

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4345**

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

7  
8 [Passed March 7, 2012; in effect ninety days from passage.]

9  
10 AN ACT 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 company railroad scrap metal; defining terms;  
13 requiring written authorization for sale; setting a minimum  
14 weight for railroad scrap metal sold; requiring purchaser to  
15 attempt to verify ownership; creating certain presumptions and  
16 other standards available in civil action; providing that  
17 certain presumptions are lost if a company does not follow  
18 this section; and allowing an award of costs and attorneys  
19 fees in certain circumstances.

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

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

24 **ARTICLE 2. RAILROAD COMPANIES.**

25 **§31-2-17. Selling railroad scrap metal.**

26 (a) As used in this section:

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

29 (2) "Railroad scrap metal" means any materials derived from

1 railroad track, railroad track material, worn or used links, pins,  
2 journal bearings, or other worn, used, or detached appendages of  
3 railroad equipment or railroad track;

4 (3) "Purchaser" means any person in the business of purchasing  
5 railroad scrap metal, any salvage yard owner or operator, any  
6 public or commercial recycling facility owner or operator and any  
7 agent or employee thereof, or other individual or entity who  
8 purchase any form of railroad scrap metal;

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

12 (b) Only a duly authorized individual, agent, officer or  
13 employee of a company may sell or dispose of railroad scrap metal  
14 owned by the company. Any sale or disposition of railroad scrap  
15 metal made by any unauthorized individual is void: *Provided*, That  
16 the purchaser knowingly purchased company railroad scrap metal.

17 (c) All sales or disposition of company railroad scrap metal  
18 must:

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

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

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

26 (d) If a duly authorized individual sells or disposes of  
27 railroad scrap metal in quantities less than one ton, or without  
28 delivering a bill of sale or other written evidence of

1 authorization from the company for sale or disposition of railroad  
2 scrap metal to the purchaser, the company shall not thereafter be  
3 entitled to the benefit of subsections (g) through (i) of this  
4 section.

5 (e) Before knowingly acquiring railroad scrap metal the  
6 purchaser shall attempt to ascertain the lawful ownership thereof,  
7 whether by evidence of a bill of sale from the company, or other  
8 form of written authorization from the company for sale or  
9 disposition of railroad scrap metal to the purchaser.

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

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

22 (h) The purchaser claiming ownership of the railroad scrap  
23 metal in controversy may rebut this presumption and prove a lawful  
24 right or title to the subject railroad scrap metal, but in the  
25 absence of adequate proof, the company shall be held to be the  
26 general owner of the subject railroad scrap metal, and shall be  
27 entitled to immediate possession of the railroad scrap metal in  
28 controversy.

1 (i) If the court finds that any portion, or all of the  
2 railroad scrap metal in controversy was unlawfully obtained by the  
3 purchaser, and mixed or confused with other railroad scrap metal,  
4 it shall be deemed a confusion of goods. In the case of a  
5 confusion of goods, the purchaser loses any right in all mixed  
6 railroad scrap metal unless the railroad scrap metal can be  
7 identified and separated among the company and the purchaser.

8 (j) In a civil action regarding rightful possession and  
9 ownership of railroad scrap metal, if the court finds that the  
10 purchaser knowingly purchased company railroad scrap metal and  
11 failed to attempt to ascertain that the person selling the railroad  
12 scrap metal had a legal right to do so, the court shall award the  
13 company costs and attorneys fees related to that action.