

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 119

BY SENATOR SMITH

[Introduced January 12, 2022; 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 §22-15-25; 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 a fee for a replacement permit for a lost
11 or destroyed original permit; providing for record retention criteria; providing that a seller
12 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 penalties for violating transportation requirements; providing for
33 revocation of a transportation permit; providing for exemptions from required permits to
34 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.**§22-15-25. 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, copper-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 §22-15-25 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 those
173 offenses that occurred within a period of 10 years, including, and immediately preceding the date
174 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 (j) 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 subdivision (j)(1) of this section is subject to the provisions
300 of paragraphs (1) and (10) of subsection (c) of this section.

301 A secondary metals recycler shall maintain a record of transactions involving exempted
302 entities listed in subdivision (j)(1) of this section pursuant to subsection (d) of this section, and is
303 subject to the penalty provisions of subsection (d) of this section. Any item of nonferrous metals
304 acquired from an exempted entity listed in subdivision (j)(1) of this section is subject to a hold
305 notice pursuant to (f) of this section.

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 fined 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 §22-15-25 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.