

SB26-098

SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Zamora Wilson

1 Amend printed bill, page 3, after line 11 insert:

2 "(c) (I) **Prohibited content in residential proximity.** A LOCAL
3 GOVERNMENT THAT ISSUES A NOISE PERMIT OR OPERATING LICENSE
4 PURSUANT TO SUBSECTION (11)(a)(II) OF THIS SECTION FOR AN OUTDOOR
5 ENTERTAINMENT VENUE SITUATED WITHIN ONE MILE OF A RESIDENTIAL
6 ZONE SHALL PROHIBIT THE BROADCAST OR AMPLIFICATION OF PROFANE OR
7 INDECENT LANGUAGE AT ALL TIMES.

8 **(II) Strict liability for venues.**

9 (A) FOR AN EVENT VENUE LOCATED IN A RESIDENTIAL AREA
10 WHERE CHILDREN ARE PRESENT AT ALL HOURS, THE "SAFE HARBOR"
11 PROVISIONS OF 10:00 P.M. TO 6:00 A.M. GENERALLY USED IN BROADCAST
12 RADIO DO NOT APPLY.

13 (B) THE PERMIT HOLDER IS STRICTLY LIABLE FOR THE CONDUCT OF
14 A PERFORMER OR ARTIST AT A VENUE OR EVENT. THE PERMIT HOLDER
15 SHALL PROVIDE A CONTRACTUAL NOTICE TO ALL PERFORMERS STATING
16 THE USE OF PROFANITY IS A VIOLATION OF STATE LAW AND LOCAL PERMIT
17 CONDITIONS.

18 **(III) Enforcement and penalties.**

19 (A) **Base civil penalty.** FOR EACH DISTINCT OCCURRENCE OF A
20 VIOLATION OF THE REQUIREMENTS OF THE PERMIT OR LICENSE OR THIS
21 SUBSECTION (11)(c), THE PERMIT HOLDER SHALL BE ASSESSED A BASE
22 PENALTY OF FIFTY THOUSAND DOLLARS, WHICH REFLECTS THE FEDERAL
23 COMMUNICATION COMMISSION'S TYPICAL STARTING POINT FOR EGREGIOUS
24 INDECENCY VIOLATIONS.

25 (B) **Revenue-based scaling.** TO ENSURE THE PENALTY IS
26 COMMENSURATE WITH THE VENUE'S CAPACITY AND THE EVENT'S
27 PROFITABILITY, THE FINAL FINE ASSESSED SHALL BE THE GREATER OF THE
28 BASE CIVIL PENALTY OR A PERCENTAGE OF THE EVENT'S TOTAL GROSS
29 REVENUE AS SET FORTH IN SUBSECTION (11)(c)(III)(C).

30 (C) FOR A FIRST VIOLATION, THE PENALTY IS THE GREATER OF THE
31 BASE CIVIL PENALTY OR TWO PERCENT OF GROSS TICKET SALES FOR THE
32 EVENT. FOR A SECOND VIOLATION, THE PENALTY IS THE GREATER OF THE
33 BASE CIVIL PENALTY OR FIVE PERCENT OF GROSS TICKET SALES FOR THE
34 EVENT. FOR A THIRD AND SUBSEQUENT VIOLATION, THE PENALTY IS THE
35 GREATER OF THE BASE CIVIL PENALTY OR TEN PERCENT OF GROSS TICKET
36 SALES FOR THE EVENT, PLUS IMMEDIATE SUSPENSION OF THE NOISE PERMIT
37 OR LICENSE FOR THE NEXT SCHEDULED PERFORMANCE.

38 (D) **Maximum statutory cap.** IN ALIGNMENT WITH THE FEDERAL
39 "BROADCAST DECENCY ENFORCEMENT ACT OF 2005", PUB. L. 109-235,

1 NO SINGLE DAY OF VIOLATIONS CAN EXCEED A TOTAL PENALTY OF THREE
2 MILLION DOLLARS FOR A SINGLE ACT OR FAILURE TO ACT.

3 (E) **Dedicated use of funds.** ALL REVENUE COLLECTED FROM
4 PENALTIES ASSESSED PURSUANT TO THIS SUBSECTION (11)(C) SHALL BE
5 DEPOSITED INTO THE LOCAL NOISE MITIGATION FUND, WHICH FUND IS
6 HEREBY CREATED. THE FUNDS SHALL BE USED EXCLUSIVELY FOR
7 REIMBURSING HOMEOWNERS WHO ARE ABLE TO DEMONSTRATE THAT
8 THERE IS PROFANE OR INDECENT LANGUAGE REACHING THEIR PROPERTY
9 FOR SOUNDPROOFING IMPROVEMENTS AND FOR FUNDING INDEPENDENT,
10 THIRD-PARTY NOISE AND CONTENT MONITORING STATIONS IN AFFECTED
11 RESIDENTIAL AREAS."

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