

By: Casteel

H.B. No. 2545

A BILL TO BE ENTITLED

AN ACT

relating to the authority of counties to enact noise regulations;
providing a criminal penalty.

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

SECTION 1. Chapter 240, Local Government Code, is amended
by adding Subchapter C to read as follows:

SUBCHAPTER C. REGULATION OF NOISE AND SOUND LEVELS

Sec. 240.051. METHOD OF SOUND MEASUREMENT. Sound measured
under this subchapter shall be measured by the actual decibel level
emitted and not by an average noise level based on a one-hour or
24-hour period.

Sec. 240.052. AUTHORITY TO REGULATE. (a) The
commissioners court of a county by order may regulate as permitted
by this subchapter sound levels to promote the public health,
safety, or welfare.

(b) A regulation adopted under this subchapter applies only
to the unincorporated area of the county.

Sec. 240.053. PERMISSIBLE REGULATIONS. (a) The
regulations may prohibit sound levels that exceed:

(1) on residential property:

(A) 65 decibels at 7 a.m. or after and before 10
p.m.; and

(B) 58 decibels at 10 p.m. or after and before 7
a.m.; or

1 (2) 68 decibels on nonresidential property.

2 (b) In addition to prohibiting a sound level that exceeds
3 the limits prescribed by Subsection (a), the regulations may
4 prohibit any act that produces a sound that a reasonable person
5 would find objectionable.

6 (c) In determining whether a sound is objectionable to a
7 reasonable person, the following factors may be considered but are
8 not exclusive or determinative:

9 (1) the time of day the sound is produced;

10 (2) the proximity of the production of the sound to
11 residential property;

12 (3) whether the sound is recurrent, intermittent, or
13 constant;

14 (4) the volume and intensity of the sound; and

15 (5) whether the sound may be controlled without
16 unreasonable effort or expense to the producer of the sound.

17 (d) A business or enterprise to which a regulation adopted
18 under this subchapter applies is presumed to have violated the
19 regulation if the business or enterprise produces a sound that:

20 (1) exceeds 65 decibels at a distance of 500 feet from
21 any portion of the boundary of the property on which the sound is
22 produced;

23 (2) is sustained for a continuous period of 15 minutes
24 or more; or

25 (3) occurs intermittently three or more times within a
26 one-hour period.

27 (e) A presumption under Subsection (d) may be rebutted only

1 by clear and convincing evidence.

2 (f) A regulation may require that a business or enterprise
3 in existence before the effective date of the regulation and
4 located within 5,000 feet of an existing residence, school,
5 hospital, or nursing home take any measure necessary to comply with
6 the regulation within a period determined by the county, not to
7 exceed two years.

8 Sec. 240.054. EXEMPTIONS. A sound is exempt from
9 regulation under this subchapter if it is a sound produced:

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

12 (2) by an emergency vehicle;

13 (3) by emergency work necessary to restore public
14 utilities, to restore property to a safe condition, or to protect
15 persons or property from imminent danger;

16 (4) by a lawfully:

17 (A) scheduled stadium or amphitheater event; or

18 (B) permitted parade;

19 (5) by a reenactment of a historical battle for which
20 any required permit was obtained and any explosives used were
21 inspected by the county fire marshal;

22 (6) by fireworks or pyrotechnics;

23 (7) by an outdoor event, race, festival, or concert
24 that was sponsored or cosponsored by the county;

25 (8) by any other lawful activity that constitutes
26 protected expression under the First Amendment of the United States
27 Constitution;

1 (9) by the construction, excavation, demolition,
2 alteration, or repair of a building or other structure or the
3 operation of tools or equipment to construct, excavate, demolish,
4 alter, or repair a building or other structure, conducted after 7
5 a.m. and before 8 p.m. that does not exceed 75 decibels;

6 (10) by aircraft in operation at an airport or in
7 flight, or railroad equipment in operation on railroad
8 rights-of-way;

9 (11) by operating a mechanically powered saw, drill,
10 sander, router, grinder, lawn or garden tool, lawnmower, or any
11 other similar device after 7 a.m. and before 8 p.m. that does not
12 exceed 85 decibels;

13 (12) by the operation of any air-conditioning unit
14 that does not exceed 65 decibels on residential property or 75
15 decibels on nonresidential property;

16 (13) by bells or chimes as part of a religious
17 observance or service after 7 a.m. and before 10 p.m. that does not
18 exceed five continuous minutes in duration in any one-hour period;

19 (14) by the discharge of a firearm at a public or
20 private shooting range or on private property; or

21 (15) by the operations of an electric utility or a
22 power generation company as defined by Section 31.002, Utilities
23 Code, or a gas utility as defined by Section 101.003 or 121.001,
24 Utilities Code.

25 Sec. 240.055. INJUNCTION. A county may sue in the district
26 court for an injunction to prohibit the violation or threatened
27 violation of a regulation adopted under this subchapter.

1 Sec. 240.056. CRIMINAL PENALTY. (a) A person commits an
2 offense if the person violates a regulation adopted under this
3 subchapter.

4 (b) Each hour that a violation of a regulation adopted under
5 this subchapter continues constitutes a separate offense.

6 (c) A first or second offense under this section is a Class C
7 misdemeanor. If it is shown on the trial of a person that the person
8 has been previously convicted of two separate offenses under this
9 section, a subsequent offense under this section is a Class B
10 misdemeanor.

11 SECTION 2. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2005.