

By: Dutton

H.B. No. 1327

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

16 (1) has probable cause or another legal basis for  
17 conducting the search, including conducting a search based on a  
18 reasonable and articulable fear for the safety of the peace officer  
19 or another person;

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

23 (3) obtains the oral consent of the operator of the  
24 vehicle and ensures that the oral consent is evidenced by an audio

1 and video recording that complies with Section 411.0207(c),  
2 Government Code.

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

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

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

11 (2) an audio and video recording used as evidence of  
12 the oral consent of the operator of a motor vehicle under Article  
13 1.06, Code of Criminal Procedure.

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

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

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

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

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

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

1        (c) At a minimum, the rules adopted under Subsection (a)(2)  
2 must require the audio and video recording to reflect an  
3 affirmative statement made by the operator that:

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

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

10        SECTION 3. The director of the Department of Public Safety  
11 shall adopt the rules required by Section 411.0207, Government  
12 Code, as added by this Act, not later than December 1, 2007.

13        SECTION 4. (a) Except as provided by Subsection (b) of  
14 this section, this Act takes effect September 1, 2007.

15        (b) Article 1.06, Code of Criminal Procedure, as amended by  
16 this Act, takes effect January 1, 2008.