

COMMITTEE SUBSTITUTE

FOR

**H. B. 4345**

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(BY DELEGATES BOGGS, D. CAMPBELL, FRAGALE, DISERIO,  
MARCUM, MOORE, R. PHILLIPS AND WHITE)

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(Originating in the Committee on the Judiciary)  
[February 10, 2012]

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

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

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

**ARTICLE 2. RAILROAD COMPANIES.**

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

1        (a) As used in this section:

2       (1) “Company” is a railroad carrier as defined in section  
3 twenty-eight, article three, chapter sixty-one;

4       (2) “Railroad scrap metal” means any materials derived  
5 from railroad track, railroad track material, worn or used  
6 links, pins, journal bearings, or other worn, used, or detached  
7 appendages of railroad equipment or railroad track;

8       (3) “Purchaser” means any person in the business of  
9 purchasing railroad scrap metal, any salvage yard owner or  
10 operator, any public or commercial recycling facility owner  
11 or operator and any agent or employee thereof, or other  
12 individual or entity who purchase any form of railroad scrap  
13 metal;

14       (4) “Confusion of goods” means the intended mixture of  
15 similar railroad scrap metal done purposely by the purchaser  
16 without authorization of right or title to the railroad scrap metal.

17       (b) Only a duly authorized individual, agent, officer or  
18 employee of a company may sell or dispose of railroad scrap  
19 metal owned by the company. Any sale or disposition of  
20 railroad scrap metal made by any unauthorized individual is  
21 void.

22       (c) All sales or disposition of company railroad scrap  
23 metal must:

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

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

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

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

37 (e) Before acquiring railroad scrap metal the purchaser  
38 shall exercise due diligence to ascertain the lawful ownership  
39 thereof, whether by evidence of a bill of sale from the  
40 company, or other form of written authorization from the  
41 company for sale or disposition of railroad scrap metal to the  
42 purchaser.

43 (f) In any civil action where the company claims to be the  
44 rightful owner of railroad scrap metal in the possession of a  
45 purchaser, the company may, in addition to any other relief

46 to which the company may be entitled, seek an immediate  
47 order from the court to physically preserve any railroad scrap  
48 metal which is the subject of the suit, and any other metals  
49 with which they may have been confused, while the suit is  
50 pending.

51 (g) In a civil action regarding rightful possession and  
52 ownership of railroad scrap metal, if the purchaser cannot  
53 produce the bill of sale or other written evidence of  
54 authorization to sell the railroad scrap metal, the court shall  
55 presume that the subject railroad scrap metal was unlawfully  
56 taken from the company.

57 (h) The purchaser claiming ownership of the railroad  
58 scrap metal in controversy may rebut this presumption and  
59 prove a lawful right or title to the subject railroad scrap  
60 metal, but in the absence of adequate proof, the company  
61 shall be held to be the general owner of the subject railroad  
62 scrap metal, and shall be entitled to immediate possession of  
63 the railroad scrap metal in controversy.

64 (i) If the court finds that any portion, or all of the railroad  
65 scrap metal in controversy was unlawfully obtained by the  
66 purchaser, and mixed or confused with other railroad scrap  
67 metal, it shall be deemed a confusion of goods. In the case

68 of a confusion of goods, the purchaser loses any right in all  
69 mixed railroad scrap metal unless the railroad scrap metal can  
70 be identified and separated among the company and the  
71 purchaser.

72 (j) In a civil action regarding rightful possession and  
73 ownership of railroad scrap metal, if the court finds that the  
74 purchaser failed to use due diligence to ascertain that the  
75 person selling the railroad scrap metal had a legal right to do  
76 so, the court shall award the company costs and attorneys  
77 fees related to that action.