WEST VIRGINIA CODE CHAPTER 31 ARTICLE 2

WV Legislature

§31-2-1. Railroad companies to be common carriers; general powers.

Every railroad company heretofore incorporated and organized under the laws of this state, or under the laws of any other state, and authorized or licensed to do business in this state, and every such company which hereafter shall be incorporated and organized under the provisions of article one of this chapter, or authorized or licensed to transact business under said article, is a common carrier, and is authorized to acquire, construct, and own, maintain, operate and hold, railway lines, plants and systems, and any and all other suitable facilities for, and to engage in transporting persons and all commodities, objects and things which are subjects of commerce or of transportation by any and all means and methods, which are now used, or which may hereafter be developed, for such purpose.

No such railroad company shall engage in any other business in this state, except as hereinafter authorized.

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§31-2-2. Right to own and dispose of property.

Every such railroad company shall have the right to purchase, take by voluntary gift or grant, acquire by condemnation, own, hold and use, all real estate and other property necessary for its corporate objects and purposes, and, when any property so acquired shall be no longer required for its use and purposes, to sell and convey the same.

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§31-2-3. Right to produce electricity for own uses.

Any such railroad company may acquire, construct, own, hold and operate plants and properties for the generation, production and transportation of electricity in this state, for its corporate uses and purposes: Provided, That it shall not build or construct any hydroelectric plant or any dams or impounding basins for the use of such plant in any waters of the state, without having first obtained the consent of the Public Service Commission of the state so to do.

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§31-2-4. Right to dispose of surplus electricity, power, etc.

Any such railroad company, owning and operating any plant in this state for the production of electricity and power primarily for its own use, may sell and dispose of any surplus electricity or power not required for its use, under such regulations as are prescribed by law or by the Public Service Commission of the state by authority conferred upon it by any law: Provided, That in the case of a corporation engaged or heretofore engaged in the operation of street or interurban railways by electricity, or other motive power than steam, it shall have the right to furnish and sell to the public electricity, water and gas, either natural or artificial, or both, and to purchase, hold and use such property, rights, privileges and franchises as may be necessary in the generation, production, manufacture and sale to the public of such electricity and gas, and in the storage, filtration, distribution, delivery and sale to the public of water: Provided further, That no right, privilege or franchise granted under this section or now held shall be exercised without first obtaining from the Public Service Commission, if provided by law, the authority so to do, and, in the event of sales within a municipality until after having first procured a franchise therefor from the municipality in which it seeks to operate.

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§31-2-5. Buying, selling or transporting coal and coke.

It shall be unlawful for any railroad corporation to engage, directly or indirectly, in the business of buying and selling coal or coke, or to promise, pledge or lend its credit, money or other property or thing of value to another, either natural or corporate, engaged in such business, but nothing herein shall prevent such corporation from purchasing such articles for its own consumption, or when it is the owner of any such commodities from selling and shipping the same: Provided, That in doing so, such corporation shall not discriminate in rates, distribution of cars or otherwise against other shippers of like commodities on its lines: Provided further, That when such company has the right to sell either of such commodities, and is unable from any cause to fill any bona fide contracts it may have made to supply such commodities, or either of them, it may purchase them to enable it to fill such contracts.

Every railroad corporation, along whose line of railroad the industry of mining coal or manufacturing coke is carried on, shall without discrimination between or among shippers, and without unnecessary delay, make a reasonable provision for the transportation of all such coal and coke offered for transportation over its railroad, and no such railroad corporation shall discriminate in rates, distribution of cars or otherwise against or among shippers of coal or coke offered for shipment on its line or lines.

The circuit and criminal courts of every county through or into which the railroad of any such railroad corporation violating any or either of the provisions of this section may pass, shall have concurrent jurisdiction of all the offenses under and violations of the provisions of this section.

Any railroad corporation or officer or agent thereof who shall knowingly and wilfully violate any of the provisions of this section, shall, for each and every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than $500.

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§31-2-6. Charter to show principal cities and towns to be served by railroad.

Any charter issued under article one of this chapter incorporating any railroad company for the purpose of constructing a railroad in the State of West Virginia shall name the principal towns and cities which are proposed to be reached and served by such railroad.

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§31-2-7. Filing map of railroad.

Every railroad corporation shall, within a reasonable time after its railroad is located in this state, cause to be made a map and profile thereof, with the names of the owners of the lands through which it runs, and of the noted places along the same stated thereon, and file the same in the office of the Secretary of State, and in the office of the clerk of the county court of each county in which any part of said road is located.

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§31-2-8. Warning of approach of train at crossings; crossing railroad tracks.

A bell or steam whistle shall be placed on each locomotive engine, which shall be rung or whistled by the engineer or fireman, at a distance of at least sixty rods from the place where the railroad crosses any public street or highway, and be kept ringing or whistling for a time sufficient to give due notice of the approach of such train before such street or highway is reached, and any failure so to do is a misdemeanor punishable by a fine of not exceeding $100; and the corporation owning or operating the railroad shall be liable to any party injured for all damages sustained by reason of such neglect. When the tracks, other than switch or sidetracks, of two railroads cross each other, or in any way connect at a common grade, the crossing shall be made and kept in repair, and watchmen maintained thereat at the joint expense of the companies owning the tracks; all trains or engines passing over such tracks shall come to a full stop not nearer than two hundred feet nor farther than eight hundred feet from the crossing and shall not cross until signaled so to do by the watchman, nor until the way is clear; and when two passenger or freight trains approach the crossing at the same time, the train on the road first built shall have precedence if the tracks are both main tracks over which all passengers and freights on the roads are transported; but if only one track is such main track, and the other is a side or depot track, the train on the main track shall have precedence; and if one of the trains is a passenger train and the other a freight train, the former shall take precedence; and regular trains on time shall take precedence over trains of the same grade not on time, and engines with cars attached not on time shall take precedence over engines without cars not on time: Provided, That if such two railroads crossing each other, or in any way connecting at a common grade, by works or fixtures to be erected by them render it safe to pass over such crossing without stopping, and such works and fixtures first be approved by the Public Service Commission of West Virginia, and the plan thereof for such crossing designating the plan of crossing has been filed with said commission and approved by it, the provisions of this section relating to railroad crossings shall not apply.

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§31-2-9. Signboards or warning notices at crossings.

Every railroad company shall, at every place where a road or street crosses its railroad on the same level, erect and maintain suitable signboards or notices of warning apprising persons of the danger in crossing its tracks. All such signboards or notices shall be of the design and construction and shall be located in the manner required or approved by the state road commission. Any railroad company failing to comply with the provisions of this section shall be fined $5 for each week that any such failure continues.

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§31-2-10. Watering troughs for livestock.

All railroads maintaining stations that are shipping points for livestock, where there are as many as one thousand head shipped in any one year, shall wherever practicable place within the stock pens owned or controlled by such railroad company suitable watering troughs which shall, at all times during the time stock is being shipped from the station, be supplied with pure drinking water such as stock will drink. It shall be considered practicable where there are waterworks from which water can be obtained (city or otherwise) by piping not to exceed one fourth of a mile.

Any railroad company which refuses to comply with this section shall be guilty of a misdemeanor and, shall be fined not less than $50 nor more than $100 for each offense. And each day that such pens are without water during the shipping season shall be considered a separate offense.

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§31-2-11. Consolidation of railroad properties.

Any railroad company in this state may, with the assent and approval of the Public Service Commission, consolidate its properties and franchises with the property and franchises of another railroad company or other railroad companies, or obtain the possession and control of the lines and tracks of another railroad company or of other railroad companies, by purchase or lease, whether such railroads are or are not parallel or competing lines.

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§31-2-12. Passing into other states.

The railroad or any extension or lateral or branch line of any railroad company may pass out of this state into any other state, with the assent of such state, and back again into this state as often as may be found necessary or convenient in locating such railroad, extension or lateral or branch line.

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§31-2-13. Enumerated powers.

In furtherance, and not in limitation, of the general or other powers of any railroad company, every such railroad company shall have the following powers, it being provided that the enumeration herein of specific powers shall not limit or restrict in any manner the general or other powers of such company:

(a) To cause such examination and survey for its proposed railroad or any extension or lateral or branch line, to be made as may be necessary to the selection of the most advantageous route, and for such purpose such company or its officers, agents, engineers or employees, may enter upon the lands or waters of any person or corporation; but subject to responsibility for all damages occasioned thereby.

(b) To lay out its road, not exceeding one hundred and fifty feet in width, with such additional width as may be necessary for the purpose of excavations and embankments for the proper construction, repair and security of the railroad; and to construct such road.

(c) To change or relocate at any time the line or lines, grade or location of its railroad, or any part thereof, and to construct a new line or lines, grade or location for the same for the purpose of reducing grades or curvature, or for the purpose of avoiding annoyance to public travel or dangerous or difficult or expensive curves or grades, or unsafe, impracticable, unsubstantial or expensive, or otherwise undesirable, locations, routes, grounds or foundations, or for otherwise improving the line or lines of railroad, or for other reasonable cause, and to construct cutoffs for any such purpose or cause; but this provision shall not be construed to give authority to such railroad company to abandon, unless otherwise provided by law, the use of such line or lines, as formerly located, if the continued use thereof shall be necessary to serve industries or communities thereon.

(d) To change the general route or termini of a proposed railroad, before the same has been originally completed; but such change of general route or termini before completion shall only be made when authorized by a majority of the stock of such corporation voting thereon at an annual or a special meeting of the stockholders, and it shall operate as a release of the right of such corporation to build on the abandoned location, and the order or resolution of the stockholders authorizing such change shall be certified by the corporation to the Secretary of State, and recorded in his office. All the provisions of law shall apply to the changed or new route, termini, location, grade and line mentioned in this subdivision or the last preceding subdivision.

(e) To construct its railroad across, along or upon any stream of water, watercourse, street, highway, state or county-district road, or canal, which the route of such railroad shall intersect or touch; but the exercise of such power shall be in accordance with the provisions of chapters seventeen and fifty-four of this code in relation thereto; but nothing in this chapter contained shall be construed to authorize the construction of any railroad upon or across any street, in the inhabited portion of a city, or incorporated town or village, without the assent of the corporation of such city, town or village.

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(f) To take and hold under any grant or ordinance made by a municipal corporation any interest or right such municipal corporation may have in any street, alley or public ground, and such railroad corporation may in exchange therefor, in whole or in part, dedicate or otherwise secure to public use, another street, alley or parcel of ground out of real estate owned by such railroad corporation whether acquired by purchase or condemnation; or under an agreement with such municipal corporation may condemn land for use as such new street, alley or public ground, in the same manner as it may condemn land for its own use.

(g) To cross at grade, or to cross over or under, intersect, join and unite its railroad with any other railroad now built and constructed, or hereafter to be built and constructed within this state, at any point on its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the object of its connections, and every corporation whose railroad is, or shall be hereafter intersected by any new railroad, shall unite with the corporation owning such new railroad in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossing and connections, the same shall be ascertained and determined in the manner prescribed by chapter fifty-four of this code.

(h) To construct, maintain and operate lateral and branch lines; to use and operate any part of its main line and of a lateral or branch line or lines when completed as though the whole of its railroad was completed; and to construct, maintain and operate telegraph and telephone lines along the line of its railroad and the lateral and branch lines thereof, and connecting with any of its offices, works and improvements.

(i) To erect or otherwise acquire and maintain all necessary or convenient structures, fixtures, machinery and facilities for the construction, maintenance or operation of the railroad or business of such corporation.

(j) To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject, nevertheless, to the provisions of any law that has been or may be hereafter enacted.

(k) From time to time to borrow money for all or any of the purposes of the corporation and to issue, sell, pledge, dispose of and transfer bonds, evidences of indebtedness and preferred stock, or any of them, for any money so borrowed; and to issue, sell, pledge, dispose of and transfer its stock, bonds and evidences of indebtedness, or any of them, for land, money, labor, property or materials for all or any of the purposes of such corporation; and in case it be found necessary to do so, such corporation may sell and dispose of its stocks, bonds and evidences of indebtedness, or any of them, at less than the par value thereof. And such corporation shall have the power from time to time to mortgage or pledge its property, real and personal, and franchises, to secure any bonds, stock, evidences of indebtedness, or any of them. And the directors of such corporation may be empowered, in pursuance of any order or resolution of the stockholders, to confer on any holder of any such bond for money borrowed by it the right to convert the principal due or owing thereon into stock of such

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corporation at such time, on such terms and under such regulations as may be provided in such order or resolution or the bylaws of such corporation.

(l) With the assent of the holders of two thirds of its stock, had by a vote at a stockholders' meeting, to become surety for, or guarantee, the bonds, stock or debt of any railroad company, or in any other manner aid such railroad company in the construction of its railroad or other works or improvements.

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§31-2-14. Foreclosure or judicial sale of railroad company.

If a sale shall be made under a trust deed or mortgage executed by a railroad corporation on all its works and property, or if the sale of such property shall be made under the decree of a court, and there be a conveyance to any person or persons pursuant to any such sale, said sale and conveyance shall pass to the purchaser at such sale, not only the works and property of the corporation as they were at the time of making the trust deed or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale, other than debts due to it. Upon such conveyance to the purchaser such company shall ipso facto be dissolved, and such purchaser shall forthwith be a corporation by any name which may be set forth in such conveyance, or in any writing signed by him or them, and recorded in the office of the clerk of the county court of any county wherein the property so sold, or any part thereof, is situated.

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§31-2-15. Same -- Rights and duties of purchaser.

The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights and privileges, but not immunity from taxation, and perform all such duties as would have been had, or should have been performed by the first company, but for such sale and conveyance; save only, that the corporation so created shall not be entitled to debts due to the first company, and shall not be liable for any debts of, or claims against the first company, which may not be expressly assumed in the contract of purchase; and that the whole profits of the business done by such corporation shall belong to such purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book kept for that purpose. Such shares shall thereupon be on the footing of shares in corporations generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by such purchaser, of which notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the state wherein such corporation may do business.

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§31-2-16. Railroad company pesticide use.

(a) No later than seven days before applying a pesticide to a right-of-way that a railroad company owns or maintains, the railroad company shall provide pesticide safety information, which may be obtained by the railroad company's contracted pesticide applicator, by posting at affected on-duty railroad locations and through train bulletins, dispatcher messages, or other required documentation for each train and engine crew that will be working in the affected pesticide spray area. Additionally, the railroad company shall provide appropriate documentation to ensure prompt notification for maintenance of way, mechanical, signal employees, or other rail workers that will be working in the affected pesticide spray area. A railroad company shall include all of the following in the safety information provided under this subdivision:

(1) The location and description of the area to be treated.

(2) The name of the pesticide, its active ingredients, and its registration number under 7 U.S.C. §§ 136 *et seq*. The material safety data sheet(MSDS) for the pesticide shall satisfy this purpose.

(3) The approximate date and time that the pesticide is to be applied.

(4) Any restricted entry interval specified on the pesticide labeling. The MSDS for the pesticide shall satisfy this purpose: *Provided*, That the railroad company shall not require an employee to reenter the pesticide spray area prior to the requirements specified by the MSDS on the pesticide being utilized: *Provided however*, That train and/or on-track movement is not prohibited.

(5) A description of where the information required to be on the pesticide label under 7 U.S.C. §§ 136 *et seq* or under the provisions of article sixteen-a, chapter nineteen of this code is available for review. The MSDS for the pesticide shall satisfy this purpose.

(6) Emergency medical contact information.

(b) A railroad company shall keep the information required by subsection (a) posted at the location accessible to employees of the railroad for at least thirty days after the day of application.

(c) No later than seven days before applying a pesticide to a right-of-way that a railroad company owns or maintains, the railroad company shall provide all of the following to each individual who directly supervises employees who work in the area to be treated:

(1) The information described in subdivision (2) to (6) of subsection (a); and

(2) A description of the central location where the railroad company provides the pesticide safety information to employees under the provisions of subsection (a).

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(d) A railroad company shall make available to the public on its Internet site a description of how to obtain answers to questions about pesticide use by the railroad company, including a telephone number for the railroad and any toll-free number maintained by the railroad company to provide information about pesticide use.

(e) A railroad company shall provide annual pesticide safety training. This training may coincide with the annual railroad operating rules class or at any other operating or safety training class that is scheduled annually. This training shall be provided to railroad employees who work along railroad rights-of-way and in rail yards and to other employees who, due to the nature of their employment, may work in areas to which pesticides have been applied. It is the duty of the railroad company to keep records for each training session, which should include, but not be limited to, the date of the training session, the employees attending, and the name of the trainer and the trainer's employer. In the training under this subsection, a railroad company shall include, but not be limited to, information about restricted entry intervals, requirements for personal protective equipment, how to read pesticide labels, and incident and complaint reporting.

(f) For purposes of this section, the term "pesticide" is defined by section three, article sixteen-a, chapter nineteen of this code.

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§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.

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(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.

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