

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3095

BY DELEGATES HORST, DEAN, J. JEFFRIES, MANDT,

BRIDGES, PRITT, KIMBLE AND HOLSTEIN

[Introduced March 12, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, and §62-16-5, all relating to creating
 3 the Protection of Property from Warrantless Searches Act; short title; legislative findings;
 4 definitions; enumerating conditions for government to enter homes and private land; illegal
 5 searches and seizures; and providing right to sue for declaratory and injunctive relief,
 6 compensatory and nominal damages, and attorney’s fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. PROTECTION OF PROPERTY FROM WARRANTLESS SEARCHES

ACT.

§62-17-1. Short title.

1 This article may be cited as the “Protection of Property from Warrantless Searches Act.”

§62-17-2. Legislative findings.

1 The Legislature finds that:

2 (1) The people of this state have a right to be free from physical intrusions on their private
 3 property.

4 (2) The people of this state have a reasonable expectation of privacy in their homes and
 5 property, both real and personal.

6 (3) This State should protect its residents’ homes and property, both real and personal,
 7 from warrantless and otherwise illegal searches and seizures.

§62-17-3. Definitions.

1 For purposes of this Article:

2 “Government agent” means any local, state, or federal officer or representative that is
 3 employed or contracted by the State government, or who reports to the State government,
 4 including any peace officer, inspector, or wildlife official.

5 “Home” means any private residence that is owned, leased, used or occupied. It includes

6 private land on which the residence is located.

7 “Probable cause” means the presence of facts and circumstances within the government
8 agent’s knowledge that would warrant a person of reasonable caution to believe that an offense
9 has been or is being committed. The possession, discharge, or use of one or more items that are
10 legal to possess does not constitute probable cause for a government agent to enter a home or
11 private land.

12 “Private land” means land that is owned, leased, used, or occupied by a natural person or
13 a non-government entity.

14 “Search warrant” means a warrant that is supported by individualized probable cause and
15 executed by a magistrate or judge.

§62-17-4. Conditions for Government to Enter Homes and Private Land.

1 (a) No government agent may enter a home or private land without a search warrant
2 except:

3 (1) With the permission of the property owner, lessee, or occupant;

4 (2) To dispatch crippled or distressed wildlife that the agent has personally observed; or

5 (3) To prevent the imminent unlawful killing of wildlife or the destruction of evidence of
6 such unlawful killing where the officer has probable cause to believe either is about to occur; or

7 (4) To respond to a life-threatening emergency or another immediate threat to public safety
8 that was either reported to the agent or that the agent personally observed.

9 (b) Unless entering under an exception in subsection (a) of this section, a government
10 agent shall show the search warrant to the property owner, lessee, or occupant if they are present.

11 (c) If a government agent is equipped with a body-mounted camera while entering a home
12 or private land pursuant to subdivision (1) of this section, the camera must be activated,
13 unobscured, and recording the entire time that the agent is on the property.

14 (d) Upon entering private land pursuant to subsection (1) of this section, the government
15 agent shall immediately notify the landowner, lessee or occupant if notice can be reasonably

16 provided.

17 (e) If a government agent enters private land pursuant to subsection (1)(c) of this section,
18 the agent shall, prior to and after dispatching the wildlife, show the wildlife to the landowner,
19 lessee, or occupant if the landowner, lessee, or occupant requests to see the wildlife.

20 (f) A government agent shall not seize any private property, including, but not limited to,
21 cash, vehicles, weapons, tools, or wild game, without individualized probable cause of the
22 commission of a criminal offense.

§62-17-5. Illegal Searches and Seizures.

1 (a) Any evidence obtained pursuant to a search or seizure conducted in violation of this
2 article is inadmissible in any administrative or judicial proceeding, civil or criminal.

3 (b) Any arrest made pursuant to a search or seizure conducted in violation of this article
4 is invalid.

5 (c) If a government agent searches or enters a home or private land in violation of this
6 article, a person who believes his or her rights have been violated may pursue an action under
7 this article.

8 (d) In an action under subsection (c) of this section, a prevailing plaintiff may recover
9 declaratory and injunctive relief, compensatory and nominal damages, and attorney’s fees.

NOTE: The purpose of this bill is to create the Protection of Property from Warrantless Searches Act.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.