

By: Smith of Tarrant

H.B. No. 50

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of the Department of Public Safety and
3 certain local law enforcement agencies to establish a checkpoint on
4 a highway or street to determine whether persons are driving while
5 intoxicated.

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

7 SECTION 1. Title 1, Code of Criminal Procedure, is amended
8 by adding Chapter 65 to read as follows:

9 CHAPTER 65. SOBRIETY CHECKPOINTS

10 Art. 65.01. DEFINITIONS. In this chapter:

11 (1) "Highway or street" has the meaning assigned by
12 Section 541.302, Transportation Code.

13 (2) "Law enforcement agency" means:

14 (A) the Texas Department of Public Safety;

15 (B) the sheriff's department of a county;

16 (C) a constable's office in a county with a
17 population of one million or more; or

18 (D) the police department of a municipality.

19 Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. A law
20 enforcement agency may operate a temporary checkpoint as provided
21 by this chapter on a highway or street to determine whether persons
22 operating motor vehicles on the highway or street are intoxicated
23 and in violation of Section 49.04, Penal Code.

24 Art. 65.03. APPROVAL OF AND PROCEDURES FOR SOBRIETY

1 CHECKPOINTS. (a) A peace officer of at least the rank of
2 lieutenant or its equivalent in the law enforcement agency must
3 approve the operation of a checkpoint by peace officers of the
4 agency and the procedures to be used in the operation of the
5 checkpoint before the checkpoint begins operation.

6 (b) The law enforcement agency must record in writing the
7 procedures:

8 (1) used in selecting the site for the checkpoint; and

9 (2) to be used in the operation of the checkpoint.

10 (c) The procedures for the operation of a checkpoint must
11 ensure that the selection of motor vehicles to be stopped is
12 reasonably predictable and nonarbitrary.

13 (d) The criteria for selecting the location for a checkpoint
14 must include the number of traffic accidents in the vicinity of the
15 location in which alcohol was a factor and that occurred in the
16 preceding 12 months and the number of arrests for intoxication or
17 related offenses in that vicinity in the preceding 12 months. The
18 selection of the location of a checkpoint must be made without
19 regard to the ethnic or socioeconomic characteristics of the area
20 in which the checkpoint is located.

21 (e) The law enforcement agency, in establishing the
22 location, time, and design of a checkpoint, shall consider the
23 safety of the public entering the checkpoint and the peace officers
24 operating the checkpoint. The law enforcement agency shall make
25 reasonable efforts to place signs or other devices to advise
26 operators of oncoming motor vehicles of the checkpoint and the
27 purpose of the checkpoint, to demarcate the checkpoint with flares,

1 flags, or traffic cones, and to otherwise illuminate the checkpoint
2 as necessary.

3 (f) The peace officer who makes the initial traffic
4 directive or other communication with the operator of a motor
5 vehicle at the checkpoint must be wearing a uniform of the law
6 enforcement agency that is distinguishable from civilian dress.

7 (g) The law enforcement agency shall establish procedures
8 governing the encounters between motor vehicle operators and the
9 peace officers to ensure that:

10 (1) intrusion on the operator is minimized; and

11 (2) an inquiry is reasonably related to determining
12 whether the operator is intoxicated and in violation of Section
13 49.04, Penal Code.

14 (h) A peace officer may request a person operating a motor
15 vehicle at the checkpoint to display the person's driver's license
16 and to furnish evidence of financial responsibility as required by
17 law. A peace officer may not direct the operator of or a passenger
18 in a motor vehicle to leave the vehicle or move the vehicle off the
19 highway or street or routine checkpoint diversion route unless the
20 officer has reasonable suspicion or probable cause to believe that
21 the person has committed or is committing an offense. The design of
22 a checkpoint may require that each motor vehicle passing through
23 the checkpoint be diverted to a location adjacent to the highway or
24 street to ensure safety.

25 (i) A peace officer at the checkpoint may not require a
26 motor vehicle operator to perform a sobriety test unless the
27 officer has reasonable suspicion or probable cause to believe that

1 the operator is in violation of Section 49.04, Penal Code. A peace
2 officer who requires or requests an operator to provide a specimen
3 of breath, blood, or urine must comply with Chapter 724,
4 Transportation Code.

5 (j) Unless a peace officer has reasonable suspicion or
6 probable cause to detain a motor vehicle operator or passenger for a
7 criminal offense, the time during which an officer makes an inquiry
8 of an operator or passenger should not exceed two minutes, and the
9 total time during which the operator must wait to pass through the
10 checkpoint should not exceed 10 minutes. The law enforcement
11 agency shall make reasonable efforts to reduce these periods to not
12 more than one and five minutes, respectively.

13 (k) The law enforcement agency shall publicize the
14 operation of a checkpoint but is not required to disclose the
15 precise date, time, location, or purpose of the checkpoint.

16 (l) A law enforcement agency may not operate a checkpoint at
17 one location for more than four hours and may not operate a
18 checkpoint at the same location more than twice in a 30-day period.
19 For the purposes of this subsection, checkpoints located within
20 one-half mile of each other are considered to be at the same
21 location. This subsection does not apply in an emergency.

22 (m) A law enforcement agency shall keep a record of the
23 operation of a checkpoint that contains:

24 (1) the date, time, location, and duration of the
25 checkpoint;

26 (2) the number of motor vehicles stopped at the
27 checkpoint and the number and nature of arrests made and citations

1 issued at the checkpoint; and

2 (3) the identities of the peace officers operating the
3 checkpoint.

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