

IN THE SENATE

SENATE BILL NO. 1326

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO PROPERTY; AMENDING TITLE 18, IDAHO CODE, BY THE ADDITION OF A
NEW CHAPTER 71, TITLE 18, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING
PRIVATE PROPERTY RIGHTS PROTECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended
by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
ter 71, Title 18, Idaho Code, and to read as follows:

CHAPTER 71

PROPERTY RIGHTS PROTECTION ACT

18-7101. SHORT TITLE. This chapter shall be known and may be cited as
the "Property Rights Protection Act."

18-7102. DEFINITIONS. As used in this chapter:

(1) "Exigent circumstances" means only those limited, judicially rec-
ognized exceptions to the warrant requirement under section 17, article I of
the constitution of the state of Idaho and the fourth amendment to the United
States constitution.

(2) "Government agent" means any employee or representative of the
state of Idaho, any political subdivision thereof, or the federal govern-
ment, acting in an official capacity.

(3) "Private land not open to the public" or "private land" means any
privately owned real property, not including any place of habitation or the
associated curtilage, where a person knows or has reason to know that the
person's presence is not permitted pursuant to the provisions of section
18-7008(2)(a), Idaho Code.

(4) "Search warrant" or "warrant" has the same meaning as that term is
defined in section 19-4401, Idaho Code, and shall include an arrest warrant
as described in section 19-507, Idaho Code.

18-7103. PRIVATE LAND PROTECTION -- PROTECTION FROM WARRANTLESS
SEARCH. Government agents shall not, in the course and scope of their lawful
duty, enter private land not open to the public without a valid search war-
rant, exigent circumstances, or lawful consent of the owner or lessee.

18-7104. FEDERAL GOVERNMENT AGENTS AND LOCAL COORDINATION. Prior to
executing a search warrant on private land pursuant to section 18-7103,
Idaho Code, federal government agents shall notify the county sheriff, un-
less exigent circumstances exist.

1 18-7105. LIMITED ACCESS FOR GOVERNMENT AGENTS. Notwithstanding sec-
2 tion 18-7103, Idaho Code, a government agent may approach a residence's
3 front entrance using a driveway, walkway, or similar pathway in a manner
4 consistent with that of a private citizen. However, such government agent:

5 (1) Shall not conduct an investigatory search, inspection, or surveil-
6 lance beyond what is visible from a lawful public vantage point, nor shall
7 the agent enter other areas of the property not open to the public; and

8 (2) Shall promptly leave such private land upon the request of the owner
9 or occupant, unless otherwise authorized by law to remain.

10 18-7106. CIVIL LIABILITY. (1) Any government agent who knowingly vio-
11 lates the provisions of this chapter shall be subject to a civil penalty of
12 one thousand dollars (\$1,000) per occurrence, payable to the property owner
13 or lessee.

14 (2) A person aggrieved by a violation of this section may bring a civil
15 action for actual damages and injunctive relief. The prevailing party shall
16 be entitled to reasonable attorney's fees and costs.

17 (3) The civil penalty provided in this section may be enforced by the
18 county prosecuting attorney or by an aggrieved person through a civil ac-
19 tion in the magistrate division of the district court. The court shall enter
20 judgment for one thousand dollars (\$1,000) per violation, together with any
21 costs and attorney's fees as provided in subsection (2) of this section.

22 (4) No political subdivision shall be required to indemnify a govern-
23 ment agent for civil penalties imposed under this section.

24 (5) Nothing in this section shall affect the admissibility of evidence
25 in any judicial or administrative proceeding.

26 (6) The penalties provided in this section shall not be applicable to
27 any county sheriff or deputies, municipal police officers, or Idaho state
28 police.

29 18-7107. CRIMINAL LIABILITY. A government agent shall not be subject
30 to prosecution under the provisions of section 18-7008, Idaho Code, if the
31 agent enters private land:

32 (1) In good faith reliance on a valid search warrant or on exigent cir-
33 cumstances;

34 (2) Pursuant to lawful consent; or

35 (3) In accordance with the provisions of section 18-7105 or 18-7108,
36 Idaho Code.

37 18-7108. SCOPE AND APPLICABILITY. Nothing in this chapter shall:

38 (1) Prevent government agents from conducting lawful investigations
39 from public vantage points or entering private land in response to exigent
40 circumstances;

41 (2) Prevent government agents from entering private land only to the
42 extent necessary to serve civil process or conduct welfare checks;

43 (3) Interfere with the use or administration of water rights as pro-
44 vided for in Idaho law;

45 (4) Interfere with the ability of the department of water resources, or
46 a designated watermaster, to make reasonable entry upon any lands to carry
47 out duties imposed by law;

1 (5) Interfere with the right of the owner or operator of any right-of-
2 way or easement for any ditch, canal, lateral, drain, or other conduit, as
3 described by law;

4 (6) Limit lawful aerial observation conducted in compliance with sec-
5 tion 21-213, Idaho Code;

6 (7) Limit lawful entry to control noxious weeds as authorized in sec-
7 tion 22-2406, Idaho Code;

8 (8) Limit lawful entry by abatement district employees as authorized in
9 section 39-2804, Idaho Code; or

10 (9) Increase or diminish any rights, protections, or legal authoriza-
11 tions with respect to any place of habitation or the associated curtilage.

12 18-7109. SEVERABILITY. If any provisions of this chapter or the ap-
13 plication thereof to any person or circumstances, is held invalid as uncon-
14 stitutional or ineffective for any reason, such invalidity shall not affect
15 other provisions or applications of the chapter, and to this end the provi-
16 sions of this chapter are severable.

17 SECTION 2. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval.