

# **Protecting Real Property from Warrantless Searches Act**

**(Addressing the Open Fields Doctrine under the 4<sup>th</sup> Amendment)**

September 22, 2023

## **Section 1. Title**

This Act may be cited as the “Protecting Real Property from Warrantless Searches Act.”

## **Section 2. Definitions**

For purposes of this Act:

1. “Government agent” means any local, state, or federal official who is employed or contracted by government in this state, including any peace officer, inspector, and wildlife official.
2. “Home” means any private residence that is owned, leased, used or occupied, including the curtilage surrounding the residence.
3. “Private land” means land that is owned, leased, used, or occupied by a natural person or a non-government entity, including all such lands that would otherwise be considered “open fields.”
4. “Probable cause” means the presence of facts and circumstances within the government agent’s knowledge that would warrant a person of reasonable caution to believe that an offense has been or is being committed. The possession, discharge, or use, by itself, of one or more items that are legal to possess does not constitute probable cause for a government agent to enter a home or private land.
5. “Warrant” means a court order that is supported by individualized probable cause and executed by a magistrate or judge.

## **Section 3. Conditions for Government to Enter Homes and Private Land**

1. No government agent shall enter a home or private land without a warrant except:
  - a. After receiving the permission of the property owner, lessee, or occupant;
  - b. To respond to a life-threatening emergency or another immediate threat to public safety that was either reported to the agent or the agent personally observed
  - c. To prevent the imminent unlawful killing of wildlife or the destruction of evidence of such unlawful killing where the agent has probable cause to believe either is about to occur; or
  - d. To dispatch crippled or distressed wildlife the agent has personally observed.

2. Upon entering private land, the government agent shall immediately notify the landowner, lessee, or occupant if notice can be reasonably made.
3. Unless entering under an exception in subsection (1), a government agent shall show the warrant to the property owner, lessee, or occupant if they are present.
4. If a government agent is equipped with a body-mounted camera while entering a home or private land, the camera must be activated and recording the entire time the agent is on the property.
5. If a government agent enters private land pursuant to subsection (1)(d) of this section, the agent shall produce, upon the request of the landowner, lessee, or lawful occupant, an image or other photo or video evidence of the wildlife dispatched by the agent.
6. A government agent shall not seize any private property, including currency, vehicles, weapons, tools, or wild game, from a home or private land unless:
  - a. The agent first acquires a warrant authorizing the seizure; or
  - b. The agent has entered the home or private land with consent or under exigent circumstances and has individualized probable cause of the commission of a criminal offense.

#### **Section 4. Illegal Searches and Seizures**

1. Any evidence obtained pursuant to a search or seizure conducted in violation of this Act is inadmissible in any administrative, civil, or criminal proceeding.
2. Any arrest made pursuant to a search or seizure conducted in violation of this Act is invalid.
3. If a government agent searches or enters a home or private land in violation of this Act, a person who believes his rights have been violated may pursue an action under [insert the state's civil rights act].
4. In an action under subsection 3, a prevailing plaintiff may recover declaratory relief, injunctive relief, compensatory damages, nominal damages, and attorney's fees.

#### **Section 5. Effective Date**

This Act shall take effect on [date].

## Section 6. Legislative Findings

(Optional)

1. The people of this State have a right to be free from physical intrusions on their private property.
2. The people of this State have a reasonable expectation of privacy in their homes and property, both real and personal.
3. This State should protect its residents' homes and property, both real and personal, from warrantless and otherwise illegal searches and seizures.
4. The U.S. Supreme Court created the "Open Fields" doctrine under the Fourth Amendment in the 1924 case of *Hester v. United States*. In doing so, the court removed from protection property categorized as "open fields"—area beyond the house and its immediate surroundings known as curtilage. There is a need to address that mistaken exception to the protection due residents of this state under the Fourth Amendment.

### For more information, contact:

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