

By: Zaffirini

S.B. No. 59

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 CHAPTER 65. SOBRIETY CHECKPOINTS

9 Art. 65.01. DEFINITIONS. In this chapter:

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

12 (2) "Law enforcement agency" means:

13 (A) the Department of Public Safety of the State
14 of Texas;

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

16 (C) the regular police department of a
17 municipality.

18 Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. A law
19 enforcement agency may operate a temporary checkpoint as provided
20 by this chapter on a highway or street to determine whether persons
21 operating motor vehicles on the highway or street are intoxicated
22 and in violation of Section 49.04 or 49.045, Penal Code.

23 Art. 65.03. APPROVAL OF AND PROCEDURES FOR SOBRIETY
24 CHECKPOINTS. (a) A peace officer of at least the rank of

1 lieutenant or its equivalent in the law enforcement agency must
2 approve the operation of a checkpoint by peace officers of the
3 agency and the procedures to be used in the operation of the
4 checkpoint before the checkpoint begins operation.

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

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

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

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

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

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

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

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

2 (2) an inquiry is reasonably related to determining
3 whether the operator is intoxicated and in violation of Section
4 49.04 or 49.045, Penal Code.

5 (g) A peace officer may not direct the operator of or a
6 passenger in a motor vehicle to leave the vehicle or move the
7 vehicle from the highway or street or routine checkpoint diversion
8 route unless the officer has reasonable suspicion or probable cause
9 to believe that the person has committed or is committing an
10 offense. The design of a checkpoint may require that each motor
11 vehicle passing through the checkpoint be diverted to a location
12 adjacent to the highway or street to ensure safety.

13 (h) A peace officer at the checkpoint may not require a
14 motor vehicle operator to perform a field sobriety test unless the
15 officer has reasonable suspicion or probable cause to believe that
16 the operator is in violation of Section 49.04 or 49.045, Penal Code.
17 A peace officer who requires or requests an operator to provide a
18 specimen of breath, blood, or urine must comply with Chapter 724,
19 Transportation Code.

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

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

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

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

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

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

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

19 SECTION 2. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2007.