

By: Smith of Tarrant

H.B. No. 439

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of the Department of Public Safety of the
3 State of Texas and certain local law enforcement agencies to
4 establish a checkpoint on a highway or street to determine whether
5 persons are 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) "Department" means the Department of Public
12 Safety.

13 (2) "Highway or street" and "limited-access or
14 controlled-access highway" have the meanings assigned by Section
15 541.302, Transportation Code.

16 (3) "Law enforcement agency" means:

17 (A) the department;

18 (B) the sheriff's department of a county with a
19 population of 250,000 or more; or

20 (C) the police department of a municipality with
21 a population of 500,000 or more.

22 (4) "Sobriety checkpoint" means a checkpoint
23 authorized under Article 65.02.

24 Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS.

1 (a) Except as provided by Subsections (b) and (c), a law
2 enforcement agency may operate on a highway or street a temporary
3 sobriety checkpoint as provided by this chapter to determine
4 whether persons operating motor vehicles on the highway or street
5 are intoxicated and in violation of Section 49.04 or 49.045, Penal
6 Code.

7 (b) A sobriety checkpoint may not be operated on:

8 (1) a limited-access or controlled-access highway;

9 (2) an overpass;

10 (3) a bridge or causeway; or

11 (4) the single ingress to or egress from a designated
12 area.

13 (c) The department may not operate a sobriety checkpoint in
14 a county with a population of less than 250,000.

15 Art. 65.03. LAW ENFORCEMENT AGENCY COORDINATION. Each law
16 enforcement agency shall coordinate efforts with other law
17 enforcement agencies as appropriate to implement this chapter.

18 Art. 65.04. APPROVAL OF AND PROCEDURES FOR SOBRIETY
19 CHECKPOINTS. (a) Before a law enforcement agency begins the
20 operation of a sobriety checkpoint, the procedures to be used in the
21 operation of the checkpoint must be approved by:

22 (1) a captain for the Texas Highway Patrol, in the case
23 of a checkpoint operated by the department;

24 (2) the elected sheriff of a county, in the case of a
25 checkpoint operated by the sheriff's department of the county; or

26 (3) the mayor of a municipality, in the case of a
27 checkpoint operated by the police department of the municipality.

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

4 (1) used in selecting each site for a sobriety
5 checkpoint; and

6 (2) to be used in the operation of each sobriety
7 checkpoint, including procedures regarding the selection of motor
8 vehicles to be stopped.

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

12 (d) The criteria for selecting the location for a sobriety
13 checkpoint must include the number of traffic accidents in the
14 vicinity of the location in which the use of alcohol was a factor
15 and that occurred in the preceding 12 months and the number of
16 arrests for intoxication-related offenses in that vicinity in the
17 preceding 12 months. The selection of the location of a sobriety
18 checkpoint must be made without regard to the ethnic or
19 socioeconomic characteristics of the area in which the checkpoint
20 is located.

21 (e) The law enforcement agency, in establishing the
22 location, time, and design of a sobriety checkpoint, shall consider
23 the safety of the public entering the checkpoint and the peace
24 officers operating the checkpoint. The law enforcement agency
25 shall make reasonable efforts to place signs or other devices to
26 advise operators of oncoming motor vehicles of the sobriety
27 checkpoint and the purpose of the checkpoint, to demarcate the

1 checkpoint with flares, flags, or traffic cones, and to otherwise
2 illuminate the checkpoint as necessary.

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

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

10 (1) a video and audio recording is made of each
11 encounter;

12 (2) intrusion on the operator is minimized; and

13 (3) an inquiry is reasonably related to determining
14 whether the operator is intoxicated and in violation of Section
15 49.04 or 49.045, Penal Code.

16 (h) Notwithstanding Section 521.025 or 601.053,
17 Transportation Code, or Section 411.205, Government Code, a peace
18 officer may not request a person operating a motor vehicle at the
19 sobriety checkpoint to display the person's driver's license or
20 concealed handgun license or to furnish evidence of financial
21 responsibility unless the officer has reasonable suspicion or
22 probable cause to believe that the person has committed or is
23 committing an offense. A peace officer may not direct the operator
24 of a motor vehicle to leave the vehicle or move the vehicle off the
25 highway or street or routine sobriety checkpoint diversion route
26 unless the officer has reasonable suspicion or probable cause to
27 believe that the person has committed or is committing an offense.

1 The design of a sobriety checkpoint may require that each motor
2 vehicle passing through the checkpoint be diverted to a location
3 adjacent to the highway or street to ensure safety.

4 (i) A peace officer at the sobriety checkpoint may not
5 require a motor vehicle operator to perform a sobriety test unless
6 the officer has reasonable suspicion or probable cause to believe
7 that the operator is in violation of Section 49.04 or 49.045, Penal
8 Code. A peace officer who requires or requests an operator to
9 provide a specimen of breath, blood, or urine must comply with
10 Chapter 724, Transportation Code.

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

19 (k) Before beginning the operation of a sobriety
20 checkpoint, the law enforcement agency shall publicize through the
21 use of the media the date and time for the operation of the
22 checkpoint but is not required to disclose the location of the
23 checkpoint.

24 (l) A law enforcement agency may not operate a sobriety
25 checkpoint at one location for more than four hours and may not
26 operate a checkpoint at the same location more than once in a
27 12-month period. For the purposes of this subsection, sobriety

1 checkpoints located within one mile of each other are considered to
2 be at the same location.

3 (m) A law enforcement agency shall maintain until at least
4 the fifth anniversary of the date on which the agency concludes the
5 operation of a sobriety checkpoint a record of the operation of the
6 checkpoint that contains:

7 (1) the date, time, location, and duration of the
8 checkpoint;

9 (2) the procedures used in selecting the site for the
10 checkpoint;

11 (3) the number and characteristics of motor vehicles
12 stopped at the checkpoint;

13 (4) the number and nature of arrests made and
14 citations issued at the checkpoint; and

15 (5) the identities of the peace officers operating the
16 checkpoint.

17 (n) A law enforcement agency shall maintain until at least
18 the second anniversary of the date on which the agency concludes the
19 operation of a sobriety checkpoint any video or audio recording
20 made under Subsection (g)(1) of an encounter between a motor
21 vehicle operator and a peace officer at the checkpoint.

22 Art. 65.05. REPORT ON EFFECTIVENESS OF CHECKPOINTS.

23 (a) Not later than January 15 of each calendar year, each law
24 enforcement agency that operated a sobriety checkpoint during the
25 preceding calendar year shall report the operation of the
26 checkpoint to the traffic safety section of the traffic operations
27 division of the Texas Department of Transportation.

1 (b) The traffic operations division is entitled to inspect
2 any information in the possession of the law enforcement agency
3 that relates to the operation of a sobriety checkpoint by the
4 agency.

5 (c) Not later than February 1, 2017, the traffic operations
6 division shall submit a report on the effectiveness of sobriety
7 checkpoints operated under this chapter to the governor, the
8 lieutenant governor, and the speaker of the house of
9 representatives.

10 Art. 65.06. EXPIRATION. This chapter expires August 31,
11 2017.

12 SECTION 2. A law enforcement agency authorized to operate a
13 sobriety checkpoint under Chapter 65, Code of Criminal Procedure,
14 as added by this Act, shall submit the first report required by
15 Article 65.05 of that chapter not later than January 15, 2012.

16 SECTION 3. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2011.