

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 784

FISCAL
NOTE

BY SENATOR SMITH

[Introduced February 14, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §22-15-24; and to amend said code by adding thereto a new section
3 designated §61-3-45b all relating to nonferrous metal sales and transportation to a
4 ,secondary recycler; providing for definitions; providing for permits for secondary metals
5 recyclers; providing that employees of an entity holding a permit do not need a separate
6 permit; providing for permit requirements for fixed sites; providing for permit requirements
7 for nonfixed sites; providing for the Department of Environmental Protection to develop an
8 application and permit; providing for a \$200 permit fee for secondary metals recyclers;
9 providing that a permit is valid for 24 months; providing for a permit for persons or entities
10 to transport nonferrous metals over the highways; providing that employees of an entity
11 do not need a separate permit; providing for no initial permit fee; providing for a \$10 fee
12 for a replacement permit for a lost or destroyed original permit; providing for record
13 retention criteria of all transportation permits issued; providing that a transportation permit
14 is valid for two years; providing for denial, revocation, or suspension of a permit for
15 violations of law; providing for penalties for permit violations; providing that only secondary
16 metals recyclers can purchase nonferrous metals from persons or entities with a valid
17 permit; providing that secondary metals recyclers must retain records of all purchases of
18 nonferrous metals; providing for record retention criteria; providing for record retention of
19 at least one year; providing for limitations on secondary metals recyclers purchasing
20 nonferrous metals through cash transactions; providing for a \$25 limit on cash
21 transactions; providing for a required sign be displayed at all secondary metals recyclers
22 locations where nonferrous metals are accepted for purchase; providing for penalties
23 when a secondary metals recycler violates certain provisions; providing for limitations on
24 selling nonferrous metals; providing for penalties for sellers violating certain provisions
25 relating to selling nonferrous metals; providing for revocation of permits for secondary
26 metals recyclers and sellers violating certain provisions of purchasing or selling nonferrous

27 metals; providing for limitations for secondary metals recyclers to accept nonferrous metal
28 sales from persons or entities without a valid transportation and sales permit; providing for
29 holds placed on stolen nonferrous metals; providing for law enforcement to provide written
30 notification to a secondary metals recycler relating to stolen nonferrous metals; providing
31 that the notice must identify the potentially stolen nonferrous metals; providing for a 15
32 calendar day hold for the secondary metals recycler to retain the nonferrous metals as
33 provided in the written notice from law enforcement; providing for an extended hold issued
34 after 15 calendar days by law enforcement; providing that law enforcement provide written
35 notice to the secondary metals recycler relating to allegedly stolen nonferrous metals;
36 providing for 30 calendar days for an extended hold of allegedly stolen nonferrous metals
37 by the secondary metals recycler; providing for automatic release of any holds on a
38 secondary metals recycler at the conclusion of a hold or extended hold by law enforcement
39 if no order has been received to retain the nonferrous metals by a court; providing for
40 limitations on transporting nonferrous metals on the highways of this state without a valid
41 permit; providing for penalties for violating transportation requirements; providing for
42 revocation of a permit for violating transportation requirements; providing for acceptable
43 forms of identification; providing for exemptions from required permits to obtain, transport,
44 or sell nonferrous metals to a secondary metals recycler; providing for preemption of other
45 laws, rules, or regulations by any county or municipality; providing that any county or
46 municipality may enact ordinances relating to the sale, transport, or purchase of
47 nonferrous metals under certain conditions; providing for criminal offenses; providing for
48 additional criminal offenses for illegally obtaining nonferrous metals; providing for
49 penalties to property damage when the damage is below \$5,000; providing for penalties
50 for property damage when the damage is greater than or equal to \$5,000; providing for
51 penalties when another person receives a great bodily injury during the course of illegally
52 obtaining nonferrous metals; providing for penalties when illegally obtaining nonferrous

53 metals results in the death of a person; providing for penalties for disruption of
 54 communication or electrical services to more than 10 people; providing for revocation of a
 55 permit when the permittee is convicted of illegally obtaining nonferrous metals; providing
 56 for no civil liability for the owner of real or personal property for any injury sustained by a
 57 person attempting to or obtaining nonferrous metals illegally; providing for no civil liability
 58 for the owner or real or personal property for any injury caused by dangerous conditions
 59 to a person attempting to or obtaining nonferrous metals illegally; providing that no duty of
 60 care is expected of an owner of real or personal property to persons attempting to or
 61 obtaining nonferrous metals illegally; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-24. Secondary metals recycler permit to purchase nonferrous metals; permit to transport and sell nonferrous metals; violations; penalties; records; notice; preemption; rulemaking.

1 (a) Definitions – For purposes of this section:

2 “Coil” means a copper, aluminum, or aluminum-copper condensing coil or evaporation
 3 coil. The term includes, but is not limited to, coil from a commercial or residential heating or air-
 4 conditioning system. The term does not include coil from a window air-conditioning system, if the
 5 coil is contained within the system, or coil from an automobile condenser.

6 “Director” means the person directing the appropriate division of the Department
 7 Environmental Protection with the authority to issue permits and promulgate rules pursuant to this
 8 chapter.

9 “Fixed site” means a site occupied by a secondary metals recycler as the owner of the site
 10 or as a lessee of the site under a lease or other rental agreement providing for occupation of the

11 site by a secondary metals recycler for a total duration of not less than 364 days.

12 “Nonferrous metals” means metals not containing significant quantities of iron or steel,
13 including, but not limited to, copper wire, cooper clad steel wire, copper pipe, copper bars, copper
14 sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and
15 copper, catalytic converters, lead-acid batteries, steel propane gas tanks, and stainless steel beer
16 kegs or containers.

17 “Secondary metals recycler” means a person or entity who is engaged, from a fixed site
18 or otherwise, in the business of paying compensation for nonferrous metals that have served their
19 original economic purpose, whether or not the person is engaged in the business of performing
20 the manufacturing process by which nonferrous metals are converted into raw material products
21 consisting of prepared grades and having an existing or potential economic value.

22 (b) Permit required for secondary metal recycler – (1) A secondary metals recycler shall
23 obtain a permit to purchase nonferrous metals. A secondary metals recycler’s employee is not
24 required to obtain a separate permit to purchase nonferrous metals provided that the employee
25 is acting within the scope and duties of their employment with the secondary metals recycler. A
26 secondary metals recycler’s employee who intends to purchase nonferrous metals on behalf of
27 the secondary metals recycler at a location other than a fixed site shall have a copy of the
28 secondary metals recycler’s permit readily available for inspection.

29 (2) If a secondary metals recycler intends to purchase nonferrous metals at a fixed site or
30 fixed sites, the secondary metals recycler shall obtain a permit from the director. The director may
31 issue the permit to the secondary metals recycler, if the secondary metals recycler:

32 (A) Has a fixed site or fixed sites in any county or counties of this state;

33 (B) Has not been convicted of a violation of §61-3-45b of this code or this section; and

34 (C) Declares on an application provided by the director that the secondary metals recycler
35 is informed of and will comply with the provisions of this section.

36 (3) If a secondary metals recycler intends to purchase nonferrous metals at a location

37 other than a fixed site, the secondary metals recycler shall obtain a permit from the director for
38 each county in which the secondary metals recycler intends to purchase nonferrous metals. The
39 director may issue the permit to the secondary metals recycler if the secondary metals recycler:

40 (A) Can sufficiently demonstrate to the director the secondary metals recycler's ability to
41 comply with the provisions of this section;

42 (B) Has not been convicted of a violation of §61-3-45b of this code or this section; and

43 (C) Declares on an application provided by the sheriff that the secondary metals recycler
44 is informed of and will comply with the provisions of this section.

45 (4) The Department of Environmental Protection shall develop the application and permit
46 in consultation with the Bureau of Public Health to ensure all public health standards are met.

47 (5) The director may investigate a secondary metals recycler's background prior to issuing
48 a permit for purposes of determining if the secondary metals recycler qualifies to be issued a
49 permit.

50 (6) The director may charge and retain a \$200 fee for each permit.

51 (7) The director shall keep a record of all permits issued containing, at a minimum, the
52 date of issuance, and the name and address of the secondary metals recycler.

53 (8) A permit is valid for 24 months.

54 (9) A permit may be denied, suspended, or revoked at any time if the director discovers
55 that the information on an application is inaccurate, a secondary metals recycler does not comply
56 with the requirements of this section, or a secondary metals recycler is convicted of a violation of
57 §61-3-45b of this code or this section.

58 (10) The director shall issue permits during the Department of Environmental Protection's
59 regular business hours.

60 (c) *Permit required to transport materials* – (1) A person or entity who wants to transport
61 or sell nonferrous metals to a secondary metals recycler shall obtain a permit to transport and sell
62 the nonferrous metals from the director. An entity's employee is not required to obtain a separate

63 permit to transport or sell nonferrous metals provided that the employee is acting within the scope
64 and duties of their employment with the entity. An entity's employee who intends to transport and
65 sell nonferrous metals on behalf of an entity shall have a copy of the entity's permit readily
66 available for inspection.

67 (2) If a person is a resident of West Virginia or an entity is located in West Virginia, the
68 person or entity shall obtain a permit from the director. The director may issue the permit to the
69 person or entity if the:

70 (A) Person resides or has a secondary residence, or the entity is located or has a
71 secondary business in any county of this state;

72 (B) Person or entity has not been convicted of a violation of §61-3-45b of this code or this
73 section; and

74 (C) Person or entity declares on an application provided by the director that the person or
75 entity is informed of and will comply with the provisions of this section and §61-3-45b of this code.

76 (3) If a person is not a resident of West Virginia or an entity is not located in West Virginia,
77 the person or entity shall obtain a permit from the director. The director may issue the permit to
78 the person or entity if the:

79 (A) Person is not a resident of West Virginia or the entity is not located in West Virginia;

80 (B) Person or entity has not been convicted of a violation of §61-3-45b of this code or this
81 section; and

82 (C) Person or entity declares on an application provided by the director that the person or
83 entity is informed of and will comply with the provisions of this section and §61-3-45b of this code.

84 (4) The Department of Environmental Protection shall develop the application and permit
85 in consultation with the Bureau of Public Health to ensure all public health standards are met.

86 (5) The director may investigate a secondary metals recycler's background prior to issuing
87 a permit for purposes of determining if the secondary metals recycler qualifies to be issued a
88 permit.

89 (6) The director may not charge a fee for a permit under this subsection. The director may
90 charge a \$10 fee to replace a permit that has been lost or destroyed. If the original permit is later
91 found by the person or entity, the person or entity must turn the original permit into the sheriff or
92 destroy the original permit.

93 (7) The director shall keep a record of all permits issued containing, at a minimum, the
94 date of issuance, the name and address of the person or entity, a photocopy of the person's
95 identification or of the employee's identification, and the person's photograph or the entity's
96 employee's photograph.

97 (8) A permit is valid statewide and expires on the person's birth date on the second
98 calendar year after the calendar year in which the permit is issued, or, if the permittee is an entity,
99 the permit expires on the date of issuance on the second calendar year after the calendar year in
100 which the permit is issued.

101 (9) A permit may be denied, suspended, or revoked at any time if the director discovers
102 that the information on an application is inaccurate, a secondary metals recycler does not comply
103 with the requirements of this section, or a secondary metals recycler is convicted of a violation of
104 §61-3-45b of this code or this section.

105 (10)(A) It is unlawful for a person or entity to obtain a permit to transport and sell
106 nonferrous metals for the purpose of transporting or selling stolen nonferrous metals.

107 (B) A person who violates a provision of this subdivision, in this subsection is guilty of a
108 felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more
109 than 10 years, or both. The person's or entity's permit must be revoked.

110 (11) The director shall issue permits during regular business hours.

111 (d) Limitations on purchasing nonferrous metals – (1) It is unlawful to purchase nonferrous
112 metals in any amount for the purpose of recycling the nonferrous metals from a seller unless the
113 purchaser is a secondary metals recycler who has a valid permit to purchase nonferrous metals
114 issued pursuant to subsection (b) of this section and the seller has a valid permit to transport and

115 sell nonferrous metals issued pursuant to subsection (c) of this section. A secondary metals
116 recycler may hold a seller's nonferrous metals while the seller obtains a permit to transport and
117 sell nonferrous metals pursuant to subsection (c) of this section.

118 (2) A secondary metals recycler shall maintain a record containing, at a minimum, the date
119 of purchase, the name and address of the seller, a photocopy of the seller's identification, a
120 photocopy of the seller's permit to transport and sell nonferrous metals, if applicable, the license
121 plate number of the seller's motor vehicle, if available, the seller's photograph, the weight and
122 size or other description of the nonferrous metals purchased, the amount paid for the nonferrous
123 metals, and a signed statement from the seller stating that the seller is the rightful owner or is
124 entitled to sell the nonferrous metals being sold. If the secondary metals recycler has the seller's
125 photograph on file, the secondary metals recycler may reference the photograph on file without
126 making a photograph for each transaction: *Provided*, That the secondary metals recycler shall
127 update the seller's photograph on an annual basis. A secondary metals recycler may use a video
128 of the seller in lieu of a photograph provided the secondary metals recycler maintains the video
129 for at least 120 days. A secondary metals recycler may maintain a record in an electronic
130 database provided that the information is legible and can be accessed by the director upon
131 request.

132 (3) All nonferrous metals that are purchased by and are in the possession of a secondary
133 metals recycler and all records required to be kept by this subsection must be maintained and
134 kept open for inspection by the director, or his or her designee, or local and state governmental
135 agencies during regular business hours. The records must be maintained for one year from the
136 date of purchase.

137 (4) A secondary metals recycler shall not enter into a cash transaction in payment for the
138 purchase of copper, catalytic converters, or beer kegs, totaling \$25 or more. Payment for the
139 purchase of copper, catalytic converters, or beer kegs, which totals \$25 or more must be made
140 by check alone issued and made payable to the seller. A secondary metals recycler shall neither

141 cash a check issued pursuant to this item nor use an automated teller machine (ATM) or other
142 cash card system in lieu of a check. A secondary metals recycler shall not enter into more than
143 one cash transaction per day per seller in payment for the purchase of copper, catalytic
144 converters, or beer kegs.

145 (5) A secondary metals recycler shall prominently display a 20-inch by 30-inch sign in the
146 secondary metals recycler's fixed site that states: "NO NONFERROUS METALS, INCLUDING
147 COPPER, MAY BE PURCHASED BY A SECONDARY METALS RECYCLER FROM A SELLER
148 UNLESS THE SELLER IS A GAS, ELECTRIC, COMMUNICATIONS, WATER, PLUMBING,
149 ELECTRICAL, OR CLIMATE CONDITIONING SERVICE PROVIDER, OR THE SELLER
150 PRESENTS THE SELLER'S VALID PERMIT TO TRANSPORT AND SELL NONFERROUS
151 METALS ISSUED PURSUANT TO §22-15-24 OF THE CODE OF WEST VIRGINIA, 2020."

152 (6) A purchaser who violates a provision of this subsection:

153 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not
154 less than \$200 nor more than \$300 or imprisoned not more than 30 days;

155 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, must be fined
156 not less than \$400 nor more than \$500 or imprisoned not more than one year, or both; and

157 (C) For a third offense or subsequent offense, is guilty of a misdemeanor and, upon
158 conviction, must be fined not more than \$1,000 or imprisoned not more than three years, or both.

159 For an offense to be considered a third or subsequent offense, only those offenses that occurred
160 within a period of 10 years, including and immediately preceding the date of the last offense, shall
161 constitute a prior offense within the meaning of this subsection.

162 If the purchaser obtained a permit to purchase nonferrous metals pursuant to subsection
163 (b), the permit must be revoked.

164 (e) Limitations on selling nonferrous metals – (1) It is unlawful to sell nonferrous metals in
165 any amount to a secondary metals recycler unless the secondary metals recycler has a valid
166 permit to purchase nonferrous metals issued pursuant to subsection (b) of this section and the

167 seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (c)
168 of this section.

169 (2) A seller who violates a provision of this subsection:

170 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, must be fined in
171 the discretion of the court or imprisoned not more than one year, or both;

172 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, must be fined
173 not less than \$500 or imprisoned not more than three years, or both; and

174 (C) For a third or subsequent offense, is guilty of a felony and, upon conviction, must be
175 fined not less than \$1,000 or imprisoned not more than five years, or both.

176 If the seller obtained a permit to transport and sell nonferrous metals pursuant to
177 subsection (c), the permit must be revoked.

178 (3) It is unlawful to purchase or otherwise acquire nonferrous metals in any amount from
179 a seller who does not have a valid permit to transport and sell nonferrous metals issued pursuant
180 to subsection (c) of this section with the intent to resell the nonferrous metals in any amount to a
181 secondary metals recycler using the purchaser's valid permit to transport and sell nonferrous
182 metals issued pursuant to subsection (c) of this section.

183 (4) A purchaser who violates a provision of this subsection is guilty of a felony and, upon
184 conviction, must be fined in the discretion of the court or imprisoned not more than 10 years, or
185 both. The purchaser's permit must be revoked.

186 (f) Holds on stolen nonferrous metals – (1) When a law-enforcement officer has
187 reasonable cause to believe that any item of nonferrous metal in the possession of a secondary
188 metals recycler has been stolen, the law-enforcement officer may issue a hold notice to the
189 secondary metals recycler. The hold notice must be in writing, be delivered to the secondary
190 metals recycler, specifically identify those items of nonferrous metal that are believed to have
191 been stolen and that are subject to the notice, and inform the secondary metals recycler of the
192 information contained in this subsection. Upon receipt of the notice, the secondary metals recycler

193 must not process or remove the items of nonferrous metal identified in the notice, or any portion
194 thereof, from the secondary metal recycler's fixed site for 15 calendar days after receipt of the
195 notice unless released prior to the 15-day period by the law-enforcement officer.

196 (2) No later than the expiration of the 15-day period, a law-enforcement officer may issue
197 a second hold notice to the secondary metals recycler, which shall be an extended hold notice.
198 The extended hold notice must be in writing, be delivered to the secondary metals recycler,
199 specifically identify those items of nonferrous metal that are believed to have been stolen and that
200 are subject to the extended hold notice, and inform the secondary metals recycler of the
201 information contained in this subsection. Upon receipt of the extended hold notice, the secondary
202 metals recycler must not process or remove the items of nonferrous metal identified in the notice,
203 or any portion thereof, from the secondary metals recycler's fixed site for 30 calendar days after
204 receipt of the extended hold notice unless released prior to the 30-day period by the law-
205 enforcement officer.

206 (3) At the expiration of the hold period or, if extended, at the expiration of the extended
207 hold period, the hold is automatically released and the secondary metals recycler may dispose of
208 the nonferrous metals unless other disposition has been ordered by a court of competent
209 jurisdiction.

210 (4) A secondary metals recycler who violates a provision of this subsection:

211 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not
212 less than \$200 nor more than \$300 or imprisoned not more than 30 days;

213 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, must be fined
214 not less than \$400 nor more than \$500 or imprisoned not more than one year, or both; and

215 (C) For a third or subsequent offense, is guilty of a misdemeanor and, upon conviction,
216 must be fined not more than \$1,000 or imprisoned not more than three years, or both. For an
217 offense to be considered a third or subsequent offense, only those offenses that occurred within
218 a period of 10 years, including and immediately preceding the date of the last offense shall

219 constitute a prior offense within the meaning of this subsection.

220 The secondary metals recycler's permit to purchase nonferrous metals issued pursuant to
221 subsection (b) of this section must be revoked.

222 (g) *Transporting nonferrous metals on highways* – (1) It is unlawful to transport nonferrous
223 metals in a vehicle or have nonferrous metals in a person's possession in a vehicle on the
224 highways of this state, except:

225 (A) The person can present a valid permit to transport and sell nonferrous metals issued
226 pursuant to subsection (c) of this section; or

227 (B) The person can present a valid bill of sale for the nonferrous metals.

228 (2) If a law-enforcement officer determines that one or more of the exceptions listed in
229 subdivision (1) of this subsection applies, or the law-enforcement officer determines that the
230 nonferrous metals are not stolen goods and are in the rightful possession of the person, the law-
231 enforcement officer shall not issue a citation for a violation of this subsection.

232 (3) A person who violates a provision of subdivision (1) of this subsection:

233 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not
234 more than \$200 or imprisoned not more than 30 days;

235 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, must be fined
236 not more than \$500 or imprisoned not more than one year, or both; and

237 (C) For a third or subsequent offense, is guilty of a misdemeanor and, upon conviction,
238 must be fined not more than \$1,000 or imprisoned not more than three years, or both. For an
239 offense to be considered a third or subsequent offense, only those offenses that occurred within
240 a period of 10 years, including and immediately preceding the date of the last offense, shall
241 constitute a prior offense within the meaning of this subsection.

242 (4) If a person transports nonferrous metals that the person knows are stolen in a vehicle
243 or has in the person's possession in a vehicle on the highways of this state nonferrous metals
244 that the person knows are stolen, is operating a vehicle used in the ordinary course of business

245 to transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit
246 to transport and sell nonferrous metals that the person knows are stolen, or presents a valid or
247 falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty
248 of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not
249 more than 10 years, or both. If the person obtained a permit to transport and sell nonferrous
250 metals pursuant to subsection (c) of this section, the permit must be revoked.

251 (h) For purposes of this section, the only acceptable identification is a valid:

252 (1) West Virginia driver's license issued by the Division of Motor Vehicles;

253 (2) West Virginia identification card issued by the Division of Motor Vehicles;

254 (3) A driver's license from another state that contains the licensee's picture on the face of
255 the license; or

256 (4) A military identification card.

257 (i) A secondary metals recycler shall not purchase or otherwise acquire:

258 (1) An iron or steel manhole cover;

259 (2) An iron or steel drainage grate; or

260 (3) A coil, unless the seller is an exempted entity pursuant to subsection (j) of this section
261 or the seller presents a bill of sale from a company indicating that the seller acquired the coil as
262 the result of a unit replacement or repair. The bill of sale is sufficient proof of ownership and serves
263 the same purpose as a permit to transport and sell nonferrous metals. A person who presents a
264 falsified bill of sale is guilty of a misdemeanor and, upon conviction, must be fined in the discretion
265 of the court or imprisoned not more three years, or both.

266 (j) Exemptions – (1) Except as provided, the provisions of this section do not apply to:

267 (A) The purchase or sale of aluminum cans;

268 (B) A transaction between a secondary metals recycler and another secondary metals
269 recycler;

270 (C) A governmental entity;

271 (D) A manufacturing or industrial vendor that generates or sells regulated metals in the
272 ordinary course of its business;

273 (E) A seller who is a holder of a retail license, an authorized wholesaler, an automobile
274 demolisher, a contractor, a real estate broker or property manager, a residential home builder, a
275 demolition contractor, a provider of gas service, electric service, communications service, water
276 service, plumbing service, electrical service, climate conditioning service, core recycling service,
277 appliance repair service, automotive repair service, or electronics repair service; or

278 (F) A seller that is an organization, a corporation, or an association registered with the
279 state as a charitable organization or a nonprofit corporation.

280 (2) An exempted entity listed in subdivision (1) of this subsection is subject to the
281 provisions of subdivision (10) of subsection (c) and subdivision (5) of subsection (g) of this section.

282 A secondary metals recycler shall maintain a record of transactions involving exempted
283 entities listed in subdivision (1) of this subsection pursuant to subsection (d) of this section and is
284 subject to the penalty provisions of subdivision (6) of subsection (d) of this section. Any item of
285 nonferrous metals acquired from an exempted entity listed in subdivision (1) of this subsection is
286 subject to a hold notice pursuant to subsection (f) of this section.

287 (k) This section preempts local ordinances and regulations governing the purchase, sale,
288 or transportation of nonferrous metals in any amount, except to the extent that such ordinances
289 pertain to zoning or business license fees. Political subdivisions of the state may not enact
290 ordinances or regulations more restrictive than those contained in this section.

291 (l) The director may establish rules pursuant to §29A-3-1 et seq. of this code to effectuate
292 the provisions of this section and carry out the intent of this section.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-45b. Obtaining nonferrous metals unlawfully; disruption of communication or

electrical service.

1 (a) For purposes of this section, “nonferrous metals” means metals not containing
2 significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel
3 wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product
4 that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, steel propane
5 gas tanks, and stainless steel beer kegs or containers.

6 (b) It is unlawful for a person to willfully and maliciously cut, mutilate, deface, or otherwise
7 injure any personal or real property, including any fixtures or improvements, for the purpose of
8 obtaining nonferrous metals in any amount.

9 (c) A person who violates a provision of this section is guilty of a:

10 (1) Misdemeanor and, upon conviction, must be fined in the discretion of the court or
11 imprisoned not more than three years, or both, if the direct injury to the property, the amount of
12 loss in value to the property, the amount of repairs necessary to return the property to its condition
13 before the act, or the property loss, including fixtures or improvements, is less than \$5,000; or

14 (2) Felony and, upon conviction, must be fined in the discretion of the court or imprisoned
15 not more than 10 years, or both, if the direct injury to the property, the amount of loss in value to
16 the property, the amount of repairs necessary to return the property to its condition before the act,
17 or the property loss, including fixtures or improvements, is \$5,000 or more.

18 (d)(1) A person who violates the provisions of this section and the violation results in great
19 bodily injury to another person is guilty of a felony and, upon conviction, must be imprisoned not
20 more than 15 years. For purposes of this subsection, “great bodily injury” means bodily injury
21 which creates a substantial risk of death or which causes serious, permanent disfigurement, or
22 protracted loss or impairment of the function of any bodily member or organ.

23 (2) A person who violates the provisions of this section and the violation results in the
24 death of another person is guilty of a felony and, upon conviction, must be imprisoned not more
25 than 30 years.

26 (e) A person who violates the provisions of this section and the violation results in
27 disruption of communication or electrical service to critical infrastructure or more than 10
28 customers of the communication or electrical service is guilty of a misdemeanor and, upon
29 conviction, must be fined in the discretion of the court or imprisoned not more than three years,
30 or both.

31 (f) If a person is convicted of violating the provisions of this section and the person has
32 been issued a permit pursuant to §22-15-24 of this code, the permit must be revoked.

33 (g)(1) A public or private owner of personal or real property is not civilly liable to a person
34 who is injured during the theft or attempted theft, by the person or a third party, of nonferrous
35 metals in any amount.

36 (2) A public or private owner of personal or real property is not civilly liable for a person's
37 injuries caused by a dangerous condition created as a result of the theft or attempted theft of
38 nonferrous metals in any amount, of the owner when the owner of personal or real property did
39 not know and could not have reasonably known of the dangerous condition.

40 (3) This subsection does not create or impose a duty of care upon an owner of personal
41 or real property that would not otherwise exist under common law.

NOTE: The purpose of this bill is to require a permit for the transport or sale of nonferrous metals to a secondary recycler and to make it unlawful to intentionally damage property for the purpose of obtaining nonferrous metals.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.