

By: Senator(s) Nunnelee

To: Environment Prot, Cons
and Water ResCOMMITTEE 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,

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

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

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

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

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

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

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

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

(9) Any person who violates Section 1 of Senate Bill No. 2772, 2001 Regular Session, shall, in addition to any other penalties, be subject to the penalties provided in this section. 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.