AN ACT TO AMEND SECTION 17-17-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSION ON ENVIRONMENTAL QUALITY MAY IMPOSE A PENALTY FOR THE GENERATION OF WASTE RESULTING FROM THE MANUFACTURE OF CONTROLLED SUBSTANCES; TO PROTECT THE ENVIRONMENT BY MAKING IT UNLAWFUL TO GENERATE HAZARDOUS WASTE IN THE MANUFACTURE OF CONTROLLED SUBSTANCES; TO PROVIDE THAT A LANDOWNER IS NOT CRIMINALLY OR CIVILLY LIABLE FOR GENERATION OF WASTE CAUSED BY THE CRIMINAL ACTS OF OTHERS IF LANDOWNERS DID NOT HAVE PRIOR KNOWLEDGE OF THE CRIMINAL ACTIVITY; TO PROVIDE A SEPARATE PENALTY FOR SUCH GENERATION OF WASTES; TO PROVIDE A FELONY FOR PURPOSELY OR RECKLESSLY DISPOSING OF HAZARDOUS WASTE WHICH CONTAMINATES DRINKING WATER SOURCES TO THE EXTENT THAT IT IS UNSAFE FOR HUMAN CONSUMPTION; TO PROVIDE PENALTIES FOR SUCH FELONY; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(a) The person has first obtained a generator identification number pursuant to the Resource Conservation and Recovery Act, 42 USCS Section 6901 et seq., and the regulations promulgated thereunder; or

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

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

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

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

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

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

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

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

(6) Except as may be otherwise provided, a property owner or occupant of land shall not be criminally or civilly liable for the generation of waste caused by the criminal acts of persons other than the property owner or occupant of such land if the property owner or occupant did not have prior knowledge of the criminal activity.

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

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

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

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

(4) Any person creating, or responsible for creating, through misadventure, happenstance, or otherwise, an immediate necessity for remedial or clean-up action involving solid waste shall be liable for the cost of such remedial or clean-up action.
and the commission may recover the cost of same by a civil action
brought in the circuit court of the county in which venue may lie.
This penalty may be recovered in lieu of or in addition to the
penalties provided in subsection (1), (2) and/or (3) of this
section.
In the event of the necessity for immediate remedial or
clean-up action, the commission may contract for same and advance
funds from the Pollution Emergency Fund to pay the costs thereof,
such advancements to be repaid to the Pollution Emergency Fund
upon recovery by the commission as provided herein.
(5) Any person who knowingly violates any provision of this
chapter or violates any order issued by the commission under the
authority of this chapter shall, upon conviction, be guilty of a
misdemeanor and shall be subject to a fine of not more than
Twenty-five Thousand Dollars ($25,000.00) for each day of
violation or to imprisonment not to exceed one (1) year, or both.
Each day's violation shall constitute a separate offense.
(6) (a) Any person who purposely or recklessly disposes of
any hazardous waste in violation of this chapter which
contaminates a drinking water source to the extent that it is
unsafe for human consumption, as determined by the state agency
charged with the responsibility of regulating safe drinking water
for human consumption; or any person who purposely or recklessly
disposes of any hazardous waste in violation of this chapter and
who knows that he places another person in imminent danger of
death or serious bodily injury shall, upon conviction, be guilty
of a felony, and shall be subject to imprisonment for a term of
not less than one (1) year nor more than ten (10) years, and shall
also be subject to a fine of not less than Five Thousand Dollars
($5,000.00) nor more than Fifty Thousand Dollars ($50,000.00) for
each day of violation or both fine and imprisonment. The fine
shall not exceed a total of One Million Dollars ($1,000,000.00).
(b) For purposes of this subsection, a person acts purposely with respect to a material element of an offense when:

(i) If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(c) For purposes of this subsection, a person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) This section shall not apply to any person holding a permit from the Department of Environmental Quality and acting within the scope of that permit.

(7) All fines, penalties and other sums recovered or collected by the commission for and in behalf of the state under this section shall be deposited in the Pollution Emergency Fund established by Sections 49-17-61 through 49-17-70, and the commission is authorized to receive and accept, from any and all available sources whatsoever, additional funds to be deposited in such fund and expended for the purpose of remedial, clean-up or abatement actions involving the introduction of solid waste upon or into the land, air or waters of this state in violation of Sections 17-17-1 through 17-17-47, any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit.
In determining the amount of any penalty under this chapter, the commission shall consider at a minimum:

(a) The willfulness of the violation;

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

(c) Costs of restoration and abatement;

(d) Economic benefit as a result of noncompliance;

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

(f) Past performance history; and

(g) Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation. If a 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;
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(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.

(9) 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.

(10) 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.

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