

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4345

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



Passed March 7, 2012

To Take Effect Ninety Days From Passage

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H. B. 4345

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

[Passed March 7, 2012; to take effect ninety days from passage.]

AN ACT 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 company railroad scrap metal; defining terms; requiring written authorization for sale; setting a minimum weight for railroad scrap metal sold; requiring purchaser to attempt to verify ownership; creating certain presumptions and other standards available in civil action; providing that certain presumptions are lost if a company does not follow this section; and allowing an award of costs and attorneys fees in certain circumstances.

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
17 metal.

18 (b) Only a duly authorized individual, agent, officer or
19 employee of a company may sell or dispose of railroad scrap
20 metal owned by the company. Any sale or disposition of
21 railroad scrap metal made by any unauthorized individual is
22 void: *Provided*, That the purchaser knowingly purchased
23 company railroad scrap metal.

24 (c) All sales or disposition of company railroad scrap
25 metal must:

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

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

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

33 (d) If a duly authorized individual sells or disposes of
34 railroad scrap metal in quantities less than one ton, or without
35 delivering a bill of sale or other written evidence of
36 authorization from the company for sale or disposition of
37 railroad scrap metal to the purchaser, the company shall not

38 thereafter be entitled to the benefit of subsections (g) through
39 (i) of this section.

40 (e) Before knowingly acquiring railroad scrap metal the
41 purchaser shall attempt to ascertain the lawful ownership
42 thereof, whether by evidence of a bill of sale from the
43 company, or other form of written authorization from the
44 company for sale or disposition of railroad scrap metal to the
45 purchaser.

46 (f) In any civil action where the company claims to be the
47 rightful owner of railroad scrap metal in the possession of a
48 purchaser, the company may, in addition to any other relief
49 to which the company may be entitled, seek an immediate
50 order from the court to physically preserve any railroad scrap
51 metal which is the subject of the suit, and any other metals
52 with which they may have been confused, while the suit is
53 pending.

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

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

67 (i) If the court finds that any portion, or all of the railroad
68 scrap metal in controversy was unlawfully obtained by the
69 purchaser, and mixed or confused with other railroad scrap
70 metal, it shall be deemed a confusion of goods. In the case of
71 a confusion of goods, the purchaser loses any right in all
72 mixed railroad scrap metal unless the railroad scrap metal can
73 be identified and separated among the company and the
74 purchaser.

75 (j) In a civil action regarding rightful possession and
76 ownership of railroad scrap metal, if the court finds that the
77 purchaser knowingly purchased company railroad scrap metal
78 and failed to attempt to ascertain that the person selling the
79 railroad scrap metal had a legal right to do so, the court shall
80 award the company costs and attorneys fees related to that
81 action.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor