

By: Senator(s) Metetal, Burton

To: Judiciary, Division B

SENATE BILL NO. 2333

1 AN ACT TO AMEND SECTION 97-35-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE OFFENSE OF NOISE DISTURBANCE; AND FOR RELATED PURPOSES.

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

4 **SECTION 1.** Section 97-35-9, Mississippi Code of 1972, is
5 amended as follows:

6 97-35-9. (1) A person who willfully disturbs the peace of
7 any family or person by an explosion of gunpowder or other
8 explosive substance, or by loud or unusual noise, or by any
9 tumultuous or offensive conduct, shall be punished by fine or
10 imprisonment, or both; the fine not to exceed One Hundred Dollars
11 (\$100.00), and the imprisonment not to exceed six (6) months in
12 the county jail.

13 (2) As used in this section, the following words and terms
14 shall have the meanings ascribed unless the context clearly
15 requires otherwise:

16 (a) "A-weighted sound level" means the sound pressure
17 level in decibels as measured on a sound level meter using the
18 A-weighting network.

19 (b) "Daytime" or "evening" mean the hours between six
20 o'clock a.m. and eleven o'clock p.m.

21 (c) "Impulsive sound" means sound of short duration,
22 usually less than one (1) second, with an abrupt onset and rapid
23 decay. Examples of sources of impulsive sound include explosions,
24 drop forge impacts and the discharge of firearms.

25 (d) "Leq" means an average measure of continuous noise
26 that has the equivalent acoustic energy of the fluctuating signal
27 over the same time period. The time period of monitoring will be

28 continuous over any two (2) hours and will use the A-weighting
29 network reported in decibel units.

30 (e) "Nighttime" means the hours between eleven o'clock
31 p.m. and six o'clock a.m.

32 (f) "Noise nuisance" means any loud, irritating, vexing
33 or disturbing sound originating from a nearby property under
34 separate ownership which causes injury, discomfort or distress of
35 a person of reasonable nervous sensibilities.

36 (g) "Sound level" means the weighted sound pressure
37 level obtained by the use of a sound level meter and frequency
38 weighting network such as A, B or C as specified in American
39 National Standards Institute specifications for sound level meters
40 (ANSI S1.4-1971). If the frequency weighting employed is not
41 indicated, the A-weighting shall apply.

42 (h) "Sound level meter" means an instrument which
43 includes a microphone, amplifier, RMS detector, integrator or time
44 averages, output meter and weighting network used to measure sound
45 pressure levels.

46 (3) (a) The following acts, among others not hereinafter
47 enumerated, are declared to be "noise nuisances," and are unlawful
48 and in violation of the provisions of this section when such acts
49 are done or accomplished or carried on in such a manner, or with
50 such volume, intensity or with continued duration, so as to annoy,
51 to distress, or to disturb the quiet, comfort or repose of any
52 person of reasonable nervous sensibilities within the vicinity or
53 hearing thereof, or so as to endanger or injure the safety or
54 health of humans or animals, or so as to interfere with the
55 physical well-being of humans or animals, or so as to endanger or
56 injure personal or real property:

57 (i) The playing or permitting or causing the
58 playing of any radio, television, phonograph, drum, boom box,
59 jukebox, nickelodeon, musical instrument, sound amplifier or
60 similar device which produces, reproduces or amplifies sound.

61 (ii) Any loud or vociferous language or any
62 soliciting for, or description of, any amusement house, moving
63 picture theater, or other like place of amusement, or for the
64 performance therein, in the entrance thereto, the foyer or lobby
65 thereof, or on the sidewalks adjoining the same.

66 (iii) The keeping of any animal, fowl or bird,
67 which makes frequent or long, continued noise.

68 (iv) The continued or frequent sounding of any
69 horn or other signal device on any automobile or vehicle,
70 motorcycle, bus or other vehicle, except as a danger signal.

71 (v) The discharge into the open air of the exhaust
72 of any steam engine, stationary internal combustion engine,
73 automobile, motorcycle, or other motor vehicle or boat, except
74 through a muffler or other device which prevents loud or explosive
75 noises therefrom.

76 (vi) The erection, including construction,
77 excavation, demolition, alteration or repair work, or the
78 permitting or causing thereof, of any building or other structure,
79 or the operation or the permitting or causing the operation of any
80 tools or equipment used in construction, excavation, drilling,
81 demolition, alteration or repair work:

82 1. Other than during the daytime on weekdays;
83 or

84 2. At any time such that the sound level at
85 or across a real property boundary exceeds 80dBA.

86 3. This section shall not apply in cases of
87 urgent necessity in the interest of public safety, or in cases of
88 public convenience, including city-sponsored or co-sponsored
89 fiestas, parades and public events.

90 (vii) The crying, calling or shouting, in person
91 or by a mechanical device, or the use of any whistle, rattle,
92 bell, gong, clapper, hammer, drum, horn, loudspeaker or phonograph
93 with or without an amplifier, hand organ or other devices or

94 instruments, musical or otherwise, for the purpose of advertising
95 any candidates for elective office, any goods, wares or
96 merchandise, or for the purpose of attracting attention to or
97 inviting persons to any political rally, meeting or gathering, to
98 any place of amusement, to any performance or show, or to any
99 business or activity whatsoever.

100 (viii) The raucous shouting, whistling, yelling,
101 singing, hooting or crying of peddlers, hawkers, vendors or any
102 other persons.

103 (ix) The making of noise which exceeds sixty-three
104 (63) decibels on residential zoned property when measured from
105 property under separate ownership.

106 (x) The making of noise which exceeds seventy (70)
107 decibels on commercial zoned property when measured from property
108 under separate ownership.

109 (xi) The making of noise which exceeds seventy-two
110 (72) decibels on industrial zoned property when measured from
111 property under separate ownership.

112 (b) The provisions of this section shall not apply to:

113 (i) The emission of sound for the purpose of
114 alerting persons to an emergency; or

115 (ii) Sound produced by emergency vehicles; or

116 (iii) Sound produced by a vehicle motor while the
117 vehicle is moving on a public right-of-way, public waterway,
118 airport runway or railway; or

119 (iv) Sound produced by any governmental body in
120 the performance of a governmental function; or

121 (v) Sound generated at a scheduled stadium event;
122 by parade spectators and participants on the parade route during a
123 permitted parade; by outdoor celebration participants sponsored or
124 co-sponsored by the city for the general welfare of the public; by
125 patrons and participants using cannons and gunfire during
126 historical battle reenactments for which a pyrotechnic permit has

127 been obtained and the explosives have been inspected and approved
128 by the fire marshal; by pyrotechnic displays that are inspected
129 and approved by the fire marshal.

130 (c) The persons responsible for violations of this
131 article are identified as follows:

132 (i) At private residences, any adult resident
133 present at the time of the offense, and any adult guest or adult
134 trespasser with the ability to control the level of noise at the
135 time of the offense when no adult resident is present at the time
136 of the offense.

137 (ii) At business locations, any business owner,
138 operator, manager, employee in charge, and all persons in control
139 or in possession of the noise nuisance generating instrument or
140 property at the time of the offense.

141 (iii) At any location with an unattended noise
142 nuisance producing machine, device, instrument, child, animal or
143 combination of same, any person who leaves unattended any machine,
144 instrument, device, child, animal, or any combination of same,
145 which thereafter commences producing noise in violation of this
146 article.

147 (d) Peace officers are hereby authorized to apply to
148 any magistrate for an administrative search warrant for the
149 purpose of entering private property to investigate and identify
150 noise nuisance producing devices, machines, instruments or
151 objects. Such identified property may be seized to summarily
152 abate the noise nuisance if:

153 (i) A person who is cited for the subject noise
154 violation has been convicted of a violation of any provision of
155 this article within the preceding twelve (12) months, or has been
156 declared to be an "habitual noise nuisance violator" within the
157 preceding twenty-four (24) months; or

158 (ii) The location of the noise nuisance has been
159 declared an habitual noise nuisance source after appropriate

160 notice to the real property owner or person in possession of the
161 subject noise-source real property of a hearing to be held for the
162 purpose of hearing evidence and determining whether the subject
163 location is in fact an "habitual noise nuisance source." Upon
164 finding a location to be an "habitual noise nuisance source," the
165 noise producing property shall be immediately seized at the time
166 of any subsequent violations whether or not there is a previous
167 noise nuisance conviction associated with the location.

168 Such seizures shall be for the purpose of assuring continued
169 cessation of the noise nuisance after the departure of the peace
170 officers by securing the instrumentality of the noise nuisance
171 temporarily. The noise producing device, machine, instrument or
172 object shall be returned to the owner or person proving the right
173 of possession, or to his authorized agent, not sooner than
174 twenty-four (24) hours after seizure. Any disputed ownership or
175 right of possession shall be resolved in a court of competent
176 jurisdiction. Seizure of noise nuisance producing property shall
177 be accomplished in addition to and not in lieu of municipal court
178 prosecution or a civil suit for injunctive relief and civil
179 penalties.

180 (e) Upon the determination that any animal or animals
181 have produced noise on two (2) occasions of a nature and intensity
182 that violates the standards established by this section, the
183 continuing noise nuisance may be summarily abated by seizure and
184 impoundment until the owner or person from whom the animal was
185 seized provides written consent of another person to provide
186 shelter and care for the animal or animals in a fenced property
187 not less than two hundred (200) feet from any neighboring
188 residential structure, or until the tenth day of impoundment.
189 Said animals shall be destroyed if not reclaimed on or before the
190 ten (10) days of impoundment.

191 (f) After producing noise measured at decibels in
192 excess of the maximum allowed by this article on three (3)

193 separate days within a twelve-month period, the noise producer may
194 be notified of a court hearing for the purpose of introducing
195 evidence so that the court may determine whether the cited noise
196 producer is an "habitual noise nuisance producer."

197 (g) After the production of noise in excess of that
198 allowed by this section by anyone at the same address or property
199 location on three (3) separate days within a twelve-month period,
200 the owner or lessee or person in possession shall be given notice
201 of a hearing for the purpose of introducing evidence so that the
202 court can determine whether the location is an "habitual noise
203 nuisance source."

204 (h) If a determination is made that the noise producer
205 is an "habitual noise nuisance producer" or that the location is
206 an "habitual noise nuisance source," the noise producing
207 instrument, equipment or other noise producing item used by the
208 habitual noise nuisance producer may be immediately seized at the
209 time of a subsequent decibel measurement in excess of that allowed
210 by this section. At the time of such seizure, a written notice of
211 the right to an immediate hearing before a court shall be issued
212 to the habitual noise producer or owner or person in possession of
213 the habitual noise nuisance source. The hearing shall be for the
214 purpose of determining if a noise nuisance actually occurred and
215 to voice any complaints about the manner of the seizure. If the
216 noise produced is determined not to constitute a noise nuisance,
217 the subject property shall be immediately delivered over the
218 person from whom it was seized.

219 (4) Any person who violates any portion of this section is
220 guilty of a misdemeanor and shall upon conviction be subject to a
221 fine of not less than Thirty-five Dollars (\$35.00) nor more than
222 Two Thousand Dollars (\$2,000.00). For the second or subsequent
223 conviction within a twelve-month period, the person shall be fined
224 not less than Seventy Dollars (\$70.00) nor more than Two Thousand
225 Dollars (\$2,000.00).

226 (5) (a) All territory embraced within a distance of two
227 hundred fifty (250) feet of the real property upon which is
228 situated any public or private school or institution of learning
229 is hereby declared to be a "Quiet Zone" during the period of time
230 the schools and institutions of learning are in session.

231 (b) All territory embraced within a distance of two
232 hundred fifty (250) feet of the real property upon which is
233 situated any hospital, sanitarium or other like institution for
234 the treatment of sick persons, public and private, shall be held
235 to be, and are declared to be "Quiet Zones."

236 (c) The making, causing or creating, or permitting or
237 allowing to be made, caused or created, any loud, vexing,
238 irritating or disturbing noise which interferes with the
239 operations or workings of any school, or other institution of
240 learning, public or private, or hospital, sanitarium or other like
241 institution for the treatment of sick persons, public or private,
242 situated within an area designated as a "Quiet Zone" is hereby
243 declared to be a "noise nuisance," unlawful and prohibited.

244 **SECTION 2.** This act shall take effect and be in force from
245 and after July 1, 2007.