

Sixty-sixth  
Legislative Assembly  
of North Dakota

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 ~~placement of the~~ electronic monitoring device is ~~focused~~ placed in a fixed,  
11           stationary position; monitors only ~~on~~ the area occupied by the resident and not ~~on~~  
12           the area occupied by the resident's roommate; and protects the privacy and  
13           dignity of the resident;

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

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

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

23          f. ~~Written consent~~ A signed authorization for the disclosure of protected health  
24           information, as defined by title 45, Code of Federal Regulations, part 160,

25           section 103, compliant with the federal Health Insurance Portability and

26           Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C.

27           1181 et seq.] and consenting to the use of the device is given by each resident

28           occupying the same room, or by that resident's resident representative in

29           accordance with subsection 3; and

30           ~~The notice to the facility of a resident's or resident representative's intent to place~~  
31           ~~and use authorized electronic monitoring, as well as the consent of any resident,~~

1 ~~or that resident's resident representative, occupying the same room must include~~  
2 ~~a release of liability for the facility for a violation of the resident's right to privacy~~  
3 ~~and for any potential disclosure of protected health information as defined by~~  
4 ~~title 45, Code of Federal Regulations, part 160, section 103, to the extent the use~~  
5 ~~of the authorized electronic monitoring device is concerned~~<sup>4</sup>.

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

9 3. The facility shall cooperate to accommodate the placement of the authorized  
10 electronic monitoring device, unless doing so would place undue burden on the facility.

11 ~~3.4.~~ Before placing and using the authorized electronic monitoring device, a resident or  
12 resident representative shall obtain the ~~written consent~~signed authorization of any  
13 other resident residing in the room in accordance with subsection 1. The  
14 ~~consent~~authorization may be ~~given~~signed by that resident's resident representative.

15 a. The resident's or the resident representative's ~~consent~~authorization may limit the  
16 use of an authorized electronic monitoring device, ~~including the to only audio~~  
17 monitoring or only video monitoring and may limit the device's time of operation,  
18 direction, and focus, ~~and use of visual or audio recording or transmission.~~

19 b. At any time, a resident or resident representative ~~may request the authorized~~  
20 ~~electronic monitoring device be turned off or the visual or audio recording or~~  
21 ~~transmitting component of the authorized electronic monitoring device be~~  
22 ~~blocked. A request under this subdivision is a withdrawal of consent for the use of~~  
23 ~~an authorized electronic monitoring device and the resident or resident~~  
24 ~~representative who initiated the use of the authorized electronic monitoring~~  
25 ~~device shall turn off the device or block the visual or audio recording or~~  
26 ~~transmitting component of the authorized monitoring device~~who did not request  
27 the authorized electronic monitoring device in the resident's room may withdraw,  
28 in writing, the signed authorization for the use of the device. The resident who  
29 requested the device or the resident's resident representative is responsible for  
30 having the device disabled in compliance with the facility's standards and  
31 regulations after receipt of the written withdrawal.

- 1 ~~4. If a resident or resident representative withdraws consent, the resident or resident~~  
2 ~~representative who initiated the use of the authorized electronic monitoring device~~  
3 ~~shall disable the authorized electronic monitoring device until accommodations can be~~  
4 ~~made.~~
- 5 5. The facility shall make a reasonable attempt to accommodate a resident if a resident  
6 or resident representative of a resident who is residing in a shared room wants to have  
7 an authorized electronic monitoring device placed in the room and another resident  
8 living in the same shared room refuses to consent to authorize the use of the  
9 authorized electronic monitoring device.~~A reasonable attempt to accommodate~~  
10 ~~includes the facility offering to move either resident to another shared room that is~~  
11 ~~available at the time of the request. The facility shall continue to review options of~~  
12 ~~roommates and room sharing.~~
- 13 6. If authorized electronic monitoring is being conducted in the room of a resident, the  
14 ~~facility shall make a reasonable attempt to not move another resident into the room~~  
15 ~~unless the resident or resident representative has consented to the use of and another~~  
16 ~~resident will be moved into the room, the resident who requested the device or the~~  
17 ~~resident's resident representative is responsible for having the existing authorized~~  
18 ~~electronic monitoring device disabled in compliance with the facility's standards and~~  
19 ~~regulations unless the new resident or the resident's resident representative~~  
20 ~~authorizes the device pursuant to subsections 1 and 4.~~
- 21 7. A facility may not refuse to admit an individual and may not remove a resident from a  
22 facility because of authorized electronic monitoring of a resident's room. A person may  
23 not intentionally retaliate or discriminate against a resident for consent to authorization  
24 of authorized electronic monitoring.
- 25 8. A facility clearly and conspicuously shall post a sign at or near the facility's main  
26 ~~entrance which states authorized electronic monitoring devices may be in use in the~~  
27 ~~facility and at the entrance of a resident's room where authorized electronic monitoring~~  
28 ~~is being conducted to alert and inform visitors.~~
- 29 9. A facility or staff of the facility may not access any video or audio recording created  
30 through an authorized electronic monitoring device placed in a resident's room without  
31 the written consent of the resident or resident representative or court order.

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