

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

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 the  
17 search;

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) At a minimum, the rules adopted under Subsection (a)(2)  
27 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.