

By: Rodriguez

S.B. No. 862

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offense of disorderly conduct involving unreasonable noise.

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

SECTION 1. Section 42.01, Penal Code, is amended by amending Subsections (a) and (c) and adding Subsections (f) and (g) to read as follows:

(a) A person commits an offense if the person ~~[he]~~ intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens another ~~[a person]~~ in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place ~~[other than a sport shooting range, as defined by Section 250.001, Local Government Code,~~ or in or near a private residence that the actor ~~[he]~~ has no right to occupy;

(6) fights with another in a public place;

1 (7) discharges a firearm in a public place other than a
2 public road or a sport shooting range, as defined by Section
3 250.001, Local Government Code;

4 (8) displays a firearm or other deadly weapon in a
5 public place in a manner calculated to alarm;

6 (9) discharges a firearm on or across a public road;

7 (10) exposes the actor's ~~[his]~~ anus or genitals in a
8 public place and is reckless about whether another may be present
9 who will be offended or alarmed by the actor's conduct ~~[his act]~~; or

10 (11) for a lewd or unlawful purpose:

11 (A) enters on the property of another and looks
12 into a dwelling on the property through any window or other opening
13 in the dwelling;

14 (B) while on the premises of a hotel or
15 comparable establishment, looks into a guest room not the actor's
16 ~~[person's]~~ own through a window or other opening in the room; or

17 (C) while on the premises of a public place,
18 looks into an area such as a restroom or shower stall or changing or
19 dressing room that is designed to provide privacy to a person using
20 the area.

21 (c) For purposes of this section:

22 (1) an act is deemed to occur in a public place or near
23 a private residence if it produces its offensive or proscribed
24 consequences in the public place or near a private residence; and

25 (2) a noise is presumed to be unreasonable if the noise
26 exceeds a decibel level of 85, if during the daytime, or 70, if
27 during the nighttime, after the actor ~~[person]~~ making the noise

receives notice from a magistrate or peace officer that the noise is a public nuisance.

(f) It is a defense to prosecution under Subsection (a)(5) that the noise made by the actor relates to:

(1) the ordinary and necessary operations or activities of:

(A) an airport;

(B) an agricultural operation, as defined by Section 251.002, Agriculture Code;

(C) a business regulated by:

(i) the Railroad Commission of Texas;

(ii) the Public Utility Commission of Texas;

(iii) the Texas Commission on Environmental Quality;

(iv) the General Land Office; or

(v) the Federal Energy Regulatory Commission;

(D) a sport shooting range, as defined by Section 250.001, Local Government Code; or

(E) a site at which building construction or road maintenance is being performed under a contract with the state; or

(2) an activity that occurs and is allowed in a municipal area in which:

(A) commercial or entertainment purposes are permitted by zoning ordinance; and

(B) the level of noise made by the actor is

1 permitted by the governing body of the municipality.

2 (g) For purposes of this section:

3 (1) "Daytime" means the period beginning at 5 a.m. on
4 any day and ending immediately before midnight on the same day.

5 (2) "Nighttime" means the period beginning at midnight
6 on any day and ending immediately before 5 a.m. on the following
7 day.

8 SECTION 2. The change in law made by this Act applies only
9 to an offense committed on or after the effective date of this Act.
10 An offense committed before the effective date of this Act is
11 governed by the law in effect on the date the offense was committed,
12 and the former law is continued in effect for that purpose. For
13 purposes of this section, an offense was committed before the
14 effective date of this Act if any element of the offense occurred
15 before that date.

16 SECTION 3. This Act takes effect September 1, 2011.