

By: Senator(s) Mettetal, Burton, Chaney

To: Judiciary, Division B

SENATE BILL NO. 2577

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; or

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

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

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

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

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

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

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

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

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

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

114 (ii) Sound produced by emergency vehicles; or

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

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

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

127 by the fire marshal; by pyrotechnic displays that are inspected
128 and approved by the fire marshal.

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

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

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

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

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

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

157 (ii) The location of the noise nuisance has been
158 declared an habitual noise nuisance source after appropriate
159 notice to the real property owner or person in possession of the

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

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

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

190 (f) After producing noise measured at decibels in
191 excess of the maximum allow by this article on three (3) separate
192 days within a twelve-month period, the noise producer may be

193 notified of a court hearing for the purpose of introducing
194 evidence so that the court may determine whether the cited noise
195 producer is an "habitual noise nuisance producer."

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

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

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

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

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

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

243 **SECTION 2.** This act shall take effect and be in force from
244 and after July 1, 2006.