

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.
- 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 placement of the electronic monitoring device is focused only on the area  
11           occupied by the resident and not on the area occupied by the resident's  
12           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 tape or recording created using an authorized electronic monitoring device  
17           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;

22          f. Written consent is given by each resident occupying the same room, or by that  
23           resident's resident representative in accordance with subsection 3; and

24          g. The notice to the facility of a resident's or resident representative's intent to place  
25           and use authorized electronic monitoring, as well as the consent of any resident,  
26           or that resident's resident representative, occupying the same room must include  
27           a release of liability for the facility for a violation of the resident's right to privacy  
28           and for any potential disclosure of protected health information as defined by title  
29           45, Code of Federal Regulations, part 160, section 103, to the extent the use of  
30           the authorized electronic monitoring device is concerned.

- 1       2. 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       3. Before placing and using the authorized electronic monitoring device, a resident or  
4       resident representative shall obtain the written consent of any other resident residing  
5       in the room. The consent may be given by that resident's resident representative.
- 6       a. The resident's or the resident representative's consent may limit the use of an  
7       authorized electronic monitoring device, including the time of operation, direction,  
8       focus, and use of visual or audio recording or transmission.
- 9       b. At any time, a resident or resident representative may request the authorized  
10       electronic monitoring device be turned off or the visual or audio recording or  
11       transmitting component of the authorized electronic monitoring device be  
12       blocked. A request under this subdivision is a withdrawal of consent for the use of  
13       an authorized electronic monitoring device and the resident or resident  
14       representative who initiated the use of the authorized electronic monitoring  
15       device shall turn off the device or block the visual or audio recording or  
16       transmitting component of the authorized monitoring device.
- 17       4. If a resident or resident representative withdraws consent, the resident or resident  
18       representative who initiated the use of the authorized electronic monitoring device  
19       shall disable the authorized electronic monitoring device until accommodations can be  
20       made.
- 21       5. The facility shall make a reasonable attempt to accommodate a resident if a resident  
22       or resident representative of a resident who is residing in a shared room wants to have  
23       an authorized electronic monitoring device placed in the room and another resident  
24       living in the same shared room refuses to consent to the use of the authorized  
25       electronic monitoring device. A reasonable attempt to accommodate includes the  
26       facility offering to move either resident to another shared room that is available at the  
27       time of the request. The facility shall continue to review options of roommates and  
28       room sharing ~~until the request can be fulfilled.~~
- 29       6. If authorized electronic monitoring is being conducted in the room of a resident, the  
30       facility shall make a reasonable attempt to not move another resident into the room

1           unless the resident or resident representative has consented to the use of the existing  
2           authorized electronic monitoring.

3        7. A facility may not refuse to admit an individual and may not remove a resident from a  
4        facility because of authorized electronic monitoring of a resident's room. A person may  
5        not intentionally retaliate or discriminate against a resident for consent to authorized  
6        electronic monitoring.

7        8. A facility clearly and conspicuously shall post a sign at or near the facility's main  
8        entrance which states authorized electronic monitoring devices may be in use in the  
9        facility and at the entrance of a resident's room where authorized electronic monitoring  
10       is being conducted.

11       9. A facility or staff of the facility may not access any video or audio recording created  
12       through an authorized electronic monitoring device placed in a resident's room without  
13       the written consent of the resident or resident representative or court order.

14       10. A person that intentionally hampers, obstructs, tampers with, or destroys a recording  
15       or an authorized electronic monitoring device placed in a resident's room, without the  
16       express written consent of the resident or resident representative, is subject to a  
17       class B misdemeanor. A person that places an electronic monitoring device in the  
18       room of a resident or which uses or discloses a tape or other recording made by the  
19       device may be civilly liable for any unlawful violation of the privacy rights of another.

20       11. A person may not intercept a communication or disclose or use an intercepted  
21       communication of an authorized electronic monitoring device placed in a resident's  
22       room, without the express written consent of the resident or the resident  
23       representative.