

By: Brown of Kaufman

H.B. No. 1629

Substitute the following for H.B. No. 1629:

By: Keel

C.S.H.B. No. 1629

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to creating an offense for conduct involving the discharge  
3 of fireworks in certain locations.

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

5 SECTION 1. Section 42.07, Penal Code, is amended to read as  
6 follows:

7 Sec. 42.07. HARASSMENT. (a) A person commits an offense  
8 if, with intent to harass, annoy, alarm, abuse, torment, or  
9 embarrass another, the person [~~he~~]:

10 (1) initiates communication by telephone, in writing,  
11 or by electronic communication and in the course of the  
12 communication makes a comment, request, suggestion, or proposal  
13 that is obscene;

14 (2) threatens, by telephone, in writing, or by  
15 electronic communication, in a manner reasonably likely to alarm  
16 the person receiving the threat, to inflict bodily injury on the  
17 person or to commit a felony against the person, a member of his  
18 family or household, or his property;

19 (3) conveys, in a manner reasonably likely to alarm  
20 the person receiving the report, a false report, which is known by  
21 the conveyor to be false, that another person has suffered death or  
22 serious bodily injury;

23 (4) causes the telephone of another to ring repeatedly  
24 or makes repeated telephone communications anonymously or in a

1 manner reasonably likely to harass, annoy, alarm, abuse, torment,  
2 embarrass, or offend another;

3 (5) makes a telephone call and intentionally fails to  
4 hang up or disengage the connection;

5 (6) knowingly permits a telephone under the person's  
6 control to be used by another to commit an offense under this  
7 section; ~~or~~

8 (7) sends repeated electronic communications in a  
9 manner reasonably likely to harass, annoy, alarm, abuse, torment,  
10 embarrass, or offend another; or

11 (8) discharges fireworks, as defined by Section  
12 2154.001, Occupations Code:

13 (A) within 30 feet of a residential dwelling or  
14 commercial building; or

15 (B) by projecting the fireworks directly at or  
16 toward a residential dwelling or commercial building.

17 (b) In this section:

18 (1) "Electronic communication" means a transfer of  
19 signs, signals, writing, images, sounds, data, or intelligence of  
20 any nature transmitted in whole or in part by a wire, radio,  
21 electromagnetic, photoelectronic, or photo-optical system. The  
22 term includes:

23 (A) a communication initiated by electronic  
24 mail, instant message, network call, or facsimile machine; and

25 (B) a communication made to a pager.

26 (2) "Family" and "household" have the meaning assigned  
27 by Chapter 71, Family Code.

1           (3) "Obscene" means containing a patently offensive  
2 description of or a solicitation to commit an ultimate sex act,  
3 including sexual intercourse, masturbation, cunnilingus, fellatio,  
4 or anilingus, or a description of an excretory function.

5           (4) "Residential dwelling or commercial building"  
6 includes a single-family home, a duplex, triplex, apartment, or  
7 other form of multifamily housing, a motel or hotel, a mobile home,  
8 a place used for temporary housing, and a building that is not  
9 primarily used as a residence.

10          (c) An offense under Subsection (a)(1) through Subsection  
11 (a)(7) [~~this section~~] is a Class B misdemeanor, except that the  
12 offense is a Class A misdemeanor if the actor has previously been  
13 convicted under this section. An offense under Subsection (a)(8)  
14 is a Class C misdemeanor.

15          (d) It is a defense to prosecution under Subsection (a)(8)  
16 that the person discharged the fireworks on the property of or at or  
17 toward a residential dwelling that the person owned, leased, or  
18 otherwise had a right to occupy at the time of the offense.

19          (e) Subsection (a)(8) does not preempt a municipal  
20 ordinance regulating the discharge of fireworks within the  
21 territorial limits of the municipality.

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