

Senate Bill No. 2113 Amendment Markup
Department of Human Services

19.8094.02000
Sixty-sixth
Legislative Assembly
of North Dakota

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
 - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.

2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. In a prosecution under this section, it is an affirmative defense that an individual was acting pursuant to section 3 of this Act.

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

50-10.2-01. Definitions.

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

1. "Authorized electronic monitoring" means the placement and use of an authorized electronic monitoring device, by a resident or resident representative, in the resident's room.
2. "Authorized electronic monitoring device" means video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices, installed in the room of a resident which are designed to acquire, transmit, broadcast, interact, or record video, communications, or other sounds occurring in the room. The term does not include still cameras or devices used for the purpose of the resident having contact with another person. Still cameras or devices typically used for the purpose of the resident having contact with another person, including cellular phones, are not an authorized electronic monitoring device, and are intended to be used only for communication and not to provide electronic monitoring of the resident.

3. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that ~~person's~~individual's immediate family.
- 2-4. "Department" means the department of human services.
- 3-5. "Facility" means a skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital approved to furnish long-term care services.
- 4-6. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
- 5-7. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
- a. Prevent the facility staff from providing customary and required care; or
 - b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of remodeling workers.
- 6-8. "Resident" means ~~a person~~an individual residing in a facility.
9. "Resident representative" means a person authorized to act as a resident's agent under power of attorney for health care or guardianship.

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

Authorized electronic monitoring - Penalty.

1. A facility shall permit a resident or the resident representative to conduct authorized electronic monitoring of the resident's room through an authorized electronic monitoring device if:
 - a. The authorized electronic monitoring device is placed in the resident's room;

- b. The placement of the electronic monitoring device ~~is focused~~ shall be in a fixed, stationary position, and shall monitor only ~~on~~ the area occupied by the resident and not ~~on~~ the area occupied by the resident's roommate and ~~protects~~ placement position shall protect the privacy and dignity of the resident;
- c. The facility is given written notice of the placement and use which must include an installation plan in compliance with the facility's standards and regulations the facility provides to the resident;
- d. A video tape or recording created using an authorized electronic monitoring device records the date and time;
- e. All costs, except for electricity, associated with the authorized electronic monitoring device, including installation, operation, removal, repairs, room damage, and maintenance, are paid by the resident or resident representative who initiated the use of the authorized electronic monitoring device. ~~If a resident chooses to install an authorized electronic monitoring device that uses Internet technology for visual or audio monitoring, that resident is responsible for contracting with an Internet service provider. The device shall not be connected to the facility's network;~~
- f. Written consent is given by each resident occupying the same room, or by that resident's resident representative in accordance with subsection 3 ~~with a copy of this consent attached to the written notice given to the facility;~~ and
- g. ~~The notice to the facility of a resident's or resident representative's intent to place and use authorized electronic monitoring, as well as the consent of any resident, or that resident's resident representative, occupying the same room must include a release of liability for the facility for a violation of the resident's right to privacy and for any potential disclosure of protected health information as defined by title 45, Code of Federal Regulations, part 160, section 103, to the extent the use of the authorized electronic monitoring~~

~~device is concerned.~~ A facility is not civilly or criminally liable for a violation of a resident's right to privacy for any potential disclosure of protected health information as defined by title 45, Code of Federal Regulations, part 160, section 103, arising out of any authorized electronic monitoring conducted pursuant to this act. The resident or the resident's representative acknowledge by signing the consent forms the resident's privacy and protected health information may not be protected and may be at risk when authorized electronic monitoring is in use.

2. The facility shall cooperate to accommodate the placement of the authorized electronic monitoring device, unless doing so would place undue burden on the facility.
3. Before placing and using the authorized electronic monitoring device, a resident or resident representative shall obtain the written consent of any other resident residing in the room. The consent may be given by that resident's resident representative.
 - ~~a. The resident's or the resident representative's consent may limit the use of an authorized electronic monitoring device, including the time of operation, direction, focus, and use of visual or audio recording or transmission.~~ The consent of the other resident residing in the room or that resident's resident representative may limit the use of an authorized electronic monitoring device to only audio or only video and limit the time of operation, direction, and focus.
 - ~~b. At any time, a resident or resident representative may request the authorized electronic monitoring device be turned off or the visual or audio recording or transmitting component of the authorized electronic monitoring device be blocked. A request under this subdivision is a withdrawal of consent for the use of an authorized electronic monitoring device and the resident or resident representative who initiated the use of the authorized electronic monitoring device shall turn off the device or block the visual or~~

~~audio recording or transmitting component of the authorized monitoring device.~~ At any time, the other resident residing in the room or the resident's resident representative may withdraw, in writing, the consent for use of an authorized electronic monitoring device in the room and the authorized electronic monitoring device shall then be disabled by the resident or resident representative who initiated the use of the authorized electronic monitoring device.

~~4. If a resident or resident representative withdraws consent, the resident or resident representative who initiated the use of the authorized electronic monitoring device shall disable the authorized electronic monitoring device until accommodations can be made.~~

5.4. The facility shall make a reasonable attempt to accommodate a resident if a resident or resident representative of a resident who is residing in a shared room wants to have an authorized electronic monitoring device placed in the room and another resident living in the same shared room refuses to consent to the use of the authorized electronic monitoring device. A reasonable attempt to accommodate includes the facility offering to move either resident to another shared room that is available at the time of the request. The facility shall continue to review options of roommates and room sharing.

6.5. If authorized electronic monitoring is being conducted in the room of a resident, ~~the~~ and there will be a new resident residing in the room, ~~facility shall make a reasonable attempt to not move another resident into the room unless the resident or resident representative has consented to the use of~~ the existing authorized electronic monitoring device must be disabled until the new resident sharing the room gives consent for the use of an authorized electronic monitoring device.

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

- ~~8.7.~~ A facility clearly and conspicuously shall post a sign ~~at or near the facility's main entrance which states authorized electronic monitoring devices may be in use in the facility and at the entrance of a resident's room~~ where authorized electronic monitoring is being conducted ~~to alert and inform visitors.~~
- ~~9.8.~~ A facility or staff of the facility may not access any video or audio recording created through an authorized electronic monitoring device placed in a resident's room without the written consent of the resident or resident representative or court order.
- ~~10.9.~~ A person that intentionally hampers, obstructs, tampers with, or destroys a recording or an authorized electronic monitoring device placed in a resident's room, without the express written consent of the resident or resident representative, is subject to a class B misdemeanor. A person that places an electronic monitoring device in the room of a resident or which uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another. ~~In any civil, criminal, administrative proceeding, or survey process material obtained through the use of an authorized electronic monitoring device shall not be used if the device was installed or used in violation of this subsection.~~
- ~~11.10.~~ A person may not intercept a communication or disclose or use an intercepted communication of an authorized electronic monitoring device placed in a resident's room, without the express written consent of the resident or the resident representative.