

**SUBJECT:** Revising unreasonable noise offense and enhancing repeat offense penalty

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Hinojosa, Dunnam, Keel, Garcia, Kitchen, Martinez Fischer  
1 nay — Talton  
2 absent — Green, Shields

**WITNESSES:** For — Beverly Gembler; Felix D. Heusinger; Mary Jane Heusinger;  
*Registered but did not testify:* Richard L. Chaplin, Sr.; Janice L. Koerner;  
Carla Jean Kutz; Roland H. Luensmann; John S. Moreno; Louise Moreno;  
Debbie Newman; Refugia Sosa Wilson; Elmon Wiedner, Jr.  
  
Against — None

**BACKGROUND:** Penal Code, sec. 42.01, makes it a class C misdemeanor (punishable by a maximum fine of \$500) for a person to make unreasonable noise in a public place other than a sport shooting range or in or near a private residence that the person has no right to occupy. A noise is presumed to be unreasonable if it exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that it is a public nuisance.

**DIGEST:** CSHB 126 would amend Penal Code, sec. 42.01 to create a class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) for a second or subsequent offense of making unreasonable noise.  
  
The decibel level of an unreasonable noise would be lowered to 55. Exceptions would be made for noise relating to the ordinary and necessary operation or activities of:

- ! an airport;
- ! an agricultural operation;
- ! a business regulated by the Railroad Commission, the Public Utility Commission, the Texas Natural Resource Conservation Commission, the General Land Office, or the Federal Energy Regulatory

- Commission;
- ! a sport shooting range; or
  - ! an activity occurring in and allowed in a municipal area in which commercial or entertainment purposes were permitted by zoning ordinances and the level of noise was permitted by the municipality.

The bill would take effect on September 1, 2001, and apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

Current law does not provide an adequate penalty for repeated noise violations. Businesses that operate in violation of the noise law are subject only to a maximum \$500 fine. It means little to them to pay the fine and continue to harass area residents with excessive noise. A drag strip in what used to be a secluded area of Guadalupe County regularly subjects residents up to two miles away to noise so loud it rattles dishes and makes conversation difficult. The business pays its \$500 fines and continues to operate at the same noise level. Area residents report that their quality of life has degraded and their property values have decreased. This bill would provide a real incentive for violators of the excessive noise law to stop making noise.

**OPPONENTS  
SAY:**

Lowering the permitted decibel level to 55 – about the level of loud talking – would be an extreme step. This bill could penalize for instance, college fraternities that throw repeated parties by putting students involved in jail.

The bill likely would not affect the businesses that are the real culprits. Most noisy businesses are either expressly exempted from the bill or would be exempt if the municipalities in which they were located exempted them.

**NOTES:**

HB 126 as filed would have left the offense a class C misdemeanor.

A similar bill, HB 581 by Kuempel, is pending in the House Criminal Jurisprudence Committee. The bill would not provide exceptions for specific business types.

During the 76th Legislature, HB 274 by West, an identical bill, was left pending in the House Criminal Jurisprudence Committee.