

1-1 By: Carona S.B. No. 298  
1-2 (In the Senate - Filed November 14, 2008; February 11, 2009,  
1-3 read first time and referred to Committee on Transportation and  
1-4 Homeland Security; March 20, 2009, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 9, Nays  
1-6 0; March 20, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 298 By: Carona

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

1-10 relating to the authority of the Department of Public Safety of the  
1-11 State of Texas and certain local law enforcement agencies to  
1-12 establish a checkpoint on a highway or street to determine whether  
1-13 persons are driving while intoxicated.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Title 1, Code of Criminal Procedure, is amended  
1-16 by adding Chapter 65 to read as follows:

1-17 CHAPTER 65. SOBRIETY CHECKPOINTS

1-18 Art. 65.01. DEFINITIONS. In this chapter:

1-19 (1) "Highway or street" and "limited-access or  
1-20 controlled-access highway" have the meanings assigned by Section  
1-21 541.302, Transportation Code.

1-22 (2) "Law enforcement agency" means:

1-23 (A) the Department of Public Safety;

1-24 (B) the sheriff's department of a county with a  
1-25 population of 250,000 or more; or

1-26 (C) the police department of a municipality with  
1-27 a population of 500,000 or more.

1-28 (3) "Sobriety checkpoint" means a checkpoint  
1-29 authorized under Article 65.02.

1-30 Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. A law  
1-31 enforcement agency may operate a temporary checkpoint as provided  
1-32 by this chapter on a highway or street, other than a limited-access  
1-33 or controlled-access highway, to determine whether persons  
1-34 operating motor vehicles on the highway or street are intoxicated  
1-35 and in violation of Section 49.04 or 49.045, Penal Code.

1-36 Art. 65.03. LAW ENFORCEMENT AGENCY COORDINATION. Each law  
1-37 enforcement agency shall coordinate efforts with other law  
1-38 enforcement agencies as appropriate to implement this chapter.

1-39 Art. 65.04. APPROVAL OF AND PROCEDURES FOR SOBRIETY  
1-40 CHECKPOINTS. (a) As applicable, a captain for the Texas Highway  
1-41 Patrol, the sheriff elected to that position, or the mayor of the  
1-42 municipality must approve the operation of a sobriety checkpoint by  
1-43 peace officers of the Department of Public Safety, a sheriff's  
1-44 department, or a municipal police department and the procedures to  
1-45 be used in the operation of the checkpoint before the checkpoint  
1-46 begins operation.

1-47 (b) The law enforcement agency must record in writing and  
1-48 publish on an appropriate publicly accessible Internet website the  
1-49 procedures:

1-50 (1) used in selecting each site for a sobriety  
1-51 checkpoint; and

1-52 (2) to be used in the operation of each sobriety  
1-53 checkpoint, including procedures regarding the selection of motor  
1-54 vehicles to be stopped.

1-55 (c) The procedures for the operation of a sobriety  
1-56 checkpoint must ensure that the selection of motor vehicles to be  
1-57 stopped is reasonably predictable and nonarbitrary.

1-58 (d) The criteria for selecting the location for a sobriety  
1-59 checkpoint must include the number of traffic accidents in the  
1-60 vicinity of the location in which the use of alcohol was a factor  
1-61 and that occurred in the preceding 12 months and the number of  
1-62 arrests for intoxication-related offenses in that vicinity in the  
1-63 preceding 12 months. The selection of the location of a sobriety

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

2-4 (e) The law enforcement agency, in establishing the  
 2-5 location, time, and design of a sobriety checkpoint, shall consider  
 2-6 the safety of the public entering the checkpoint and the peace  
 2-7 officers operating the checkpoint. The law enforcement agency  
 2-8 shall make reasonable efforts to place signs or other devices to  
 2-9 advise operators of oncoming motor vehicles of the sobriety  
 2-10 checkpoint and the purpose of the checkpoint, to demarcate the  
 2-11 checkpoint with flares, flags, or traffic cones, and to otherwise  
 2-12 illuminate the checkpoint as necessary.

2-13 (f) The peace officer who makes the initial traffic  
 2-14 directive or other communication with the operator of a motor  
 2-15 vehicle at the sobriety checkpoint must be wearing a uniform of the  
 2-16 law enforcement agency that is distinguishable from civilian dress.

2-17 (g) The law enforcement agency shall establish procedures  
 2-18 governing the encounters between motor vehicle operators and the  
 2-19 peace officers to ensure that:

2-20 (1) a video recording is made of the encounter;  
 2-21 (2) intrusion on the operator is minimized; and  
 2-22 (3) an inquiry is reasonably related to determining  
 2-23 whether the operator is intoxicated and in violation of Section  
 2-24 49.04 or 49.045, Penal Code.

2-25 (h) Notwithstanding Section 521.025 or 601.053,  
 2-26 Transportation Code, a peace officer may not request a person  
 2-27 operating a motor vehicle at the sobriety checkpoint to display the  
 2-28 person's driver's license or to furnish evidence of financial  
 2-29 responsibility unless the officer has reasonable suspicion or  
 2-30 probable cause to believe that the person has committed or is  
 2-31 committing an offense. A peace officer may not direct the operator  
 2-32 of a motor vehicle to leave the vehicle or move the vehicle off the  
 2-33 highway or street or routine sobriety checkpoint diversion route  
 2-34 unless the officer has reasonable suspicion or probable cause to  
 2-35 believe that the person has committed or is committing an offense.  
 2-36 The design of a sobriety checkpoint may require that each motor  
 2-37 vehicle passing through the checkpoint be diverted to a location  
 2-38 adjacent to the highway or street to ensure safety.

2-39 (i) A peace officer at the sobriety checkpoint may not  
 2-40 require a motor vehicle operator to perform a sobriety test unless  
 2-41 the officer has reasonable suspicion or probable cause to believe  
 2-42 that the operator is in violation of Section 49.04 or 49.045, Penal  
 2-43 Code. A peace officer who requires or requests an operator to  
 2-44 provide a specimen of breath, blood, or urine must comply with  
 2-45 Chapter 724, Transportation Code.

2-46 (j) Unless a peace officer has reasonable suspicion or  
 2-47 probable cause to detain a motor vehicle operator for a criminal  
 2-48 offense, the time during which an officer makes an inquiry of an  
 2-49 operator should not exceed three minutes, and the total time during  
 2-50 which the operator must wait to pass through the checkpoint should  
 2-51 not exceed 10 minutes. The law enforcement agency shall make  
 2-52 reasonable efforts to reduce these periods to not more than one and  
 2-53 five minutes, respectively.

2-54 (k) The law enforcement agency shall publicize the date and  
 2-55 time for the operation of a sobriety checkpoint but is not required  
 2-56 to disclose the location of the checkpoint.

2-57 (l) A law enforcement agency may not operate a sobriety  
 2-58 checkpoint at one location for more than four hours and may not  
 2-59 operate a checkpoint at the same location more than once in a  
 2-60 12-month period. For the purposes of this subsection, sobriety  
 2-61 checkpoints located within one mile of each other are considered to  
 2-62 be at the same location.

2-63 (m) A law enforcement agency shall maintain until at least  
 2-64 the fifth anniversary of the date on which the agency concludes the  
 2-65 operation of a sobriety checkpoint a record of the operation of the  
 2-66 checkpoint that contains:

2-67 (1) the date, time, location, and duration of the  
 2-68 checkpoint;  
 2-69 (2) the procedures used in selecting the site for the

3-1 checkpoint;  
3-2 (3) the number and characteristics of motor vehicles  
3-3 stopped at the checkpoint and the number and nature of arrests made  
3-4 and citations issued at the checkpoint; and  
3-5 (4) the identities of the peace officers operating the  
3-6 checkpoint.

3-7 SECTION 2. This Act takes effect immediately if it receives  
3-8 a vote of two-thirds of all the members elected to each house, as  
3-9 provided by Section 39, Article III, Texas Constitution. If this  
3-10 Act does not receive the vote necessary for immediate effect, this  
3-11 Act takes effect September 1, 2009.

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