

By: Senator(s) Nunnelee

To: Environment Prot, Cons  
and Water Res

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2772

1 AN ACT TO AMEND SECTION 17-17-29, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE COMMISSION ON ENVIRONMENTAL QUALITY MAY IMPOSE  
3 A PENALTY FOR THE GENERATION OF WASTE RESULTING FROM THE  
4 MANUFACTURE OF CONTROLLED SUBSTANCES; TO PROTECT THE ENVIRONMENT  
5 BY MAKING IT UNLAWFUL TO GENERATE HAZARDOUS WASTE IN THE  
6 MANUFACTURE OF CONTROLLED SUBSTANCES; TO PROVIDE A SEPARATE  
7 PENALTY FOR SUCH GENERATION OF WASTES; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. It is the intent of the Legislature to make  
10 unlawful the generation of wastes occurring in the illegal  
11 manufacture or attempted illegal manufacture of controlled  
12 substances through the mixing, combining, processing or cooking of  
13 listed precursor chemicals.

14 SECTION 2. (1) The definitions used in this section are  
15 expressly limited to this section only, and the inclusion of  
16 indoor air in the definition of "waste" does not expand the  
17 jurisdiction of the Commission on Environmental Quality or the  
18 Department of Environmental Quality to include the regulation of  
19 indoor air:

20 (a) "Byproduct" means a substance produced without a  
21 separate intent during the manufacture, processing, use or  
22 disposal of another substance or mixture; and

23 (b) "Waste" means all liquid, gaseous, solid,  
24 radioactive or other substances that may pollute or tend to  
25 pollute any waters of the state or soil within the state, and any  
26 particulate matter, dust, fumes, gas, mist, smoke or vapor, or any  
27 combination thereof, that may pollute or tend to pollute air in  
28 the state, including indoor air.



29           (2) The generation of waste in any quantity by any person  
30 caused by the mixing, combining, processing or cooking together of  
31 two (2) or more precursor drugs or chemicals listed in Section  
32 41-29-313(3) is unlawful unless:

33           (a) The person has first obtained a generator  
34 identification number pursuant to the Resource Conservation and  
35 Recovery Act, 42 U.S.C. Section 6901 et seq., and the regulations  
36 promulgated thereunder; or

37           (b) The person has first obtained a treatment, storage  
38 or disposal permit pursuant to the Resource Conservation and  
39 Recovery Act, 42 U.S.C. Section 6901 et seq., and the regulations  
40 promulgated thereunder; or

41           (c) The process that generated the waste also, as part  
42 of the same process:

43           (i) Created a product that is not illegal to  
44 possess pursuant to Section 41-29-139(c);

45           (ii) Created a byproduct that is not illegal to  
46 possess pursuant to Section 41-29-139(c), while not at the same  
47 time producing a controlled substance; or

48           (iii) Was a process of servicing, maintaining or  
49 cleaning an item or product that is not illegal to possess  
50 pursuant to Section 41-29-139(c).

51           (3) Any person who violates this section, upon conviction,  
52 is guilty of a felony and may be imprisoned for a period not to  
53 exceed thirty (30) years and shall be fined not less than Five  
54 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
55 (\$1,000,000.00), or may be both fined and imprisoned.

56           (4) Nothing in this section shall preclude any farmer or  
57 manufacturer from storing or using any of the listed precursor  
58 drugs or chemicals listed in Section 41-29-313 in the normal  
59 pursuit of farming or manufacturing operations.

60           (5) Nothing in this section shall preclude any wholesaler,  
61 retailer or pharmacist from possessing or selling precursor drugs



62 or chemicals listed in Section 41-29-313 in the normal pursuit of  
63 business.

64 SECTION 3. Section 17-17-29, Mississippi Code of 1972, is  
65 amended as follows:

66 17-17-29. (1) Any person found by the commission violating  
67 any of the provisions of Sections 17-17-1 through 17-17-47, or any  
68 rule or regulation or written order of the commission in pursuance  
69 thereof, or any condition or limitation of a permit, shall be  
70 subject to a civil penalty of not more than Twenty-five Thousand  
71 Dollars (\$25,000.00) for each violation, such penalty to be  
72 assessed and levied by the commission after a hearing. Appeals  
73 from the imposition of the civil penalty may be taken to the  
74 chancery court in the same manner as appeals from orders of the  
75 commission. If the appellant desires to stay the execution of a  
76 civil penalty assessed by the commission, he shall give bond with  
77 sufficient resident sureties of one or more guaranty or surety  
78 companies authorized to do business in this state, payable to the  
79 State of Mississippi, in an amount equal to double the amount of  
80 any civil penalty assessed by the commission, as to which the stay  
81 of execution is desired, conditioned, if the judgment shall be  
82 affirmed, to pay all costs of the assessment entered against the  
83 appellant. Each day upon which such violation occurs shall be  
84 deemed a separate and additional violation.

85 (2) In lieu of, or in addition to, the penalty provided in  
86 subsection (1) of this section, the commission shall have the  
87 power to institute and maintain in the name of the state any and  
88 all proceedings necessary or appropriate to enforce the provisions  
89 of Sections 17-17-1 through 17-17-47, rules and regulations in  
90 force pursuant thereto, and orders and permits made and issued  
91 under those sections, in the appropriate circuit, chancery, county  
92 or justice court of the county in which venue may lie. The  
93 commission may obtain mandatory or prohibitory injunctive relief,  
94 either temporary or permanent, and in cases of imminent and



95 substantial hazard as set forth in Section 17-17-27, subsection  
96 (4), it shall not be necessary in such cases that the state plead  
97 or prove (a) that irreparable damage would result if the  
98 injunction did not issue; (b) that there is no adequate remedy at  
99 law; or (c) that a written complaint or commission order has first  
100 been issued for the alleged violation.

101 (3) Any person who violates any of the provisions of, or  
102 fails to perform any duty imposed by, Sections 17-17-1 through  
103 17-17-47, or any rule or regulation issued hereunder, or who  
104 violates any order or determination of the commission promulgated  
105 pursuant to such sections, and causes the death of wildlife shall  
106 be liable, in addition to the penalties provided in subsection (1)  
107 and/or (2) of this section, to pay to the state an additional  
108 amount equal to the sum of money reasonably necessary to replenish  
109 such wildlife as determined by the commission after consultation  
110 with the Mississippi Commission on Wildlife, Fisheries and Parks.  
111 Such amount may be recovered by the commission on behalf of the  
112 state in a civil action brought in the appropriate county or  
113 circuit court of the county in which venue may lie.

114 (4) Any person creating, or responsible for creating,  
115 through misadventure, happenstance, or otherwise, an immediate  
116 necessity for remedial or clean-up action involving solid waste  
117 shall be liable for the cost of such remedial or clean-up action  
118 and the commission may recover the cost of same by a civil action  
119 brought in the circuit court of the county in which venue may lie.  
120 This penalty may be recovered in lieu of or in addition to the  
121 penalties provided in subsection (1), (2) and/or (3) of this  
122 section.

123 In the event of the necessity for immediate remedial or  
124 clean-up action, the commission may contract for same and advance  
125 funds from the Pollution Emergency Fund to pay the costs thereof,  
126 such advancements to be repaid to the Pollution Emergency Fund  
127 upon recovery by the commission as provided herein.



128           (5) Any person who knowingly violates any provision of this  
129 chapter or violates any order issued by the commission under the  
130 authority of this chapter shall, upon conviction, be guilty of a  
131 misdemeanor and shall be subject to a fine of not more than  
132 Twenty-five Thousand Dollars (\$25,000.00) for each day of  
133 violation or to imprisonment not to exceed one (1) year, or both.  
134 Each day's violation shall constitute a separate offense.

135           (6) All fines, penalties and other sums recovered or  
136 collected by the commission for and in behalf of the state under  
137 this section shall be deposited in the Pollution Emergency Fund  
138 established by Sections 49-17-61 through 49-17-70, and the  
139 commission is authorized to receive and accept, from any and all  
140 available sources whatsoever, additional funds to be deposited in  
141 such fund and expended for the purpose of remedial, clean-up or  
142 abatement actions involving the introduction of solid waste upon  
143 or into the land, air or waters of this state in violation of  
144 Sections 17-17-1 through 17-17-47, any rule or regulation or  
145 written order of the commission in pursuance thereof, or any  
146 condition or limitation of a permit.

147           (7) In determining the amount of any penalty under this  
148 chapter, the commission shall consider at a minimum:

- 149           (a) The willfulness of the violation;
- 150           (b) Any damage to air, water, land or other natural  
151 resources of the state or their uses;
- 152           (c) Costs of restoration and abatement;
- 153           (d) Economic benefit as a result of noncompliance;
- 154           (e) The seriousness of the violation, including any  
155 harm to the environment and any hazard to the health, safety and  
156 welfare of the public;
- 157           (f) Past performance history; and
- 158           (g) Whether the noncompliance was discovered and  
159 reported as the result of a voluntary self-evaluation. If a  
160 person discovers as a result of a voluntary self-evaluation,



161 information related to noncompliance with an environmental law and  
162 voluntarily discloses that information to the department,  
163 commission or any employee thereof, the commission shall, to the  
164 greatest extent possible, reduce a penalty, if any, determined by  
165 the commission, except for economic benefit as a result of  
166 noncompliance, to a de minimis amount if all of the following are  
167 true:

168 (i) The disclosure is made promptly after  
169 knowledge of the information disclosed is obtained by the person;

170 (ii) The person making the disclosure initiates  
171 the appropriate corrective actions and pursues those corrective  
172 actions with due diligence;

173 (iii) The person making the disclosure cooperates  
174 with the commission and the department regarding investigation of  
175 the issues identified in the disclosure;

176 (iv) The person is not otherwise required by an  
177 environmental law to make the disclosure to the commission or the  
178 department;

179 (v) The information was not obtained through any  
180 source independent of the voluntary self-evaluation or by the  
181 department through observation, sampling or monitoring; and

182 (vi) The noncompliance did not result in a  
183 substantial endangerment threatening the public health, safety or  
184 welfare or the environment.

185 (8) Any provision of this section and chapter regarding  
186 liability for the costs of clean-up, removal, remediation or  
187 abatement of any pollution, hazardous waste or solid waste shall  
188 be limited as provided in Section 49-17-42 and rules adopted  
189 thereto.

190 (9) Any person who violates Section 1 of Senate Bill No.  
191 2772, 2001 Regular Session, shall, in addition to any other  
192 penalties, be subject to the penalties provided in this section.  
193 Each day a person is in violation of Section 1 of Senate Bill No.



194 2772, 2001 Regular Session, shall constitute a separate offense  
195 under this section.

196 SECTION 4. This act shall take effect and be in force from  
197 and after July 1, 2001.

