

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2572

By Delegates Horst, Jeffries, McGeehan, Phillips,

Kirby, Ridenour, Smith, Kimble, Householder,

Longanacre, and Mazzocchi

[Introduced January 16, 2023; 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 §62-1H-1, §62-1H-2, §62-1H-3, §62-1H-4, §62-1H-5, and §62-1H-6, all
 3 relating to establishing the Protection of Shared Physical and Digital Property from
 4 Warrantless Searches Act; providing for legislative findings; providing for definitions;
 5 creating conditions for government to search or seize physical or digital property from a
 6 third party; defining illegal searches and seizures, and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1H. PROTECTION OF SHARED PHYSICAL AND DIGITAL PROPERTY

FROM WARRANTLESS SEARCHES ACT.

§62-1H-1. Short title.

1 This article may be cited as "The Protection of Shared Physical and Digital Property
 2 from Warrantless Searches Act."

§62-1H-2. Legislative findings.

1 (a) The people of this state have the right to be secure in their persons and property.

2 (b) A person’s right to be secure in property extends to all forms of property, including
 3 physical and digital in nature. The person has a property interest and a reasonable expectation of
 4 privacy in the person’s physical and digital property.

5 (c) A person who holds a property interest or reasonable expectation of privacy in physical
 6 or digital property, including information, may share that property by contract or other legal means
 7 with others for the purpose of obtaining goods and services without impairing or abridging the
 8 person’s right to be secure in that property.

9 (d) Misguided judicial decisions have established a rule called the "Third Party Doctrine." It
 10 states a person lacks any constitutional protections as to information the person shares with
 11 another party. This exception applies to all information shared even when the receiving party is
 12 contractually obligated to keep the shared information private.

13 (e) The "Third Party Doctrine" is inconsistent with the right to be secure in property. It forces
14 a person to sacrifice constitutional protection to obtain goods and services.

15 (f) The rapid technological advancement that has facilitated Internet access,
16 communications and commerce is a welcomed development. But it has exacerbated the impact of
17 the "Third Party Doctrine." Virtually all such access, communications and commerce depend on
18 the sharing of a person's information with third parties.

19 (g) This article protects a resident from warrantless searches of information shared with
20 third parties when obtaining goods and services by requiring government officials to obtain a
21 person's consent or a judicial warrant based on probable cause prior to accessing that person's
22 shared information.

§62-1H-3.

Definitions.

1 (a) "Digital property" means:

2 (1) Information that a person creates that exists in digital form, either online or on an
3 electronic storage device. It includes information necessary to access the digital property.

4 (2) Information that a person shares with a third party in connection to the provision of
5 goods or services to that person and is recorded in digital form. This includes all digital records
6 containing such information.

7 (3) This definition does not include information a person voluntarily shares with the public
8 or a third party with the understanding that the third party will share that information with the public.

9 (b) "Government agent" means any official who is employed or contracted by any level of
10 government in this state.

11 (c) "Physical property" means:

12 (1) All real and personal property that a person owns or possesses.

13 (2) All real and personal property that a person shares with a third party in connection to
14 the provision of goods or services to that person.

15 (3) Information a person shares with a third party in connection to the provision of goods or

16 services to that person that is recorded in physical form, including all physical records containing
17 such information.

18 (4) This definition does not include information a person voluntarily shares with the public
19 or a third party with the understanding that the third party will share that information with the public.

20 (5) "Probable cause" means the presence of facts and circumstances within the
21 government agent's knowledge that would warrant a person of reasonable caution to believe that
22 an offense has been or is being committed.

23 (6) "Search or seizure warrant" means a warrant that is supported by individualized
24 probable cause and authorized by a magistrate or judge.

25 (7) "Third party" means a party, different from the person or government, who maintains
26 physical or digital property about the person as part of providing that person goods or services.

**§62-1H-4. Conditions for government to search or seize physical or digital property from
a third party.**

1 (a) No government agent shall search or seize physical or digital property of any person
2 that is held by a third party without first obtaining a search or seizure warrant based on probable
3 cause, except:

4 (1) After receiving the permission of the property owner; or

5 (2) To respond to an imminent threat to a person's life, safety, or property, or a similar
6 exigent circumstance.

7 (b) Unless searching or seizing property under an exception in subsection (a), a
8 government agent must, upon execution of a search or seizure warrant, provide notice and a copy
9 of said warrant authorizing the search or seizure to the property owner as well as any third party
10 from whom the property has been searched or seized.

11 (c) A court, upon a showing by the government that providing the search or seizure warrant
12 to the property owner would impede or otherwise jeopardize an ongoing investigation, may delay
13 the giving of such notice for a reasonable period not to exceed 30 days after the date of its

14 execution, or on a later date certain if the facts of the case justify a longer period of delay.

15 (d) A person aggrieved by a search or seizure of their physical or digital property
16 possessed by a third party may challenge the search or seizure as if the property had been
17 searched or seized directly from the person.

§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) If a government agent searches or seizes physical or digital property in violation of this
4 article, a person who believes her rights have been violated may pursue an action under the West
5 Virginia Human Rights Act.

6 (c) In an action under subsection (b), a prevailing plaintiff may recover declaratory relief,
7 injunctive relief, compensatory damages, nominal damages, and attorney's fees.

§62-1H-6. Effective date.

1 This article shall take effect on July 31, 2023.

NOTE: The purpose of this bill is to establish the Protection of Shared Physical and Digital Property from Warrantless Searches Act. The bill provides for legislative findings. The bill provides for definitions. The bill creates conditions for government to search or seize physical or digital property from a third party. The bill defines illegal searches and seizures. Finally, the bill provides for an effective date.

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