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MOTOR VEHICLES AND TRAFFIC

Uniform Rules of the Road: Prohibit Car Sound Device That Can Be Heard More Than 100 Feet from Motor Vehicle

CODE SECTION:	O.C.G.A. § 40-6-14 (new)
BILL NUMBER:	HB 149
ACT NUMBER:	306
SUMMARY:	The Act prohibits amplifying a car radio or tape player so that it can be heard more than 100 feet away from the car. A violation of this Act is a misdemeanor. The Act delegates to the Department of Public Safety the responsibility of defining certain provisions of the Act, and establishing standards by which the police are to measure the sound. The Act also provides for several exceptions: communication devices necessary in police and emergency vehicles used for performing their respective duties, sound devices used for business or political purposes, and warning devices, such as horns.
EFFECTIVE DATE:	July 1, 1991

History

HB 149 was introduced in response to complaints from educators, ministers, city police, and state troopers about teens playing their radios too loud.[1] "[P]eace and quiet" was the reason for the bill.[2] Another concern was that "booming car [stereos] can be a safety hazard by blocking the sounds of oncoming police or ambulance sirens."[3]

Although municipalities have long been able to pass similar ordinances regulating the sound of car stereos, this Act creates a minimum "standard

1. Telephone Interview with Rep. Mike Barnett, House District No. 59 (Apr. 4, 1991) [hereinafter Barnett Interview].

2. Joe Earle, *Bill Lowers the Boom on Car Stereos*, ATLANTA J., Feb. 22, 1991, at C1.

3. *Id.* at C3.

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for the entire state."[4] Therefore, municipalities still have the power to set shorter distances at which the stereo can be heard and to set lower decibel levels.[5]

HB 149

HB 149 has been referred to as the "bassing bill."[6] Its language is taken directly from a Florida statute.[7] The Act makes it a misdemeanor to "operate or amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument" from a motor vehicle that is "plainly audible at a distance of 100 feet or more from the motor vehicle."[8] The Act delegates to the Department of Public Safety the power to define "plainly audible," to establish decibel standards, and to create a method for police to measure the sound.[9]

The Act also provides for three exceptions: first, police and other emergency vehicles that are equipped with "any communication device necessary" in the performance of their respective duties;[10] second, "vehicles used for business or political purposes, which in the normal course of conducting such business use sound-making devices";[11] and, third, warning devices, such as horns, as defined in Code section 40-8-70.[12]

The Act underwent two changes before the General Assembly passed it. The first amendment, offered by the House Committee on Motor

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4. *Law Makers '91* (WGTV television broadcast, Feb. 8, 1991) (videotape available in Georgia State University College of Law Library) [hereinafter *Law Makers '91*]. *See also* Rep. Mike Barnett, Remarks Made During a House Motor Vehicle Subcommittee Meeting (Feb. 5, 1991) (available in Georgia State University College of Law Library). [hereinafter Barnett Remarks].

5. Barnett Interview, *supra* note 1.

6. Barnett Remarks, *supra* note 4.

7. FLA. STAT. ANN. § 316.3045 (West Supp. 1991). To date, no decisions regarding this code section have been reported.

8. O.C.G.A. § 40-6-14(a) (1991).

9. O.C.G.A. § 40-6-14(d) (1991).

10. O.C.G.A. § 40-6-14(b) (1991).

11. O.C.G.A. § 40-6-14(c) (1991). This subsection does not prevent municipalities from regulating the time and manner within which the exempted business may be conducted. *Id.*

12. O.C.G.A. § 40-6-14(d) (1991).

> Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when it is reasonably necessary to ensure safe operation, give audible warning with his horn, but shall not otherwise use such horn when upon a highway.

O.C.G.A. § 40-8-70(a) (1989).

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Vehicles, added language making a violation of the Act a misdemeanor.[13] The Senate proposed the second amendment. As introduced, the bill would have made it illegal to allow sound to be heard more than 100 feet away from the car or "louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals."[14] The quoted language was deleted because it made the bill "too vague or arbitrary."[15]

The bill met considerable opposition in both the House and Senate. In the House, the bill passed only because the Speaker of the House cast the deciding vote. At least two representatives expressed concern that the Act provides nothing more than an opportunity for state law enforcement officials to harass teens.[16] The bill's sponsor claimed that the "harassing is done in the opposite direction."[17]

Although the Senate passed the bill with less opposition, there was some doubt as to its constitutionality.[18] According to one commentator, the Act raises constitutional issues relating to content-based regulation.[19] The distinction between content-based regulation and content-neutral regulation is that the former regulates communication based on the "message conveyed," while the latter regulates communication regardless of its message.[20] The distinction is important because the United States Supreme Court applies a low level standard of review in determining the constitutionality of a content-neutral regulation. On the other hand, content-based regulations receive the highest level of judicial scrutiny.[21]

Narrowly tailored noise ordinances are generally constitutional,[22] but this Act raises questions of constitutionality because of the exceptions made for "business or political purposes." These exceptions create the impression that the legislature is seeking to regulate

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13. O.C.G.A. § 40-6-14(e) (1991).

14. HB 149, as introduced, 1991 Ga. Gen. Assem.

15. Telephone Interview with Sen. Roy Allen, Senate District No. 2 (Apr. 4, 1991).

16. *See Law Makers '91*, *supra* note 4, Remarks by Rep. David Lucas, House District No. 102; *Briefing*, ATLANTA J., Feb. 26, 1991, at C3. Sen. Harrill Dawkins, Senate District No. 45, stated "[t]his will provide a lot of opportunities for kids to get harassed, and they probably get harassed enough. Probably when this body gets through with them, they'll be lucky if they can even date anymore." *Id.*

17. *Law Makers '91*, *supra* note 4.

18. *Briefing*, *supra* note 16.

19. Interview with Prof. L. Lynn Hogue, Georgia State University Professor of Law (Mar. 20, 1991) [hereinafter Hogue Interview].

20. Geoffrey R. Stone, *Content Regulation and the First Amendment*, 25 WM. & MARY L. REV. 189, 189-90 (1983).

21. GERALD GUNTHER, CONSTITUTIONAL LAW 1164, 1166-67 (11th ed. 1985).

22. *See* Saia v. New York, 334 U.S. 558 (1948). "Noise can be regulated by regulating decibels.... Any abuses which loudspeakers create can be controlled by narrowly drawn statutes." *Id.* at 562.

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speech, not based on police powers,[23] but on the content of the speech involved.[24] This kind of content-based regulation is strictly prohibited.[25]

As to enforcement of the Act, the bill's sponsor envisions policemen with decibel meters mounted on their dashboards next to their radar guns. According to the Act, these meters would be calibrated by the Department of Public Safety.[26] Until that time, however, law enforcement officials will have to walk 100 paces, turn, and listen.

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23. *See* Kovacs v. Cooper, 336 U.S. 77 (1949). "The police power of a state extends beyond health, morals, and safety, and comprehends the duty, within constitutional limitations, to protect the well being and tranquility of a community." *Id.* at 83.

24. Hogue Interview, *supra* note 19.

25. *See* Police Dept. v. Mosley, 408 U.S. 92 (1972). "[T]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Id.* at 95.

26. O.C.G.A. § 40-6-14(d) (1991).

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