

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 336

FISCAL  
NOTE

BY SENATORS SMITH AND PHILLIPS

[Introduced February 18, 2021; referred  
to the Committee on Energy, Industry, and Mining;  
and then to the Committee on Finance]

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 shall 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 to 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 shall 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 of  
 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 shall comply with 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 shall comply with this section.

45 (4) The Department of Environmental Protection shall develop the application and permit  
46 in consultation with the Bureau for 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  
64 scope and duties of their employment with the entity. An entity's employee who intends to  
65 transport and sell nonferrous metals on behalf of an entity shall have a copy of the entity's permit  
66 readily 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 shall comply with 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 shall comply with 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 for 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 shall 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, shall be fined in an amount determined by the court or imprisoned in  
109 a state correctional facility not more than 10 years, or both fined and imprisoned. The person's or  
110 entity's permit shall be revoked.

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

112 (d) Limitations on purchasing nonferrous metals. – (1) It is unlawful to purchase nonferrous  
113 metals in any amount for the purpose of recycling the nonferrous metals from a seller unless the  
114 purchaser is a secondary metals recycler who has a valid permit to purchase nonferrous metals

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

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

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

138 (4) A secondary metals recycler may not enter into a cash transaction in payment for the  
139 purchase of copper, catalytic converters, or beer kegs, totaling \$25 or more. Payment for the  
140 purchase of copper, catalytic converters, or beer kegs, which totals \$25 or more shall be made

141 by check alone issued and made payable to the seller. A secondary metals recycler may neither  
142 cash a check issued pursuant to this item nor use an automated teller machine (ATM) or other  
143 cash card system in lieu of a check. A secondary metals recycler may not enter into more than  
144 one cash transaction per day per seller in payment for the purchase of copper, catalytic  
145 converters, or beer kegs.

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

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

154 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined not  
155 less than \$200 nor more than \$300 or confined in jail not more than 30 days;

156 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined  
157 not less than \$400 nor more than \$500 or confined in jail not more than one year, or both fined  
158 and confined; and

159 (C) For a third offense or subsequent offense, is guilty of a misdemeanor and, upon  
160 conviction, shall be fined not more than \$1,000 or confined in jail not more than three years, or  
161 both fined and confined. For an offense to be considered a third or subsequent offense, only  
162 those offenses that occurred within a period of 10 years, including, and immediately preceding  
163 the date of the last offense, shall constitute a prior offense within the meaning of this subsection.

164 If the purchaser obtained a permit to purchase nonferrous metals pursuant to subsection  
165 (b), the permit shall be revoked.

166 (e) Limitations on selling nonferrous metals. – (1) It is unlawful to sell nonferrous metals

167 in any amount to a secondary metals recycler unless the secondary metals recycler has a valid  
168 permit to purchase nonferrous metals issued pursuant to subsection (b) of this section and the  
169 seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (c)  
170 of this section.

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

172 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined in  
173 an amount determined by the court or confined in jail not more than one year, or both fined and  
174 confined;

175 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined  
176 not less than \$500 or confined in jail not more than three years, or both fined and confined ; and

177 (C) For a third or subsequent offense, is guilty of a felony and, upon conviction, shall be  
178 fined not less than \$1,000 or imprisoned in a state correctional facility not more than five years,  
179 or both fined and imprisoned.

180 If the seller obtained a permit to transport and sell nonferrous metals pursuant to  
181 subsection (c), the permit shall be revoked.

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

187 (4) A purchaser who violates a provision of this subsection is guilty of a felony and, upon  
188 conviction, shall be fined an amount determined by the court or imprisoned in a state correctional  
189 facility not more than 10 years, or both fined and imprisoned. The purchaser's permit shall be  
190 revoked.

191 (f) Holds on stolen nonferrous metals. – (1) When a law-enforcement officer has  
192 reasonable cause to believe that any item of nonferrous metal in the possession of a secondary

193 metals recycler has been stolen, the law-enforcement officer may issue a hold notice to the  
194 secondary metals recycler. The hold notice shall be in writing, be delivered to the secondary  
195 metals recycler, specifically identify those items of nonferrous metal that are believed to have  
196 been stolen and that are subject to the notice, and inform the secondary metals recycler of the  
197 information contained in this subsection. Upon receipt of the notice, the secondary metals recycler  
198 may not process or remove the items of nonferrous metal identified in the notice, or any portion  
199 thereof, from the secondary metal recycler's fixed site for 15 calendar days after receipt of the  
200 notice unless released prior to the 15-day period by the law-enforcement officer.

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

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

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

216 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined not  
217 less than \$200 nor more than \$300 or confined in jail not more than 30 days;

218 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined

219 not less than \$400 nor more than \$500 or confined in jail not more than one year, or both fined  
220 and confined; and

221 (C) For a third or subsequent offense, is guilty of a misdemeanor and, upon conviction,  
222 shall be fined not more than \$1,000 or confined in jail not more than three years, or both fined  
223 and confined. For an offense to be considered a third or subsequent offense, only those offenses  
224 that occurred within a period of 10 years, including, and immediately preceding the date of the  
225 last offense shall constitute a prior offense within the meaning of this subsection.

226 The secondary metals recycler's permit to purchase nonferrous metals issued pursuant to  
227 subsection (b) of this section shall be revoked.

228 (g) Transporting nonferrous metals on highways. – (1) It is unlawful to transport nonferrous  
229 metals in a vehicle or have nonferrous metals in a person's possession in a vehicle on the  
230 highways of this state, except:

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

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

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

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

239 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined not  
240 more than \$200 or confined in jail not more than 30 days;

241 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined  
242 not more than \$500 or confined in jail not more than one year, or both fined and confined; and

243 (C) For a third or subsequent offense, is guilty of a misdemeanor and, upon conviction,  
244 shall be fined not more than \$1,000 or confined in jail not more than three years, or both fined

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

248 (4) If a person transports nonferrous metals that the person knows are stolen in a vehicle  
249 or has in the person's possession in a vehicle on the highways of this state nonferrous metals  
250 that the person knows are stolen, is operating a vehicle used in the ordinary course of business  
251 to transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit  
252 to transport and sell nonferrous metals that the person knows are stolen, or presents a valid or  
253 falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty  
254 of a felony and, upon conviction, shall be fined in the discretion of the court or imprisoned not  
255 more than 10 years, or both. If the person obtained a permit to transport and sell nonferrous  
256 metals pursuant to subsection (c) of this section, the permit shall be revoked.

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

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

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

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

262 (4) A military identification card.

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

264 (1) An iron or steel manhole cover;

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

266 (3) A coil, unless the seller is an exempted entity pursuant to subsection (j) of this section  
267 or the seller presents a bill of sale from a company indicating that the seller acquired the coil as  
268 the result of a unit replacement or repair. The bill of sale is sufficient proof of ownership and serves  
269 the same purpose as a permit to transport and sell nonferrous metals. A person who presents a  
270 falsified bill of sale is guilty of a misdemeanor and, upon conviction, shall be fined an amount

271 determined by the court or confined in jail not more three years, or both fined and confined.

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

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

274 (B) A transaction between a secondary metals recycler and another secondary metals  
275 recycler;

276 (C) A governmental entity;

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

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

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

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

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

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

297 (l) The director may establish rules pursuant to §29A-3-1 et seq. of this code to effectuate  
 298 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, shall be fined in an amount determined by the  
 11 court or confined in jail not more than three years, or both fined and confined, if the direct injury  
 12 to the property, the amount of loss in value to the property, the amount of repairs necessary to  
 13 return the property to its condition before the act, or the property loss, including fixtures or  
 14 improvements, is less than \$5,000; or

15 (2) Felony and, upon conviction, shall be fined in an amount determined by the court or  
 16 imprisoned in a state correctional facility not more than 10 years, or both fine and imprisoned, if  
 17 the direct injury to the property, the amount of loss in value to the property, the amount of repairs  
 18 necessary to return the property to its condition before the act, or the property loss, including  
 19 fixtures or improvements, is \$5,000 or more.

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

26 (2) A person who violates the provisions of this section and the violation results in the  
27 death of another person is guilty of a felony and, upon conviction, shall be imprisoned in a state  
28 correctional facility not more than 30 years.

29 (e) A person who violates the provisions of this section and the violation results in  
30 disruption of communication or electrical service to critical infrastructure or more than 10  
31 customers of the communication or electrical service is guilty of a misdemeanor and, upon  
32 conviction, shall in an amount determined by the court or imprisoned not more than three years,  
33 or both fined and imprisoned.

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

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

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

43 (3) This subsection does not create or impose a duty of care upon an owner of personal  
44 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.