

BILL ANALYSIS

C.S.S.B. 1195
By: Hinojosa
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Fourth Amendment to the United States Constitution guarantees that Americans have the right to be free from unreasonable searches and seizures. However, that right has been eroded by a series of judicial decisions, particularly regarding citizens' rights at traffic stops. Consent searches at traffic stops occur when an officer has no probable cause to believe a crime has been committed, but asks for the driver's consent to search the vehicle.

C.S.S.B. 1195 prohibits peace officers from requesting permission to search vehicles stopped for traffic violations unless the officer has probable cause or obtains written consent from the operator of the vehicle or oral consent, evidenced by an audio and video recording.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the director of the Department of Public Safety in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 1195 amends Article 1.06, Code of Criminal Procedure, to prohibit a peace officer who stops a motor vehicle for any alleged violation regulating traffic from requesting the operator of the motor vehicle for consent to search the vehicle, unless:

- the peace officer has probable cause or another legal basis for the search;
- obtains the written consent of the operator of the vehicle on a form that complies with Section 411.0207, Government Code;
- obtains the oral consent of the operator of the vehicle, evidenced by an audio and video recording that complies with Section 411.0207, Government Code.

The bill amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0207 that requires the director of the Department of Public Safety (director), by rule, to establish requirements for a form used to obtain the consent of the operator of a motor vehicle under Article 1.06, Code of Criminal Procedure. The bill sets forth minimum requirements for said rules. The bill also requires the director, by rule, to establish requirements for the audio and video recording used to obtain the consent of the operator of a motor vehicle under Article 1.06, Code of Criminal Procedure. The bill sets forth minimum requirements for said rules.

The bill requires the director to adopt rules required by Section 411.0207, Government Code, as added by this Act, not later than December 1, 2005.

EFFECTIVE DATE

September 1, 2005, except provides that Article 1.06, Code of Criminal Procedure, as amended by this Act, takes effect January 1, 2006.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SB 1195 amends Article 1.06, Code of Criminal Procedure, to prohibit a peace officer who stops a motor vehicle for any alleged violation regulating traffic from requesting the operator of the motor vehicle for consent to search the vehicle, unless:

C.S.S.B. 1195 79(R)

- the peace officer has probable cause or another legal basis for the search, or
- obtains the written consent of the operator of the vehicle on a form that complies with Section 411.0207, Government Code.

C.S.S.B 1195 allows an officer to obtain the oral consent of the operator of the vehicle, evidenced by an audio and video recording that complies with Section 411.0207, Government Code in addition to the options described above.

SB 1195 amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0207, that requires the director of the Department of Public Safety (director), by rule, to establish requirements for a form used to obtain the consent of the operator of a motor vehicle under Article 1.06, Code of Criminal Procedure. The bill sets forth minimum requirements for said rules.

C.S.S.B requires the director, by rule, to establish requirements for the audio and video recording used to obtain the consent of the operator of a motor vehicle under Article 1.06, Code of Criminal Procedure in addition to the obligations described above. The bill sets forth minimum requirements for said rules.