

By: Harris

S.B. No. 233

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain law enforcement agencies to establish a checkpoint to determine whether persons are boating 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. BOATING SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITION. In this chapter, "law enforcement agency" means any entity of the state or a political subdivision of the state that employs a peace officer who patrols the public waters of this state.

Art. 65.02. AUTHORIZATION FOR BOATING SOBRIETY CHECKPOINTS. A law enforcement agency may operate a temporary checkpoint as provided by this chapter to determine whether persons operating watercraft are intoxicated and in violation of Section 49.06, Penal Code.

Art. 65.03. APPROVAL OF AND PROCEDURES FOR BOATING 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 boating sobriety checkpoint by peace officers of the agency and the procedures to be used in the operation of the checkpoint before the checkpoint begins operation.

(b) The law enforcement agency must record in writing the

1 procedures:

2 (1) used in selecting the site for the boating  
3 sobriety checkpoint; and

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

5 (c) The procedures for the operation of a boating sobriety  
6 checkpoint must ensure that the selection of watercraft to be  
7 stopped is reasonably predictable and nonarbitrary.

8 (d) The law enforcement agency, in establishing the  
9 location, time, and design of a boating sobriety checkpoint, shall  
10 consider the safety of the public subject to the checkpoint and the  
11 peace officers operating the checkpoint. The law enforcement  
12 agency shall make reasonable efforts to advise operators of  
13 oncoming watercraft of the checkpoint and the purpose of the  
14 checkpoint, to demarcate the checkpoint, and to illuminate the  
15 checkpoint as necessary.

16 (e) The peace officer who makes the initial communication  
17 with the operator of a watercraft at the boating sobriety  
18 checkpoint must be wearing a uniform of the law enforcement agency  
19 that is distinguishable from civilian dress.

20 (f) The law enforcement agency shall establish procedures  
21 governing the encounters between watercraft operators and the peace  
22 officers to ensure that:

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

24 (2) an inquiry is reasonably related to determining  
25 whether the operator is intoxicated and in violation of Section  
26 49.06, Penal Code.

27 (g) A peace officer may not direct the operator of or a

1 passenger in a watercraft to leave the watercraft unless the  
2 officer has reasonable suspicion or probable cause to believe that  
3 the person has committed or is committing an offense. The design of  
4 a boating sobriety checkpoint may require that each watercraft  
5 subject to the checkpoint be diverted to a specific location to  
6 ensure safety.

7 (h) A peace officer at the boating sobriety checkpoint may  
8 not require a watercraft operator to perform a field sobriety test  
9 unless the officer has reasonable suspicion or probable cause to  
10 believe that the operator is in violation of Section 49.06, Penal  
11 Code. A peace officer who requires or requests an operator to  
12 provide a specimen of breath, blood, or urine must comply with  
13 Chapter 724, Transportation Code.

14 (i) Unless a peace officer has reasonable suspicion or  
15 probable cause to detain a watercraft operator or passenger for a  
16 criminal offense, the time during which an officer makes an inquiry  
17 of an operator or passenger should not exceed three minutes, and the  
18 total time during which the operator must wait to pass through the  
19 boating sobriety checkpoint should not exceed 10 minutes. The law  
20 enforcement agency shall make reasonable efforts to reduce these  
21 periods to not more than one and five minutes, respectively.

22 (j) The law enforcement agency shall publicize the  
23 operation of a boating sobriety checkpoint but is not required to  
24 disclose the precise date, time, location, or purpose of the  
25 checkpoint.

26 (k) A law enforcement agency may not operate a boating  
27 sobriety checkpoint at one location for more than four hours and may

1 not operate a checkpoint at the same location more than twice in a  
2 seven-day period. This subsection does not apply in an emergency.

3 (1) A law enforcement agency shall keep a record of each  
4 operation of a boating sobriety checkpoint that contains:

5 (1) the date, time, location, and duration of the  
6 checkpoint;

7 (2) the number of watercraft stopped at the checkpoint  
8 and the number and nature of any arrests made or citations issued at  
9 the checkpoint; and

10 (3) the identities of the peace officers operating the  
11 checkpoint.

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