

FIRST REGULAR SESSION

SENATE BILL NO. 535

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 20, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1792S.031

AN ACT

To repeal sections 260.211, 260.212, 260.240, and 260.249, RSMo, and to enact in lieu thereof four new sections relating to solid waste disposal, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 260.211, 260.212, 260.240, and 260.249, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 260.211, 260.212, 260.240, and 260.249, to read as follows:

260.211. 1. A person commits the offense of criminal disposition of
2 demolition waste [in the first degree] if he purposely or knowingly disposes of or
3 causes the disposal of [more than two thousand pounds or four hundred cubic feet
4 of] such waste [in violation of section 260.210] **on any property in this state**
5 **other than in a solid waste processing facility or solid waste disposal**
6 **area having a permit as required by section 260.205; provided that this**
7 **subsection shall not prohibit the use or require a permit for the use of**
8 **solid wastes in normal farming operations or in the processing or**
9 **manufacturing of other products in a manner that will not create a**
10 **public nuisance or adversely affect the public health.** Demolition waste
11 shall not include clean fill or vegetation. Criminal disposition of demolition waste
12 [in the first degree] is a class [A misdemeanor] **D felony**. In addition to other
13 penalties prescribed by law, a person convicted of criminal disposition of
14 demolition waste [in the first degree] is subject to a fine not to exceed twenty
15 thousand dollars, except as provided below. The magnitude of the fine shall
16 reflect the seriousness or potential seriousness of the threat to human health and
17 the environment posed by the violation, but shall not exceed twenty thousand

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 dollars, except that if a court of competent jurisdiction determines that the person
19 responsible for illegal disposal of demolition waste under this subsection did so
20 for remuneration as a part of an ongoing commercial activity, the court shall set
21 a fine which reflects the seriousness or potential threat to human health and the
22 environment which at least equals the economic gain obtained by the person, and
23 such fine may exceed the maximum established herein.

24 2. The court shall order any person convicted of illegally disposing of
25 demolition waste upon his own property for remuneration to clean up such waste
26 and, if he fails to clean up the waste or if he is unable to clean up the waste, the
27 court may notify the county recorder of the county containing the illegal disposal
28 site. The notice shall be designed to be recorded on the record.

29 [3. Any person who pleads guilty or is convicted of criminal disposition of
30 demolition waste in the first degree a second or subsequent time shall be guilty
31 of a class D felony, and subject to the penalties provided in subsection 1 of this
32 section in addition to those penalties prescribed by law.

33 4. A person commits the offense of criminal disposition of demolition
34 waste in the second degree if he purposely or knowingly disposes of or causes the
35 disposal of less than the amount of demolition waste specified in subsection 1 of
36 this section in violation of section 260.210. Criminal disposition of demolition
37 waste in the second degree is a class C misdemeanor.

38 5. In addition to other penalties prescribed by law, a person convicted of
39 criminal disposition of demolition waste in the second degree is subject to a fine,
40 and the magnitude of the fine shall reflect the seriousness or potential
41 seriousness of the threat to human health and the environment posed by the
42 violation, but shall not exceed two thousand dollars.

43 6. Any person who pleads guilty or is convicted of criminal disposition of
44 demolition waste in the second degree a second or subsequent time shall be guilty
45 of a class D felony, and subject to the penalties provided in subsection 5 of this
46 section in addition to those penalties prescribed by law.]

47 [7.] 3. The court may order restitution by requiring any person convicted
48 under this section to clean up any demolition waste he illegally dumped and the
49 court may require any such person to perform additional community service by
50 cleaning up and properly disposing of demolition waste illegally dumped by other
51 persons.

52 [8.] 4. The prosecutor of any county or circuit attorney of any city not
53 within a county may, by information or indictment, institute a prosecution for any

54 violation of the provisions of this section.

55 **5. Any person shall be guilty of conspiracy as defined in section**
56 **564.016, RSMo, if he or she knows or should have known that his or her**
57 **agent or employee has committed the acts described in sections 260.210**
58 **to 260.212 while engaged in the course of employment.**

260.212. 1. A person commits the offense of criminal disposition of solid
2 waste [in the first degree] if he purposely or knowingly disposes of or causes the
3 disposal of [more than five hundred pounds or one hundred cubic feet of]
4 commercial or residential solid waste on any property in this state other than [a
5 sanitary landfill in violation of section 260.210] **in a solid waste processing**
6 **facility or solid waste disposal area having a permit as required by**
7 **section 260.205; provided that this subsection shall not prohibit the use**
8 **or require a permit for the use of solid wastes in normal farming**
9 **operations or in the processing or manufacturing of other products in**
10 **a manner that will not create a public nuisance or adversely affect the**
11 **public health.** Criminal disposition of solid waste [in the first degree] is a class
12 [A misdemeanor] **D felony.** In addition to other penalties prescribed by law, a
13 person convicted of criminal disposition of solid waste [in the first degree] is
14 subject to a fine, and the magnitude of the fine shall reflect the seriousness or
15 potential seriousness of the threat to human health and the environment posed
16 by the violation, but shall not exceed twenty thousand dollars, except that if a
17 court of competent jurisdiction determines that the person responsible for illegal
18 disposal of solid waste under this subsection did so for remuneration as a part of
19 an ongoing commercial activity, the court shall set a fine which reflects the
20 seriousness or potential threat to human health and the environment which at
21 least equals the economic gain obtained by the person, and such fine may exceed
22 the maximum established herein.

23 2. The court shall order any person convicted of illegally disposing of solid
24 waste upon his own property for remuneration to clean up such waste and, if he
25 fails to clean up the waste or if he is unable to clean up the waste, the court may
26 notify the county recorder of the county containing the illegal disposal site. The
27 notice shall be designed to be recorded on the record.

28 [3. Any person who pleads guilty or is convicted of criminal disposition of
29 solid waste in the first degree a second or subsequent time shall be guilty of a
30 class D felony. If a court of competent jurisdiction determines that the person
31 responsible for illegal disposal of solid waste under this subsection did so for

32 remuneration as a part of an ongoing commercial activity, the court shall set a
33 fine which reflects the seriousness or potential threat to human health and the
34 environment which equals at least three times the economic gain obtained by the
35 person, and such fine may exceed the maximum established in this section.

36 4. A person commits the offense of criminal disposition of solid waste in
37 the second degree if he purposely or knowingly disposes of or causes the disposal
38 of less than the amount of commercial or residential solid waste specified in
39 subsection 1 of this section on any property in this state other than a permitted
40 sanitary landfill in violation of section 260.210. Criminal disposition of solid
41 waste in the second degree is a class C misdemeanor.

42 5. In addition to other penalties prescribed by law, a person convicted of
43 criminal disposition of solid waste in the second degree is subject to a fine, and
44 the magnitude of the fine shall reflect the seriousness or potential seriousness of
45 the threat to human health and the environment posed by the violation, but shall
46 not exceed two thousand dollars.

47 6. Any person who pleads guilty or is convicted of criminal disposition of
48 solid waste in the second degree a second or subsequent time shall be guilty of
49 a class D felony. If a court of competent jurisdiction determines that the person
50 responsible for illegal disposal of solid waste under this subsection did so for
51 remuneration as a part of an ongoing commercial activity, the court shall set a
52 fine which reflects the seriousness or potential threat to human health and the
53 environment which equals at least three times the economic gain obtained by the
54 person, and such fine may exceed the maximum established in this subsection.]

55 [7.] 3. The court may order restitution by requiring any person convicted
56 under this section to clean up any commercial or residential solid waste he
57 illegally dumped and the court may require any such person to perform additional
58 community service by cleaning up commercial or residential solid waste illegally
59 dumped by other persons.

60 [8.] 4. The prosecutor of any county or circuit attorney of any city not
61 within a county may, by information or indictment, institute a prosecution for any
62 violation of the provisions of this section.

63 [9.] 5. Any person shall be guilty of conspiracy as defined in section
64 564.016, RSMo, if he knows or should have known that his agent or employee has
65 committed the acts described in sections 260.210 to 260.212 while engaged in the
66 course of employment.

260.240. 1. In the event the director determines that any provision of

2 sections 260.200 to 260.245 **and 260.330** or any standard, rule, regulation, final
3 order or approved plan promulgated pursuant thereto is being, was, or is in
4 imminent danger of being violated, the director may, in addition to those
5 remedies provided in section 260.230, cause to have instituted a civil action in
6 any court of competent jurisdiction for injunctive relief to prevent any such
7 violation or further violation or in the case of violations concerning a [solid waste
8 disposal area or a] solid waste processing facility, for the assessment of a penalty
9 not to exceed one thousand dollars per day for each day, or part thereof, the
10 violation occurred and continues to occur, or both, as the court deems proper **or**
11 **in the case of violations concerning a solid waste disposal area and in**
12 **the case of violation of 260.330 by a solid waste processing facility, for**
13 **the assessment of a penalty not to exceed five thousand dollars per day**
14 **for each day, or part thereof, the violation occurred and continues to**
15 **occur, or both as the court deems proper.** A civil monetary penalty under
16 this section shall not be assessed for a violation where an administrative penalty
17 was assessed under section 260.249. The director may request either the attorney
18 general or a prosecuting attorney to bring any action authorized in this section
19 in the name of the people of the state of Missouri. Suit can be brought in any
20 county where the defendant's principal place of business is located or where the
21 violation occurred. Any offer of settlement to resolve a civil penalty under this
22 section shall be in writing, shall state that an action for imposition of a civil
23 penalty may be initiated by the attorney general or a prosecuting attorney
24 representing the department under authority of this section, and shall identify
25 any dollar amount as an offer of settlement which shall be negotiated in good
26 faith through conference, conciliation and persuasion.

27 2. Any rule, regulation, standard or order of a county commission, adopted
28 [pursuant to] **under** the provisions of sections 260.200 to 260.245, may be
29 enforced in a civil action for mandatory or prohibitory injunctive relief or for the
30 assessment of a penalty not to exceed one [hundred] **thousand** dollars per day
31 for each day, or part thereof, that a violation of such rule, regulation, standard
32 or order of a county commission occurred and continues to occur, or both, as the
33 commission deems proper. The county commission may request the prosecuting
34 attorney or other attorney to bring any action authorized in this section in the
35 name of the people of the state of Missouri.

36 3. The liabilities imposed by this section shall not be imposed due to any
37 violation caused by an act of God, war, strike, riot or other catastrophe.

260.249. 1. In addition to any other remedy provided by law, upon a
2 determination by the director that a provision of sections 260.200 to 260.281, or
3 a standard, limitation, order, rule or regulation promulgated pursuant thereto,
4 or a term or condition of any permit has been violated, the director may issue an
5 order assessing an administrative penalty upon the violator under this section.
6 An administrative penalty shall not be imposed until the director has sought to
7 resolve the violations through conference, conciliation and persuasion and shall
8 not be imposed for minor violations of sections 260.200 to 260.281 or minor
9 violation of any standard, limitation, order, rule or regulation promulgated
10 [pursuant to] **under** sections 260.200 to 260.281 or minor violations of any term
11 or condition of a permit issued [pursuant to] **under** sections 260.200 to 260.281
12 or any violations of sections 260.200 to 260.281 by any person resulting from
13 mismanagement of solid waste generated and managed on the property of the
14 place of residence of the person. If the violation is resolved through conference,
15 conciliation and persuasion, no administrative penalty shall be assessed unless
16 the violation has caused, or has the potential to cause, a risk to human health or
17 to the environment, or has caused or has potential to cause pollution, or was
18 knowingly committed, or is defined by the United States Environmental
19 Protection Agency as other than minor. Any order assessing an administrative
20 penalty shall state that an administrative penalty is being assessed under this
21 section and that the person subject to the penalty may appeal as provided by
22 section 260.235. Any such order that fails to state the statute under which the
23 penalty is being sought, the manner of collection or rights of appeal shall result
24 in the state's waiving any right to collection of the penalty.

25 2. The department shall promulgate rules and regulations for the
26 assessment of administrative penalties. The amount of the administrative
27 penalty assessed per day of violation for each violation under this section shall
28 not exceed the amount of the civil penalty specified in section [260.230]
29 **260.240**. Such rules shall reflect the criteria used for the administrative penalty
30 matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C.
31 6928(a), Section 3008(a), and the harm or potential harm which the violation
32 causes, or may cause, the violator's previous compliance record, and any other
33 factors which the department may reasonably deem relevant. An administrative
34 penalty shall be paid within sixty days from the date of issuance of the order
35 assessing the penalty. Any person subject to an administrative penalty may
36 appeal as provided in section 260.235. Any appeal will stay the due date of such

37 administrative penalty until the appeal is resolved. Any person who fails to pay
38 an administrative penalty by the final due date shall be liable to the state for a
39 surcharge of fifteen percent of the penalty plus ten percent per annum on any
40 amounts owed. Any administrative penalty paid [pursuant to] **under** this section
41 shall be handled in accordance with section 7 of article IX of the state
42 constitution. An action may be brought in the appropriate circuit court to collect
43 any unpaid administrative penalty, and for attorney's fees and costs incurred
44 directly in the collection thereof.

45 3. An administrative penalty shall not be increased in those instances
46 where department action, or failure to act, has caused a continuation of the
47 violation that was a basis for the penalty. Any administrative penalty must be
48 assessed within two years following the department's initial discovery of such
49 alleged violation, or from the date the department in the exercise of ordinary
50 diligence should have discovered such alleged violation.

51 4. The state may elect to assess an administrative penalty, or, in lieu
52 thereof, to request that the attorney general or prosecutor file an appropriate
53 legal action seeking a civil penalty in the appropriate circuit court.

54 5. Any final order imposing an administrative penalty is subject to
55 judicial review upon the filing of a petition pursuant to section 536.100, RSMo,
56 by any person subject to the administrative penalty.

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