

By: Senator(s) Nunnelee

To: Environment Prot, Cons
and Water Res

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) As used in this section:

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

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

24 (2) The generation of waste in any quantity by any person
25 caused by the mixing, combining, processing or cooking together of
26 two (2) or more precursor drugs or chemicals listed in Section
27 41-29-313(3) is unlawful unless:

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

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

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

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

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

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

46 (3) Any person who violates this section, upon conviction,
47 is guilty of a felony and may be imprisoned for a period not to
48 exceed thirty (30) years and shall be fined not less than Five
49 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
50 (\$1,000,000.00), or may be both fined and imprisoned.

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

55 (5) Nothing in this section shall preclude any wholesaler,
56 retailer or pharmacist from possessing or selling precursor drugs
57 or chemicals listed in Section 41-29-313 in the normal pursuit of
58 business.

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

61 17-17-29. (1) Any person found by the commission violating
62 any of the provisions of Sections 17-17-1 through 17-17-47, or any
63 rule or regulation or written order of the commission in pursuance
64 thereof, or any condition or limitation of a permit, shall be
65 subject to a civil penalty of not more than Twenty-five Thousand
66 Dollars (\$25,000.00) for each violation, such penalty to be
67 assessed and levied by the commission after a hearing. Appeals
68 from the imposition of the civil penalty may be taken to the
69 chancery court in the same manner as appeals from orders of the
70 commission. If the appellant desires to stay the execution of a
71 civil penalty assessed by the commission, he shall give bond with
72 sufficient resident sureties of one or more guaranty or surety
73 companies authorized to do business in this state, payable to the
74 State of Mississippi, in an amount equal to double the amount of
75 any civil penalty assessed by the commission, as to which the stay
76 of execution is desired, conditioned, if the judgment shall be
77 affirmed, to pay all costs of the assessment entered against the
78 appellant. Each day upon which such violation occurs shall be
79 deemed a separate and additional violation.

80 (2) In lieu of, or in addition to, the penalty provided in
81 subsection (1) of this section, the commission shall have the
82 power to institute and maintain in the name of the state any and
83 all proceedings necessary or appropriate to enforce the provisions
84 of Sections 17-17-1 through 17-17-47, rules and regulations in
85 force pursuant thereto, and orders and permits made and issued
86 under those sections, in the appropriate circuit, chancery, county
87 or justice court of the county in which venue may lie. The
88 commission may obtain mandatory or prohibitory injunctive relief,
89 either temporary or permanent, and in cases of imminent and
90 substantial hazard as set forth in Section 17-17-27, subsection
91 (4), it shall not be necessary in such cases that the state plead
92 or prove (a) that irreparable damage would result if the
93 injunction did not issue; (b) that there is no adequate remedy at

94 law; or (c) that a written complaint or commission order has first
95 been issued for the alleged violation.

96 (3) Any person who violates any of the provisions of, or
97 fails to perform any duty imposed by, Sections 17-17-1 through
98 17-17-47, or any rule or regulation issued hereunder, or who
99 violates any order or determination of the commission promulgated
100 pursuant to such sections, and causes the death of wildlife shall
101 be liable, in addition to the penalties provided in subsection (1)
102 and/or (2) of this section, to pay to the state an additional
103 amount equal to the sum of money reasonably necessary to replenish
104 such wildlife as determined by the commission after consultation
105 with the Mississippi Commission on Wildlife, Fisheries and Parks.
106 Such amount may be recovered by the commission on behalf of the
107 state in a civil action brought in the appropriate county or
108 circuit court of the county in which venue may lie.

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

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

123 (5) Any person who knowingly violates any provision of this
124 chapter or violates any order issued by the commission under the
125 authority of this chapter shall, upon conviction, be guilty of a
126 misdemeanor and shall be subject to a fine of not more than

127 Twenty-five Thousand Dollars (\$25,000.00) for each day of
128 violation or to imprisonment not to exceed one (1) year, or both.
129 Each day's violation shall constitute a separate offense.

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

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

144 (a) The willfulness of the violation;

145 (b) Any damage to air, water, land or other natural
146 resources of the state or their uses;

147 (c) Costs of restoration and abatement;

148 (d) Economic benefit as a result of noncompliance;

149 (e) The seriousness of the violation, including any
150 harm to the environment and any hazard to the health, safety and
151 welfare of the public;

152 (f) Past performance history; and

153 (g) Whether the noncompliance was discovered and
154 reported as the result of a voluntary self-evaluation. If a
155 person discovers as a result of a voluntary self-evaluation,
156 information related to noncompliance with an environmental law and
157 voluntarily discloses that information to the department,
158 commission or any employee thereof, the commission shall, to the
159 greatest extent possible, reduce a penalty, if any, determined by

160 the commission, except for economic benefit as a result of
161 noncompliance, to a de minimis amount if all of the following are
162 true:

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

165 (ii) The person making the disclosure initiates
166 the appropriate corrective actions and pursues those corrective
167 actions with due diligence;

168 (iii) The person making the disclosure cooperates
169 with the commission and the department regarding investigation of
170 the issues identified in the disclosure;

171 (iv) The person is not otherwise required by an
172 environmental law to make the disclosure to the commission or the
173 department;

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

177 (vi) The noncompliance did not result in a
178 substantial endangerment threatening the public health, safety or
179 welfare or the environment.

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

185 (9) Any person who violates Section 1 of Senate Bill No.
186 2772, 2001 Regular Session, shall, in addition to any other
187 penalties, be subject to the penalties provided in this section.
188 Each day a person is in violation of Section 1 of Senate Bill No.
189 2772, 2001 Regular Session, shall constitute a separate offense
190 under this section.

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