

By: Senator(s) Nunnelee

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2772
(As Sent to Governor)

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 THAT A LANDOWNER
7 IS NOT CRIMINALLY OR CIVILLY LIABLE FOR GENERATION OF WASTE CAUSED
8 BY THE CRIMINAL ACTS OF OTHERS IF LANDOWNERS DID NOT HAVE PRIOR
9 KNOWLEDGE OF THE CRIMINAL ACTIVITY; TO PROVIDE A SEPARATE PENALTY
10 FOR SUCH GENERATION OF WASTES; TO PROVIDE A FELONY FOR PURPOSELY
11 OR RECKLESSLY DISPOSING OF HAZARDOUS WASTE WHICH CONTAMINATES
12 DRINKING WATER SOURCES TO THE EXTENT THAT IT IS UNSAFE FOR HUMAN
13 CONSUMPTION; TO PROVIDE PENALTIES FOR SUCH FELONY; AND FOR RELATED
14 PURPOSES.

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

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

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

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

30 (b) "Waste" means all liquid, gaseous, solid,
31 radioactive or other substances that may pollute or tend to
32 pollute any waters of the state or soil within the state, and any

33 particulate matter, dust, fumes, gas, mist, smoke or vapor, or any
34 combination thereof, that may pollute or tend to pollute air in
35 the state, including indoor air.

36 (2) The generation of waste in any quantity by any person
37 caused by the mixing, combining, processing or cooking together of
38 two (2) or more precursor drugs or chemicals listed in Section
39 41-29-313(3) is unlawful unless:

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

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

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

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

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

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

58 (3) Any person who violates this section, upon conviction,
59 is guilty of a felony and may be imprisoned for a period not to
60 exceed thirty (30) years and shall be fined not less than Five
61 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
62 (\$1,000,000.00), or may be both fined and imprisoned.

63 (4) Nothing in this section shall preclude any farmer or
64 manufacturer from storing or using any of the listed precursor

65 drugs or chemicals listed in Section 41-29-313 in the normal
66 pursuit of farming or manufacturing operations.

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

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

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

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

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

114 (3) Any person who violates any of the provisions of, or
115 fails to perform any duty imposed by, Sections 17-17-1 through
116 17-17-47, or any rule or regulation issued hereunder, or who
117 violates any order or determination of the commission promulgated
118 pursuant to such sections, and causes the death of wildlife shall
119 be liable, in addition to the penalties provided in subsection (1)
120 and/or (2) of this section, to pay to the state an additional
121 amount equal to the sum of money reasonably necessary to replenish
122 such wildlife as determined by the commission after consultation
123 with the Mississippi Commission on Wildlife, Fisheries and Parks.
124 Such amount may be recovered by the commission on behalf of the
125 state in a civil action brought in the appropriate county or
126 circuit court of the county in which venue may lie.

127 (4) Any person creating, or responsible for creating,
128 through misadventure, happenstance, or otherwise, an immediate
129 necessity for remedial or clean-up action involving solid waste
130 shall be liable for the cost of such remedial or clean-up action

131 and the commission may recover the cost of same by a civil action
132 brought in the circuit court of the county in which venue may lie.
133 This penalty may be recovered in lieu of or in addition to the
134 penalties provided in subsection (1), (2) and/or (3) of this
135 section.

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

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

148 (6) (a) Any person who purposely or recklessly disposes of
149 any hazardous waste in violation of this chapter which
150 contaminates a drinking water source to the extent that it is
151 unsafe for human consumption, as determined by the state agency
152 charged with the responsibility of regulating safe drinking water
153 for human consumption; or any person who purposely or recklessly
154 disposes of any hazardous waste in violation of this chapter and
155 who knows that he places another person in imminent danger of
156 death or serious bodily injury shall, upon conviction, be guilty
157 of a felony, and shall be subject to imprisonment for a term of
158 not less than one (1) year nor more than ten (10) years, and shall
159 also be subject to a fine of not less than Five Thousand Dollars
160 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) for
161 each day of violation or both fine and imprisonment. The fine
162 shall not exceed a total of One Million Dollars (\$1,000,000.00).

163 (b) For purposes of this subsection, a person acts
164 purposely with respect to a material element of an offense when:

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

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

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

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

183 (7) All fines, penalties and other sums recovered or
184 collected by the commission for and in behalf of the state under
185 this section shall be deposited in the Pollution Emergency Fund
186 established by Sections 49-17-61 through 49-17-70, and the
187 commission is authorized to receive and accept, from any and all
188 available sources whatsoever, additional funds to be deposited in
189 such fund and expended for the purpose of remedial, clean-up or
190 abatement actions involving the introduction of solid waste upon
191 or into the land, air or waters of this state in violation of
192 Sections 17-17-1 through 17-17-47, any rule or regulation or
193 written order of the commission in pursuance thereof, or any
194 condition or limitation of a permit.

195 (8) In determining the amount of any penalty under this
196 chapter, the commission shall consider at a minimum:

197 (a) The willfulness of the violation;

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

200 (c) Costs of restoration and abatement;

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

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

205 (f) Past performance history; and

206 (g) Whether the noncompliance was discovered and
207 reported as the result of a voluntary self-evaluation. If a
208 person discovers as a result of a voluntary self-evaluation,
209 information related to noncompliance with an environmental law and
210 voluntarily discloses that information to the department,
211 commission or any employee thereof, the commission shall, to the
212 greatest extent possible, reduce a penalty, if any, determined by
213 the commission, except for economic benefit as a result of
214 noncompliance, to a de minimis amount if all of the following are
215 true:

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

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

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

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

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

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

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

238 (10) Any person who violates Section 1 of Senate Bill No.
239 2772, 2001 Regular Session, shall, in addition to any other
240 penalties, be subject to the penalties provided in this section.

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