

By: Smith of Tarrant

H.B. No. 169

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of the Texas Department of Public Safety
3 and certain local law enforcement agencies to establish a
4 checkpoint on a highway or street to determine whether persons are
5 driving while 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" and "limited-access or
12 controlled-access highway" have the meanings assigned by Section
13 541.302, Transportation Code.

14 (2) "Law enforcement agency" means:

15 (A) the Texas Department of Public Safety;

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

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

19 (D) the police department of a municipality.

20 (3) "Sobriety checkpoint" means a checkpoint
21 authorized under Article 65.02.

22 Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. A law
23 enforcement agency may operate a temporary checkpoint as provided
24 by this chapter on a highway or street, other than a limited-access

1 or controlled-access highway, to determine whether persons
2 operating motor vehicles on the highway or street are intoxicated
3 and in violation of Section 49.04 or 49.045, Penal Code.

4 Art. 65.03. LAW ENFORCEMENT AGENCY COORDINATION. Each law
5 enforcement agency shall coordinate efforts with other law
6 enforcement agencies as appropriate to implement this chapter.

7 Art. 65.04. APPROVAL OF AND PROCEDURES FOR SOBRIETY
8 CHECKPOINTS. (a) A peace officer of at least the rank of
9 lieutenant or its equivalent in the law enforcement agency must
10 approve the operation of a sobriety checkpoint by peace officers of
11 the agency and the procedures to be used in the operation of the
12 checkpoint before the checkpoint begins operation.

13 (b) The law enforcement agency must record in writing the
14 procedures:

15 (1) used in selecting the site for the sobriety
16 checkpoint; and

17 (2) to be used in the operation of the sobriety
18 checkpoint.

19 (c) The procedures for the operation of a sobriety
20 checkpoint must ensure that the selection of motor vehicles to be
21 stopped is reasonably predictable and nonarbitrary.

22 (d) The criteria for selecting the location for a sobriety
23 checkpoint must include the number of traffic accidents in the
24 vicinity of the location in which the use of alcohol was a factor
25 and that occurred in the preceding 12 months and the number of
26 arrests for intoxication-related offenses in that vicinity in the
27 preceding 12 months. The selection of the location of a sobriety

1 checkpoint must be made without regard to the ethnic or
2 socioeconomic characteristics of the area in which the checkpoint
3 is located.

4 (e) The law enforcement agency, in establishing the
5 location, time, and design of a sobriety checkpoint, shall consider
6 the safety of the public entering the checkpoint and the peace
7 officers operating the checkpoint. The law enforcement agency
8 shall make reasonable efforts to place signs or other devices to
9 advise operators of oncoming motor vehicles of the sobriety
10 checkpoint and the purpose of the checkpoint, to demarcate the
11 checkpoint with flares, flags, or traffic cones, and to otherwise
12 illuminate the checkpoint as necessary.

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

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

20 (1) intrusion on the operator is minimized; and
21 (2) an inquiry is reasonably related to determining
22 whether the operator is intoxicated and in violation of Section
23 49.04 or 49.045, Penal Code.

24 (h) Notwithstanding Section 521.025 or 601.053,
25 Transportation Code, a peace officer may not request a person
26 operating a motor vehicle at the sobriety checkpoint to display the
27 person's driver's license or to furnish evidence of financial

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

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

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

27 (k) The law enforcement agency shall publicize the date and

1 time for the operation of a sobriety checkpoint but is not required
2 to disclose the location of the checkpoint.

3 (1) A law enforcement agency may not operate a sobriety
4 checkpoint at one location for more than four hours and may not
5 operate a checkpoint at the same location more than twice in a
6 30-day period. For the purposes of this subsection, sobriety
7 checkpoints located within one-half mile of each other are
8 considered to be at the same location.

9 (m) A law enforcement agency shall keep a record of the
10 operation of a sobriety checkpoint that contains:

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

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

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

18 SECTION 2. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2009.