

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 336**

BY SENATORS SMITH AND PHILLIPS

[Originating in the Committee on Energy, Industry,  
and Mining; reported on March 27, 2021]

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 to purchase nonferrous metals; providing for permit requirements for fixed and  
6 nonfixed sites; providing that the Superintendent of the West Virginia State Police shall  
7 develop applications and permits; providing for a permit fee for secondary metals  
8 recyclers; providing that a secondary metals recycler permit to purchase nonferrous  
9 metals is valid for two years; providing for a permit for persons or entities to sell or transport  
10 nonferrous metals over the highways; providing for a fee for a replacement permit for a  
11 lost or destroyed original permit; providing for record retention criteria; providing that a  
12 seller or transportation permit is valid for two years; providing for denial, revocation, or  
13 suspension of a permit for violations of law and for penalties; providing that only secondary  
14 metals recyclers can purchase nonferrous metals from persons or entities with a valid  
15 permit; providing that secondary metals recyclers shall retain records of all purchases of  
16 nonferrous metals; providing for record retention of at least one year; providing for a limit  
17 for secondary metals recyclers purchasing nonferrous metals through cash transactions;  
18 providing for signage to be displayed; providing for penalties when a secondary metals  
19 recycler violates certain provisions; providing for limitations on selling nonferrous metals;  
20 providing for penalties for sellers violating certain provisions relating to selling nonferrous  
21 metals; providing for revocation of permits for secondary metals recyclers and sellers  
22 violating certain provisions of purchasing or selling nonferrous metals; providing for holds  
23 placed on stolen nonferrous metals; providing for law enforcement to issue written notice  
24 to a secondary metals recycler relating to stolen nonferrous metals; providing for a 15  
25 calendar day hold for the secondary metals recycler to retain the nonferrous metals as  
26 provided in the written notice from law enforcement; providing that law enforcement

27 provide written notice to the secondary metals recycler relating to allegedly stolen  
28 nonferrous metals; providing for 30 calendar days for an extended hold of allegedly stolen  
29 nonferrous metals by the secondary metals recycler; providing for automatic release of  
30 any holds if no order has been received to retain the nonferrous metals by a court;  
31 providing for limitations on transporting nonferrous metals on the highways of this state  
32 without a valid permit and for penalties for violating transportation requirements; providing  
33 for revocation of a transportation permit; providing for exemptions from required permits  
34 to obtain, transport, or sell nonferrous metals to a secondary metals recycler; providing for  
35 preemption of other laws, rules, or regulations by any county or municipality; providing for  
36 additional criminal offenses for illegally obtaining nonferrous metals; providing for  
37 penalties to property damage when the damage is below \$5,000; providing for penalties  
38 for property damage when the damage is greater than or equal to \$5,000; providing for  
39 penalties when another person receives a great bodily injury during the course of illegally  
40 obtaining nonferrous metals; providing for penalties when illegally obtaining nonferrous  
41 metals results in the death of a person; providing for penalties for disruption of  
42 communication or electrical services to more than 10 people; providing for revocation of a  
43 permit upon conviction for illegally obtaining nonferrous metals; providing immunity from  
44 civil liability to the owner of real or personal property for any injury sustained by a person  
45 attempting to or obtaining nonferrous metals illegally, or for any injury caused by  
46 dangerous conditions to a person attempting to or obtaining nonferrous metals illegally;  
47 providing that no duty of care is expected of an owner of real or personal property to  
48 persons attempting to or obtaining nonferrous metals illegally; and providing for rule-  
49 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 “Fixed site” means a site occupied by a secondary metals recycler as the owner of the site  
7 or as a lessee of the site under a lease or other rental agreement providing for occupation of the  
8 site by a secondary metals recycler for a total duration of not less than 364 days.

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

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

19 (b) Permit required for secondary metal recycler. –

20 (1) A secondary metals recycler shall obtain a permit to purchase nonferrous metals. A  
21 secondary metals recycler’s employee is not required to obtain a separate permit to purchase  
22 nonferrous metals: *Provided*, That the employee is acting within the scope and duties of their

23 employment with the secondary metals recycler. A secondary metals recycler's employee who  
24 intends to purchase nonferrous metals on behalf of the secondary metals recycler at a location  
25 other than a fixed site shall have a copy of the secondary metals recycler's permit readily available  
26 for inspection.

27 (2) If a secondary metals recycler intends to purchase nonferrous metals at a fixed site or  
28 fixed sites, the secondary metals recycler shall obtain a permit from the sheriff of the county in  
29 which each of the secondary metals recycler's fixed sites are located. The sheriff may issue the  
30 permit to the secondary metals recycler, if the secondary metals recycler:

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

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

33 (C) Declares on an application provided by the sheriff that the secondary metals recycler  
34 is informed of and shall comply with this section.

35 (3) If a secondary metals recycler intends to purchase nonferrous metals at a location  
36 other than a fixed site, the secondary metals recycler shall obtain a permit from the sheriff for  
37 each county in which the secondary metals recycler intends to purchase nonferrous metals. The  
38 sheriff may issue the permit to the secondary metals recycler if the secondary metals recycler:

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

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

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

44 (4) The Superintendent of the West Virginia State Police, in cooperation with the West  
45 Virginia Sheriff's Bureau of Professional Standards, shall develop uniform applications and  
46 permits.

47 (5) The sheriff 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 sheriff may charge and retain a \$200 fee for each permit.

51 (7) The sheriff shall keep a record of all permits issued containing, at a minimum, the date  
52 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 sheriff discovers that  
55 the information on an application is inaccurate, a secondary metals recycler does not comply with  
56 the requirements of this section, or a secondary metals recycler is convicted of a violation of §61-  
57 3-45b of this code or this section.

58 (10) The sheriff shall issue permits during regular business hours.

59 (11) The sheriff shall, immediately after the permit is issued, provide the Superintendent  
60 of the West Virginia State Police a copy of the approved application. The sheriff shall provide to  
61 the Superintendent of the West Virginia State Police, at any time so requested, a certified list of  
62 all permits issued in the county. The Superintendent of the West Virginia State Police shall  
63 maintain a registry of all secondary metals recyclers who have been issued permits.

64 (c) Permit required to transport materials. – (1) A person or entity who wants to transport  
65 or sell nonferrous metals to a secondary metals recycler shall obtain a permit to transport and sell  
66 the nonferrous metals from the sheriff. An entity's employee is not required to obtain a separate  
67 permit to transport or sell nonferrous metals: *Provided*, That the employee is acting within the  
68 scope and duties of their employment with the entity. An entity's employee who intends to  
69 transport and sell nonferrous metals on behalf of an entity shall have a copy of the entity's permit  
70 readily available for inspection.

71 (2) If a person is a resident of West Virginia or an entity is located in West Virginia, the  
72 person or entity shall obtain a permit from the sheriff of the county in which the person resides or  
73 has a secondary residence or in which the entity is located or has a secondary business. The  
74 sheriff may issue the sheriff to the person or entity if the:

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

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

79 (C) Person or entity declares on an application provided by the sheriff that the person or  
80 entity is informed of and shall comply with this section and §61-3-45b of this code.

81 (3) If a person is not a resident of West Virginia or an entity is not located in West Virginia,  
82 the person or entity shall obtain a permit from the sheriff of any county. The sheriff may issue the  
83 permit to the person or entity if the:

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

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

87 (C) Person or entity declares on an application provided by the sheriff that the person or  
88 entity is informed of and shall comply with this section and §61-3-45b of this code.

89 (4) The Superintendent of the West Virginia State Police, in cooperation with the West  
90 Virginia Sheriff's Bureau of Professional Standards, shall develop uniform applications and  
91 permits.

92 (5) The sheriff may investigate a secondary metals recycler's background prior to issuing  
93 a permit for purposes of determining if the secondary metals recycler qualifies to be issued a  
94 permit.

95 (6) The sheriff may not charge a fee for a permit under this subsection. The sheriff may  
96 charge a \$10 fee to replace a permit that has been lost or destroyed. If the original permit is later  
97 found by the person or entity, the person or entity shall turn the original permit into the sheriff or  
98 destroy the original permit.

99 (7) The sheriff shall keep a record of all permits issued containing, at a minimum, the date  
100 of issuance, the name and address of the person or entity, a photocopy of the person's

101 identification or of the employee's identification, and the person's photograph or the entity's  
102 employee's photograph.

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

107 (9) A permit may be denied, suspended, or revoked at any time if the sheriff discovers that  
108 the information on an application is inaccurate, a secondary metals recycler does not comply with  
109 the requirements of this section, or a secondary metals recycler is convicted of a violation of §61-  
110 3-45b of this code or this section.

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

113 (B) A person who violates a provision of this subdivision, in this subsection is guilty of a  
114 felony and, upon conviction, shall be fined in an amount determined by the court or imprisoned in  
115 a state correctional facility not more than 10 years, or both fined and imprisoned. The person's or  
116 entity's permit shall be revoked.

117 (11) The sheriff shall issue permits during regular business hours.

118 (12) The sheriff shall, immediately after the permit is issued, provide the Superintendent  
119 of the West Virginia State Police a copy of the approved application. The sheriff shall provide to  
120 the Superintendent of the West Virginia State Police, at any time so requested, a certified list of  
121 all permits issued in the county. The Superintendent of the West Virginia State Police shall  
122 maintain a registry of all persons or entities who have been issued permits

123 (d) *Limitations on purchasing nonferrous metals.* –

124 (1) It is unlawful to purchase nonferrous metals in any amount for the purpose of recycling  
125 the nonferrous metals from a seller unless the purchaser is a secondary metals recycler who has  
126 a valid permit to purchase nonferrous metals issued pursuant to subsection (b) of this section and



127 the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection  
128 (c) of this section. A secondary metals recycler may hold a seller's nonferrous metals while the  
129 seller obtains a permit to transport and sell nonferrous metals pursuant to subsection (c) of this  
130 section.

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

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

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

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

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

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

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

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

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

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

177 (e) Limitations on selling nonferrous metals. –

178 (1) It is unlawful to sell nonferrous metals in any amount to a secondary metals recycler

179 unless the secondary metals recycler has a valid permit to purchase nonferrous metals issued  
180 pursuant to subsection (b) of this section and the seller has a valid permit to transport and sell  
181 nonferrous metals issued pursuant to subsection (c) of this section.

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

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

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

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

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

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

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

202 (f) Holds on stolen nonferrous metals. –

203 (1) When a law-enforcement officer has reasonable cause to believe that any item of  
204 nonferrous metal in the possession of a secondary metals recycler has been stolen, the law-

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

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

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

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

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

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

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

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

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

240 (g) *Transporting nonferrous metals on highways.* –

241 (1) It is unlawful to transport nonferrous metals in a vehicle or have nonferrous metals in  
242 a person's possession in a vehicle on the highways of this state, except:

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

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

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

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

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

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

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

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

260 (4) If a person transports nonferrous metals that the person knows are stolen in a vehicle  
261 or has in the person's possession in a vehicle on the highways of this state nonferrous metals  
262 that the person knows are stolen, is operating a vehicle used in the ordinary course of business  
263 to transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit  
264 to transport and sell nonferrous metals that the person knows are stolen, or presents a valid or  
265 falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty  
266 of a felony and, upon conviction, shall be fined in the discretion of the court or imprisoned not  
267 more than 10 years, or both. If the person obtained a permit to transport and sell nonferrous  
268 metals pursuant to subsection (c) of this section, the permit shall be revoked.

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

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

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

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

274 (4) A military identification card.

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

276 (1) An iron or steel manhole cover;

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

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

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

284 (i) Exemptions. –

285 (1) Except as provided, the provisions of this section do not apply to:

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

287 (B) A transaction between a secondary metals recycler and another secondary metals  
288 recycler;

289 (C) A governmental entity;

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

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

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

299 (2) An exempted entity listed in §22-15-24(i)(1) of this code is subject to the provisions of  
300 §22-15-24(c)(10 and §22-15-24(g)(5) of this code.

301 A secondary metals recycler shall maintain a record of transactions involving exempted  
302 entities listed in §22-15-24(i)(1) of this code pursuant to §22-15-24(d) of this code, and is subject  
303 to the penalty provisions of §22-15-24(d)(6) of this code. Any item of nonferrous metals acquired  
304 from an exempted entity listed in §22-15-24(i)(1) of this code is subject to a hold notice pursuant  
305 to §22-15-24(f) of this code.

306 (k) This section preempts local ordinances and regulations governing the purchase, sale,  
307 or transportation of nonferrous metals in any amount, except to the extent that such ordinances  
308 pertain to zoning or business license fees. Political subdivisions of the state may not enact

309 ordinances or regulations more restrictive than those contained in this section.

310 (l) The Superintendent of the West Virginia State Police may propose rules pursuant to  
311 §29A-3-1 et seq. of this code to effectuate the provisions of this section and carry out the intent  
312 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.