

By: Hinojosa

S.B. No. 1195

Substitute the following for S.B. No. 1195:

By: Burnam

C.S.S.B. No. 1195

A BILL TO BE ENTITLED

AN ACT

relating to the authority of peace officers to conduct certain searches.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 1.06, Code of Criminal Procedure, is amended to read as follows:

Art. 1.06. SEARCHES AND SEIZURES. (a) The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

(b) A peace officer who stops a motor vehicle for any alleged violation of a law or ordinance regulating traffic may not search the vehicle unless the peace officer:

(1) has probable cause or another legal basis for the search;

(2) obtains the written consent of the operator of the vehicle on a form that complies with Section 411.0207(b), Government Code; or

(3) obtains the oral consent of the operator of the vehicle and ensures that the oral consent is evidenced by an audio and video recording that complies with Section 411.0207(c), Government Code.

SECTION 2. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0207 to read as follows:

Sec. 411.0207. RULES FOR CERTAIN EVIDENCE OF CONSENT TO VEHICLE SEARCH. (a) The director by rule shall establish requirements for:

(1) a form used to obtain the written consent of the operator of a motor vehicle under Article 1.06, Code of Criminal Procedure; and

(2) an audio and video recording used as evidence of the oral consent of the operator of a motor vehicle under Article 1.06, Code of Criminal Procedure.

(b) At a minimum, the rules adopted under Subsection (a)(1) must require the form to contain:

(1) a statement that the operator of the motor vehicle fully understands that the operator may refuse to give the peace officer consent to search the motor vehicle;

(2) a statement that the operator of the motor vehicle is freely and voluntarily giving the peace officer consent to search the motor vehicle;

(3) the time and date of the stop giving rise to the search;

(4) a description of the motor vehicle to be searched; and

(5) the name of each peace officer conducting the stop or search.

(c) At a minimum, the rules adopted under Subsection (a)(2) must require the audio and video recording to reflect an

1 affirmative statement made by the operator that:

2 (1) the operator of the motor vehicle fully
3 understands that the operator may refuse to give the peace officer
4 consent to search the motor vehicle; and

5 (2) the operator of the motor vehicle is freely and
6 voluntarily giving the peace officer consent to search the motor
7 vehicle.

8 SECTION 3. The director of the Department of Public Safety
9 of the State of Texas shall adopt the rules required by Section
10 411.0207, Government Code, as added by this Act, not later than
11 December 1, 2005.

12 SECTION 4. (a) Except as provided by Subsection (b) of
13 this section, this Act takes effect September 1, 2005.

14 (b) Article 1.06, Code of Criminal Procedure, as amended by
15 this Act, takes effect January 1, 2006.