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A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Texas Department of Public Safety and certain local law enforcement agencies to establish a checkpoint on a highway or street to determine whether persons are driving 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. SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITIONS. In this chapter:

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

(2) "Law enforcement agency" means:

(A) the Texas Department of Public Safety;

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

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

(D) the police department of a municipality.

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

Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. A law enforcement agency may operate a temporary checkpoint as provided 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 2

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 3

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 4

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. 5