

A BILL  
entitled

SUMMARY OFFENCES AMENDMENT ACT 2010

WHEREAS it is expedient to amend the Summary Offences Act 1926;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Summary Offences Amendment Act 2010.

Repeals and replaces section 7

2 Section 7 of the Summary Offences Act 1926 is repealed and replaced by the following—

“Restriction on the making of noise

7 (1) Except under the authority and in accordance with the terms of a permit issued by the Commissioner of Police, a person commits an offence if—

- (a) the person unreasonably causes noise which disturbs or annoys any person in the vicinity, or is likely to disturb or annoy any person in the vicinity, by—
  - (i) operating, or causing or allowing to be operated, any amplifier or loud speaker so as to amplify the sound made by the playing of any musical instrument or by the human voice or so as to amplify any other sound; or

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- (ii) playing or operating, or causing or allowing to be played or operated, any radio, television, music player or other device designed or adapted for the transmission of sound; and
  - (b) the sound in question is heard from a distance exceeding 100 feet from the source of the sound.
- (2) The issue of a permit by the Commissioner of Police under subsection (1) shall not affect any right or liability of any person under any Act or at common law.
- (3) Any person who between the hours of midnight and six o'clock in the morning unreasonably causes any noise by singing, shouting or other means whatsoever in such a manner as disturbs or annoys, or is likely to disturb or annoy, any person in the vicinity commits an offence.
- (4) A person shall not be convicted of an offence under this section unless it is proved that after having been required to desist by a police officer, or by any other person in the vicinity, he continued to make such noise.”.

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### EXPLANATORY MEMORANDUM

This Bill seeks to amend the provisions of the Summary Offences Act 1926 which deal with restrictions on making noise.

Clause 1 gives the short title of the Bill.

Clause 2 repeals and replaces section 7 of the Summary Offences Act 1926. The main purpose of the amendment is to enable a police officer to be a complainant in the prosecution of any noise offence under the section.

The existing section 7(1)(a) makes it an offence to cause noise by playing loud music, etc. (without a permit issued by the Commissioner of Police to do so) between midnight and six o'clock in the morning if the noise disturbs or annoys any person dwelling in the vicinity. Therefore, in a prosecution for an offence under this section, the complainant: (a) must be a person dwelling in the vicinity, and (b) has to prove that he or she was annoyed or disturbed by the noise. In other words: (a) a police officer cannot be the complainant, and (b) the section does not provide any objective criteria by which to judge whether or not an offence has been committed.

The existing section 7(1)(b) makes it an offence to cause noise by playing loud music, etc. (without a permit to do so) between six o'clock in the morning and midnight if: (a) the noise disturbs or annoys two or more persons, (b) the causing of the annoyance is unreasonable, and (c) the noise is heard from a distance exceeding one hundred feet. Therefore, in a prosecution for an offence under this section, the complainants: (a) must be persons who were annoyed by the noise, and (b) they must prove that the causing of the noise was unreasonable and that the sound was heard from a distance exceeding one hundred feet. Here it is not clear if a police officer can be construed as a complainant, although objective criteria by which to judge whether or not an offence has been committed is provided.

The new section 7(1) combines the existing section 7(1)(a) and (b). It does not restrict the complainant to being a person who is dwelling in the vicinity or a person who is annoyed by the noise. The complainant could be a police officer who is satisfied that the noise is "likely to disturb or annoy any person in the vicinity". The complainant would also have to show that the person unreasonably caused the noise and that the noise was heard from a distance exceeding one hundred feet. The new section 7(1) applies to the unreasonable causing of noise by loud music, etc. at any time of the day or night.

The new section 7(2) re-enacts the proviso to the existing section 7(1). It states that the permit issued by the Commissioner of Police does not affect any right or liability of a person under any Act or at common law.

The new section 7(3) substantially re-enacts the existing section 7(2) without its proviso. It provides that a person commits an offence if he or she, between the hours of midnight and six o'clock in the morning, unreasonably causes noise by singing, shouting

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or any other means in such a manner as disturbs or annoys, or is likely to disturb or annoy, any person in the vicinity.

The new section 7(4) applies the provisions of the proviso to the existing section 7(2) to the whole of section 7. It provides that, in order to convict a person of an offence under section 7, it must be proved that the person continued to make a noise even after having been required to desist by a police officer, or by any other person in the vicinity.