

(b) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any violation of the provisions of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence: Provided, That no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying: Provided further, The immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath, or produces evidence documentary or otherwise under oath;

(c) Upon application of any person the commission shall furnish certified copies, under seal of the commission and signed by the commission or its secretary, of any order made by it, which shall be prima facie evidence in any court or proceedings of the facts stated therein.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8135;—CL 1929, 11043;—CL 1948, 462.27.

462.28 Common carriers; authority of commission; blanks; inspection; order to produce books; penalty.

Sec. 28. (a) The commission shall have authority to inquire into the management of the business of any common carrier and shall keep itself informed as to the manner and shall have the right to obtain from any common carrier all necessary information to enable the commission to perform the duties and carry out the objects for which it is created;

(b) The commission shall cause to be prepared for the purposes designated in this act blanks which shall conform as nearly as practicable to the forms prescribed by the interstate commerce commission, and shall when necessary furnish such blanks to each common carrier. Any common carrier receiving from the commission any such blanks shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question it shall give a full and sufficient reason for such failure; and said answer shall be verified under oath by the proper officer of said common carrier and returned to the commission at its office within the time fixed by the commission. The

making of a false affidavit or the filing of the same shall be deemed perjury and punishable as such under the statutes of Michigan defining perjury;

(c) The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books and papers of any common carrier, and to examine under oath any officer, agent or employe of such common carrier in relation to any matter which is the subject of complaint or investigation: Provided, That any person other than 1 of said commissioners who shall make such demand shall produce his authority to make such inspection under the hand of the commission or its secretary, and under the seal of said commission;

(d) The commission may require by order or subpoena, to be served upon any common carrier in the same manner that a subpoena is served in a law action in the circuit court, the production within this state, at such time and place as it may designate, any books, papers or accounts relating to any matter which is the subject of complaint or investigation, kept by such railroad in any office or place without the state of Michigan, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof shall be made by the commission or under its direction, and such subpoena may issue to any sheriff in any county of the state. Any common carrier failing or refusing to comply with such order or subpoena within a reasonable time shall for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than 100 dollars nor more than 1,000 dollars, to be recovered in an action at law brought in the name of the Michigan railroad commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8136;—CL 1929, 11044;—CL 1948, 462.28.

462.29 Common carriers; contracts and free transportation lists; annual free transportation list.

Sec. 29. (a) Every common carrier whenever required by the commission shall, within a time to be fixed by the commission, deliver to the commission for its use, copies of all contracts which relate to the transportation of persons or property or any service in connection therewith, made or entered into by it with any other common carrier or any shipper or shippers, producers or consumers or other person or persons doing business with it;

(b) Every common carrier shall, on or before the first day of February, 1910, and annually thereafter and oftener if required by the commission, file with the commission a verified list of all free tickets, free passes and free transportation issued or given by it during the year ending the thirty-first day of December preceding, together with the full names and addresses of recipients thereof and the reason for issuing the same: Provided, That this section shall not be deemed to require the filing of a list of such free tickets, free passes and free transportation issued or given by such common carrier to its employes or their families, its officers, agents, surgeons, physicians or attorneys-at-law and members of their families, or the officers, agents, attorneys and employes of other common carriers and their families, except such list be specially ordered by the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8137;—CL 1929, 11045;—CL 1948, 462.29.

462.30 Common carriers; annual statement, contents, time; blanks; additional information; earnings and income, report.

Sec. 30. Every common carrier doing business in this state, or which shall hereafter do business in this state, and every person, firm or corporation owning property in this state which is used for common carrier purposes, shall on or before the first day of May, 1918, and on or before the same day in each year thereafter, make and transmit to the commission at its office in Lansing a full and true statement, under oath of the proper official of such carrier of the financial and operating transactions of such carrier relative to the state of Michigan for the year ending the thirty-first day of December preceding, which statement for the state of Michigan shall be similar in character and detail to the annual report, if any, required to be made by such carriers to the interstate commerce commission. The said commission shall cause to be made suitable blanks at the expense of the state and forward the same to such common carrier, upon which to make reports required by this act. The said railroad commission may require of such common carrier, subject to the provisions of this act, any other or additional information relating to the management of such carrier and to the condition of its respective property utilized for common carrier purposes and such other subjects as in its judgment may be necessary in order to gain full information in regard thereto. Every common carrier doing business in this state shall, when so ordered by the commission, report to the railroad commission its earnings and income statement for the period designated in such order, and the proper blanks for that purpose shall be furnished by the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8138;—Am. 1917, Act 205, Eff. Aug. 10, 1917;—CL 1929, 11046;—CL 1948, 462.30.

Compiler's note: Amendatory Act 205 of 1917 erroneously referred to this section as CL 1915, § 8132.

462.31 Freight tariffs; filing.

Sec. 31. Any freight tariffs issued by common carriers relating to interstate traffic in this state or by any common carrier relating either to interstate or to intrastate traffic wholly by water routes in this state shall be on order of the commission filed in the offices of the commission within such time as such order shall prescribe.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8139;—CL 1929, 11047;—CL 1948, 462.31.

462.32 Unreasonable rate or practice; regulation by commission.

Sec. 32. Whenever, after hearing and investigation as provided in this act, the commission shall find that any charge, regulation or practice affecting the transportation of passengers or property, or any service in connection therewith not herein specifically designated, is unreasonable or unjustly discriminatory, it shall have the power to regulate the same as provided in section 22 of this act.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8140;—CL 1929, 11048;—CL 1948, 462.32.

462.33 Accidents; report; investigation, expense.

Sec. 33. Every common carrier shall, whenever an accident occurs within this state upon its line or road or on its depot grounds or yards, give such notice thereof and make such report thereof to the commission as the regulations of the commission shall require. In the event of any accident the commission, if it deem the public interests require it, shall cause an investigation to be made forthwith, which investigation shall be held within the locality of the accident, unless for greater convenience of those concerned it shall order the investigation to be held at some other place, and said investigation may be adjourned from place to place, as may be found necessary and convenient. The commission shall seasonably notify an officer of the company of the time and place of the investigation. The cost of such investigation shall be certified by the chairman of the commission, and the same shall be audited and paid by the state in the same manner as other expenses are audited and paid, and record or file of said proceedings and evidence shall be kept by said commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8141;—CL 1929, 11049;—CL 1948, 462.33.

Administrative rules: R 460.1451 et seq. of the Michigan Administrative Code.

462.34 Equipment and structures; inspection; notice of repairs; orders as to rate of speed and use of defective equipment; penalties, forfeitures.

Sec. 34. Whenever the commission shall have reasonable grounds to believe, either on complaint or otherwise, that any of the equipment, cars, tracks, bridges or other structures of any common carrier of this state are in a condition which renders any of them dangerous or unfit for the transportation of passengers with reasonable safety, or unreasonably endangering the employes of such carrier, it shall be its duty to inspect and examine, or cause to be inspected, examined and tested by some competent person or persons, and for that purpose it, the said commission, may employ some other person possessing especial knowledge and skill in the construction of railroads and bridges, as an expert, and if, on such examination, in its opinion any such equipment, cars, tracks, bridges or other structures be dangerous or unfit for the transportation of passengers with reasonable safety, or unreasonably endanger the employes of such carrier, it shall be its duty to give the superintendent or other executive officer of the corporation, working or operating said defective, dangerous or unfit equipment, car, track or bridge or other structure, notice of the condition thereof, and of the repairs or changes necessary to place the same in a reasonably safe condition, and of the time within which such repairs or changes shall be made. It may also order and direct the rate of speed of passing trains or cars over such dangerous or defective track, bridge or other structure, until the said repairs shall be made. If any superintendent or other executive officer aforesaid, receiving such notice or order to direct the proper subordinate officers of said corporation to run the passenger trains or cars over such defective track, bridge or other structure, at the speed so prescribed by the commission, or if any engineer, conductor or other employe of such company shall knowingly disobey such order, every such superintendent, officer, conductor or employe shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 43 of this act. The said commission shall have power to wholly prohibit the running of passenger trains or cars over such defective, dangerous or unfit track, bridge or other structure, or the use of such dangerous, unfit or defective equipment or car, if said company shall neglect or without reasonable cause fail to make such repairs within the time prescribed by the commission; and such company, for each and every day that ensues thereafter, and until such changes or repairs are made, shall forfeit and pay to the state the sum of 100 dollars. In case of the employment of an expert, as provided for in this section, the commission shall issue a certificate, which shall set forth the amount of time said expert has been employed, and the pay

he is to receive therefor, which certificate shall entitle the holder thereof to receive the amount mentioned therein in the same manner as other employees of the state are paid.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8142;—CL 1929, 11050;—CL 1948, 462.34.

462.35 Rules regarding maximum speed limits; order; effective date of speed limit.

Sec. 35. (1) The state transportation department shall promulgate rules establishing the standards by which the director of the department shall determine maximum speed limits for railroad locomotives when used in passenger train operations and for passenger railroad trains. The rules shall provide that the director base his or her determinations on engineering, traffic, and safety inspections; on federal railroad safety standards; and on state on-site inspection criteria provided for in the rules.

(2) The speed limits established by the director shall designate expressly those portions of the railroad routes in this state to which the speed limits shall apply for passenger train operations. The maximum speed limit for passenger train operations may vary on specified portions of a route on the basis of safety and other factors.

(3) Before making a determination establishing a maximum speed limit, the director of the state transportation department shall give consideration to local governmental comments. After determining the maximum speed limit, the director of the state transportation department shall issue an order notifying each city, village, and township of the effective date of the speed limit, which date shall not be less than 30 days following the date of the order. The speed limit shall take effect on the specified date unless an appeal, by resolution of the local governing body or by the operating railroad, is filed with the state transportation commission before the proposed effective date of the speed limit as is set forth in the order. If a timely appeal is filed, the order shall not take effect within that city, village, or township unless the order is approved or modified by resolution of the state transportation commission following consideration of the appeal by the commission. If the commission approves or modifies an order by resolution, the effective date of the speed limit shall be established in the resolution of the commission, and the director shall issue a revised order with regard to that city, village, or township.

History: Add. 1984, Act 10, Imd. Eff. Feb. 16, 1984.

462.36 Equipment and structures; authority of commission.

Sec. 36. Authority is hereby given to the said commission, and it shall be its duty, if it shall deem it advisable, to prescribe the use of such modern generally approved system of protection for the safe operation of trains or cars at all crossings and junctions of railroads in this state, and at all crossings of draw bridges, upon which trains or cars are operated by steam, electricity or other power, such as will secure safety in the operation of trains or cars at such crossings, junctions and draw bridges, and to apportion the cost of construction, operation and maintenance of such system of protection among the several companies in such proportion as to the commission shall seem just. The commission, having determined such form of protection, shall immediately cause a description thereof over its official signature to be delivered to an officer of the railroad affected thereby, with notice that the same must be adopted and put into practical force within a reasonable time to be fixed by the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8144;—CL 1929, 11052;—CL 1948, 462.36.

Administrative rules: R 460.1451 et seq. of the Michigan Administrative Code.

462.37 Equipment and structures; hearing prior to order.

Sec. 37. No order of the commission, made in pursuance of the provisions of sections 35 and 36 shall be made except upon examination, at which representatives of the common carriers affected shall be entitled to be heard, after notice.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8145;—CL 1929, 11053;—CL 1948, 462.37.

462.38 Equipment and structures; refusal to obey order; penalty.

Sec. 38. Any common carrier that shall willfully neglect or refuse to obey or conform to any order of the commission made pursuant to either of sections 35 or 36 shall be liable to a penalty in the sum of 500 dollars, and to a like penalty for every week thereafter until such order shall have been complied with: Provided, That in cases in which an application for rehearing shall be made, or an action in court shall be begun and prosecuted in good faith and with diligence, the liability for the continuing penalty herein prescribed shall not apply or begin until after the decision of the commission or rehearing of the final order of the courts in such action.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8146;—CL 1929, 11054;—CL 1948, 462.38.

462.39 Fences; inspection, construction.

Sec. 39. The railroad commission shall have power, and it shall be its duty, if it shall deem it practicable, in all cases to inspect and determine the sufficiency of all fences required by law to be constructed and maintained by railroad companies, and it may prescribe the manner of constructing and the time within which it shall be done.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8147;—CL 1929, 11055;—CL 1948, 462.39.

462.40 Bill of lading; liability of carrier; statements of charges.

Sec. 40. Whenever any property is received by any common carrier subject to the provisions of this act to be transported from 1 place to another in the state, it shall upon demand by the shipper issue a receipt or bill of lading therefor, naming therein the classification of such freight and the rate of freight at which the same is to be carried; and no common carrier shall limit or change its common law liability by contract or otherwise as to its responsibility for the negligent act of its agents and servants with reference to property in its custody as a common carrier: Provided, That nothing herein contained shall be so construed as to abridge or in anywise lessen the liability of any such common carrier as it now is under existing laws. All statements rendered for transportation charges shall show character of shipments, weight, rate and total charges before demanding payment.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8148;—CL 1929, 11056;—CL 1948, 462.40.

462.41 Violations; investigation; enforcement of act.

Sec. 41. This commission shall inquire into any neglect or violation of the laws of this state by any such common carrier hereinbefore defined doing business therein, or by its officers, agents or employes thereof, and shall have the power and it shall be its duty to enforce the provisions of this act as well as all other laws relating to common carriers and report all violations thereof to the attorney general. Upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to aid in any investigation, prosecution, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and of all other laws of this state relating to common carriers, and for the punishment of all violations thereof. Any forfeiture and penalty herein provided shall be paid to the state treasurer and shall be recovered and suit therefor shall be brought in the name of the state of Michigan in the circuit court of any county having jurisdiction of the defendants. The attorney general of Michigan, or any prosecuting attorney selected by the said commission in any county where such action is pending, shall be the counsel in any proceeding, investigation, hearing or trial prosecuted or defended by the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8149;—CL 1929, 11057;—CL 1948, 462.41.

462.42 Investigation of claims.

Sec. 42. All claims against any common carrier for loss or damage to property from any cause, or for over-charge upon any shipments, or for any other service, if not acted upon within 90 days from the date of filing of such claim with the common carrier may be investigated by the commission in its discretion, and the result of such investigation may be embodied in a special report and the next annual report of the commission.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8150;—CL 1929, 11058;—CL 1948, 462.42.

462.43 Liability for violations; penalty.

Sec. 43. Any common carrier subject to the operation of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person employed by such corporation, who alone or with any other corporation, company, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or who shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall do or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, or who shall willfully disobey or knowingly fail or neglect to obey any lawful order made under the provisions of this act by the Michigan railroad commission, or shall aid and abet any such disobedience or omission or failure shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court having jurisdiction of misdemeanors, if a penalty for such offense be not elsewhere provided in this act, be subject to a fine of not to exceed 500 dollars for each offense, in the discretion of the court, or if the convicted party be a natural person, he shall be liable to be punished by imprisonment in the county jail for a period of not to exceed 3 months, or both such fine and imprisonment in the discretion of the court.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8151;—CL 1929, 11059;—CL 1948, 462.43.

462.44 Police powers vested in commission.

Sec. 44. The police powers of the state over railroads, street railways, interurban railways and suburban street railways, whether operated by steam, electricity or other motive power, organized or doing business in this state, shall be and the same are hereby vested in the railroad commission, and it is hereby made the duty of said railroad commission to exercise the same in accordance with the requirements of the law.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8152;—CL 1929, 11060;—CL 1948, 462.44.

462.45 Substantial compliance.

Sec. 45. A substantial compliance with the requirements of this act shall be sufficient to give effect to all rules, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8153;—CL 1929, 11061;—CL 1948, 462.45.

462.46 Rights of action; penalties cumulative.

Sec. 46. This act shall not have the effect to release or waive any right of action by the state or by any person for any right, damage, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this state, and all penalties and forfeitures accruing under this act shall be cumulative, and a suit for and recovery of one shall not be a bar to the recovery of any other penalty or damage.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8154;—CL 1929, 11062;—CL 1948, 462.46.

462.47 Mandamus; injunction; civil remedies.

Sec. 47. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions hereof and of all orders of the commission, the commission, and likewise any person, firm or corporation interested, may compel compliance with the provisions of this act and with the orders of the commission by proceedings in mandamus, injunction or by other appropriate civil remedies.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8155;—CL 1929, 11063;—CL 1948, 462.47.

462.48 Record of proceedings; report to governor, contents, publication.

Sec. 48. The commission shall keep a record of all its findings, decisions, determinations and investigations under this act or under any other act prescribing its duties and powers, and shall, on January first of each year, render to the governor a full and complete report of all such findings, decisions, determinations and investigations, together with a statement of all moneys expended by it or on its order, and of all salaries paid by or to it. It shall include in such report such recommendations as it shall desire to make on the conduct of railroad business in the state of Michigan, and such portion or abridgment of the reports of the various railroad corporations made to it as it shall deem to be of interest to the general public. Not more than 1,500 copies of this report shall be published, except by special authority of the board of state auditors.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8156;—CL 1929, 11064;—CL 1948, 462.48.

462.49 Powers, duties and privileges transferred to commission; saving clause.

Sec. 49. All powers, duties and privileges imposed and conferred under existing laws upon the commissioner of railroads, the railroad and street crossing board, the crossing board as defined by section 6232 of the Compiled Laws of 1897, and the board of railway consolidations as defined by section 6255 of the Compiled Laws of 1897, and upon the Michigan railroad commission under existing laws are hereby imposed and conferred upon the commission created under the provisions of this act; and wherever in said acts or either of them the commissioner of railroads, the railroad and street crossing board, the crossing board, and the board of railway consolidations, the Michigan railroad commission, or either of said officials or boards, are named, the same shall be construed to mean and apply to and name the Michigan railroad commission created by this act: Provided, That the powers and duties conferred upon the Michigan railroad commission by Act 312 of the Public Acts of 1907, shall continue to be exercised by that commission until the commission provided in section 1 of this act has qualified and organized: Provided further, That all hearings, investigations and complaints pending upon the organization of the commission provided for in section 1 of this act which shall have been begun by or before the commission organized under Act 312 of the Public Acts of 1907, may be continued and orders issued therein in all respects the same as if the complaints presented, investigations made and hearings held by the commission operating under Act 312 of 1907, had been presented to, made by and held by the commission created under section 1 of this act. All tariffs and schedules now on file with the Michigan railroad commission created by said Act 312 shall be of the same

effect as if filed with the commission created by this act.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8157;—CL 1929, 11065;—CL 1948, 462.49.

Compiler's note: For provisions of sections 6232 and 6255, referred to in this section, see MCL 464.7 and 464.30, respectively. Act 312 of 1907, referred to in this section, was repealed by Act 300 of 1909.

The powers and duties of the railroad commission, referred to in this section, were transferred to the public utilities commission by MCL 460.53. The public utilities commission was subsequently abolished and its powers and duties transferred to the public service commission by MCL 460.4.

Administrative rules: R 460.1451 et seq. of the Michigan Administrative Code.

462.50 Legislation; hearing on changes; recommendations.

Sec. 50. The commission shall conduct a hearing and take testimony as to the advisability of any proposed change of law relative to any matter within its jurisdiction if requested to do so by the legislature, by the senate or house committee on railroads, or by the governor, and shall report its conclusions to the officer or body at whose request the hearing was held. The commission may also recommend the enactment of such legislation, with respect to any matter within its jurisdiction, as it deems wise or necessary in the public interest, and may draft or cause to be drafted such bills or acts as it may deem necessary or proper to enact into law the legislation recommended by it.

History: 1909, Act 300, Eff. Sept. 1, 1909;—CL 1915, 8158;—CL 1929, 11066;—CL 1948, 462.50.

INTERSTATE AGREEMENT ON HIGH SPEED INTERCITY RAIL PASSENGER NETWORK

Act 191 of 1979

AN ACT entering into the interstate high speed intercity rail passenger network compact; and for related purposes.

History: 1979, Act 191, Imd. Eff. Dec. 21, 1979.

The People of the State of Michigan enact:

462.71 Interstate agreement on high speed intercity rail passenger network.

Sec. 1. The interstate agreement on a high speed intercity rail passenger network is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

Because the beneficial service of and profitability of a high speed intercity rail passenger system would be enhanced by establishing such a system which would operate across state lines, it is the policy of the states party to this compact to cooperate and share jointly the administrative and financial responsibilities of preparing a feasibility study concerning the operation of such a system connecting major cities in Ohio, Indiana, Michigan, Pennsylvania, Illinois, West Virginia, and Kentucky.

ARTICLE II. COOPERATION.

The states of Ohio, Indiana, Michigan, Pennsylvania, Illinois, West Virginia, and Kentucky, hereinafter referred to as participating states, agree to, upon adoption of this compact by the respective states, jointly conduct and participate in a high speed intercity rail passenger feasibility study by providing such information and data as is available and may be requested by a participating state or any consulting firms representing a participating state or the compact. It is mutually understood by the participating states that such information shall not include matters not of public record or of a nature considered to be privileged and confidential unless the state providing such information agrees to waive the confidentiality.

The participating states further agree to:

(a) Make available to each other and to any consulting firm representing the member states or the compact such assistance as may be legal, proper and available, including but not limited to personnel, equipment, office space, machinery, computers, engineering and technical advice and services; and

(b) Provide such financial assistance for the implementation of the feasibility study as may be legal, proper and available.

ARTICLE III. INTERSTATE RAIL PASSENGER ADVIORY COUNCIL

There is hereby created an interstate rail passenger advisory council, the membership of which shall consist of two representatives appointed by the governor. The members shall select designees who shall serve in the absence of the members. The advisory council shall meet within thirty days after ratification of this agreement by at least two participating states and establish rules for the conduct of the advisory council's business.

The advisory council shall coordinate all aspects of the high speed intercity rail passenger feasibility study relative to interstate connections and shall do all other things necessary and proper for the completion of the feasibility study.

ARTICLE IV. EFFECTIVE DATE

This compact shall become effective upon the adoption of the compact into law by two or more of the participating states. Thereafter, it shall enter into force and effect as to any other participating state upon the enactment thereof by such state.

This compact shall continue in force with respect to a participating state and remain binding upon such state until six months after such state has given notice to each other participating state of the repeal thereof. Such withdrawal shall not be construed to relieve any participating state from any obligation incurred prior to the end of the state's participation in the compact as provided herein.

ARTICLE V. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1979, Act 191, Imd. Eff. Dec. 21, 1979.

TRI-STATE HIGH SPEED RAIL LINE COMPACT

Act 230 of 1988

AN ACT to provide for entering into the tri-state high speed rail line compact.

History: 1988, Act 230, Imd. Eff. July 8, 1988.

The People of the State of Michigan enact:

462.81 Tri-state high speed rail line compact.

Sec. 1. The tri-state high speed rail line compact is enacted into law and entered into with all jurisdictions legally joining as parties, in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

There is created the tri-state high speed rail line compact. The party states acknowledge that it is within the public interest to develop a high speed rail line to provide faster and more frequent rail service in the Detroit-Chicago corridor. The party states also recognize that the development of a high speed rail line requires the awarding of a contract to the private sector for the development of the line in the Detroit-Chicago corridor to provide more economic and efficient transportation in the states of Michigan, Illinois, and Indiana.

It is the policy of the party states to enter into a tri-state high speed rail line compact for the purpose of:

- a. Providing the instrument and framework for a cooperative effort.
- b. Protecting the health and safety of the citizens in development and management of the tri-state high speed rail line.
- c. Accepting and reviewing proposals from the private sector.
- d. Reviewing proposals to determine compliance with rules, regulations, and laws on the federal, state, and local levels.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Commission" or "tri-state high speed rail commission" means the high speed rail advisory commission created pursuant to this compact which shall have as its members representatives from the states of Michigan, Indiana, and Illinois. The commission is composed of members from the states participating in the development of the high speed rail line from Detroit to Chicago.

b. "Corridor" or "Detroit-Chicago corridor" means the area between Detroit and Chicago within which a high speed rail line is to be located. The corridor shall run between the general geographic areas established by the proposal submitted to the commission.

c. "Cost" means any cost of construction or acquisition of a high speed rail line, including finance charges, interest, provision for working capital, reserves for principal and interest, contributions in aid of construction, expenses necessary to determine the feasibility of a proposed high speed rail line, and all other costs necessary for placing the high speed rail line in operation.

d. "Developer" or "contractor" means a person who presents a proposal to the commission for the high speed rail line. The developer shall be responsible for the construction of the high speed rail line right-of-way and enter into joint development agreements with local political subdivisions for acquiring use or ownership of property as transit stations, transit station appurtenant buildings, and ancillary facilities.

e. "Development" or "joint development" means the planning, management, financing, or construction of projects adjacent or physically, functionally, or otherwise related to a high speed rail line to establish improved areas in order to effect the policy and purposes of this compact, pursuant to agreements between any person or other entity, public or private.

f. "Facility" means a structure or improvement on or appurtenant to the land which is being developed for the high speed rail line.

g. "High speed rail line", "high speed rail line system", or "tri-state high speed rail line" means any mass commuting high speed fixed guideway transportation system capable of operating at speeds in excess of 100 miles per hour. A high speed rail line includes a corridor and structures essential to the operation of the line, including land, structures, improvements, rolling stock, rights-of-way, easements, rail lines, rail beds, guideway structures, stations, platforms, switches, yards, terminals, parking lots, power relays, switching houses, transit stations, transit station appurtenant buildings, ancillary facilities, and any other facilities or equipment used or useful for the purposes of high speed rail transportation construction, operation, or maintenance, or the financing of high speed rail transportation. Each of the facilities of a high speed rail line shall fall within 1 of the following categories: rail line, transit station, transit station appurtenant building, or ancillary facility.

h. "Local political subdivision" means a municipality in which any part of the high speed rail line is

proposed to be located.

i. "Municipality" means a city, village, township, or county.

j. "Party state" means a state which enacts the compact into law and which subsequently becomes part of the agreement with the other states for construction of the high speed rail line.

k. "Person" means an individual, corporation, partnership, or association.

l. "Proposal" means the documents submitted by a contractor to the commission for construction of a proposed high speed rail line. The proposal shall provide all needed specifications information for construction of the high speed rail line and any related facilities, as well as financial and operational disclosures. The proposal shall clearly state the terms and conditions of the agreement detailing commencement of performance, phases of construction, financial arrangements, amendment procedures, termination of contract, subcontracting, assignments, breach of contract actions, penalties, and any other terms that the commission considers appropriate and necessary.

m. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

ARTICLE III. THE COMMISSION

a. There is hereby created the tri-state high speed rail line advisory commission which shall include representatives from the party states of Michigan, Indiana, and Illinois. The commission consists of 15 voting members with powers to bind their respective states by their words or actions. The state of Michigan has 10 members plus 1 advisory nonvoting member from the house of representatives appointed by the speaker of the house and 1 advisory nonvoting member from the senate appointed by the senate majority leader, Illinois 4 members, and Indiana 1 member. The governor of each party state shall notify the persons appointed to the commission and any alternates in writing. An alternate may act on behalf of the member only in the member's absence. The method of selection of the members appointed by the governors of the respective states, and the expenses of each commission member, shall be the responsibility of the member's respective state. The commission may include as advisory members or a state may include as part of its representation on the commission members of the interstate rail passenger advisory council.

b. Each commission member is entitled to 1 vote. An action of the commission is not binding unless approved by a majority of the total membership with members from at least 2 of the states constituting the majority.

c. The commission shall elect among its members a chairperson. The commission shall adopt and publish, in convenient form, bylaws, rules, and policies which are not inconsistent with this compact.

d. The commission shall meet at least once quarterly and shall also meet upon the call of the chairperson or a commission member.

e. All meetings of the commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The commission may establish advisory committees for the purpose of advising the commission on any matters pertaining to high speed rail transportation systems.

g. The office of the commission shall be in a party state. The commission may appoint or contract for and compensate a limited staff necessary to carry out its duties and functions. The staff shall serve at the commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the commission.

h. The commission may accept any donations, grants of money, equipment, supplies, materials, and services from any state, the United States, any political subdivision, an interstate agency, or from any person. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the commission together with the identity of the donor, grantor or lender, shall be retained by the commission.

ARTICLE IV. PROPOSAL EVALUATIONS

a. The tri-state high speed rail commission shall be responsible for the evaluation of proposals from potential contractors as determined by its bylaws for development and construction of the high speed rail line. The commission shall determine the breakdown of both public and private costs involved in the development and construction of the high speed rail line. Each state's representatives shall use appropriate departments and bureaus to assist in the evaluation of the proposals.

b. The commission shall determine if the applicant's qualifications are sufficient to develop a high speed rail line between Detroit and Chicago. The commission shall determine whether the contractor can meet certain minimal financial requirements, can meet certain construction capabilities, can meet specification

requirements, and has suitable management operations to develop a high speed rail line system and make recommendations to the governors of each state based on its determinations.

c. The commission shall submit recommendations for the technology for the main corridor to the governors of the respective states.

d. The commission may recommend proposed forms of financial aid or incentives that may be provided by each state and the federal government.

e. Proposals submitted by contractors to the commission shall include a clear and precise delineation of the proposed route, station locations, fares, schedules of operation, technology to be used, and revenue sources including land development.

f. The commission shall insure that any staff assisting the commission in the evaluation of the proposals abides by all existing state laws and budget procedures of the respective states.

g. The commission shall make recommendations for overall policies and procedures relating to the high speed rail line for the states of Indiana, Michigan, and Illinois.

h. The commission may accept proposals from potential contractors for 6 months after the first formal meeting of the commission. The commission shall then evaluate and make recommendations to the governors of the respective states on the proposals not later than 6 months after the last proposal has been accepted. The governors of the respective states shall approve or disapprove the proposal. If the governors approve the proposal, the governors shall develop all appropriate executive and legislative proposals necessary to implement development of the high speed rail line. If the governors disapprove the proposal, the governors, by unanimous consent, may direct the commission to accept new or revised proposals within a timetable as set by the governors. The commission shall be disbanded 2 years after its first formal meeting.

ARTICLE V. RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to insure the potential development of the high speed rail line and its facilities in a manner consistent with this compact.

b. Each party state shall provide to the commission any data and information the commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the commission.

c. Each party state shall encourage and promote developmental projects to support the potential development of the high speed rail line.

d. Each party state shall adopt reciprocal legislation and agreements in order to carry out the purposes of this compact.

ARTICLE VI. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any federal statute or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred by congress.

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact.

3. Affects any administrative or judicial proceeding pending on the effective date of this compact.

4. Alters the relations between and the respective internal responsibility of the government of a party state and its political subdivisions.

b. For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

c. No law, rule, or regulation of a party state or of any of its political subdivisions or instrumentalities may be applied in a manner which discriminates against a contractor.

ARTICLE VII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, TERMINATION

a. Eligible parties to this compact are the states of Michigan, Illinois, and Indiana.

b. An eligible state becomes a party state when the state enacts the compact into law and pays a membership fee if required by the bylaws.

c. The commission is formed upon the appointment of commission members. The governor of the first state to enact this compact shall convene the initial meeting of the commission. The commission shall, if required, cause legislation to be introduced in the congress which grants the consent of the congress to this compact, and shall take action necessary to organize the commission and implement the provisions of this compact.

d. Any party state may withdraw from this compact either by repealing the authorizing legislation or by withdrawing from the compact within 2 years after the date the party state entered into the compact. A state which withdraws shall give notice in writing of the withdrawal to the commission and to the governor of each party state.

e. Any party state which fails to comply with the terms of this compact or fails to fulfill its obligations may

have its privileges suspended or its membership in the compact revoked by the commission pursuant to its bylaws. Revocation takes effect 1 year after the date the affected party state received written notice from the commission of its action. All legal rights of the affected party state established under this compact cease upon the effective date of revocation but any legal obligations of that party state arising before revocation continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact immediately following the vote of the commission to the governor of the affected party state, all other governors of the party states, and the congress of the United States, if necessary.

f. This compact becomes effective upon enactment by the 3 party states and, if required, consent to this compact by congress. If consent is required, the congress shall have an opportunity to withdraw its consent every 5 years. Failure of the congress to affirmatively withdraw its consent has the effect of renewing consent for an additional 5-year period.

g. The withdrawal of a party state from this compact under section d of this article or the suspension or revocation of a state's membership in this compact under section e of this article does not affect the applicability of this compact to the remaining party states.

ARTICLE VIII. PENALTIES

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

ARTICLE IX. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable. If any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected. If any provision of this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the state affected as to all severable matters.

History: 1988, Act 230, Imd. Eff. July 8, 1988.

RAILROAD CODE OF 1993
Act 354 of 1993

AN ACT to revise, consolidate, and codify the laws relating to railroads and their employees; to prescribe powers and duties of certain state and local agencies and officials; to prescribe fees; to create certain funds; to provide for the disposition of certain money; to provide remedies and penalties; and to repeal certain acts and parts of acts.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

The People of the State of Michigan enact:

462.101 Short title.

Sec. 101. This act shall be known and may be cited as the "railroad code of 1993".

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.103 Meanings of words and phrases.

Sec. 103. The words and phrases in sections 105 to 109 shall have the meanings respectively ascribed to them in those sections.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.105 Definitions; A to G.

Sec. 105. (1) "Active traffic control devices" means those traffic control devices located at or in advance of grade crossings, activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, manually operated devices, and a crossing watchperson, all of which display to operators of approaching vehicles positive warning of the approach or presence of a train.

(2) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code, 1998 PA 58, MCL 436.1105.

(3) "Bridge" means a structure including supports erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes where the clear distance between openings is less than half of the smaller contiguous opening.

(4) "Bridge carrying railroad traffic" means any bridge carrying a railroad track on which locomotives, railroad cars, or railroad maintenance machinery may be operated or moved. Bridge carrying railroad traffic includes unloading pits, turntables, and ferry aprons which meet the physical criteria for the definition of a bridge.

(5) "Department" means the Michigan department of transportation.

(6) "Diagnostic study team" means a group of knowledgeable individuals from the department, road authorities, railroads, and others who meet and, using crossing safety management principles, evaluate conditions at proposed or existing crossings and assist the department in making determinations concerning safety needs.

(7) "Flagger" means a person, other than a railroad employee, clearly visible to approaching traffic at all times, who controls highway traffic through work areas using a hand-held paddle sign during daylight hours and approved lights and reflectorized paddle signs at night.

(8) "Grade crossing" means the point at which any railroad intersects with any public street or highway, or a nonmotorized trail.

(9) "Grade separation" means an intersection of a railroad and a highway at different levels with either the railroad above or below the highway.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.

462.107 Definitions; H to P.

Sec. 107. (1) "High speed rail corridor" means any railroad line having been formally designated by the United States department of transportation as a high speed rail corridor.

(2) "Nonmotorized trail" means a public or privately owned or operated traveled way, the use of which is restricted to pedestrians or nonmotorized conveyances including, but not limited to, bicycles and horses.

(3) "Notice" means the written expression of the department's findings that certain conditions observed at a crossing are not in compliance with state law, and that these conditions must be corrected.

(4) "Order" means an administrative document, signed by the department director or his or her designee,

that details certain findings of fact and, based on those findings, specifies certain work to be performed by railroads or other parties in compliance with law and specifies a time period within which the work is to be completed. An order is based upon the department's statutory authority to require the performance of that work.

(5) "Passive traffic control devices" means those types of traffic control devices, including signs, markings, and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

(6) "Private crossing" means any at-grade intersection of a railroad with any traveled way not under the jurisdiction of a road authority.

(7) "Public street or highway" means any improved thoroughfare maintained by a road authority that has been dedicated and constructed in accordance with law.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.109 Definitions; R to W.

Sec. 109. (1) "Railroad" means a person, partnership, association, or corporation, their respective lessees, trustees, or receivers, appointed by a court, or other legal entity operating in this state either as a common carrier for hire or for private use as a carrier of persons or property upon cars operated upon stationary rails and includes any person, partnership, association, corporation, trustee, or receiver appointed by a court or any other legal entity owning railroad tracks.

(2) "Road authority" means a governmental agency having jurisdiction over public streets and highways. Road authority includes the department, any other state agency, and county, city, and village governmental agencies responsible for the construction, repair, and maintenance of streets and highways.

(3) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(4) "Street railway" means an organization formed under the laws of this state for the purpose of operating a street railway system other than a railroad train for transporting persons or property. A street railway system is operated upon rails principally within a municipality utilizing streetcars, trolleys, and trams for the transportation of persons or property. Such organizations may accumulate, store, manufacture, conduct, use, sell, furnish, and supply electricity and electric power. Street railway does not include a street railway organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

(5) "Street railway system" means the facilities, equipment, and personnel required to provide and maintain a public transportation service. Street railway system does not include a street railway system under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

(6) "Traffic control device" means a sign, signal, marking, or other device placed on or adjacent to a street or highway by the road authority having jurisdiction over that street or highway to regulate, warn, or guide traffic.

(7) "Watchperson" means a railroad employee who is stationed at an at-grade crossing to signal to operators of vehicles approaching the crossing of the impending movement of a train or other railroad on-track equipment over the crossing.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003;—Am. 2008, Act 483, Imd. Eff. Jan. 12, 2009.

462.131 Regulatory and police power of department; rules.

Sec. 131. (1) To the extent provided in this act, the department shall have and exercise regulatory and police power over railroad companies in this state insofar as such power has not been preempted by federal law or regulation.

(2) The department may promulgate and enforce rules relating to sanitation and adequate shelter as affecting the welfare and health of railroad employees, to the extent such rules are not preempted by federal law or regulation. Rules promulgated under this act shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.133 Records to be kept by department.

Sec. 133. The department shall keep a record of all its findings, decisions, determinations, and investigations under this act.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.137 Reports to be furnished to department.

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Sec. 137. Railroads shall furnish to the department copies of Michigan train-vehicle accident reports filed with the federal railroad administration.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.153 Orders; oaths; official acts; subpoenas; witnesses; production of documents; contempt; witness fees and mileage; depositions; record of proceedings; copy of transcript.

Sec. 153. (1) The department, for the purposes mentioned in this act, may issue orders, may administer oaths, certify to official acts, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, and other related documents. If a person refuses or willfully fails to comply with an order of the department or a subpoena, or upon the refusal of any witness to testify regarding any matter upon which he or she may be lawfully interrogated, or to produce any books or papers in his or her custody or control which he or she was required by the department to produce, the court, upon application of the department, may compel obedience by proceedings for contempt, in the same manner as a case of disobedience of the requirements of a subpoena issued from that court.

(2) A witness subpoenaed by the department shall receive for his or her attendance the fees and mileage now provided for witnesses in civil cases in circuit court, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by the witness and approved by the department. A witness subpoenaed at the instance of a party other than the department shall not be entitled to compensation from the state for attendance and travel unless the department certifies that his or her testimony was material and necessary to the matter investigated.

(3) The department or any party may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the circuit courts.

(4) A full and complete record shall be kept of all proceedings held before an administrative law judge on any investigation under this act and all testimony shall be taken down by a certified court reporter appointed by the department. When a complaint is served upon the department to appeal a department order, the department, before the action is reached for trial, shall cause the certified transcript of proceedings and testimony to be filed with the clerk of the circuit court of the county where the action is pending. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, taken by the certified court reporter, certified by him or her to be a true and correct transcript of all the testimony of a particular witness, or of any specific part thereof, carefully compared by him or her with his or her original notes, and to be a correct statement of the evidence and proceedings had on the investigation shall be received in evidence with the same effect as if the certified court reporter were present and testified to the facts certified. A copy of the transcript shall be furnished upon demand, free of cost, to any party to an investigation, and to all other persons on payment of a reasonable amount for that purpose.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.155 Rescission, alteration, or amendment of order.

Sec. 155. The department, at any time upon application of a person and upon at least 10 days' notice to the parties interested, and after opportunity to be heard, may rescind, alter, or amend any order issued by the department. Certified copies shall be served and take effect as provided in this act for original orders.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.157 Orders, regulations, practices, and services; effect.

Sec. 157. All orders, lawfully promulgated regulations, practices, and services prescribed by the department shall be in force and shall be prima facie lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the appeal provisions of this act, or until changed or modified by the department.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.159 Rehearing.

Sec. 159. The department may grant a rehearing and alter, amend, or modify its previous findings and orders.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.161 Review of order; time for bringing action.

Sec. 161. The time allowed by law for bringing an action to review any order of the department, shall continue after the order denying a rehearing or made upon a rehearing, for the same number of days now

provided by law for review of the order upon which a rehearing was denied or had.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.171 Action to vacate or set aside order; issuance of injunction to stay or suspend order; different or additional evidence; appeal; burden of proof.

Sec. 171. (1) Any railroad or other party in interest, being dissatisfied with any order of the department may within 30 days after the issuance of the order commence an action in the circuit court for the county of Ingham, against the department as defendant to vacate and set aside the order. The department shall be served with a summons and a copy of the complaint. The department shall file its answer, and on leave of court any interested party may file an answer to the complaint. Upon the filing of the answer of the department the action shall be at issue and stand ready for hearing upon 10 days' notice by either party. An action brought under this section shall have precedence over any civil cause of a different nature pending in that court and shall proceed, be tried, and determined as other civil suits. Any party to the action may introduce original evidence in addition to the transcript of evidence offered to the department. The circuit court may affirm, vacate, or set aside the order of the department in whole or in part, and may make such other order or decree as the court determines to be in accordance with the facts and the law.

(2) An injunction shall not issue to suspend or stay an order of the department, except upon application to the circuit court, with notice and opportunity to be heard on the matter given to the department.

(3) If, upon the trial of the action, evidence is introduced that is found by the court to be different from, or in addition to, that offered upon the hearing before the department, the court, before proceeding to render judgment, unless the parties in the action stipulate in writing to the contrary, shall transmit a copy of that evidence to the department, and shall stay further proceedings in the action for 15 days after the date of that transmission. Upon receipt and consideration of the evidence the department may alter, modify, amend, or rescind its order complained of in the action, and shall report its action thereon to the court within 10 days after receipt of the evidence. If the department rescinds the order complained of, the action shall be dismissed. If the department alters, modifies, or amends the order, the altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the department in the first instance. If the original order is not rescinded or changed by the department, judgment shall be rendered upon such original order.

(4) Within 60 days after service of a copy of the final judgment of the court, either party to the action may appeal to the court of appeals, which appeal shall be governed by the statutes governing civil appeals. When the appeal is taken the case shall, on the return of the papers to the court of appeals, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or if no term is then pending, shall take precedence of cases of a different nature except criminal cases at the next term of the court of appeals.

(5) In all actions under this section the burden of proof shall be upon the complainant to show by a preponderance of the evidence that the order of the department complained of is unreasonable or discriminatory.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.173 Service of process; practice and rules of evidence; execution of process; certified copies of orders.

Sec. 173. (1) In all actions and proceedings in court arising under this act process shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise provided in this act. A sheriff or other officer empowered to execute civil process may execute any process issued under this act and shall receive compensation for that purpose as may be prescribed by law for similar services.

(2) Upon application of any person the department shall furnish certified copies, signed and under seal of the department, of any order made by it, and, if otherwise admissible, may be admitted as evidence in any court or proceedings without further authentication.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.175 Authority of department to obtain information.

Sec. 175. The department may obtain from any party all necessary information to enable it to perform the duties and carry out the requirements set forth in this act.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.201 Corporation; formation; purpose; articles of association; filing; powers of subscribers; increasing or decreasing number of directors; resolution.

Sec. 201. (1) One or more persons may form a corporation for the purpose of constructing, operating, and maintaining a railroad, railroad bridge, or railroad tunnel by subscribing articles of association, in which shall be set forth the name of the corporation, the number of years the corporation is to be continued or if it is to be perpetual, the amount, classes, and value of capital stock of the corporation, which shall not be less than 1/2 the estimated cost of the railroad, bridge, or tunnel; the number of shares of which the stock shall consist, with such designations, relative rights, preferences, conditions, limitations, restrictions, and voting rights as shall be specified, and the consideration for which the corporation may issue and sell the shares, or authorization to the board of directors to fix the consideration from time to time, which consideration shall not be less than the value placed on the share in the articles of association, and when the consideration for which a share was authorized to be issued is received by the company the share is considered to be fully paid and nonassessable; the number of directors, which shall not be less than 3, and their names; the places from and to which and the name of each county into or through which it is or is intended to be constructed, and its length as near as may be. Each subscriber to the articles of association shall set opposite his or her name his or her place of residence, and the number of shares of each class of stock subscribed to by him or her.

(2) Whenever 1/2 the estimated cost of the railroad, bridge, or tunnel is subscribed upon the articles of association, and 5% of the amount subscribed is paid in to the directors named in the articles, in good faith, in cash, and an affidavit is made and attached thereto by any 2 of the directors, that this amount has been subscribed, the articles of association shall be filed in the office of the department of commerce, and thereupon the persons who have subscribed the articles, and all other persons who thereafter subscribe to or become the holders of the capital stock of the corporation, in the manner to be provided in its by-laws, shall be a body corporate, by the name specified in the articles, and shall be capable of suing and being sued, and may have a corporate seal and make and alter the same at pleasure, and may use the seal by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise, and be capable in law of purchasing, holding, and conveying any real and personal property necessary for the construction, maintenance, and operation of the railroad, railroad bridge, or railroad tunnel; and for the erection of all necessary buildings, yards, and appurtenances for the use of the same.

(3) Subject to the limitations of this act, a railroad company existing in whole or in part under the laws of this state, at any general or special meeting of the stockholders called and held pursuant to the provisions of this act, may increase or decrease the number of its directors provided for in its articles of association, by a resolution approved by 2/3 of the entire stock of the company having voting power. A copy of a resolution so passed shall be certified by the secretary of the company and shall be filed and recorded in the office of the department of commerce in like manner as provided by law for the filing and recording of articles of incorporation of railroad companies.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.203 Stock certificate; signature; seal.

Sec. 203. The stock of every corporation, incorporated under this act, shall be represented by certificates signed by the president or vice-president, and the secretary or an assistant secretary, or the treasurer or an assistant treasurer. The certificate shall be sealed with the seal of the corporation. When a certificate is signed by a transfer agent or a transfer clerk and by a registrar, the signature of the corporate officers and the seal thereon may be facsimiles, written, engraved, stamped, lithographed, or printed. If an officer who has signed or whose facsimile signature has been placed upon a certificate has ceased to be an officer before the certificate is issued, it may be issued by the company with the same effect as if the officer had not ceased to be an officer at the date of its issue.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.205 Applicability of MCL 450.1101 to 450.2098 to railroad corporations.

Sec. 205. The business corporation act, Act No. 284 of the Public Acts of 1972, being sections 450.1101 to 450.2098 of the Michigan Compiled Laws, shall apply to railroad corporations incorporated under this act or a former act repealed by this act, unless otherwise provided in or inconsistent with this act or the former act under which the corporation was formed.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.207 Records of corporations formed under former acts; duration, rights, and limitations of existing corporations.

Sec. 207. (1) Within 30 days after the effective date of this act, the department, the secretary of state, or any other agency having records of corporations formed under former acts repealed by this act shall certify and send to the department of commerce for filing the articles of association, as amended or restated, and any

consolidations or mergers of each existing railroad, bridge, and tunnel company and union depot company which is on file in their respective offices on the effective date of this act. On and after the effective date of this act, all amendments to and restatements of the articles, and any merger or dissolution of a railroad, bridge, or tunnel company and union depot company shall be filed with the department of commerce and shall comply with the requirements of this act.

(2) This act does not affect the duration of a corporation which exists on the effective date of this act. An existing corporation and its shareholders, directors, and officers have the same rights and are subject to the same limitations, restrictions, liabilities, and penalties as a corporation formed under this act, and its shareholders, directors, and officers.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.211 Board of directors; corporate powers; stockholders entitled to vote for directors; election of president; powers of board of directors generally; voting by stockholders; quorum; vacancy.

Sec. 211. (1) All of the corporate powers of any corporation organized under this act, or under any former act for the incorporation of railroads, are vested in the board of directors, except as otherwise provided in this act. A stockholder shall not be entitled to vote for directors, or for any other purpose, who shall be in arrears in the payment of any assessment made on a subscription of stock. The president of the corporation shall be elected by the directors from their own number.

(2) The board of directors, upon such terms and restrictions as they shall impose, may provide for the disposition of the unissued capital stock of the corporation, and may provide for and carry out a plan for the issue of any or all of its unissued stock to employees of the corporation, or to employees of subsidiary corporations or a trustee on their behalf who may desire to subscribe therefor, for the payment for such stock in installments or at 1 time, and for the establishment of a special fund or funds in which employees purchasing stock pursuant to such plan and continuing in the ownership thereof and in the employment of the corporation during a definite period of time may be privileged to share, may provide for the election or appointment of agents or employees of the corporation and require of them security for the faithful performance of their duties, and for the general management of the business and affairs of the corporation.

(3) At all elections for directors and meetings of stockholders, each stockholder holding stock with voting power shall be entitled to cast, in person or by proxy, 1 vote upon each share of stock held, except as may be otherwise provided by the articles of association or consolidation, and votes representing a majority of the voting power of all of the shares voted shall be requisite to an election, or for the determination of any question voted upon, except as may be otherwise provided by law as to any particular question. If the board of directors has specified a time not more than 40 days before an election or meeting as the time as of which stockholders entitled to vote shall be determined, shareholders of record at that time and no others shall be entitled to vote at that election or meeting.

(4) A majority of the directors shall constitute a quorum for the transaction of business by the board of directors. In case of any vacancy in the board of directors, the vacancy may be filled by appointment by the remaining directors until the next election of directors.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.213 Articles of association; alteration and amendment; signature; certification; filing; effect; recording; powers of railroad company; copies as prima facie evidence; public inspection of records and files.

Sec. 213. (1) A corporation organized under this act, or under any former act for the incorporation of railroads, upon a vote of its stockholders holding shares representing 2/3 of the voting power of the outstanding capital stock entitled to vote on the question, at any annual or special meeting of the stockholders, may alter and amend its articles of association or consolidation to accomplish 1 or more of the following:

(a) Change the general route of said railway.

(b) Extend the length of the railroad line from either or both of its terminals or to extend any branch or branches from any point on the railroad line.

(c) Change the gauge of its road.

(d) Make any of the following changes in respect to its capital stock, issued or unissued:

(i) Increase or decrease the capital stock.

(ii) Make other lawful changes in the amount, classes, and value of shares issued or to be issued.

(2) Upon approval of an amendment as provided in subsection (1), the amended articles shall be signed and certified by the president and secretary of the railroad company under its corporate seal and filed with the department of commerce. The amended articles shall have the same force and effect as though the

amendments had been included in the original articles of association.

(3) Articles of association filed pursuant to this act, with all subsequent alterations and amendments, shall be recorded by the department of commerce. After a railroad company has filed articles of association provided in this section, it may construct, operate, and maintain its railroad, exercise its powers and privileges, and assess, levy, and collect such assessments upon its subscribed stock as it determines. A copy of any articles of association, with a copy of the affidavit attached, filed in pursuance of this act, and certified by the department of commerce under the seal of the state shall in all courts and places be prima facie evidence of the document certified.

(4) The records and files of the department of commerce relating to corporations formed under this act and records relating to corporations formed under former acts repealed by this act and transferred to the department of commerce pursuant to this act shall be open to reasonable inspection by the public. The records or files may be maintained either in their original form or in a photostatic, micrographic, photographic, optical disk media, or other reproduced form.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.215 Board of directors; election; classification; terms; meetings; notice; removal of directors or officers; rules, regulations, and directions; stockholder vote by proxy; adjournment of meeting.

Sec. 215. (1) At any meeting of stockholders for the election of directors, the stockholders may classify the directors into 3 classes, as near as may be, 1 of which shall hold their office 1 year, 1 for 2 years, and 1 for 3 years, and until their successors are respectively elected. At all subsequent elections directors shall be elected for 3 years. If a classification is not made, the persons elected at any such meeting shall hold their office for 1 year, and until their successors shall be elected.

(2) The directors shall prescribe by by-law the time and place for calling and holding annual meetings of the stockholders within some county in this state for the election of directors and the transaction of such other business as may be desired. If the directors fail to call such meeting annually, the holders and owners of 1/4 of the capital stock of the company having voting powers may call the meeting, at which time and place there shall be a general meeting of the stockholders having voting powers in person or by proxy. The directors may prescribe by by-law a place outside the state for the holding of annual meetings which by-law shall become effective when consented to in writing, or by resolution duly adopted at any meeting, by stockholders holding shares representing 100% of the voting power of the capital stock entitled to vote at any annual meeting.

(3) A special meeting of the stockholders may be called at any time by the directors, or by the stockholders owning not less than 1/4 of the stock in voting power, by giving notice of the meeting as provided in this section.

(4) At least 30 days' written notice of the time and place and, in the case of special meetings, the purpose or purposes of every such meeting shall be given to all persons entitled to vote at the meeting at a time and in a manner as shall be provided in the by-laws. However, notice of regular or adjourned meetings of the board or of adjourned meetings of shareholders need not be given unless specified in the by-laws. Notice of the time, place, and purpose of any such meeting may be waived by telegram, radiogram, cablegram, or other writing by those not present and entitled to vote either before or after the holding of the meeting. Evidence of such notice may be perpetuated by the affidavit of any person having knowledge thereof.

(5) At any meeting of the stockholders held pursuant to this act, the stockholders representing a majority in voting power of the stock may remove from office any of the directors or any other officer of the company, and elect others in their stead. The president and directors, and officers and agents of the company, in the exercise of their respective powers and duties, shall at all times be governed by and be subject to such rules, regulations, and directions as the stockholders holding a majority in voting power of the stock may adopt at a meeting. A stockholder owning or holding stock with voting powers may appear and vote by proxy as well as in person. If at any meeting of the stockholders a majority in voting power of the stock which by this act is entitled to vote is not represented in person or by proxy, the meeting may be adjourned by such as are present from day to day, not exceeding 3 days, without doing any business, when, if a majority does not appear and attend, the meeting shall be dissolved.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.217 Annual meeting; statement of affairs.

Sec. 217. At each annual meeting of stockholders the board of directors shall present a clear and full statement of the affairs of the railroad company for the preceding year.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.219 Subscribers to capital stock; payment in installments; forfeiture of stock for neglect or refusal to pay.

Sec. 219. The board of directors may, by resolution, require the subscribers to the capital stock to pay the amounts by them respectively subscribed in a manner and in installments as the board considers proper. If a subscriber neglects or refuses to pay an installment, the company may sue for and collect the installment. If the neglect or refusal continues for 60 days after notice in writing to pay has been served on the subscriber personally or by mail, or if execution issued on a judgment recovered for an installment is returned unsatisfied, in whole or in part, the board of directors may declare such stock, and all previous payments or collections made thereon, forfeited. Forfeited stock shall be subject to sale by the company in the manner provided in the by-laws or resolutions of the directors.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.221 Stock as personal estate; transfer.

Sec. 221. The stock of a railroad company is considered personal estate and is transferable in the manner and under such restrictions and conditions as may be provided for in the by-laws, but any certificate of stock issued before payment in full, shall show on its face, or by indorsement, the amount paid thereon. A share of stock shall not be transferred on the books of the company until paid in full, without the consent of the board of directors.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.223 Railroad company; liabilities and restrictions.

Sec. 223. A railroad company shall possess the general powers and be subject to the following liabilities and restrictions:

(a) To cause such examinations and surveys of the proposed railroad, or railroad bridge or tunnel to be made as may be necessary to the selection of the most advantageous route for the road, and for such purposes by its officers, agents, and servants to enter upon lands or waters of any person or company, but subject to liability for any damages caused. A corporation by its officers, agents, or servants shall not enter upon the land or water of any person or company to make an examination or survey until the corporation has executed and delivered to the judge of probate of the county where the land or water lies a bond to be approved by the judge, with 2 sufficient sureties running to the judge of probate of the county in his or her official name, for the use of any person interested, in the penal sum of \$5,000.00, conditioned upon the payment by the corporation of all damages sustained by any person or company due to an examination or survey. Upon delivery of the bond and approval by the judge of probate, he or she shall file it in his or her office, and when so filed it shall be considered a public record and may be proved in court by a certified copy thereof. A person or company having a claim for damages arising under this section may bring an action upon the bond in any court of the county having jurisdiction over the amount claimed in damages.

(b) To receive, hold, and take such voluntary grants and donations of real estate and other property as shall be made to it to aid in the construction, maintenance, and accommodation of a road or railroad bridge or tunnel, but the real estate thus received by voluntary grant shall be held and used for the purpose of the grant only.

(c) To purchase, and by voluntary grants and donations, receive, take and by its officers, engineers, surveyors, and agents, enter upon and take possession of, hold and use all such lands and real estate, franchises and other property as may be necessary for the construction, maintenance, and accommodation of its railroad or railroad bridge or railroad tunnels, stations, depots, and other accommodations. However, property shall not be taken until the compensation to be made is agreed upon by the parties, unless the consent of the owner is given.

(d) To lay out its road not exceeding 100 feet in width, and to lay out its bridge or tunnel and its bridge or tunnel approaches not exceeding 200 feet in width, and to construct the same, and for the purpose of cuttings and embankments and for procuring stone, gravel, or other material or for the purpose of draining its roadbed or tunnel, to take in the manner provided such further lands adjacent to and in the vicinity of its road or tunnel, as may be necessary for the proper construction, operation, and security of its road or tunnel.

(e) To construct its road or bridge over, upon, or across, or its railroad tunnel under any stream of water, watercourse, private road, street, lane, alley, or highway, and across or under any plank road, railroad, or canal which the route of its road or railroad bridge or railroad tunnel shall lie along or intersect. However, the corporation shall restore the stream, watercourse, private road, street, alley, lane, highway, plank road, railroad, or canal to its former state as near as may be, but shall not materially obstruct the navigation of any stream.

(f) To cross, join, and unite its railroad, bridge, or tunnel with any other railroad at any point on its route,

and upon the grounds of such other railroad now or hereafter constructed with the necessary turnouts, sidings, and switches and other accommodations and conveniences in furtherance of the objects of its connections; and to make all such business arrangements as the companies may agree upon. Every company whose railroad shall be intersected by any other railroad shall unite with the owners of the other railroad in forming such intersections and connections, and grant facilities for them as hereinafter provided.

(g) To take, transport, carry, and convey persons and property on their road or bridge or through their tunnel and to receive tolls and compensation for that purpose.

(h) To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight, and business, and to obtain and hold all the lands necessary for that purpose.

(i) To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid for that purpose.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.225 Ownership and operation of steamboats, barges, or vessels; conditions.

Sec. 225. A railroad company in this state having either or both of its terminals at the shore of 1 of the navigable lakes or streams through which the boundary line between this state and other states or the Dominion of Canada passes, where physical connection between its road and other railroads without the state is impracticable by reason of that intervening navigable body of water, may own and operate on that body of water steamboats, barges, or vessels as the traffic of passengers and freight between it and other railroads shall be necessary. A railroad company may loan money to any person or corporation in aid of the construction of steamboats, barges, or other vessels.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.227 Ownership and operation of steamboats, barges, or vessels; number; restrictions.

Sec. 227. (1) Any street railway, or any railroad company, organized under the laws of this state, may own and operate, in connection with its railway lines, such number of steamboats, barges, or vessels, within or without this state, as its traffic of passengers or freight shall render necessary to make complete its different routes.

(2) A railroad company shall operate such steamboats, barges, or vessels subject to such restrictions as are now imposed on other corporations and private individuals owning and operating steamboats, barges, and vessels.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.229 Automobile buses or motor vehicles and trailers; ownership and operation; purpose; aerial transportation; powers of railroad company.

Sec. 229. (1) Any railroad company operating a railroad in this state may own and operate automobile buses or motor vehicles and trailers for the purpose of transporting persons and property upon the public streets or highways for hire, subject to the provisions of law regulating such transportation upon the public highways; but only after having obtained the appropriate certificate of public convenience and necessity. A railroad company may also own and operate equipment for, and engage in, aerial transportation.

(2) A railroad company may purchase and own capital stock and securities of corporations organized for, or engaged in, the business authorized in this act, may operate the properties or any part or parts of such corporations by way of lease or any other agreement, and may enter into working arrangements and agreements with such corporations.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.231 Railroad company; organizing and holding interest in subsidiary corporation; disposition of capital stock of other corporations; rights, powers, and privileges of ownership.

Sec. 231. A railroad company, where not prohibited by its articles of association or consolidation, may make use of such part of its property and assets as is not required in the performance of adequate service as a common carrier to the public to organize and hold an interest in subsidiary corporations engaged in noncommon carrier activities and business, and may hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of any other corporation or corporations of this or any other state, territory, or country, and while owners of such stock may exercise all rights, powers, and privileges of ownership, including the right to vote thereon.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.233 Cutting dangerous trees.

Sec. 233. A railroad company owning, controlling, or operating any line or lines of railroad in this state shall cut any tree or trees that are dangerous and liable to fall or blow over and obstruct its track.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.235 Land held by foreign company; transfer of title.

Sec. 235. (1) A foreign railway company that has purchased land in this state to be used to facilitate and accommodate its business of receiving and delivering passengers and freight that it may transport from and to this state may hold and own that land and all buildings and other structures that it may place on that land, in like manner and effect as if the company were duly incorporated under the laws of this state. However, the company shall hold and use the land subject to all the limitations, obligations, and duties to the public and to individuals which are or hereafter may be imposed upon railway companies by the laws of this state.

(2) If a foreign railway company that has purchased land for the use specified in subsection (1) has subsequently become merged or vested in any other foreign railway company by virtue of a sale and conveyance made in pursuance of judicial decree or its railroad and other property situated in that foreign state or country has become vested in another foreign company by virtue of a formal written agreement made and executed in pursuance of the law of that foreign state or country, the deed of conveyance and agreement is effective to transfer title to the land in this state. When the transfer has been or is effected by written agreement, a copy certified as a correct and perfect copy by the secretary of the company acquiring the land, under the seal of the company, shall be entitled to record in the country where the land is situated, notwithstanding that the execution of the agreement may not have been in conformity with the general statutory requirement for conveyance of land in this state.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.241 Acquisition of property in manner prescribed by MCL 213.51 to 213.77; exception.

Sec. 241. If a railroad, bridge, or tunnel company, including a non-Michigan railroad company authorized to own and operate a railroad in this state, is unable to agree for the purchase of any real or personal property or franchises required for the purpose of its incorporation, including, but not limited to, yards, terminals, depots, and freight service facilities, it may acquire title to the property in the manner and by the proceedings prescribed in the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws. However, a railroad, bridge, or tunnel company shall not, except for crossing, take the track or right-of-way of any other railroad company.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.243 Purchase of land belonging to state, city, village, county, or township.

Sec. 243. If a railroad company desires to purchase land belonging to the state or a city, village, county, or township, the state through the appropriate department, or the city, village, county, or township officers respectively, having charge of the lands, may grant such lands to the company for compensation which shall be agreed upon between them. If compensation cannot be agreed upon, then such lands shall be appraised as in other cases. All petitions or notices, in cases when the state is the owner, shall be served on the director of the appropriate state department; where a city or village is the owner, on the mayor or other chief executive officer; when a county is the owner, on the prosecuting attorney of the county; and when the township is the owner, on the supervisor of the township.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.245 Construction of bridges or tunnels; acquisition of right-of-way; issuance and sale of bonds; rights of railroad bridge and railroad tunnel companies.

Sec. 245. (1) A railroad bridge or tunnel company organized under this act may construct bridges over or tunnels under the waters of this state to extend the railroad track or tracks which they may lay upon any bridge or through any tunnel which they may construct, so as to connect with any railroad whose business may pass through it, and for that purpose may acquire the right-of-way over or under or across any private property, in the same manner as provided in this act for acquiring the right-of-way for railroads, and, with the authority of the legislative body of any city, may acquire the right to cross and use that portion of any street as may be found necessary.

(2) To raise money for these purposes, a railroad company may issue and sell bonds, and secure their payment by deeds of trust; and for these purposes the railroad bridge companies and railroad tunnel companies shall have the same rights as railroad companies organized under this act.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.247 Negotiation by railroad bridge or tunnel company with railroad company; purpose.

Sec. 247. A railroad bridge or tunnel company may negotiate with any railroad company which may connect with its bridge or tunnel for the purpose of obtaining aid in the construction of its work.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.249 Use of road and bridge or tunnel; compensation charged by railroad bridge or tunnel company; terms.

Sec. 249. (1) A railroad bridge or tunnel company may charge such fair compensation for the use of its road and bridge or tunnel by the railroad companies whose business shall pass along, over or through it, as shall be found by experience sufficient to pay the expense of keeping the works in repair and interest upon the money borrowed for the construction, and dividends not exceeding 10% upon their capital stock, and such additional sum as may furnish a sinking fund each year, not to exceed 5% of the amount of its bonded debt, for the purpose of gradually extinguishing that bonded debt.

(2) A railroad company whose tracks may connect with such tunnels or bridges may send their business through or over them, respectively, upon such terms as shall be just and fair, and the charges for the passage of freight and passengers from all railroads shall be the same.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.250 Acquisition of right-of-way by railroad company; amount offered for damages; eligibility of owners to recover or collect costs.

Sec. 250. If a railroad company desires to acquire the right-of-way through any lands or premises, the company before or after proceedings are commenced for that purpose, may offer to the owner or owners of the lands or premises, any sum of money the company determines to be sufficient for the damages for the right-of-way, together with the costs to the time of making the offer. If it appears that the amount offered was sufficient to pay the damages, plus 25%, and the costs of the proceedings up to the time of the offer, the owner or owners of the lands or premises shall not be entitled to recover or collect any costs incurred subsequent to the time of the offer, but shall be liable to the railroad company for the costs incurred by it subsequent to the offer.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.251 Removal of person from train by conductor or employee.

Sec. 251. If a person refuses to pay his or her fare, or refuses to obey the regulations established for the convenience and safety of passengers, the conductor of the train or an employee of the railroad company may remove the person from the train at any usual stopping place.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.253 Person using abusive, profane, or indecent language or exhibiting violent conduct; powers of conductor.

Sec. 253. A person who uses abusive, profane, or indecent language or exhibits violent conduct may be taken into custody by the conductor of the train and removed to a safe and secure place on the train until its arrival at some usual stopping place, where he or she may be put off the train and put into the custody of some proper officer for prosecution if necessary. For this purpose railroad conductors, while in charge of trains, are hereby invested with the powers of sheriffs and peace officers.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.255 Conduct as misdemeanor; penalty; powers of conductor or freight agent; duties of police officer; jurisdiction of court.

Sec. 255. (1) A person who, while riding in the car of a freight, passenger, or other train on any railroad in this state, uses or utters indecent, obscene, or profane language in the hearing of other passengers, riotously or boisterously conducts himself or herself to the annoyance of other passengers, or who obtains or attempts to obtain money or property from any passenger or person by means of any game or device, shall, on conviction, be guilty of a misdemeanor, punishable by a fine of not to exceed \$100.00, or imprisonment for not to exceed 90 days, or both.

(2) Railroad conductors are hereby invested with the powers of sheriffs and constable in regard to offenses under this section occurring upon trains or cars in their charge, and may arrest and detain a person who violates this section until the car or train arrives at a usual stopping place, where the conductor may deliver the person to a police officer with a written statement specifying generally the offense or offenses the person has committed.

(3) If a police officer is not present to receive the person, the conductor may deliver him or her to the ticket or freight agent at that stopping place, with the statement. The freight agent shall detain the offender in his or her custody, and may exercise the powers of sheriffs and constables in regard to persons charged with crimes in doing so, until a police officer may be obtained to take charge of the offender.

(4) The police officer shall institute a complaint against the person for the alleged offense before the district or municipal court of the judicial district or municipality in which the offense was committed. The court shall have jurisdiction to try the offender and to impose the penalties authorized by this section.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

Compiler's note: In subsection (2), the phrase "of sheriffs and constable" evidently should read "of sheriffs and constables."

462.257 Conduct as felony or misdemeanor; penalties.

Sec. 257. (1) A person who causes or attempts to cause the derailment of an engine, cars, or track vehicle used on railroad tracks by placing an impediment on the track of a railroad, whether the engine, cars, or track vehicle are thrown from the track or not, or who by any other means whatsoever willfully endangers or attempts to endanger the lives of persons engaged in the work of the railroad, or persons traveling on the engine or cars of the railroad, is guilty of a felony punishable by imprisonment for life or any term of years, in the discretion of the court. It is not necessary for the people to allege or prove that the person intended to injure or endanger the life of any particular person or persons.

(2) A person who throws a stone, brick, or other missile at a train or track vehicle is guilty of a misdemeanor punishable by a fine of not less than \$100.00 or more than \$500.00, or imprisonment for not more than 90 days, or both.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2020, Act 386, Eff. Mar. 24, 2021.

462.259 Liability of railroad company for loss or damage by fire.

Sec. 259. A railroad company building, owning, or operating a railroad in this state is liable for all loss or damage to property by fire originating from engines passing over the roads, fires set by company employees by order of the officers of the road, or otherwise originating in the constructing or operating of the railroad. However, a railroad company is not liable if it proves to the satisfaction of the court or jury that the fire originated from fire by engines whose machinery or smokestack was in good order and properly managed, or fires originating in building, operating, or repairing the railroad, and that all reasonable precautions had been taken to prevent their origin, and that proper efforts had been made to extinguish the fire in case of their extending beyond the limits of the road, when the existence of the fire is communicated to any of the officers of the company.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.261 Liability of railroad company for death or injury to passenger.

Sec. 261. If a passenger on a train is killed or injured while on the platform of a car, or while in or on a baggage or freight car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside its passenger cars then in the train, the company shall not be liable for the injury, if the injury occurs due to the person being improperly on the platform or within the baggage or freight car, or after having been notified by the conductor or any other person having charge of the train, that the person is not in the proper place if the company at the time furnished room and seats inside its passenger cars sufficient for the proper accommodation of its passengers.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.263 Transportation of railroad employees; vehicles.

Sec. 263. Vehicles used to transport railroad employees shall be equipped with adequate seating, heating, and communication systems and shall comply with all safety requirements to operate on Michigan highways. This section shall not apply to motor vehicles used to transport employees on railroad property or in cases of extreme emergency unless the condition of the vehicle endangers employee safety. If a dispute arises as to the adequacy of the facilities provided, it may be submitted to and decided by the department.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.265 Stringing wire over and across railway right-of-way; procedures; construction of aerial crossings; dispute between parties; order.

Sec. 265. (1) A corporation or person shall not string any wire, electrical or other, over and across a railroad or street railway right-of-way unless 1 of the following procedures is followed:

(a) For crossings within the right-of-way of a public street, highway, road, or alley, notification shall first

be given to the railroad company and railroad authority of the place and the manner in which the corporation or person desires to string any wire 30 calendar days prior to performance of the work unless the parties otherwise agree.

(b) For crossings at any other location not within the right-of-way of a public street, highway, road, or alley, notification shall first be given to the railroad company and railroad authority in writing of the place and the manner in which the corporation or person desires to string the wire and written or telegraphic permission shall be received from the railroad company and railroad authority prior to performance of the work. The railroad company shall respond positively or negatively to the request within 90 calendar days after the receipt of the request.

(2) Any aerial crossings shall be constructed in accordance with specifications of the Michigan public service commission and all applicable codes and laws.

(3) In case of a dispute emanating from subsections (1) and (2) which the parties cannot resolve within a reasonable time, either party may petition the department for a hearing. The department shall have jurisdiction to settle the dispute between the parties.

(4) Upon proof of violation of or failure to comply with subsections (1) and (2), a court of competent jurisdiction may issue an order immediately enjoining the violation.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.267 Light or banner attached to switch or derailling device; prohibited conduct; violation as misdemeanor; penalty.

Sec. 267. (1) A person not authorized by a railroad company shall not destroy, remove, change, extinguish, or tamper with any light or banner attached to or connected with any switch or derailling device maintained by a railroad company.

(2) A person who violates this section is guilty of a misdemeanor punishable by a fine of not less than \$100.00 or more than \$500.00 or by imprisonment for not more than 60 days.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2020, Act 386, Eff. Mar. 24, 2021.

462.271 Offer to sell certain property; contents of offer; disagreement as to price or other terms; application to state tax commission to resolve disagreement; hearing; decision and order; determination of fair market value; appraisals; applicability of section.

Sec. 271. (1) If a railroad company, or its trustee or successor in interest, has an interest in real property adjacent to a right-of-way approved for abandonment within this state that is not necessary for the operation of rail services over the right-of-way, which adjacent real property has leasehold improvements upon it, or if a railroad company, or its trustee or successor in interest, seeks to convey under any other circumstances its interest in real property adjacent to a right-of-way, which adjacent real property has leasehold improvements upon it, the railroad company, trustee, or successor in interest first shall extend a written offer to sell that real property at fair market value to a person or entity holding a lease, license, or permit or owning leasehold improvements on that adjacent real property. The offer shall contain the legal description of the property; the real property rights to be conveyed by the seller; and proof of a good and marketable title to those rights, the cost of which shall be paid by the offeror. A person or entity holding a lease, license, or permit or owning leasehold improvements on the real property shall respond to the written offer within 60 days after receipt of the offer to sell. If the person or entity holding a lease, license, or permit or owning leasehold improvements on the adjacent real property also owns leasehold improvements on the right-of-way approved for abandonment, the railroad company or its trustee or successor in interest shall include that portion of the right-of-way which the leasehold improvements are on in its written offer of sale under this subsection, if that portion of the right-of-way is not necessary for the operation of rail services.

(2) If the parties disagree concerning the price or other terms of the sale, either party may apply to the state tax commission to resolve the disagreement. The application shall be made within 60 days after the railroad company, trustee, or successor in interest has received the written response.

(3) The state tax commission shall provide a hearing on the disagreement pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, and subsection (4). Within 90 days after the dispute is filed, the commission shall make a determination of the fair market value of the property and other terms of the sale that were in dispute.

(4) The decision and order of the commission under subsection (3) shall be binding on the parties. The decision and order issued by the commission under this section shall establish just and equitable terms of the sale. In determining the fair market value of the real property, the commission shall obtain 3 independent appraisals as follows:

(a) Each party shall select 1 appraiser and the cost of an appraisal under this subdivision shall be paid by the party for whom the appraisal is prepared.

(b) The commission shall appoint a third appraiser and the cost of this appraisal shall be divided equally between the parties.

(5) This section shall not apply to a railroad company, or its trustee or successor in interest, subject to the jurisdiction of the interstate commerce commission or a successor agency.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.273 Walking, riding, driving, or being upon or along right-of-way or yard; permission required; "right-of-way" defined; being upon, entering, or damaging buildings, rolling stock, or equipment; applicability of section; violation as misdemeanor; penalty.

Sec. 273. (1) Except in the case of a right-of-way designated as a demonstration snowmobile trail in section 82126 of part 821 (snowmobiles) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.82126 of the Michigan Compiled Laws, a person shall not walk, ride, drive, or be upon or along the right-of-way or yard of a railroad company operating its lines within this state, or go upon or cross the right-of-way or yard at a place other than a public or private crossing, unless having first obtained written permission from the owner or occupant railroad, its agent or servant.

(2) For purposes of this section, "right-of-way" means the track or roadbed owned by a railroad and that property owned by a railroad which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing, the existence of railroad tracks, or appropriate signs.

(3) A person shall not be upon, enter, or damage any buildings, rolling stock, or equipment of any railway company operating its lines within this state.

(4) This section shall not apply to any of the following:

(a) Passengers on trains or employees of a railroad company while engaged in the performance of the duties of their employment.

(b) An authorized representative of the railroad employees.

(c) A person going upon the right-of-way or tracks to save human life or to protect property.

(d) A person going or being upon or in the station grounds or depot of the railroad company as a passenger or for the purpose of transacting business with the railroad company.

(e) A person, members of his or her family, or his or her employees going upon the right-of-way or tracks for the purpose of crossing from 1 part to another of a farm he or she may own or lease, where the farm lies on both sides of the right-of-way.

(f) A person having written permission to go upon the right-of-way or tracks granted by the railroad company, a person using officially abandoned rights-of-way for recreational purposes, the Michigan public service commission, the state transportation department, the interstate commerce commission, or the federal railroad administration.

(g) A registered land surveyor or his or her employees for the purpose of making land surveys.

(5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 30 days, or by a fine of not more than \$100.00, or both.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 1996, Act 93, Imd. Eff. Feb. 27, 1996.

462.301 Grade crossings; diagnostic study team review; notice; decision; order; consensus during review not reached; cost of necessary changes; funding sources; administration and expenditure of funds; notice of corrective action.

Sec. 301. (1) The department, upon request of any interested party or by its own interest, may when it considers necessary assess the physical condition and safety needs of grade crossings of railroad tracks with public streets and highways or with a nonmotorized trail by scheduling a diagnostic study team review at the grade crossing or group of grade crossings. Written notice shall be given to all parties 15 days before the review. Each affected organization shall be represented by a knowledgeable individual prepared to contribute information requested in the notice and empowered to make decisions on behalf of that party. A decision by a diagnostic study team concerning the safety needs of a grade crossing based upon current roadway and railroad traffic levels, speeds and other parameters, funding arrangements, division of responsibility, and scheduling will be mutually decided to accommodate adjustments or improvements, relocations, closures, grade separations, or other changes reasonably required in the interest of public welfare and safety. The department shall issue an order confirming the agreements reached, in writing, to all parties.

(2) If consensus cannot be reached during the diagnostic study team review, the department, by order to the affected parties, shall require such adjustments or improvements, relocations, closures, or other changes as

may be reasonably required in the interest of public welfare and safety. The railroad or railroads having responsibility for the track or tracks in the grade crossing, and the road authority having jurisdiction of the streets or highways shall be given due notice and have the right to a hearing.

(3) The cost of an adjustment or improvement, relocation, closure, grade separation, or other change determined necessary by a department order shall be funded as provided in this act. Items of work which would usually be at the expense of the railroad or road authority may be funded from the following sources if the work is eligible for such funding and if the funds are available:

(a) First, from federal funds obtained through the federal aid railroad-highway grade crossing improvement program.

(b) Second, from state funds obtained through the railroad grade crossing account of the state trunk line fund.

(4) The department shall administer these funds in an efficient and equitable manner by establishing an annual prioritization of grade crossing safety improvements. Items of work determined to be routine maintenance items shall not be eligible for funding from these funding sources. The department may, at its own discretion, approve or disapprove the use of these funds for items of grade crossing surface and roadway approach work. Federal funds obtained for high speed rail corridor grade crossing improvements, needed to accommodate trains at speeds exceeding 79 miles per hour, shall be expended prior to the use of those federal and state funds of the type referenced in subsection (3)(a) and (b) on a high speed rail corridor. No federal or state funds of the type referenced in subsection (3)(a) and (b) shall be expended for construction of grade separations on federally designated high speed rail corridors.

(5) The department may, through routine inspections, periodically serve notice to affected parties, that existing devices and conditions exist at public grade crossings need corrective action. The railroads or road authorities, or both, shall, at their cost and according to their respective responsibility, expeditiously correct the deficiency and advise the department in writing when the work is completed.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.303 Traffic control devices; determination and order by department.

Sec. 303. The department, at no cost to the freight railroads or adjacent property owners, may order traffic control devices at existing farm, other private, bicycle, and pedestrian crossings of the railroad tracks of a high speed rail corridor including signs, signals, crossing gates, movable barriers, or other devices. The department may determine the number, type, and location of signs, signals, gates, or other types of safety devices which shall conform as closely as possible with generally recognized national standards.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.305 Order of department.

Sec. 305. An order of the department need not specify the details of the construction, repair, or reconstruction of a physical grade crossing unless the circumstances surrounding a particular grade crossing so require. An order of the department shall take into consideration time required for design, acquisition of materials, and construction time, including seasonal difficulties, and the volume of similar projects pending.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.307 Construction; approval required; investigation of proposed crossing location; changing location or abolishing existing public grade crossing; hearing; order; action against department to vacate or set aside order; construction across high-speed rail corridor; granting or denying permission for crossing; cost; furnishing inspector; request for reconstruction, change, widening, or alteration; abandonment; removal of track and traffic control devices.

Sec. 307. (1) A new public street, highway, or a new nonmotorized trail shall not be constructed across the tracks of any railroad, or the new tracks of any railroad shall not be constructed across a public street, highway, or nonmotorized trail until approval is granted by the department. Upon application, the department shall investigate the location of the proposed crossing.

(2) The department, when it determines necessary for the safety of the public, may change the location of or abolish any existing public grade crossing after not less than 30 days' notice in the area affected by the crossing. A public hearing shall be held by the department if requested by any affected party. Within 30 days after the date of the hearing, the department may issue an order to close the existing grade crossing. Any person, local unit of government, or road authority having an interest in the abolishment of an existing grade crossing, within 30 days after the closure order of the department, may commence an action in the circuit court for the county of Ingham against the department as defendant to vacate or set aside the order.

(3) Commencing with the date of the federal designation of a high-speed rail corridor, a public or private at-grade street or highway or a farm, bicycle, or pedestrian crossing shall not be constructed across the railroad tracks of that corridor except for a crossing consolidation or relocation approved by the department.

(4) If the location of a proposed crossing is found to be necessary, feasible, and may be made reasonably safe for a crossing at grade, the department shall grant permission for the crossing. The department shall require installation of such traffic control devices as in its judgment may be appropriate. When a crossing necessitated by a new roadway across an existing track is permitted, the department shall simultaneously, after investigation and hearing, order the abolishment of 1 or more existing grade crossings having less than 100 vehicles a day within the same road authority jurisdiction, if the involved road authority and railroad may waive hearing thereon.

(5) If the department determines that the proposed location may not be made reasonably safe for a grade crossing, it shall deny permission for the crossing and require the crossing to be redesigned, if constructed at that location, or to be made other than at grade in accordance with section 319. If the department determines that it is impractical to secure a safe crossing at the point in question, either at grade or otherwise, it shall deny the grade crossing.

(6) The full cost of constructing a new street or highway across an existing railroad, or of a new railroad track or tracks across an existing street or highway, shall be borne by the party requesting the crossing. The following shall apply to a new or relocated grade crossing:

(a) The plans for the grade crossing shall be approved by both railroad and road authority. If there is a failure to agree, the department shall settle the points of disagreement by the terms of its order.

(b) The relocation of an existing grade crossing or the establishment of a new grade crossing at which the existing public highway grade crossing is completely abandoned, shall be constructed and the cost borne in the same manner as in the case of a new grade crossing. The maintenance responsibility of the relocated crossing shall be the same as the removed crossing unless otherwise agreed to by the parties.

(c) Temporary grade crossings shall be constructed, maintained, and removed at the sole expense of the parties requesting the same.

(d) The cost of construction shall include the direct construction cost of the roadbed, track structure, grade crossing surface, pavement, traffic control devices and drainage, including all material, labor, and services and other costs of construction.

(e) After construction, the grade crossing and traffic control devices shall be maintained as provided in this act.

(7) Upon approval of any new grade crossing project requested by a road authority, the road authority shall notify the railroad, in writing, to furnish a competent inspector and other necessary persons to inspect the construction of the grade crossing which shall be constructed according to the order of the department. The road authority shall pay to the railroad the actual costs incurred by the railroad for the time actually and necessarily spent in inspecting construction. Upon approval of any new grade crossing project requested by a railroad, the railroad shall notify the road authority, in writing, to furnish a competent inspector and other necessary persons to inspect the construction of the grade crossing which shall be constructed according to the order of the department. The railroad shall pay to the road authority the actual costs incurred by the road authority for the time actually and necessarily spent in inspecting construction.

(8) A road authority may request a railroad or a railroad may request a road authority, in writing, to reconstruct, change, widen, or alter that portion of an existing grade crossing with a public street or highway for which they are responsible to accommodate the requesting party's plans for reconstruction, change, widening, or alteration of their crossing related facility. The requesting party shall notify the other party to conform to the change simultaneously with the requesting party's work. However, if the party requested to make changes refuses, the requesting party may make application to the department for a determination. The department, after due hearing on the issue, shall determine the matters in dispute by order. The full cost of the reconstructing, change, widening, or alteration shall be borne by the party requesting it, unless otherwise agreed to.

(9) If a track through any grade crossing is abandoned through legal proceedings, the railroad, at its cost as part of routine maintenance, shall remove the tracks and any active traffic control devices and then shall restore the street or highway surface in a manner satisfactory to the road authority. The road authority, at its cost as part of routine maintenance, shall remove all passive traffic control devices. The track and all traffic control devices shall be removed within 1 year of the abandonment. Until such removal is complete, the railroad and road authority shall maintain it in accordance with this act.

(10) If a track through any grade crossing becomes unnecessary for the conduct of railroad services, the railroad, at its cost as part of routine maintenance, shall remove the track and any active traffic control devices and then shall restore the street or highway surface in a manner satisfactory to the road authority. The road

authority, at its cost as part of routine maintenance, shall remove all passive traffic control devices. The department may order the railroad to remove the track and any traffic control devices if there is not a likelihood of continued use. Until the track and all traffic control devices are removed, the railroad and road authority shall maintain it in accordance with this act.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.309 Maintenance, renewal, and repair of roadbeds, tracks, culverts, and certain streets or sidewalks.

Sec. 309. (1) A railroad owning tracks across a public street or highway at grade shall at its sole cost and expense construct and thereafter maintain, renew, and repair all railroad roadbed, track, and railroad culverts within the confines of the street or highway, and the streets or sidewalks lying between the rails and for a distance outside the rails of 1 foot beyond the end of the ties. The road authority at its sole cost and expense shall construct or improve if necessary and thereafter maintain, renew, and repair the remainder of the street or highway.

(2) The space between the rails and for a distance outside of the rails of 1 foot beyond the end of the ties shall be surfaced with a material which shall be as durable and as smooth as the adjacent street or highway surfacing, and shall have minimum qualifications not inferior to wooden planks, and shall conform, as nearly as reasonably may be, to the configuration of the adjacent street or highway. In the case of streets and highways constructed or reconstructed after the effective date of this act, the surfacing of planks or other material shall have a minimum length equal to the length between the established curb lines, or, in the absence of curb lines, equal to the length between the established shoulder lines of the street or highway plus 2 feet on each side of the street or highway.

(3) The full cost of maintaining and repairing all existing crossings shall be borne by the respective parties responsible for the work as provided in this act. The cost of improving an existing crossing, where improvement is necessary, shall be borne in the same manner as provided in this act for maintenance and repair.

(4) Any alteration in the existing elevation of the top of railroad track or highway surface in excess of 1 inch shall be mutually determined by the railroad and road authority; but in case of failure to agree, the parties may apply to the department which may provide for the alteration after hearing. Where the change in elevation of track rails is agreed upon or authorized for purposes other than to conform to the configuration of the adjacent street or highway, the entire cost shall be borne by the party requesting the change.

(5) The railroad shall not perform any work, except emergency repairs, on public streets or highways between the established curb lines, or, in the absence of established curb lines, between the established shoulder lines of the street or highway, without first notifying the road authority having jurisdiction over the street or highway, and without first providing and thereafter maintaining the necessary traffic controls in accordance with the Michigan manual of uniform traffic control devices. The railroad plan for maintaining traffic showing the necessary barricades, lights, flaggers, and traffic detours and other traffic controls shall be approved by the road authority before the work begins.

(6) In cases of sidewalk repair or construction, a railroad shall first be given the right to construct in the same manner as that right is given to individuals, and if it fails, the local unit of government may cause the sidewalk to be constructed at the expense of the railroad, with the cost to be collected in the usual manner as provided in the law governing that local unit of government. In the case of the construction of a railroad upon any public street, lane, alley, or highway, the same shall be on such terms and conditions as shall be agreed upon between the railroad company and the governing body of any city, or the village board of any village, or the township board of any township and the appropriate road authority in which the railroad is located; but the railroad shall not be constructed upon any public street, lane, alley, highway, or private way until damages and compensation are made by the railroad company to the owner or owners of property adjoining the street, lane, alley, highway, or private way and opposite where the railroad is to be constructed, either by agreement between the railroad company and each owner or owners, or as otherwise provided in this act for obtaining property or franchises for the purpose of constructing a railroad.

(7) Nothing in this section shall prohibit a road authority, at its discretion and sole cost and expense, from performing any of the work described in this section provided that the road authority receives approval from and gives notice to the railroad.

(8) Notwithstanding any other provision of this section, neither the railroad nor the road authority shall charge any type of access fee, inspection fee, or right of entry fee in connection with the performance of work described in this section.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 420, Imd. Eff. June 5, 2002.

462.310 Culverts.

Sec. 310. All culverts or other openings in or under the roadbed of a railroad to provide for the flow of water shall be constructed so as not to interfere with the drainage of the land above the railroad.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.311 Passive traffic control devices; street lighting.

Sec. 311. (1) The road authority, at its own expense, shall furnish, renew, and maintain all passive traffic control devices on public streets or highways approaching grade crossings of streets and highways with railroad tracks, including the various advance warning signs, railroad pavement markings, railroad grade crossing signs, number of tracks signs, and other special signs located, designed, and maintained as prescribed by the Michigan manual of uniform traffic control devices. The number of tracks sign shall include a designation "railroad crossing ____ tracks" (insert number of tracks), indicating the actual number of tracks to be crossed. If there is only 1 track in the crossing, the sign stating the number of tracks shall be omitted. These passive traffic control devices shall conform to designs prescribed by the department and shall be subject to revision from time to time as the department considers necessary in the interest of public safety, conforming as closely as possible with generally recognized national standards.

(2) The department, for the purposes of this act, may install and maintain or arrange for the installation and maintenance of highway street lighting at any grade crossing of a state trunkline highway.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.313 National inventory signs.

Sec. 313. The railroad, at its own expense, shall furnish, renew, and maintain the national inventory signs at public and private crossings, grade separations, and bridges.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.315 Active traffic control devices; maintenance payments.

Sec. 315. (1) The department, by order, in accordance with section 301, may prescribe active traffic control devices to warn of the approach of trains about to cross a street or highway at public railroad grade crossings consisting of signals with signs, circuitry, or crossing gates and other appurtenances as depicted in the Michigan manual on uniform traffic control devices. A determination must detail the number, type, and location of signals with signs, circuitry, or gates and appurtenances, that must conform as closely as possible with generally recognized national standards.

(2) Except as otherwise provided for in this act, the cost of any installation, alteration, or modernization of active traffic control devices must be at equal expense of the railroad and road authority.

(3) After initial installation, all active traffic control devices, circuitry, and appurtenances at crossings must be maintained, enhanced, renewed, and replaced by the railroad at its own expense, except that the road authority shall pay, subject to the increase described in this subsection, \$1,427.00 for flashing signals on a single track, \$2,867.00 for flashing signals and gates on a single track, \$2,105.00 for flashing signals with cantilever arm on a single track, \$3,239.00 for flashing signals with cantilever arm with gates on a single track, \$3,394.00 for flashing signals and gates on multiple tracks, \$4,352.00 for flashing signals with cantilever arms and gates on a multiple track, \$1,698.00 for flashing signals on a multiple track, and \$2,167.00 for flashing signals with cantilever arms on a multiple track annually for maintenance to the railroad for each crossing with active traffic control devices not covered by existing or future railroad-road authority agreements. The railroad shall furnish standard equipment uniform for all railroads at a cost and installation basis consistent for all railroads. Beginning January 1, 2024, and on January 1 of each even-numbered year after 2024, the amounts a road authority must pay under this subsection are increased by 6.64%.

(4) Standard active railroad-highway traffic control devices consisting of side of street flashing light signals with or without half-roadway gates and cantilevers must include the railroad crossing (crossbuck) sign, "stop on red signal" sign, and number of tracks sign located, designed, and maintained on the signal support as prescribed by the Michigan manual on uniform traffic control devices. The railroad shall perform actual installation and maintenance of these signs. The railroad shall also install, renew, and maintain any signs placed on cantilevered signal supports. If active traffic control devices are installed at any crossing, those active traffic control devices must be so arranged that for every train or switching movement over the grade crossing, the active traffic control devices operate for a period of not less than 20 seconds or more than 60 seconds in advance of the train movement reaching the nearest established curb line or highway shoulder and the devices must continue to operate until the train movement has passed the established curb line or shoulder on the far side of the highway.

(5) The department may order a railroad, at the railroad's expense, to stop and flag a crossing for normal train service or when active traffic control devices may become inoperable.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2001, Act 5, Imd. Eff. Apr. 12, 2001;—Am. 2012, Act 421, Imd. Eff. Dec. 21, 2012;—Am. 2022, Act 62, Eff. July 1, 2022.

462.317 Clear vision areas; expenditure of funds relating to high speed rail corridor.

Sec. 317. (1) If a road authority determines to establish a clear vision area as described in this section, the railroad and a road authority may agree in writing for clear vision areas with respect to a particular crossing. The portions of the right-of-way and property owned and controlled by the respective parties within an area to be provided for clear vision shall be considered as dedicated to the joint usage of both railroad and road authority.

(2) The acquisition of right-of-way, purchase and removal of obstructions within a clear vision area, including buildings and other artificial constructions, trees, brush, and other growths, and grading or earthwork, and including the maintenance of such conditions, shall be at the equal cost and expense of the railroad and road authority.

(3) For public, farm, bicycle, pedestrian, or other private crossings of the railroad tracks of a high speed rail corridor, state, federal, and other funds may be expended in accordance with section 301(4) for construction of access roads, purchase of real estate, purchase of private crossing easements, compensation for crossing closure, utility relocation, costs associated with improvements to traffic control devices, grade crossing closures, relocations, consolidations, and separations.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.318 Whistle post; erection and maintenance as notice to engineer of approach to public crossing.

Sec. 318. A railroad shall erect and maintain a whistle post in advance of a public crossing or multiple consecutive crossings to notify the engineer of an approaching public crossing.

History: Add. 2010, Act 106, Imd. Eff. July 1, 2010.

462.319 New construction, partial reconstruction, alteration, or removal of grade separation.

Sec. 319. (1) The construction of a new highway/railroad grade separation structure or the total reconstruction of an existing grade separation structure shall require a written agreement between all affected railroads, the road authority, and any other parties required by law to participate in the construction or funding of the grade separation. As a minimum, the written agreement shall include the following:

- (a) A detailed statement of the work to be performed by each party.
- (b) Methods of payment.
- (c) A description of any work to be performed by the affected parties at no cost to the project.
- (d) Each party's share of the project cost.
- (e) An itemized estimate of the cost of work to be performed by the railroad.
- (f) Methods to be used for performing the work, including contract and force account work.
- (g) Maintenance responsibilities.
- (h) Form, duration, and amounts of any needed insurance.
- (i) Appropriate reference to or identification of plans and specifications.
- (j) Statements defining the conditions under which the railroad will provide or require protective services during performance of the work, the type of protective services, and the method of reimbursement to the railroad.
- (k) Required minimum horizontal and vertical clearances for each track and roadway passing over or under the separation.
- (l) A clause providing transfer of responsibilities to successive parties in the event of the change of ownership or jurisdiction of the railroad or highway.
- (m) The parties responsible to expeditiously remove the grade separation structure and cost responsibility if the grade separation is no longer needed.

Each party signing the agreement shall receive an executed copy of the agreement and shall retain the agreement or a facsimile of the agreement for the life of the structure. If the roadway or railroad changes jurisdiction or ownership, the copy of the agreement shall be provided to the new affected party.

(2) The partial reconstruction of an existing highway/railroad grade separation, the alteration of an existing grade separation for increased railroad or highway facilities, or the removal of an existing grade separation shall be accomplished under the terms and conditions of the existing agreement or agreements covering the existing grade separation. If no agreement exists for the separation or if the existing agreement does not

adequately address the proposed work, a new written agreement meeting the requirements of subsection (1) shall be executed before commencement of the work.

(3) For new construction, partial reconstruction, alteration, or removal of a grade separation, as provided for in subsections (1) and (2), where the affected parties cannot come to agreement, either the railroad or road authority may request, in writing, the department to order the construction, reconstruction, alteration, or removal of a grade separation. A request by a railroad or road authority shall include proposed profiles, plans, maps, and specifications showing the portions of the street or highway and the railroad or railroads, for which the grade is to be changed or modified and the details of construction necessary for the improvements.

(4) The department shall set a day for a hearing on the request and give written notice, together with a copy of the request, to all known interested parties in the proceeding at least 10 days before the day set for the hearing, and on the day set for hearing, or at any adjournment or continuance of the hearing, the parties in interest shall be entitled to be heard. The department may issue summonses or subpoenas to enforce the attendance of witnesses at the hearing and may make such examination of the location of the grade separation as it considers necessary.

(5) If after the hearing the department finds that the separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations for increased highway or railroad facilities is necessary for the public convenience, welfare, and safety, it may by proper order approve the separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations for increased highway or railroad facilities, together with the profiles, plans, maps, and specifications to govern the work. If it finds that there is no such necessity, it may by proper order deny the request. The department, if in its judgment finds it is necessary for the public convenience, welfare, and safety, may change or alter the location of a grade separation. When existing grade crossings of any streets or highways with the railroad are near an involved grade separation, plans for which are approved pursuant to this act, and are situated within a reasonable distance of the site approved for grade separation, and when it is considered practical and reasonable to abolish any of such crossings by connecting the streets or highways to the highway directly served by the approved grade separation project, the department may order such crossings closed, may specify or approve the nature of connections to the highways interrupted by closing these crossings, and may require that the work be included as a part of the grade separation project. Profiles, plans, maps, and specifications for structures and railroad and highway approaches shall be prepared, unless otherwise agreed upon, by the party whose traffic is to be carried thereon, and likewise, unless otherwise agreed upon, the work of construction shall be performed by the party whose traffic is to be carried by such construction. However, if the profiles, plans, maps, and specifications of any party or parties have not been agreed to in writing by the other parties interested in the improvement before the day set for hearing on the application before the department, the department shall in its order prescribe the manner in which the separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations shall be affected, fix and approve the profiles, plans, maps, and specifications, and in this behalf may approve in whole or in part, modify, or alter the plans submitted by the applicant.

(6) Unless otherwise agreed upon, the cost of constructing and making separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations for increased highway or railroad facilities, computed as provided in this act, shall be borne according to the benefits received, except that projects requested by the road authority shall not exceed 15% by the affected railroad with the balance paid by the road authority, and projects requested by the railroad shall not exceed 15% by the affected road authority with the balance paid by the railroad. If there is more than 1 affected railroad, and the railroads do not agree on the division of the amount to be borne by each, then the division shall be made by the order of the department. If the amount to be borne by more than 1 road authority is not agreed upon, the division of the amount to be borne by them shall be made by the order of the department.

(7) Unless otherwise agreed upon, the department shall determine the parts or sections of a grade separation undertaking that shall be maintained by the railroad and the part or sections that shall be maintained by the road authority. Unless there are special conditions which complicate a direct allotment of the division of maintenance responsibilities, the maintenance of the structure and approaches and corresponding items of work shall be performed and the cost shall be borne entirely by the party whose traffic is carried thereon. The railroad shall repair or replace, at its own expense, any portions that may be damaged or destroyed by accident or otherwise arising from railroad traffic, and the road authority will repair or replace, at its own expense, any portions that may be damaged or destroyed by highway traffic.

(8) In computing the costs of an improvement, abutment damages, property acquisition costs, engineering costs, all the other costs of construction, both temporary and permanent, including railroad and highway approaches to the structure incident to the separation of grades, reconstruction of existing grade separations, and the alteration of existing grade separations for increased highway or railroad facilities as set forth in the

profiles, plans, maps, and specifications approved by the department may be considered. Additional property acquired or to be acquired for economizing the cost of the improvement and necessary to the grade separation structure and immediate approaches for preserving the existing railroad or highway may be considered a construction cost and included in the cost of the improvement.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.321 Acquisition of property rights by condemnation.

Sec. 321. If a railroad and road authority enter into an agreement or if the department orders or otherwise authorizes the construction, relocation, or improvement of a railroad crossing at grade, the construction of a grade separation structure, the reconstruction of an existing grade separation, the alteration of existing grade separations for increased highway or railroad facilities, or the establishment of a clear vision area, the right-of-way and other property rights necessary for the project, unless otherwise agreed upon, shall be acquired by condemnation in the same manner as property is acquired for other highway purposes.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.323 Farm crossings; other private crossings.

Sec. 323. (1) A farm crossing shall be constructed and maintained by the railroad at the expense of the party requesting the crossing.

(2) Farm crossings shall be of such width and condition as shall permit expeditious and safe passage of large farm machinery.

(3) A railroad may permit the establishment and use of other private crossings on such terms as may be negotiated between the requesting party and the railroad.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.325 Fencing in agricultural areas; other areas.

Sec. 325. (1) The department, after notice and hearing, may order a railroad to erect and maintain such fencing along railroad right-of-way in agricultural areas as shall be necessary to prevent livestock from entry upon that right-of-way. Such fencing shall not be required unless the other boundaries of the property are fenced.

(2) In agricultural areas, the cost and expense of installation, maintenance, and repair of fencing shall be borne by the railroad. However, if gates or cattle guards are necessitated by the existence of a farm crossing, the cost and expense of installation, maintenance, and repair of such gates or cattle guards shall be considered a cost of the crossing to be borne by the party requesting the gates or cattle guards.

(3) The owner or proprietors of the adjacent farm lands, upon 30 days' written notice to the railroad, may erect or repair the fence and then may recover from the railroad in any court of competent jurisdiction the cost of the fence, together with reasonable compensation for labor in the construction of the fence. The railroad shall also be liable for damages caused by its agents, engines, or cars to livestock by reason of the livestock escaping due to failure to construct or maintain a fence.

(4) The responsibility for and cost of installation, maintenance, and repair of fences in all other areas shall be borne by the property owner adjacent to the railroad unless the fencing is necessitated by the construction of new or the expansion of existing rail facilities, in which case the costs shall be borne by the railroad. The installation of fencing shall be consistent with the clearance requirement of this act. Conflicts between the parties shall be submitted to and decided by the department by order.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.327 Bridges carrying railroad traffic; inspection; applicability of section and MCL 462.331 to 462.335.

Sec. 327. All bridges carrying railroad traffic shall be inspected as set forth in this act. This section and sections 331 through 335 shall apply until federal law is enacted requiring the periodic inspection of bridges carrying railroad traffic.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.331 Bridge carrying railroad traffic; qualifications of inspector; affidavit; performance and recording of inspections; report; reinspection and order by department.

Sec. 331. (1) Any railroad owning a bridge carrying railroad traffic shall have the bridge inspected by a person with at least the minimum qualifications provided by this section. Inspections shall be performed not less than every other year. Inspections shall be performed, signed, and dated by a person competent and familiar in railroad bridge inspection. As a minimum, the inspector shall be a registered professional engineer

or satisfy 1 or more of the following:

- (a) Have at least 2 years of practical experience in railroad bridge inspection.
- (b) Have at least 5 years of practical bridge maintenance and repair experience.
- (c) Pass a study course in railroad bridge inspection.

(2) Beginning 2 years after the effective date of this act and each year thereafter, the railroad shall provide an affidavit to the department stating that all bridges located on the railroad within the state have been inspected within the last 2 years in accordance with the requirements of this act.

(3) As a minimum, inspections shall be performed and recorded in accordance with the recommendations set forth in the current "manual of railway engineering" as published by the American railway engineering association.

(4) The railroad shall keep the most current inspection report for each bridge on file and, upon request, shall provide a copy to the department.

(5) The department may reinspect any bridge using its own inspectors or inspectors hired by it. The department may order any of the following: closure of the bridge, speed and load restrictions, or repairs or changes necessary to place the bridge in a reasonably safe condition and the time in which repairs or changes are to be accomplished.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.333 Unsafe bridge; prohibited conduct.

Sec. 333. A railroad shall not operate or move any locomotive, railroad car, or railroad maintenance machinery, except such locomotives, cars, and machinery needed for bridge repair, across any bridge determined by inspection to be unsafe.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.335 Unsafe bridge; penalties for certain conduct.

Sec. 335. (1) A railroad may be fined \$10,000.00 for operating or moving any locomotive, railroad car, or railroad maintenance machinery not necessary for bridge repair across a bridge determined by inspection to be unsafe.

(2) A railroad may be fined \$100.00 per day for failure to provide the department with an affidavit as required by section 331(2).

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.337 Applicability of act.

Sec. 337. This act shall apply to any individual, partnership, association, or corporation, and their respective lessees, trustees, or receivers, appointed by a court, while engaged in the operation of a railroad within this state, or while owning, leasing, or otherwise having under his or her or their jurisdiction or control the land on which, or adjacent to which, there may be located and operated any railroad track or sidetrack that is a part of or is in any way connected with a railroad.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.339 Construction, erection, placement, and maintenance of a bridge, structure, pole, or other obstruction or loading or unloading device; compliance with clear spaces; exceptions; application; warning signs; required distance for construction of railroad track or sidetrack; inspection; report; violation; penalty; failure to correct violation; applicability of section.

Sec. 339. (1) A person shall not construct, erect, or place, and thereafter maintain, over or adjacent to any railroad track or sidetrack which is a part of or is connected with any railroad, any bridge, structure, pole, movable or immovable obstruction, or any loading or unloading device, the movable or immovable or fixed parts of which are within the clear space of 8 feet 6 inches from either side of a perpendicular extending through the center line of a railroad track, which has a radius of not less than 400 feet lateral curvature, or a track with less radius than 400 feet lateral curvature shall be provided with a clear space 9 feet from either side of a perpendicular extending through the center line of the track, or which is within the clear space of 22 feet 6 inches above the plane of the top of the rails of the track, except by the written consent of the department.

(2) This section shall not apply to the following:

(a) Materials used in the construction, maintenance, or repair of railroad tracks when temporarily placed.

(b) Temporarily extended or connected car loading or unloading devices which, when not in use, are removed or secured so as to maintain the clearances prescribed in this section.

(c) Structure or materials below grade level.

(3) A person who desires to construct, erect, or place, and thereafter maintain, over or adjacent to any railroad track or sidetrack which is a part of or is connected with a railroad, any bridge, structure, pole, immovable obstruction, or loading or unloading device, the immovable or fixed parts of which are within the clear spaces over or adjacent to the railroad track which are provided for in subsection (1), and not covered by the exceptions in subsection (2), may make application to the department. Upon the filing of an application, the department may authorize the construction, erection, or placement, and the subsequent maintenance, of a bridge, structure, pole, or other obstruction or loading or unloading device, within such lesser spaces as may be described in the application if, in the judgment of the department, compliance with the clear spaces prescribed in subsection (1) would be unreasonable, unnecessary, or impracticable, and the erection, construction, or placement, and the subsequent maintenance of the bridge, structure, pole, or other immovable obstruction, or loading or unloading device, within such lesser spaces, will not create a hazardous condition to the employees of the railroad.

(4) If any structure or obstruction is at a less distance from any railroad track or sidetrack which is a part of or is connected with a railroad than the clear space required to be maintained from that track or sidetrack pursuant to subsection (1), the railroad company operating the track or sidetrack, if the track or sidetrack is located on the lands or premises owned or controlled by it, or any other person, if the track or sidetrack is located on the lands or premises of another person, shall erect, and thereafter maintain, or cause to be erected or maintained, a warning sign upon or near the structure or obstruction, as a caution to the employees of the railroad company that uses that track or sidetrack. The warning sign shall have black letters upon a white background, and shall contain the words—"WARNING—CLOSE CLEARANCE," or words of a similar purport, with letters of not less than 3 inches in height.

(5) A person shall not, except by the written consent of the department as provided in this section, construct a railroad track or sidetrack where the center line of the track or sidetrack is at a distance of less than 14 feet from the center line of any other parallel railroad track or sidetrack which is adjacent thereto. However, the distance between adjacent tracks may be diminished or closed up, as may be necessary, for the construction of crossovers, turnouts, or switches.

(6) A railroad company that desires to construct a railroad track or sidetrack where the center line of the track or sidetrack is at a distance of less than 14 feet from the center line of any other parallel railroad track or adjacent sidetrack may make application to the department. Upon the filing of an application, the department may authorize the construction of the railroad track or sidetrack within a lesser distance from an adjacent railroad track or sidetrack as may be described in the application if, in the judgment of the department, compliance with the distance of 14 feet would be unreasonable, unnecessary, or impracticable, and the construction of the track within such lesser distance from an adjacent track will not create a hazardous condition to the employees of the person or persons engaged in the operation of the tracks. Nothing in subsection (5) or this subsection shall be construed to require the change of requirements between any railroad tracks or sidetracks existing on the effective date of this act.

(7) The department shall make an inspection within 30 days after receipt of a written complaint by an employee or union whose members are affected by a violation of this act, or upon a written complaint by a person, including a common carrier, affected by the violation, giving each party of interest 15 days' notice of the date of the inspection. The department may dispose of a complaint by denial for lack of merit in fact or law. The department shall issue a report to each interested party within 30 days after the inspection is conducted. If a party does not file a written objection to the report within 30 days after the transmittal of the report, the report shall become the order of the department.

(8) A person subject to this act, who violates this section, shall be liable for a civil penalty of not more than \$1,500.00, to be collected by the prosecuting attorney of the county where the violation occurred.

(9) If a person thereafter fails to correct a violation of this section when ordered by the department, the person shall be liable for the same fine, to be collected as provided in subsection (8) for each calendar day's delay thereafter in his or her failure to correct the violation of this section.

(10) This section shall not apply to any structure erected and approved by the department before January 1, 1994.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.351 "Operator" and "operate" defined.

Sec. 351. As used in sections 353 to 365, "operator" or "operate" means a person who is in actual physical control of a locomotive engine upon a railroad track.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.353 Locomotive engine; operation by person under influence of alcoholic liquor or controlled substance.

Sec. 353. (1) A person who is under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whose ability to operate a locomotive engine is visibly impaired due to the consumption of alcoholic liquor or a controlled substance or both shall not operate a locomotive engine upon the railroad tracks of this state. A peace officer may, without a warrant, arrest a person when the peace officer has probable cause to believe that the person, at the time of an accident, was the operator of a locomotive engine involved in the accident and was operating the locomotive engine upon the railroad tracks of this state while impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(2) A person who has an alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate a locomotive engine upon the railroad tracks of this state.

(3) Except as otherwise provided, a person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 nor more than \$500.00, or both, together with costs of the prosecution.

(4) A person who violates this section within 7 years of a prior conviction may be sentenced to imprisonment for not more than 1 year, or a fine of not less than \$200.00 or more than \$1,000.00, or both, together with costs of the prosecution.

(5) A person who violates this section within 10 years of 2 or more prior convictions is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$500.00 or more than \$5,000.00, or both, together with costs of the prosecution.

(6) A person who operates a locomotive engine in violation of subsection (1) or (2) and by the operation of that locomotive engine causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(7) A person who operates a locomotive engine in violation of subsection (1) or (2) and by the operation of that locomotive engine causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(8) As part of the sentence for a violation of this section, the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 45 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(9) Before imposing sentence for a violation of this section, the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(10) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to the penalty imposed for violation of this section.

(11) As used in this section, "prior conviction" means a conviction under this section, a local ordinance substantially corresponding to subsection (1) or (2), or a law of another state or the United States substantially corresponding to subsection (1) or (2).

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.

462.355 Repealed. 2002, Act 658, Eff. Apr. 1, 2003.

Compiler's note: The repealed section pertained to visible impairment of ability to operate locomotive engine.

462.357 Locomotive engine; authorization or knowledge of operation by person under influence of alcoholic liquor or controlled substance.

Sec. 357. The owner of a locomotive engine or the person in charge or in control of a locomotive engine, or a person acting as a conductor of any train of cars, shall not knowingly authorize or knowingly permit the locomotive engine to be operated upon the railroad tracks of this state by a person who is impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance or who has an alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210

liters of breath, or per 67 milliliters of urine. A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 nor more than \$500.00, or both, together with costs of the prosecution.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.

462.359 Chemical test and analysis of operator's blood, urine, or breath.

Sec. 359. (1) The amount of alcohol or presence of a controlled substance or both in the operator's blood at the time alleged as shown by chemical analysis of that person's blood, urine, or breath shall be admissible into evidence in a criminal prosecution for any of the following:

(a) A violation of section 353 or 357 or of a local ordinance substantially corresponding to section 353(1) or (2) or 357.

(b) Manslaughter or murder resulting from the operation of a locomotive engine while the operator is alleged to have been impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or to have had a blood alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) If a test is given, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

(3) Except in a prosecution relating solely to a violation of section 353(2), the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of that person's blood, urine, or breath shall give rise to the following presumptions:

(a) If there was at the time less than 0.04% grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the person was not impaired by or under the influence of intoxicating liquor.

(b) If there was at the time 0.04% grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the person was impaired by or under the influence of intoxicating liquor.

(4) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, 1978 PA 368, MCL 333.16215, and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this section. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures shall not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws blood or analyzes blood or assists in the withdrawal or analysis in accordance with this section unless the withdrawal or analysis is performed in a negligent manner.

(5) The tests shall be administered at the request of a peace officer having probable cause to believe the person has committed a crime described in subsection (1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention. The results of the test shall be admissible and shall be considered with other admissible evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample. The person charged shall be informed that after taking a test administered at the request of a peace officer he or she has the right to demand that a person of his or her own choosing administer 1 of the tests provided for in subsection (1), that the results of the test shall be admissible and shall be considered with other admissible evidence in determining the innocence or guilt of the defendant, and that the person charged is responsible for obtaining a chemical analysis of the test sample.

(6) The person charged shall be advised that if the person refuses the request of a peace officer to take a test described in this section, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(7) This section shall not be construed as limiting the introduction of any other competent evidence, including a video tape recording taken of, and with prior notice to the person, bearing upon the question of whether or not the person was impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whether the person had a blood alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters

of urine.

(8) If a jury instruction regarding a defendant's refusal to submit to a chemical test under this section is requested by the prosecution or the defendant, the jury instruction shall be given as follows:

"Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of his or her guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant."

(9) If after an accident the operator of a locomotive engine involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the result of a chemical analysis of that sample is admissible in any criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(10) If after an accident the operator of a locomotive engine involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn by the medical examiner or attending personnel of the medical facility in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or presence of a controlled substance or both. The results of the blood testing shall be released to a prosecuting attorney for use in a criminal prosecution as provided in this section. A medical facility disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(11) The obtaining or analysis of a person's blood, breath, or urine under this section shall not be performed in a manner prohibited by the federal railroad administration, United States department of transportation.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.

462.361 Chemical tests of blood, breath, or urine; consent; administration.

Sec. 361. (1) A person who operates a locomotive engine upon the railroad tracks of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood if:

(a) The person is arrested for a violation of section 353 or a local ordinance substantially corresponding to section 353(1) or (2).

(b) The person is arrested for murder or manslaughter resulting from the operation of a locomotive engine, and the peace officer had probable cause to believe that the person was operating the locomotive engine while impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or while having a blood alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) The chemical tests shall be administered as provided in section 359.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.

462.363 Refusal to submit to chemical test; report.

Sec. 363. If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 359, a test shall not be given without a court order. A written report shall be forwarded by the peace officer to the federal department of transportation. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 361, and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.365 Report of certain convictions; form.

Sec. 365. If a person is convicted of a violation of section 353 or of a local ordinance substantially corresponding to section 353(1) or (2), a report of the conviction shall be forwarded by the court in which the conviction occurred to the United States department of transportation. The form of the report shall be prescribed and furnished by the department of state police.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.

462.367 Railroad police officer; appointment; commission; eligibility; duration of commission; employment before certain date.

Sec. 367. (1) Upon application in writing of a company owning, leasing, using, or operating any railroad company in this state, whether by steam, electricity, or other motive power, accompanied by the statements of 3 reputable United States citizens testifying to the moral character of the person mentioned in the application, the director of the department of state police, if the director finds the person to be suitable and qualified, may appoint and commission the person to act as a police officer for the company, upon the premises of the company, or elsewhere within the state, when in the discharge of his or her duties as a police officer for the company.

(2) A person shall not be eligible to receive an appointment unless the person is 18 years of age or older and has completed a minimum of 440 hours of training, which shall be certified by the Michigan law enforcement training council created by the Michigan law enforcement officers training council act of 1965, Act No. 203 of the Public Acts of 1965, being sections 28.601 to 28.616 of the Michigan Compiled Laws. Every police officer so appointed shall be known and designated as a railroad police officer. A railroad police officer's commission shall be in force until it becomes null and void or terminated as provided in this act.

(3) A railroad police officer employed on or before November 18, 1975 may continue that employment, and failure to meet the training standards required by this act shall not be grounds for dismissal or termination of employment.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.369 Railroad police officer applicant; cost of training.

Sec. 369. The cost of training an individual who is an applicant for a railroad police officer commission to meet the minimum training standards prescribed in section 367 shall be borne solely by the railroad company seeking the appointment.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.371 Railroad police officer; application fee; identification.

Sec. 371. An application for the appointment of a railroad police officer shall be accompanied by a fee of \$100.00 and by 2 photographs of and other identification information concerning the person named in the application, including fingerprints of the person, which fingerprints shall be classified by the bureau of identification of the department of state police and shall remain with that bureau as a permanent record.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.373 Railroad police officer; notice of appointment.

Sec. 373. When the director of the department of state police appoints a railroad police officer, the director shall give notice of the commission to the person appointed and to the company that made application for the appointment.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.375 Railroad police officer; oath.

Sec. 375. Before performing the duties of office and within 30 days after receiving notice from the director of the department of state police of appointment, a railroad police officer appointed shall take and file with the director the oath prescribed by the state constitution of 1963.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.377 Railroad police officer; duties and powers.

Sec. 377. Every railroad police officer, who is appointed and commissioned as provided in this act, shall have, exercise, and possess, throughout the state, while in the discharge of his or her duties as a railroad police officer, the powers of sheriffs, marshals, constables, and municipal police officers except in the service of civil process. A railroad police officer shall enforce and compel obedience to the laws of this state and to the ordinances of the cities, villages, and townships of this state when engaged in the discharge of his or her duties as a railroad police officer for the company.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.379 Keepers of jails, lockups, and station houses.

Sec. 379. The keepers of jails, lockups, and station houses in any county, city, village, or township shall receive all persons arrested by a railroad police officer for the commission of any offense against the laws of

the United States, of this state, or the ordinances of the city, village, or township, to be dealt with according to law. The persons arrested shall be received by the keepers of jails, lockups, or station houses on the same basis, and shall have the same status, as persons arrested by any other peace officer of this state.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.381 Railroad police officer; wearing and receiving badge.

Sec. 381. A railroad police officer appointed and commissioned under this act, when on duty as provided in this act, shall wear a metallic badge with the word "police" and the name of the railroad company for which the railroad police officer is appointed inscribed on the badge, and he or she shall exhibit the badge on demand and before making an arrest.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.383 Railroad police officer; surety bond.

Sec. 383. A railroad police officer appointed and commissioned under this act, before entering upon the discharge of his or her duties, shall give a surety bond, in the sum of \$1,000.00, conditioned upon the faithful performance of those duties. A bond shall be filed with, and approved by, the director of the department of state police.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.385 Railroad police officer; delivery of commission; identification card; roster.

Sec. 385. (1) Upon filing the official oath and bond, and the payment of the fee, as required by this act, the director of the department of state police shall deliver to the person the commission which shall certify that the person named in the commission has been commissioned as a railroad police officer. The commission shall give the name of the railroad company the railroad police officer represents, and shall designate the date on which the commission was issued. The commission shall be in the form, size, and description as the director of the department of state police may determine.

(2) An identification card shall be issued to the railroad police officer. Each card shall be valid for 5 years and expire on December 31 of the fifth year. The identification card shall be in the form, size, and description as the director of the department of state police may determine.

(3) On January 1 each year, each railroad operating in this state shall submit to the department of state police a roster of those persons employed in this state as railroad police officers and certify that those officers are bonded in accordance with this act.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.387 Railroad police officer; compensation.

Sec. 387. The compensation for a railroad police officer shall be paid by the company for which the railroad police officer is appointed.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.389 Railroad police officer; termination.

Sec. 389. When a company terminates the services of a railroad police officer, it shall file a notice to that effect with the director of the department of state police, stating the date on which services shall be discontinued. The commission issued to the railroad police officer shall become null and void on the date specified. The dismissal of a railroad police officer from employment of the company shall render the commission null and void. The director, on 5 days' notice to the company for whom a railroad police officer was appointed, may revoke a commission issued to the railroad police officer.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.390 Conductor or flagperson; requirements for employment; applicability of section; substantial compliance; enforcement.

Sec. 390. (1) A person shall not be employed as a conductor on a railroad freight train in this state without having 2 years' prior experience as a brakeman or conductor on a freight or passenger train on a line of road. A person shall not be employed as a conductor on a passenger train in this state without having 1 year's prior experience as a conductor of a freight or passenger train on a line of road.

(2) A person shall not be employed as a flagperson on a railroad train in this state without having 3 months' prior experience as a yard or road brakeman on a yard, freight, or passenger train on a line of road.

(3) A railroad company by its officers, agents, or employees shall not knowingly engage or employ any person to act in the capacity of conductor or flagperson in violation of this act.

(4) Nothing in this section shall be construed to apply in the case of the disability of a conductor or

flagperson or in case of an accident or wreck of a railroad train.

(5) The provisions of this section shall not apply to any railroad company within this state or the receiver or lessee thereof, whose line of railway is less than 30 miles in length, nor shall anything herein contained relieve any railroad company from the negligence of any of its employees. If a railroad company is unable to hire a sufficient number of persons having the experience for the respective positions specified in this act, at the average rate of wages paid by said company during the next preceding year, it shall be considered a substantial compliance with this act if the company employs from among such persons as are available those having the highest qualifications as to experience and efficiency.

(6) The department shall enforce this section.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.391 Obstruction of vehicular traffic; offenses as separate violations; penalty; allocation of fines.

Sec. 391. (1) A railroad shall not permit a train to obstruct vehicular traffic on a public street or highway for longer than 5 minutes at any 1 time, except the obstruction shall not be considered a violation under the following circumstances:

(a) If the train is continuously moving in the same direction at not less than 10 miles per hour for not longer than 7 minutes.

(b) If the railroad can show that the incident occurred as a result of a verifiable accident, mechanical failure, or unsafe condition.

(2) A railroad shall not permit successive train movements to obstruct vehicular traffic on a public street or highway until all vehicular traffic previously delayed by such train movements has been cleared.

(3) A railroad company shall not permit its employees to allow the activation of active traffic control devices at a railroad grade crossing for more than 2 minutes if there is no intention to move a train or track equipment through the crossing within 20 seconds to 60 seconds after the activation of the devices.

(4) Each offense under this section shall be a separate violation punishable by a fine of not more than \$500.00 unless the railroad is willfully, deliberately, and negligently blocking vehicular traffic and then the fine shall be not more than \$1,000.00 and the costs of prosecution.

(5) All fines civil or otherwise collected by a local unit of government in excess of \$10,000.00 annually from the enforcement of a local ordinance substantially similar to this section shall be allocated as follows:

(a) Fifteen percent shall be retained by each local unit of government for costs of enforcement of the ordinance.

(b) Eighty-five percent shall be deposited in a railroad grade crossing safety fund. The revenue collected in this fund shall be used solely for railroad grade crossing safety projects in these local units of government.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.400 Employee sanitation and shelter facilities; rules; compliance with section.

Sec. 400. (1) All railroads shall be required to provide adequate sanitation and shelter facilities for their employees.

(2) In accordance with section 31 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.231 of the Michigan Compiled Laws, the rules promulgated under the following acts shall continue in effect under this act until amended or rescinded by the department pursuant to its rule making authority under this act:

(a) Act No. 419 of the Public Acts of 1919, being sections 460.51 to 460.62 of the Michigan Compiled Laws.

(b) Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(3) A railroad that fails to comply with this section is in violation of this act.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.402 Definitions; unreasonable endangerment of employee; complaint by employee or union; inspection by department; notice; order; hearing; appeal; enforcement.

Sec. 402. (1) As used in this section:

(a) "Legal control" means legal control in whole or in part of any safe space.

(b) "Person" means, in addition to a railroad, an individual, partnership, association, or corporation, and their respective trustees or receivers appointed by a court, that owns, leases, or otherwise has under his or their control land on which, or adjacent to which, is located and operated a railroad track or sidetrack that is part of or in any way connected with a railroad.

(c) "Safe space" means that space whose height extends from the actual grade level to a distance 22 feet 6

inches above the top of the rails and whose width, along any railroad track or sidetrack with a radius of not less than 400 feet lateral curvature, extends 8 feet 6 inches on both sides of a perpendicular from the center line of the track, or, along any railroad track or sidetrack with a radius of less than 400 feet lateral curvature, extends 9 feet on both sides of a perpendicular from the center line of the track.

(d) "Union" means any labor organization that has a contract with an employer who is a common carrier.

(2) A person shall not knowingly permit scrap iron, lumber, debris, vegetation exceeding a height of 4 inches, marked unevenness of terrain, or any material or condition whatsoever, which unreasonably endangers an employee, to remain or continue in the safe space over which the person has legal control.

(3) The department shall make an inspection within 30 days upon written complaint by an employee or union whose members are affected by a violation of this section, or upon written complaint by any person, including a common carrier, affected by the violation. Each party of interest shall be given a 15-day notice of the date of the inspection. The department may dispose of a complaint by denial for lack of merit in fact or in law. The department shall issue a proposed order to all parties of interest after the complaint is inspected.

(4) If no written objection to the proposed order is filed with the department within 30 days after the date the proposed order is transmitted, it shall become the order of the department.

(5) If after receipt of the proposed order of the inspection, a party who is opposed to the proposed order may file a written request for hearing and the department, after notice, shall hold a hearing and shall issue its order.

(6) If an order issued pursuant to subsection (4) or (5) is not complied with, the department or any person feeling aggrieved by the violation of the order, including a common carrier or union any of whose members feel aggrieved by the violation of the order, may apply to the circuit court for the county of Ingham or to the circuit court of any county in which the department has found there is a violation of this section, for a court order to enforce the department's order. A copy of the application for the court order shall be sent by registered or certified mail to the department and to any party to whom the department order applies. The circuit court, on its own motion, may join the department as a party to an application made to the court for enforcement of the order.

(7) The prosecuting attorney of the county in which the violation occurs shall enforce this section.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.431 Liens; effect.

Sec. 431. (1) All claims arising out of the death or personal injury of any person resulting from the negligence of any street railway or railroad organized and doing business under the laws of this state, after a judgment is obtained, shall constitute a lien upon all of the assets and property of the street railway or railroad and all of its rights and franchises. This lien shall take precedence over all other judgments, executions, or attachments levied upon the assets or property, except those issued in favor of persons having obtained judgments for personal work and labor of themselves or their minor children.

(2) Any lien obtained under former Act No. 110 of the Public Acts of 1899 and in effect on the effective date of this act shall remain in full force and effect until discharged.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.441 Administration of act; investigation of complaints; violation or noncompliance; penalty; inspections; hearing; action to recover penalties; enforcement; remedies.

Sec. 441. (1) The department shall administer this act and investigate complaints alleging a violation of this act.

(2) Unless a specific penalty is otherwise provided in this act, a railroad, road authority, or person that violates or fails to comply with any provision of this act, or fails to obey or comply with any lawful order issued or rule promulgated by the department, is subject to a civil fine of not more than \$1,000.00 for each day of noncompliance following exhaustion of administrative and legal remedies.

(3) The department may make inspections at any time to determine if this act or the rules promulgated under this act are being violated and upon discovering a violation of this act or the rules may issue a citation to the alleged violator with a specified date for compliance. If the violations in the citation are not corrected by the specified date, a hearing will be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(4) Unless other procedures are specified, an action to recover penalties for a violation of this act, an order issued, or a rule promulgated by the department pursuant to this act shall be instituted by the department on its own motion or by complaint. If, after notice and hearing, the violation still exists, an action may be brought in the circuit court of any county in which the alleged violator may be sued or in the circuit court of the county

of Ingham. Enforcement of orders, collection of civil fines, and actions to prosecute violations of this act or department orders to a final judgment shall be the responsibility of the department and the attorney general.

(5) In addition to the other remedies provided by this act for the violation of this act, an order issued, or a rule promulgated by the department pursuant to this act, the department or an affected party may compel compliance with this act and with an order issued or a rule promulgated by the department by proceedings in mandamus, injunction, or other appropriate civil remedies.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.

462.450 Applicability of act to street railway organized under MCL 472.1 to 472.31.

Sec. 450. This act does not apply to a street railway organized under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

History: Add. 2008, Act 483, Imd. Eff. Jan. 12, 2009.

462.451 Repeal of certain acts and parts of acts.

Sec. 451. The following acts and parts of acts are repealed:

(a) Section 27 of chapter 1 of Act No. 283 of the Public Acts of 1909, being section 221.27 of the Michigan Compiled Laws.

(b) Act No. 92 of the Public Acts of 1893, being sections 253.1 to 253.33 of the Michigan Compiled Laws.

(c) Act No. 114 of the Public Acts of 1925, being sections 253.51 to 253.74 of the Michigan Compiled Laws.

(d) Sections 1, 3, and 3a of Act No. 419 of the Public Acts of 1919, being sections 460.51, 460.53, and 460.53a of the Michigan Compiled Laws.

(e) Act No. 200 of the Public Acts of 1925, being sections 460.101 to 460.102 of the Michigan Compiled Laws.

(f) Act No. 198 of the Public Acts of 1873, being sections 463.1 to 467.36 of the Michigan Compiled Laws.

(g) Act No. 64 of the Public Acts of 1885, being sections 467.101 to 467.103 of the Michigan Compiled Laws.

(h) Act No. 124 of the Public Acts of 1867, being sections 467.151 to 467.152 of the Michigan Compiled Laws.

(i) Act No. 156 of the Public Acts of 1905, being sections 467.201 to 467.202 of the Michigan Compiled Laws.

(j) Act No. 193 of the Public Acts of 1929, being section 467.251 of the Michigan Compiled Laws.

(k) Act No. 137 of the Public Acts of 1956, being sections 467.301 to 467.302 of the Michigan Compiled Laws.

(l) Act No. 115 of the Public Acts of 1921, being sections 468.31 to 468.37 of the Michigan Compiled Laws.

(m) Act No. 142 of the Public Acts of 1875, being section 468.51 of the Michigan Compiled Laws.

(n) Act No. 74 of the Public Acts of 1913, being sections 468.71 to 468.73 of the Michigan Compiled Laws.

(o) Act No. 252 of the Public Acts of 1889, being section 468.101 of the Michigan Compiled Laws.

(p) Act No. 38 of the Public Acts of 1875, being sections 468.121 to 468.122 of the Michigan Compiled Laws.

(q) Act No. 289 of the Public Acts of 1865, being sections 468.151 to 468.153 of the Michigan Compiled Laws.

(r) Act No. 134 of the Public Acts of 1869, being section 468.201 of the Michigan Compiled Laws.

(s) Act No. 86 of the Public Acts of 1891, being sections 468.221 to 468.223 of the Michigan Compiled Laws.

(t) Act No. 240 of the Public Acts of 1929, being section 468.241 of the Michigan Compiled Laws.

(u) Act No. 138 of the Public Acts of 1863, being section 468.301 of the Michigan Compiled Laws.

(v) Act No. 160 of the Public Acts of 1905, being sections 468.351 to 468.356 of the Michigan Compiled Laws.

(w) Act No. 96 of the Public Acts of 1859, being sections 468.371 to 468.373 of the Michigan Compiled Laws.

(x) Act No. 100 of the Public Acts of 1871, being sections 468.401 to 468.403 of the Michigan Compiled Laws.

(y) Act No. 110 of the Public Acts of 1899, being sections 468.451 to 468.453 of the Michigan Compiled Laws.

- (z) Act No. 270 of the Public Acts of 1921, being sections 469.1 to 469.13 of the Michigan Compiled Laws.
- (aa) Act No. 171 of the Public Acts of 1893, being sections 469.31 to 469.37 of the Michigan Compiled Laws.
- (bb) Act No. 27 of the Public Acts of 1875, being section 469.51 of the Michigan Compiled Laws.
- (cc) Act No. 189 of the Public Acts of 1921, being sections 469.61 to 469.65 of the Michigan Compiled Laws.
- (dd) Act No. 102 of the Public Acts of 1927, being sections 469.81 to 469.84 of the Michigan Compiled Laws.
- (ee) Act No. 77 of the Public Acts of 1913, being sections 469.101 to 469.103 of the Michigan Compiled Laws.
- (ff) Act No. 158 of the Public Acts of 1923, being sections 469.111 to 469.113 of the Michigan Compiled Laws.
- (gg) Act No. 9 of the Public Acts of 1895, being sections 469.121 to 469.124 of the Michigan Compiled Laws.
- (hh) Act No. 118 of the Public Acts of 1887, being sections 469.131 to 469.133 of the Michigan Compiled Laws.
- (ii) Act No. 167 of the Public Acts of 1871, being sections 469.141 to 469.144 of the Michigan Compiled Laws.
- (jj) Act No. 178 of the Public Acts of 1901, being sections 469.151 to 469.152 of the Michigan Compiled Laws.
- (kk) Act No. 234 of the Public Acts of 1907, being sections 469.181 to 469.182 of the Michigan Compiled Laws.
- (ll) Act No. 401 of the Public Acts of 1919, being sections 469.191 to 469.192 of the Michigan Compiled Laws.
- (mm) Act No. 52 of the Public Acts of 1909, being sections 469.201 to 469.204 of the Michigan Compiled Laws.
- (nn) Act No. 123 of the Public Acts of 1923, being sections 469.211 to 469.213 of the Michigan Compiled Laws.
- (oo) Act No. 275 of the Public Acts of 1887, being sections 469.221 to 469.222 of the Michigan Compiled Laws.
- (pp) Act No. 55 of the Public Acts of 1919, being sections 469.231 to 469.235 of the Michigan Compiled Laws.
- (qq) Act No. 56 of the Public Acts of 1919, being sections 469.241 to 469.246 of the Michigan Compiled Laws.
- (rr) Act No. 190 of the Public Acts of 1873, being sections 469.261 to 469.263 of the Michigan Compiled Laws.
- (ss) Act No. 35 of the Public Acts of 1887, being sections 469.281 to 469.282 of the Michigan Compiled Laws.
- (tt) Act No. 30 of the Public Acts of 1901, being sections 469.301 to 469.302 of the Michigan Compiled Laws.
- (uu) Act No. 303 of the Public Acts of 1921, being sections 469.351 to 469.356 of the Michigan Compiled Laws.
- (vv) Act No. 4 of the Public Acts of the Extra Session of 1900, being sections 469.381 to 469.382 of the Michigan Compiled Laws.
- (ww) Act No. 184 of the Public Acts of 1897, being sections 469.401 to 469.402 of the Michigan Compiled Laws.
- (xx) Act No. 245 of the Public Acts of 1917, being section 469.421 of the Michigan Compiled Laws.
- (yy) Act No. 142 of the Public Acts of 1895, being sections 469.451 to 469.452 of the Michigan Compiled Laws.
- (zz) Act No. 177 of the Public Acts of 1881, being section 469.461 of the Michigan Compiled Laws.
- (aaa) Act No. 153 of the Public Acts of 1883, being sections 469.471 to 469.472 of the Michigan Compiled Laws.
- (bbb) Act No. 21 of the Public Acts of 1867, being sections 469.481 to 469.482 of the Michigan Compiled Laws.
- (ccc) Act No. 104 of the Public Acts of 1921, being sections 469.501 to 469.502 of the Michigan Compiled Laws.
- (ddd) Act No. 37 of the Public Acts of 1949, being sections 469.521 to 469.522 of the Michigan Compiled Laws.

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(eee) Act No. 106 of the Public Acts of 1951, being sections 469.541 to 469.542 of the Michigan Compiled Laws.

(fff) Act No. 180 of the Public Acts of 1956, being section 469.601 of the Michigan Compiled Laws.

(ggg) Act No. 187 of the Public Acts of 1911, being sections 470.2 to 470.10 of the Michigan Compiled Laws.

(hhh) Act No. 114 of the Public Acts of 1941, being sections 470.51 to 470.61 of the Michigan Compiled Laws.

(iii) Act No. 156 of the Public Acts of 1941, being sections 470.101 to 470.109 of the Michigan Compiled Laws.

(jjj) Act No. 26 of the Public Acts of 1968, being sections 470.121 to 470.126 of the Michigan Compiled Laws.

(kkk) Act No. 75 of the Public Acts of 1945, being sections 470.151 to 470.153 of the Michigan Compiled Laws.

(lll) Act No. 4 of the Public Acts of 1986, being sections 470.201 to 470.210 of the Michigan Compiled Laws.

(mmm) Act No. 244 of the Public Acts of 1881, being sections 471.1 to 471.47 of the Michigan Compiled Laws.

(nnn) Act No. 160 of the Public Acts of 1875, being section 473.91 of the Michigan Compiled Laws.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 1996, Act 93, Imd. Eff. Feb. 27, 1996.