

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2113**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-10.2 of the North Dakota
2 Century Code, relating to authorized electronic monitoring of facility residents; to amend and
3 reenact sections 12.1-31-14 and 50-10.2-01 of the North Dakota Century Code, relating to
4 authorized electronic monitoring of facility residents and privacy; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 12.1-31-14 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-31-14. Surreptitious intrusion or interference with privacy.**

- 9 1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or
10 interfere with the privacy of another, the individual:
- 11 a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a
12 house or place of dwelling of another; or
- 13 b. Enters upon another's property and surreptitiously installs or uses any device for
14 observing, photographing, recording, amplifying, or broadcasting sounds or
15 events from a house or place of dwelling of another.
- 16 2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or
17 interfere with the privacy of an occupant, the individual:
- 18 a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a
19 hotel, or other place where a reasonable individual would have an expectation of
20 privacy; or
- 21 b. Surreptitiously installs or uses any device for observing, photographing,
22 recording, amplifying, or broadcasting sounds or events from a tanning booth, a
23 sleeping room in a hotel, or other place where a reasonable individual would
24 have an expectation of privacy.

1 3. In a prosecution under this section, it is an affirmative defense that an individual was
2 acting pursuant to section 3 of this Act.

3 **SECTION 2. AMENDMENT.** Section 50-10.2-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **50-10.2-01. Definitions.**

6 In this chapter, unless the context or subject matter otherwise requires:

- 7 1. "Authorized electronic monitoring" means the placement and use of an authorized
8 electronic monitoring device, by a resident or resident representative, in the resident's
9 room.
- 10 2. "Authorized electronic monitoring device" means video surveillance cameras,
11 monitoring devices, web-based cameras, video phones, or audio recording or
12 transmitting devices, or a combination of these devices, installed in the room of a
13 resident which are designed to acquire, transmit, broadcast, interact, or record video,
14 communications, or other sounds occurring in the room. The term does not include still
15 cameras or devices used for the purpose of the resident having contact with another
16 person but not for the purpose of electronically monitoring a resident.
- 17 3. "Conflict of interest" means any type of ownership in a facility or membership on the
18 governing body of a facility by a provider of goods or services to that facility or by a
19 member of that ~~person's~~individual's immediate family.
- 20 ~~2.4.~~ "Department" means the department of human services.
- 21 ~~3.5.~~ "Facility" means a skilled nursing care facility, basic care facility, assisted living facility,
22 or swing-bed hospital approved to furnish long-term care services.
- 23 ~~4.6.~~ "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter,
24 father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,
25 stepchild, uncle, aunt, niece, nephew, or grandchild.
- 26 ~~5.7.~~ "Remodeling" means any alteration in structure, refurbishing, or repair that would:
27 a. Prevent the facility staff from providing customary and required care; or
28 b. Seriously endanger or inconvenience any resident with noise, dust, fumes,
29 inoperative equipment, or the presence of remodeling workers.
- 30 ~~6.8.~~ "Resident" means a ~~person~~an individual residing in a facility.

1 9. "Resident representative" means a person authorized to act as a resident's agent
2 under power of attorney for health care or guardianship.

3 **SECTION 3.** A new section to chapter 50-10.2 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Authorized electronic monitoring - Penalty.**

6 1. A facility shall permit a resident or the resident representative to conduct authorized
7 electronic monitoring of the resident's room through an authorized electronic
8 monitoring device if:

9 a. The authorized electronic monitoring device is placed in the resident's room;

10 b. The electronic monitoring device is placed in a fixed, stationary position; monitors
11 only the area occupied by the resident and not the area occupied by the
12 resident's roommate; and protects the privacy and dignity of the resident;

13 c. The facility is given written notice of the placement and use which must include
14 an installation plan in compliance with the facility's standards and regulations the
15 facility provides to the resident;

16 d. A video tape or recording created using an authorized electronic monitoring
17 device records the date and time;

18 e. All costs, except for electricity, associated with the authorized electronic
19 monitoring device, including installation, operation, removal, repairs, room
20 damage, and maintenance, are paid by the resident or resident representative
21 who initiated the use of the authorized electronic monitoring device; and

22 f. A signed authorization for the disclosure of protected health information, as
23 defined by title 45, Code of Federal Regulations, part 160, section 103, compliant
24 with the federal Health Insurance Portability and Accountability Act of 1996 [Pub.
25 L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of
26 the device is given by each resident occupying the same room, or by that
27 resident's resident representative in accordance with subsection 4.

28 2. A facility that uses an authorized electronic monitoring device in compliance with this
29 chapter is not guilty of a crime or civilly liable under this code for a violation of a
30 resident's privacy.

- 1 3. The facility shall cooperate to accommodate the placement of the authorized
2 electronic monitoring device, unless doing so would place undue burden on the facility.
- 3 4. Before placing and using the authorized electronic monitoring device, a resident or
4 resident representative shall obtain the signed authorization of any other resident
5 residing in the room in accordance with subsection 1. The authorization may be signed
6 by that resident's resident representative.
- 7 a. The resident's or the resident representative's authorization may limit the use of
8 an authorized electronic monitoring device to only audio monitoring or only video
9 monitoring and may limit the device's time of operation, direction, and focus.
- 10 b. At any time, a resident or resident representative who did not request the
11 authorized electronic monitoring device in the resident's room may withdraw, in
12 writing, the signed authorization for the use of the device. The resident who
13 requested the device or the resident's resident representative is responsible for
14 having the device disabled in compliance with the facility's standards and
15 regulations after receipt of the written withdrawal.
- 16 5. The facility shall make a reasonable attempt to accommodate a resident if a resident
17 or resident representative of a resident who is residing in a shared room wants to have
18 an authorized electronic monitoring device placed in the room and another resident
19 living in the same shared room refuses to authorize the use of the authorized
20 electronic monitoring device.
- 21 6. If authorized electronic monitoring is being conducted in the room of a resident, and
22 another resident will be moved into the room, the resident who requested the device or
23 the resident's resident representative is responsible for having the existing authorized
24 electronic monitoring device disabled in compliance with the facility's standards and
25 regulations unless the new resident or the resident's resident representative
26 authorizes the device pursuant to subsections 1 and 4.
- 27 7. A facility may not refuse to admit an individual and may not remove a resident from a
28 facility because of authorized electronic monitoring of a resident's room. A person may
29 not intentionally retaliate or discriminate against a resident for authorization of
30 authorized electronic monitoring.

- 1 8. A facility clearly and conspicuously shall post a sign where authorized electronic
2 monitoring is being conducted to alert and inform visitors.
- 3 9. A facility or staff of the facility may not access any video or audio recording created
4 through an authorized electronic monitoring device placed in a resident's room without
5 the written consent of the resident or resident representative or court order.
- 6 10. A person that intentionally hampers, obstructs, tampers with, or destroys a recording
7 or an authorized electronic monitoring device placed in a resident's room, without the
8 express written consent of the resident or resident representative, is subject to a
9 class B misdemeanor. A person that places an electronic monitoring device in the
10 room of a resident or which uses or discloses a tape or other recording made by the
11 device may be guilty of a crime or civilly liable for any unlawful violation of the privacy
12 rights of another. In any civil proceeding, administrative proceeding, or survey process,
13 material obtained through the use of an authorized electronic monitoring device may
14 not be used if a person intentionally hampered, obstructed, or tampered with the
15 material without the express written consent of the resident or resident representative,
16 or if the material was obtained through the operation of an electronic monitoring device
17 which was not compliant with this section.
- 18 11. A person may not intercept a communication or disclose or use an intercepted
19 communication of an authorized electronic monitoring device placed in a resident's
20 room, without the express written consent of the resident or the resident
21 representative.