MISSISSIPPI LEGISLATURE REGULAR SESSION 2012

By: Representative Mettetal

To: Judiciary B

HOUSE BILL NO. 1080

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

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

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

97-35-9. (1) A person who willfully disturbs the peace of any family or person by * * * any tumultuous or offensive conduct other than a noise nuisance, shall be punished by fine or imprisonment, or both; the fine not to exceed One Hundred Dollars ($100.00), and the imprisonment not to exceed six (6) months in the county jail.

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

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

(b) "Daytime" or "evening" mean the hours between 6 a.m. and 11 p.m.

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

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

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

(e) "Nighttime" means the hours between 11 p.m. and 6 a.m.

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

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

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

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

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

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

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

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

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

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

1. Other than during the daytime on weekdays; or

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

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

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

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

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

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

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

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

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

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

(ii) Sound produced by emergency vehicles; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2012.

ST: Noise abatement; revise offense of noise disturbance.