

FIRST REGULAR SESSION

# HOUSE BILL NO. 886

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHLOTTACH (Sponsor), YAEGER, ROORDA,  
HARRIS (110) AND DEEKEN (Co-sponsors).

Read 1st time February 15, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2143L.02I

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### 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 wastes, with penalty provisions.

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Section A. Sections 260.211, 260.212, 260.240, and 260.249, RSMo, are repealed and  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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 posed by the violation, but shall not exceed twenty thousand dollars, except that if a court of  
15 competent jurisdiction determines that the person responsible for illegal disposal of demolition  
16 waste under this subsection did so for remuneration as a part of an ongoing commercial activity,  
17 the court shall set a fine which reflects the seriousness or potential threat to human health and  
18 the environment which at least equals the economic gain obtained by the person, and such fine  
19 may exceed the maximum established herein.

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

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

29         4. A person commits the offense of criminal disposition of demolition waste in the  
30 second degree if he purposely or knowingly disposes of or causes the disposal of less than the  
31 amount of demolition waste specified in subsection 1 of this section in violation of section  
32 260.210. Criminal disposition of demolition waste in the second degree is a class C  
33 misdemeanor.

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

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

42         7.] The court may order restitution by requiring any person convicted under this section  
43 to clean up any demolition waste he illegally dumped and the court may require any such person  
44 to perform additional community service by cleaning up and properly disposing of demolition  
45 waste illegally dumped by other persons.

46         [8.] 4. The prosecutor of any county or circuit attorney of any city not within a county  
47 may, by information or indictment, institute a prosecution for any violation of the provisions of  
48 this section.

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

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

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

24           3. [Any person who pleads guilty or is convicted of criminal disposition of solid waste  
25 in the first degree a second or subsequent time shall be guilty of a class D felony. If a court of  
26 competent jurisdiction determines that the person responsible for illegal disposal of solid waste  
27 under this subsection did so for remuneration as a part of an ongoing commercial activity, the  
28 court shall set a fine which reflects the seriousness or potential threat to human health and the  
29 environment which equals at least three times the economic gain obtained by the person, and  
30 such fine may exceed the maximum established in this section.

31           4. A person commits the offense of criminal disposition of solid waste in the second  
32 degree if he purposely or knowingly disposes of or causes the disposal of less than the amount  
33 of commercial or residential solid waste specified in subsection 1 of this section on any property

34 in this state other than a permitted sanitary landfill in violation of section 260.210. Criminal  
35 disposition of solid waste in the second degree is a class C misdemeanor.

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

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

47 7.] The court may order restitution by requiring any person convicted under this section  
48 to clean up any commercial or residential solid waste he illegally dumped and the court may  
49 require any such person to perform additional community service by cleaning up commercial or  
50 residential solid waste illegally dumped by other persons.

51 [8.] 4. The prosecutor of any county or circuit attorney of any city not within a county  
52 may, by information or indictment, institute a prosecution for any violation of the provisions of  
53 this section.

54 [9.] 5. Any person shall be guilty of conspiracy as defined in section 564.016, RSMo,  
55 if he knows or should have known that his agent or employee has committed the acts described  
56 in sections 260.210 to 260.212 while engaged in the course of employment.

260.240. 1. In the event the director determines that any provision of sections 260.200  
2 to 260.245 **and 260.330** or any standard, rule, regulation, final order or approved plan  
3 promulgated pursuant thereto is being, was, or is in imminent danger of being violated, the  
4 director may, in addition to those remedies provided in section 260.230, cause to have instituted  
5 a civil action in any court of competent jurisdiction for injunctive relief to prevent any such  
6 violation or further violation or in the case of violations concerning a solid waste disposal area  
7 or a solid waste processing facility, for the assessment of a penalty not to exceed one thousand  
8 dollars per day for each day, or part thereof, the violation occurred and continues to occur, or  
9 both, as the court deems proper **or in the case of violations concerning a solid waste disposal**  
10 **area and in the case of a violation of section 260.330 by a solid waste processing facility, for**  
11 **the assessment of a penalty not to exceed five thousand dollars per day, or part thereof, the**  
12 **violation occurred and continues to occur, or both, as the court deems proper.** A civil  
13 monetary penalty under this section shall not be assessed for a violation where an administrative

14 penalty was assessed under section 260.249. The director may request either the attorney general  
15 or a prosecuting attorney to bring any action authorized in this section in the name of the people  
16 of the state of Missouri. Suit can be brought in any county where the defendant's principal place  
17 of business is located or where the violation occurred. Any offer of settlement to resolve a civil  
18 penalty under this section shall be in writing, shall state that an action for imposition of a civil  
19 penalty may be initiated by the attorney general or a prosecuting attorney representing the  
20 department under authority of this section, and shall identify any dollar amount as an offer of  
21 settlement which shall be negotiated in good faith through conference, conciliation and  
22 persuasion.

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

31         3. The liabilities imposed by this section shall not be imposed due to any violation  
32 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 determination by  
2 the director that a provision of sections 260.200 to 260.281, or a standard, limitation, order, rule  
3 or regulation promulgated pursuant thereto, or a term or condition of any permit has been  
4 violated, the director may issue an order assessing an administrative penalty upon the violator  
5 under this section. An administrative penalty shall not be imposed until the director has sought  
6 to resolve the violations through conference, conciliation and persuasion and shall not be  
7 imposed for minor violations of sections 260.200 to 260.281 or minor violation of any standard,  
8 limitation, order, rule or regulation promulgated pursuant to sections 260.200 to 260.281 or  
9 minor violations of any term or condition of a permit issued pursuant to sections 260.200 to  
10 260.281 or any violations of sections 260.200 to 260.281 by any person resulting from  
11 mismanagement of solid waste generated and managed on the property of the place of residence  
12 of the person. If the violation is resolved through conference, conciliation and persuasion, no  
13 administrative penalty shall be assessed unless the violation has caused, or has the potential to  
14 cause, a risk to human health or to the environment, or has caused or has potential to cause  
15 pollution, or was knowingly committed, or is defined by the United States Environmental  
16 Protection Agency as other than minor. Any order assessing an administrative penalty shall state  
17 that an administrative penalty is being assessed under this section and that the person subject to

18 the penalty may appeal as provided by section 260.235. Any such order that fails to state the  
19 statute under which the penalty is being sought, the manner of collection or rights of appeal shall  
20 result in the state's waiving any right to collection of the penalty.

21 2. The department shall promulgate rules and regulations for the assessment of  
22 administrative penalties. The amount of the administrative penalty assessed per day of violation  
23 for each violation under this section shall not exceed the amount of the civil penalty specified  
24 in section [260.230] **260.240**. Such rules shall reflect the criteria used for the administrative  
25 penalty matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C.  
26 6928(a), Section 3008(a), and the harm or potential harm which the violation causes, or may  
27 cause, the violator's previous compliance record, and any other factors which the department may  
28 reasonably deem relevant. An administrative penalty shall be paid within sixty days from the  
29 date of issuance of the order assessing the penalty. Any person subject to an administrative  
30 penalty may appeal as provided in section 260.235. Any appeal will stay the due date of such  
31 administrative penalty until the appeal is resolved. Any person who fails to pay an  
32 administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen  
33 percent of the penalty plus ten percent per annum on any amounts owed. Any administrative  
34 penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX  
35 of the state constitution. An action may be brought in the appropriate circuit court to collect any  
36 unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection  
37 thereof.

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

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

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

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