

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

Senate Bill NO. 2772

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

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

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

86 any civil penalty assessed by the commission, as to which the stay
87 of execution is desired, conditioned, if the judgment shall be
88 affirmed, to pay all costs of the assessment entered against the
89 appellant. Each day upon which such violation occurs shall be
90 deemed a separate and additional violation.

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

107 (3) Any person who violates any of the provisions of, or
108 fails to perform any duty imposed by, Sections 17-17-1 through
109 17-17-47, or any rule or regulation issued hereunder, or who
110 violates any order or determination of the commission promulgated
111 pursuant to such sections, and causes the death of wildlife shall
112 be liable, in addition to the penalties provided in subsection (1)
113 and/or (2) of this section, to pay to the state an additional
114 amount equal to the sum of money reasonably necessary to replenish
115 such wildlife as determined by the commission after consultation

116 with the Mississippi Commission on Wildlife, Fisheries and Parks.
117 Such amount may be recovered by the commission on behalf of the
118 state in a civil action brought in the appropriate county or
119 circuit court of the county in which venue may lie.

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

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

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

141 (6) All fines, penalties and other sums recovered or
142 collected by the commission for and in behalf of the state under
143 this section shall be deposited in the Pollution Emergency Fund
144 established by Sections 49-17-61 through 49-17-70, and the
145 commission is authorized to receive and accept, from any and all

146 available sources whatsoever, additional funds to be deposited in
147 such fund and expended for the purpose of remedial, clean-up or
148 abatement actions involving the introduction of solid waste upon
149 or into the land, air or waters of this state in violation of
150 Sections 17-17-1 through 17-17-47, any rule or regulation or
151 written order of the commission in pursuance thereof, or any
152 condition or limitation of a permit.

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

155 (a) The willfulness of the violation;

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

158 (c) Costs of restoration and abatement;

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

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

163 (f) Past performance history; and

164 (g) Whether the noncompliance was discovered and
165 reported as the result of a voluntary self-evaluation. If a
166 person discovers as a result of a voluntary self-evaluation,
167 information related to noncompliance with an environmental law and
168 voluntarily discloses that information to the department,
169 commission or any employee thereof, the commission shall, to the
170 greatest extent possible, reduce a penalty, if any, determined by
171 the commission, except for economic benefit as a result of
172 noncompliance, to a de minimis amount if all of the following are
173 true:

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

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

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

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

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

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

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

196 (9) Any person who violates Section 1 of Senate Bill No.
197 2772, 2001 Regular Session, shall, in addition to any other
198 penalties, be subject to the penalties provided in this section.
199 Each day a person is in violation of Section 1 of Senate Bill No.
200 2772, 2001 Regular Session, shall constitute a separate offense
201 under this section.

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