

WEST VIRGINIA CODE: §31-2-17

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

(a) As used in this section:

- (1) "Company" is a railroad carrier as defined in section twenty-eight, article three, chapter sixty-one;
- (2) "Railroad scrap metal" means any materials derived from railroad track, railroad track material, worn or used links, pins, journal bearings, or other worn, used, or detached appendages of railroad equipment or railroad track;
- (3) "Purchaser" means any person in the business of purchasing railroad scrap metal, any salvage yard owner or operator, any public or commercial recycling facility owner or operator and any agent or employee thereof, or other individual or entity who purchase any form of railroad scrap metal;
- (4) "Confusion of goods" means the intended mixture of similar railroad scrap metal done purposely by the purchaser without authorization of right or title to the railroad scrap metal.

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

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

- (1) Be in quantities equal to or greater than one ton;
- (2) Be accompanied by a bill of sale or other written evidence of authorization to sell the railroad scrap metal, a copy of which shall be retained by the purchaser and the duly authorized seller of railroad scrap metal; and,
- (3) Comply with other lawful requirements regarding the sale and purchase of railroad scrap metal.

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

(e) Before knowingly acquiring railroad scrap metal the purchaser shall attempt to ascertain the lawful ownership thereof, whether by evidence of a bill of sale from the company, or

other form of written authorization from the company for sale or disposition of railroad scrap metal to the purchaser.

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

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

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

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

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