

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4345**

4 (By Delegates Boggs, D. Campbell, Fragale, Diserio,  
5 Marcum, Moore, R. Phillips and White)

6  
7 (Originating in the Committee on the Judiciary)

8 [February 10, 2012]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §31-2-17, relating to  
12 the sale of railroad scrap metal; definitions; written  
13 authorization for sale; minimum amount of railroad scrap metal  
14 sold; due diligence of purchaser; presumptions available in  
15 civil action; and, award of costs and fees.

16 *Be it enacted by the Legislature of West Virginia:*

17 That the Code of West Virginia, 1931, as amended, be amended  
18 by adding thereto a new section, designated §31-2-17, to read as  
19 follows:

20 **ARTICLE 2. RAILROAD COMPANIES.**

21 **§31-2-17. Selling railroad scrap metal.**

22 (a) As used in this section:

23 (1) "Company" is a railroad carrier as defined in section  
24 twenty-eight, article three, chapter sixty-one;

25 (2) "Railroad scrap metal" means any materials derived from  
26 railroad track, railroad track material, worn or used links, pins,  
27 journal bearings, or other worn, used, or detached appendages of  
28 railroad equipment or railroad track;

29 (3) "Purchaser" means any person in the business of purchasing

1 railroad scrap metal, any salvage yard owner or operator, any  
2 public or commercial recycling facility owner or operator and any  
3 agent or employee thereof, or other individual or entity who  
4 purchase any form of railroad scrap metal;

5 (4) "Confusion of goods" means the intended mixture of similar  
6 railroad scrap metal done purposely by the purchaser without  
7 authorization of right or title to the railroad scrap metal.

8 (b) Only a duly authorized individual, agent, officer or  
9 employee of a company may sell or dispose of railroad scrap metal  
10 owned by the company. Any sale or disposition of railroad scrap  
11 metal made by any unauthorized individual is void.

12 (c) All sales or disposition of company railroad scrap metal  
13 must:

14 (1) Be in quantities equal to or greater than one ton;

15 (2) Be accompanied by a bill of sale or other written evidence  
16 of authorization to sell the railroad scrap metal, a copy of which  
17 shall be retained by the purchaser and the duly authorized seller  
18 of railroad scrap metal; and,

19 (3) Comply with other lawful requirements regarding the sale  
20 and purchase of railroad scrap metal.

21 (d) If a duly authorized individual sells or disposes of  
22 railroad scrap metal in quantities less than one ton, or without  
23 delivering a bill of sale or other written evidence of  
24 authorization from the company for sale or disposition of railroad  
25 scrap metal to the purchaser, the company shall not thereafter be  
26 entitled to the benefit of subsections (f) through (i).

27 (e) Before acquiring railroad scrap metal the purchaser shall  
28 exercise due diligence to ascertain the lawful ownership thereof,

1 whether by evidence of a bill of sale from the company, or other  
2 form of written authorization from the company for sale or  
3 disposition of railroad scrap metal to the purchaser.

4 (f) In any civil action where the company claims to be the  
5 rightful owner of railroad scrap metal in the possession of a  
6 purchaser, the company may, in addition to any other relief to  
7 which the company may be entitled, seek an immediate order from  
8 the court to physically preserve any railroad scrap metal which is  
9 the subject of the suit, and any other metals with which they may  
10 have been confused, while the suit is pending.

11 (g) In a civil action regarding rightful possession and  
12 ownership of railroad scrap metal, if the purchaser cannot produce  
13 the bill of sale or other written evidence of authorization to sell  
14 the railroad scrap metal, the court shall presume that the subject  
15 railroad scrap metal was unlawfully taken from the company.

16 (h) The purchaser claiming ownership of the railroad scrap  
17 metal in controversy may rebut this presumption and prove a lawful  
18 right or title to the subject railroad scrap metal, but in the  
19 absence of adequate  
20 proof, the company shall be held to be the general owner of the  
21 subject railroad scrap metal, and shall be entitled to immediate  
22 possession of the railroad scrap metal in controversy.

23 (i) If the court finds that any portion, or all of the  
24 railroad scrap metal in controversy was unlawfully obtained by the  
25 purchaser, and mixed or confused with other railroad scrap metal,  
26 it shall be deemed a confusion of goods. In the case of a  
27 confusion of goods, the purchaser loses any right in all mixed  
28 railroad scrap metal unless the railroad scrap metal can be

1 identified and separated among the company and the purchaser.

2 (j) In a civil action regarding rightful possession and  
3 ownership of railroad scrap metal, if the court finds that the  
4 purchaser failed to use due diligence to ascertain that the person  
5 selling the railroad scrap metal had a legal right to do so, the  
6 court shall award the company costs and attorneys fees related to  
7 that action.