

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3245**

BY DELEGATE HAMRICK

[Introduced March 16, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §62-1H-1, §62-1H-2, §62-1H-3, §62-1H-4, and §62-1H-5, all relating to  
 3 creating the Protection of All Property from Warrantless Searches Act; providing a short  
 4 title, legislative findings, and definitions; stating conditions for entry to homes or on land;  
 5 defining illegal searches; and right to sue for damages.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1H. THE PROTECTION OF ALL PROPERTY FROM WARRANTLESS SEARCHES ACT.**

**§62-1H-1. Short title.**

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

**§62-1H-2. Legislative findings.**

1 The Legislature finds:

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

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

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

**§62-1H-3. Definitions.**

1 For the purposes of this article:

2 (a) “Government agent” means any local, state, or federal official who is employed or  
 3 contracted by government in this state, including any peace officer, inspector, and wildlife official.

4 (b) “Home” means any private residence that is owned, leased, used, or occupied. It  
 5 includes private land on which the residence is located.

6 (c) "Private land" means land that is owned, leased, used, or occupied by a natural person  
7 or anon-government entity.

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

13 (e) "Search warrant" means a warrant that is supported by individualized probable cause  
14 and executed by a magistrate or judge.

**§62-1H-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) After receiving the permission of the property owner, lessee, or occupant;

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

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

8 (4) To dispatch crippled or distressed wildlife the agent has personally observed.

9 (b) Upon entering private land, the government agent shall immediately notify the  
10 landowner, lessee, or occupant if notice can be reasonably made.

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

13 (d) If a government agent is equipped with a body-mounted camera while entering a home  
14 or private land, the camera must be activated, unobscured, and recording the entire time the  
15 agent is on the property.

16 (e) If a government agent enters private land pursuant to subsection (a)(4) of this section,

17 the agent shall, prior to and after dispatching the wildlife, show the wildlife to the landowner,  
18 lessee, or occupant if the landowner, lessee, or occupant requests to see the wildlife.

19 (f) A government agent may not seize any private property, including currency, vehicles,  
20 weapons, tools, or wild game, without individualized probable cause of the commission of a  
21 criminal offense.

**§62-1H-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, civil, or criminal proceeding.

3 (b) Any arrest made pursuant to a search or seizure conducted in violation of this article is  
4 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 rights have been violated may pursue a civil action for damages.

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

NOTE: The purpose of this bill is to create the Protection of All 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.