

By: McClendon

H.B. No. 309

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain law enforcement agencies to establish a checkpoint on a highway or street to determine whether persons are driving while intoxicated.

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

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

CHAPTER 65. SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITIONS. In this chapter:

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

(2) "Law enforcement agency" means:

(A) the Department of Public Safety;

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

(C) the police department of a municipality.

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

Art. 65.03. APPROVAL OF AND PROCEDURES FOR SOBRIETY CHECKPOINTS. (a) A peace officer of at least the rank of lieutenant or its equivalent in the law enforcement agency must approve the operation of a checkpoint by peace officers of the

1 agency and the procedures to be used in the operation of the
2 checkpoint before the checkpoint begins operation.

3 (b) The law enforcement agency must record in writing the
4 procedures:

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

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

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

10 (d) The law enforcement agency, in establishing the
11 location, time, and design of a checkpoint, shall consider the
12 safety of the public entering the checkpoint and the peace officers
13 operating the checkpoint. The law enforcement agency shall make
14 reasonable efforts to place signs or other devices to advise
15 operators of oncoming motor vehicles of the checkpoint and the
16 purpose of the checkpoint, to demarcate the checkpoint with flares,
17 flags, or traffic cones, and to otherwise illuminate the checkpoint
18 as necessary.

19 (e) The peace officer who makes the initial traffic
20 directive or other communication with the operator of a motor
21 vehicle at the checkpoint must be wearing a uniform of the law
22 enforcement agency that is distinguishable from civilian dress.

23 (f) The law enforcement agency shall establish procedures
24 governing the encounters between motor vehicle operators and the
25 peace officers to ensure that:

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

27 (2) an inquiry is reasonably related to determining

1 whether the operator is intoxicated and in violation of Section
2 49.04, Penal Code.

3 (g) A peace officer may request a person operating a motor
4 vehicle at the checkpoint to display the person's driver's license
5 and to furnish evidence of financial responsibility as required by
6 law. A peace officer may not direct the operator of or a passenger
7 in a motor vehicle to leave the vehicle or move the vehicle off the
8 highway or street or routine checkpoint diversion route unless the
9 officer has reasonable suspicion or probable cause to believe that
10 the person has committed or is committing an offense. The design of
11 a checkpoint may require that each motor vehicle passing through
12 the checkpoint be diverted to a location adjacent to the highway or
13 street to ensure safety.

14 (h) A peace officer at the checkpoint may not require a
15 motor vehicle operator to perform a sobriety test unless the
16 officer has reasonable suspicion or probable cause to believe that
17 the operator is in violation of Section 49.04, Penal Code. A peace
18 officer who requires or requests an operator to provide a specimen
19 of breath, blood, or urine must comply with Chapter 724,
20 Transportation Code.

21 (i) Unless a peace officer has reasonable suspicion or
22 probable cause to detain a motor vehicle operator or passenger for a
23 criminal offense, the time during which an officer makes an inquiry
24 of an operator or passenger should not exceed three minutes, and the
25 total time during which the operator must wait to pass through the
26 checkpoint should not exceed 10 minutes. The law enforcement
27 agency shall make reasonable efforts to reduce these periods to not

1 more than one and five minutes, respectively.

2 (j) The law enforcement agency shall publicize the
3 operation of a checkpoint but is not required to disclose the
4 precise date, time, location, or purpose of the checkpoint.

5 (k) A law enforcement agency may not operate a checkpoint at
6 one location for more than four hours and may not operate a
7 checkpoint at the same location more than twice in a seven-day
8 period. For the purposes of this subsection, checkpoints located
9 within one-half mile of each other are considered to be at the same
10 location. This subsection does not apply in an emergency.

11 (l) A law enforcement agency shall keep a record of the
12 operation of a checkpoint that contains:

13 (1) the date, time, location, and duration of the
14 checkpoint;

15 (2) the number of motor vehicles stopped at the
16 checkpoint and the number and nature of arrests made and citations
17 issued at the checkpoint; and

18 (3) the identities of the peace officers operating the
19 checkpoint.

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