

By: Kuempel

H.B. No. 2018

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the presumption that a noise is unreasonable for  
3 purposes of establishing the commission of the offense of  
4 disorderly conduct.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 42.01, Penal Code, is amended by adding  
7 Subsections (f)-(i) to read as follows:

8 (f) On or after September 1, 2003, a noise is presumed to be  
9 unreasonable under Subsection (a)(5) if the noise:

10 (1) is produced by a business or enterprise that uses a  
11 facility, the construction of which begins on or after September 1,  
12 2003;

13 (2) is made within 5,000 feet of a residence, school,  
14 hospital, or nursing home; and

15 (3) meets any of the following requirements:

16 (A) exceeds a decibel level of 65 at a distance of  
17 500 feet from any portion of the boundary of the property on which  
18 the noise is produced;

19 (B) is sustained for a continuous period of 15  
20 minutes or more; or

21 (C) intermittently occurs three or more times  
22 within a one-hour period.

23 (g) On or after September 1, 2005, a noise is presumed to be  
24 unreasonable under Subsection (a)(5) if the noise:

1           (1) is produced by a business or enterprise;

2           (2) is made within 5,000 feet of a residence, school,  
3 hospital, or nursing home; and

4           (3) meets any of the following requirements:

5                   (A) exceeds a decibel level of 65 at a distance of  
6 500 feet from any portion of the boundary of the property on which  
7 the noise is produced;

8                   (B) is sustained for a continuous period of 15  
9 minutes or more; or

10                   (C) intermittently occurs three or more times  
11 within a one-hour period.

12           (h) Notwithstanding Section 2.05 or other law, a  
13 presumption established under Subsection (f) or (g) may be rebutted  
14 only by clear and convincing evidence.

15           (i) Subsections (f) and (g) do not apply to a business or  
16 enterprise that produces a noise:

17                   (1) for the purpose of alerting persons to the  
18 existence of an emergency, danger, or attempted crime;

19                   (2) from the use of an emergency vehicle;

20                   (3) while conducting emergency work necessary to  
21 restore public utilities, to restore property to a safe condition,  
22 or to protect persons or property from imminent danger;

23                   (4) in connection with a lawfully:

24                           (A) scheduled stadium or amphitheater event; or

25                           (B) permitted parade;

26                   (5) in connection with a reenactment of a historical  
27 battle for which any required permit was obtained and any

1 explosives used were inspected by the fire marshal with  
2 jurisdiction in the area in which the noise is produced;

3 (6) from the use of fireworks or pyrotechnics;

4 (7) in connection with an outdoor event, race,  
5 festival, or concert that was sponsored or cosponsored by the  
6 county in which the noise is produced;

7 (8) in connection with any other lawful activity that  
8 constitutes protected expression under the First Amendment of the  
9 United States Constitution;

10 (9) in connection with the construction, excavation,  
11 demolition, alteration, or repair of a building or other structure  
12 or the operation of tools or equipment to construct, excavate,  
13 demolish, alter, or repair a building or other structure, conducted  
14 after 7 a.m. and before 8 p.m. that does not exceed 75 decibels;

15 (10) from the use of aircraft in operation at an  
16 airport or in flight, or railroad equipment in operation on  
17 railroad rights-of-way;

18 (11) from the operation of a mechanically powered saw,  
19 drill, sander, router, grinder, lawn or garden tool, lawnmower, or  
20 any other similar device after 7 a.m. and before 8 p.m. that does  
21 not exceed 85 decibels;

22 (12) from the operation of any air-conditioning unit  
23 that does not exceed 65 decibels on residential property or 75  
24 decibels on nonresidential property;

25 (13) from the use of bells or chimes as part of a  
26 religious observance or service after 7 a.m. and before 10 p.m. that  
27 does not exceed five continuous minutes in duration in any one-hour

1 period;

2 (14) in connection with the discharge of a firearm at a  
3 public or private shooting range or on private property; or

4 (15) in connection with the operations of an electric  
5 utility or a power generation company as defined by Section 31.002,  
6 Utilities Code, or a gas utility as defined by Section 101.003 or  
7 121.001, Utilities Code.

8 SECTION 2. (a) The change in law made by this Act applies  
9 only to an offense committed on or after the effective date of this  
10 Act. For purposes of this section, an offense is committed before  
11 the effective date of this Act if any element of the offense occurs  
12 before the effective date.

13 (b) An offense committed before the effective date of this  
14 Act is covered by the law in effect when the offense was committed,  
15 and the former law is continued in effect for that purpose.

16 SECTION 3. This Act takes effect September 1, 2003.