

1-1 By: Zaffirini, Carona, Harris S.B. No. 59
1-2 (In the Senate - Filed November 13, 2006; January 23, 2007,
1-3 read first time and referred to Committee on Transportation and
1-4 Homeland Security; April 11, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; April 11, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 59 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the authority of certain law enforcement agencies to
1-11 establish a checkpoint on a highway or street to determine whether
1-12 persons are driving while intoxicated.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Title 1, Code of Criminal Procedure, is amended
1-15 by adding Chapter 65 to read as follows:

1-16 CHAPTER 65. SOBRIETY CHECKPOINTS

1-17 Art. 65.01. DEFINITIONS. In this chapter:

1-18 (1) "Highway or street" has the meaning assigned by
1-19 Section 541.302, Transportation Code.

1-20 (2) "Law enforcement agency" means:
1-21 (A) the Department of Public Safety of the State
1-22 of Texas;

1-23 (B) the sheriff's department of a county; or
1-24 (C) the regular police department of a
1-25 municipality.

1-26 Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. (a) A
1-27 law enforcement agency may operate a temporary checkpoint as
1-28 provided by this chapter on a highway or street to determine whether
1-29 persons operating motor vehicles on the highway or street are
1-30 intoxicated and in violation of Section 49.04 or 49.045, Penal
1-31 Code.

1-32 (b) Law enforcement agencies as defined under this chapter
1-33 shall coordinate their efforts for the implementation of this
1-34 chapter.

1-35 Art. 65.03. APPROVAL OF AND PROCEDURES FOR SOBRIETY
1-36 CHECKPOINTS. (a) A peace officer of at least the rank of
1-37 lieutenant or its equivalent in the law enforcement agency must
1-38 approve the operation of a checkpoint by peace officers of the
1-39 agency and the procedures to be used in the operation of the
1-40 checkpoint before the checkpoint begins operation. The selection
1-41 of the location of a checkpoint must be made without regard to the
1-42 ethnic or socioeconomic characteristics of the area in which the
1-43 checkpoint is located.

1-44 (b) The law enforcement agency must record in writing the
1-45 procedures:

1-46 (1) used in selecting the site for the checkpoint; and
1-47 (2) to be used in the operation of the checkpoint.

1-48 (c) The procedures for the operation of a checkpoint must
1-49 ensure that the selection of motor vehicles to be stopped is
1-50 reasonably predictable and nonarbitrary.

1-51 (d) The law enforcement agency, in establishing the
1-52 location, time, and design of a checkpoint, shall consider the
1-53 safety of the public entering the checkpoint and the peace officers
1-54 operating the checkpoint. The law enforcement agency shall make
1-55 reasonable efforts to place signs or other devices to advise
1-56 operators of oncoming motor vehicles of the checkpoint and the
1-57 purpose of the checkpoint, to demarcate the checkpoint with flares,
1-58 flags, or traffic cones, and to otherwise illuminate the checkpoint
1-59 as necessary.

1-60 (e) The peace officer who makes the initial traffic
1-61 directive or other communication with the operator of a motor
1-62 vehicle at the checkpoint must be wearing a uniform of the law
1-63 enforcement agency that is distinguishable from civilian dress.

2-1 (f) The law enforcement agency shall establish procedures
2-2 governing the encounters between motor vehicle operators and the
2-3 peace officers to ensure that:

- 2-4 (1) intrusion on the operator is minimized; and
- 2-5 (2) an inquiry is reasonably related to determining
2-6 whether the operator is intoxicated and in violation of Section
2-7 49.04 or 49.045, Penal Code.

2-8 (g) A peace officer may not direct the operator of or a
2-9 passenger in a motor vehicle to leave the vehicle or move the
2-10 vehicle from the highway or street or routine checkpoint diversion
2-11 route unless the officer has reasonable suspicion or probable cause
2-12 to believe that the person has committed or is committing an
2-13 offense. The design of a checkpoint may require that each motor
2-14 vehicle passing through the checkpoint be diverted to a location
2-15 adjacent to the highway or street to ensure safety.

2-16 (h) A peace officer at the checkpoint may not require a
2-17 motor vehicle operator to perform a field sobriety test unless the
2-18 officer has reasonable suspicion or probable cause to believe that
2-19 the operator is in violation of Section 49.04 or 49.045, Penal Code.
2-20 A peace officer who requires or requests an operator to provide a
2-21 specimen of breath, blood, or urine must comply with Chapter 724,
2-22 Transportation Code.

2-23 (i) Unless a peace officer has reasonable suspicion or
2-24 probable cause to detain a motor vehicle operator or passenger for a
2-25 criminal offense, the time during which an officer makes an inquiry
2-26 of an operator or passenger should not exceed three minutes, and the
2-27 total time during which the operator must wait to pass through the
2-28 checkpoint should not exceed 10 minutes. The law enforcement
2-29 agency shall make reasonable efforts to reduce these periods to not
2-30 more than one and five minutes, respectively.

2-31 (j) The law enforcement agency shall publicize the
2-32 operation of a checkpoint but is not required to disclose the
2-33 precise date, time, location, or purpose of the checkpoint.

2-34 (k) A law enforcement agency may not operate a checkpoint at
2-35 one location for more than four hours and may not operate a
2-36 checkpoint at the same location more than twice in a seven-day
2-37 period. For the purposes of this subsection, checkpoints located
2-38 within one-half mile of each other are considered to be at the same
2-39 location. This subsection does not apply in an emergency.

2-40 (l) A law enforcement agency shall keep a record of each
2-41 operation of a checkpoint that contains:

- 2-42 (1) the date, time, location, and duration of the
2-43 checkpoint;
- 2-44 (2) the number of motor vehicles stopped at the
2-45 checkpoint and the number and nature of any arrests made or
2-46 citations issued at the checkpoint; and
- 2-47 (3) the identities of the peace officers operating the
2-48 checkpoint.

2-49 SECTION 2. This Act takes effect immediately if it receives
2-50 a vote of two-thirds of all the members elected to each house, as
2-51 provided by Section 39, Article III, Texas Constitution. If this
2-52 Act does not receive the vote necessary for immediate effect, this
2-53 Act takes effect September 1, 2007.

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