

The Senate Committee on Health and Human Services offered the following substitute to HB 605:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to care  
2 and protection of indigent and elderly patients, so as to provide for authorized electronic  
3 monitoring in long-term care facilities; to provide for definitions; to provide consent  
4 requirements; to provide for notice to the facility; to provide for relocation of a resident to  
5 another room; to provide for installation and costs; to provide for notice to visitors; to  
6 prohibit obstruction or destruction of devices; to provide for protection of privacy rights; to  
7 provide for limited liability; to provide for a notification and consent form; to provide for  
8 statutory construction; to provide for related matters; to repeal conflicting laws; and for other  
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to care and  
13 protection of indigent and elderly patients, is amended by adding a new article to read as  
14 follows:

15 "ARTICLE 5B16 31-8-140.17 As used in this article, the term:18 (1) 'Authorized electronic monitoring' means the open and obvious use of an electronic  
19 monitoring device by a resident to monitor the resident or activities within the resident's  
20 room in accordance with this article.21 (2) 'Department' means the Department of Community Health.22 (3) 'Designated agent' means an individual listed in paragraphs (1) through (6) of  
23 subsection (a) of Code Section 31-9-2.24 (4) 'Electronic monitoring device' means a video camera or an audio recording device,  
25 or a combination thereof, that broadcasts, records, or both activity or sounds.26 (5) 'Facility' means any skilled nursing facility, intermediate care home, assisted living  
27 community, or personal care home subject to regulation and licensure by the department  
28 under Chapter 7 of this title.29 (6) 'Notification and consent form' means a document substantially similar to the form  
30 set forth in Code Section 31-8-148.31 (7) 'Physician' means an individual licensed to practice medicine in this state.32 (8) 'Resident' means a person who receives care and treatment and resides in a facility.33 31-8-141.34 (a) Before initiating authorized electronic monitoring inside a facility, a resident shall  
35 complete and submit to the facility a written notification and consent form that  
36 substantially meets the requirements of this article. If the resident lacks decision-making  
37 capacity, the form may be completed and submitted by a designated agent of the resident.  
38 The notification and consent form shall either be on a form substantially similar to the form  
39 set forth in Code Section 31-8-148 or include at least:

- 40 (1) A statement affirming that the resident or resident's designated agent, subject to any  
41 noted restrictions, consents to the use of authorized electronic monitoring;
- 42 (2) If the resident has a roommate or roommates, a statement affirming that each  
43 roommate or roommate's designated agent, subject to any noted restrictions, consents to  
44 the use of authorized electronic monitoring;
- 45 (3) A description of the electronic monitoring device to be used in the authorized  
46 electronic monitoring, including the brand name and model number, and the installation  
47 and operating requirements; and
- 48 (4) Restrictions that the resident, the resident's designated agent, the resident's roommate,  
49 or the resident's roommate's designated agent may impose on the placement and use of  
50 the electronic monitoring device to be used in the authorized electronic monitoring,  
51 including, but not limited to, any of the following:
- 52 (A) Prohibitions on video or audio recording;
- 53 (B) Prohibitions on broadcasting video or audio recordings;
- 54 (C) Requiring that the electronic monitoring device be turned off or blocked during an  
55 examination or procedure by a specified health care provider;
- 56 (D) Requiring that the electronic monitoring device be turned off or blocked while  
57 dressing, bathing, or personal care is being performed;
- 58 (E) Requiring that the electronic monitoring device be turned off or blocked during a  
59 visit with an intimate partner;
- 60 (F) The signature of the resident or his or her designated agent and the date of signing;  
61 and
- 62 (G) If the resident has a roommate or roommates, the signature of each roommate or  
63 his or her designated agent, and the date of signing.
- 64 (b) Consent by a roommate or roommate's designated agent to use authorized electronic  
65 monitoring constitutes authorization to the resident's use of any video or audio recording  
66 obtained in accordance with this Code section and pursuant to subsection (c) of 31-8-146.

67 (c) Any amendments to the information contained in the notification and consent form  
68 shall be in writing, signed, and dated, and submitted to the facility. The notification and  
69 consent form, or an amendment to it, shall not be effective until 24 hours after it has been  
70 received by the facility.

71 (d) If a notification and consent form or an amendment to the form is signed by a  
72 designated agent, it shall also include either a statement from a physician who has  
73 evaluated the resident that the resident, on whose behalf the designated agent is acting,  
74 lacks decision-making capacity, or a copy of the guardianship order, power of attorney, or  
75 similar authority.

76 (e) Upon receiving a completed notification and consent form, or any amendment to the  
77 form, the facility shall place the form in the resident's file and provide a copy to the  
78 resident or his or her designated agent and to the resident's roommate or roommates or his  
79 or her designated agent, if applicable.

80 (f) Any electronic monitoring device used for authorized electronic monitoring shall be  
81 in an open and obvious location and shall not be hidden in another device or item.

82 (g) No person shall conduct authorized electronic monitoring in a manner that is  
83 inconsistent with this article. No person shall conduct clandestine use of an electronic  
84 monitoring device to monitor a resident's room, unless otherwise authorized by law.

85 31-8-142.

86 (a) If any of the resident's roommates refuse to consent to authorized electronic  
87 monitoring, the facility shall, upon the written request of the resident, relocate the resident  
88 to another room as soon as the circumstances permit; provided, however, that the facility  
89 is not required to provide the resident with a private or single room, unless the resident  
90 agrees to pay the increased charges.

91 (b) During the period of any delay in a requested relocation as provided in subsection (a)  
92 of this Code section, the resident shall be permitted to install a video-only electronic  
93 monitoring device, provided that such device is installed to monitor only the resident.

94 (c) In order to assist the resident or the resident's designated agent with implementation  
95 of authorized electronic monitoring, the facility shall provide the contact information for  
96 a roommate's designated agent, where known, if the roommate is incapacitated.

97 31-8-143.

98 (a) A resident may not use a facility's local area network for authorized electronic  
99 monitoring unless the facility provides written consent to the resident. Subject to  
100 subsection (d) of this Code section, a facility that consents to a resident's use of a local area  
101 network may impose reasonable conditions on the use of such network to prevent a data  
102 breach and to limit the consumption of available bandwidth.

103 (b) If a facility does not consent to a resident's use of its local area network, the resident  
104 may, at the resident's cost, arrange for access to the internet through an internet service  
105 provider. The facility may impose reasonable conditions on the installation of any wire,  
106 cable, or other technologies, required for internet access only to:

107 (1) Prevent permanent damage to the facility; provided, however, that the resident or  
108 resident's designated agent shall be responsible for the cost of repair of any physical  
109 damage to the facility that occurs as a result of authorized electronic monitoring;

110 (2) Avoid the creation of a safety hazard; or

111 (3) Avoid the violation of any applicable building or electrical code.

112 (c) All electronic monitoring device installations and supporting services for authorized  
113 electronic monitoring shall comply with the requirements of the National Fire Protection  
114 Association (NFPA) 101 Life Safety Code (2000 edition).

115 (d) A facility may not charge a resident a fee for the cost of electricity used for authorized  
116 electronic monitoring, and, if the facility charges a resident a fee for the use of data, such  
117 fee shall be reasonable.

118 (e)(1) The resident or resident's designated agent may install or maintain an electronic  
119 monitoring device for authorized electronic monitoring in accordance with this Code  
120 section.

121 (2) The facility shall not:

122 (A) Be required to or mandate that it install or maintain the resident's selected  
123 electronic monitoring device or devices for authorized electronic monitoring in  
124 compliance with this article; or

125 (B) Bar or attempt to limit the ability of a resident, resident's designated agent, or other  
126 agent of such resident or resident's designated agent to install or maintain an electronic  
127 monitoring device for authorized electronic monitoring in compliance with this article.

128 31-8-144.

129 (a) If a resident conducts authorized electronic monitoring, a sign shall be clearly and  
130 conspicuously posted by the facility at the entrance to a resident's room where authorized  
131 electronic monitoring is being conducted. The sign shall state in large, easy-to-read type,  
132 'This room is electronically monitored.'

133 (b) The facility shall be responsible for installing and maintaining the signage required by  
134 this Code section.

135 31-8-145.

136 (a) A person is prohibited from knowingly hampering, obstructing, tampering with, or  
137 destroying an electronic monitoring device used for authorized electronic monitoring  
138 installed in a resident's room without the permission of the resident or the resident's  
139 designated agent.

140 (b) Except as otherwise provided in this article, a person may not access or disseminate  
141 a recording produced through authorized electronic monitoring without the written consent  
142 of the resident or his or her designated agent.

143 (c) Except as directed by the resident or the resident's designated agent, a facility may only  
144 move or adjust an electronic monitoring device to ensure such electronic monitoring device  
145 is installed, placed, or used in accordance with the terms of the notification and consent  
146 form filed with the facility pursuant to subsection (a) of 31-8-141.

147 (d) A court may consider evidence that a person violated subsection (a) of this Code  
148 section.

149 31-8-146.

150 (a) A person who possesses material captured through authorized electronic monitoring  
151 shall, upon the facility's written request, provide a copy of the recording to the facility if  
152 an allegation of neglect, abuse, negligence, or other misconduct has been filed or if a  
153 demand letter threatening litigation has been sent to the facility in a civil, criminal, or  
154 administrative action, and the recording, or any portion thereof, contains alleged evidence  
155 related to the allegation or threatened allegation. The facility shall reimburse the person  
156 with the recording for any reasonable costs incurred by providing the recording.

157 (b) Subject to the applicable rules of evidence and procedure, requests for discovery of  
158 video or audio recordings captured pursuant to authorized electronic monitoring shall be  
159 directed to the resident or the designated agent who consented on behalf of the resident to  
160 the authorized electronic monitoring, and such requests shall not be directed to the facility.

161 (c) Subject to the applicable rules of evidence and procedure, video and audio recordings  
162 captured pursuant to authorized electronic monitoring may be admitted into evidence in a  
163 civil, criminal, or administrative proceeding if such video or audio recordings were  
164 obtained in accordance with the conditions and provisions of this article.

165 (d) There shall be no duty for a resident or a resident's designated agent to retain material  
166 captured through authorized electronic monitoring as referenced in subsection (a) of this  
167 Code section, except after receipt of a written request from a facility pursuant to  
168 subsection (a) of this Code section by such resident or resident's designated agent,  
169 whereupon failure to retain such material, if available, may result in a presumption against  
170 the resident or resident's designated agent as provided in Code Section 24-14-22.

171 31-8-147.

172 (a) A facility shall not be civilly or criminally liable for any violation of a person's right  
173 to privacy arising out of the use of authorized electronic monitoring, including by third  
174 parties, except to the extent the violation was caused by the facility's intentional violation  
175 of this article.

176 (b) A facility may not discriminate against a resident or roommate for using, requesting,  
177 consenting to, or refusing to consent to the use of authorized electronic monitoring.

178 (c) A facility may not discriminate against any potential resident or potential roommate  
179 for using, requesting, consenting to, or refusing to consent to the use of authorized  
180 electronic monitoring.

181 31-8-148.

182 (a) This document or a document substantially similar to the following form may be used  
183 to create a notification and consent form that has the meaning and effect prescribed by this  
184 article.

185 NOTICE OF AUTHORIZED ELECTRONIC MONITORING

186 \_\_\_\_\_

187 Resident's Name Date

188 I, \_\_\_\_\_, elect at my own expense to conduct

189 Resident

190 authorized electronic monitoring in my room \_\_\_\_\_.

191 Room Number

192 \_\_\_\_\_

193 Resident or Designated Agent Signature Date Resident Consented to Authorized

194 Electronic Monitoring

195 \_\_\_\_\_

196 Resident or Designated Agent Printed Name

197 Type of electronic monitoring device to be used: audio/video (circle one or both)

198 Make/Model/Type: \_\_\_\_\_

199 Installation needs (if any): \_\_\_\_\_

200 Proposed date of installation: \_\_\_\_\_

201  **Resident authorizes continuous 24/7 video and audio recording**

202 OR

203  Resident's restrictions (check all that apply):

204  Prohibit Audio Recording

- 205  Prohibit Video Recording
- 206  Turn Off Device for Duration of an Examination or Procedure by a Physician or the
- 207 Following Other Health Care Provider or Providers:
- 208 \_\_\_\_\_
- 209  Block Visual Recording for Duration of an Examination or Procedure by a Physician
- 210 or the Following Other Health Care Provider or Providers:
- 211 \_\_\_\_\_
- 212  Turn Off Device while Dressing, Bathing, or other Personal Care is Performed
- 213  Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed
- 214  Turn Off Device for the Duration of a Visit with an Intimate Partner
- 215  Other Conditions/Restrictions (please specify) \_\_\_\_\_
- 216 \_\_\_\_\_

ROOMMATE CONSENT

218 \_\_\_\_\_

219 Roommate Name Date

220 I, \_\_\_\_\_, consent to my roommate's use of authorized

221 Roommate

222 electronic monitoring in our room \_\_\_\_\_.

223 Room Number

224 \_\_\_\_\_

225 Roommate or Designated Agent Signature Date Roommate Consented to Authorized

226 Electronic Monitoring

227 \_\_\_\_\_

228 Roommate or Designated Agent Printed Name

229  **Roommate authorizes continuous 24/7 video and audio recording**

230 OR

231  Roommate's restrictions (check all that apply):

232  Prohibit Audio Recording

233  Prohibit Video Recording

234  Turn Off Device for Duration of an Examination or Procedure by a Physician or the  
235 Following Other Health Care Provider or Providers:

236 \_\_\_\_\_

237  Block Visual Recording for Duration of an Examination or Procedure by a Physician  
238 or the Following Other Health Care Provider or Providers:

239 \_\_\_\_\_

240  Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

241  Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

242  Turn Off Device for the Duration of a Visit with an Intimate Partner

243 Use of Data Obtained by Device:

244  Must obtain my consent before disseminating, publishing, or otherwise sharing the  
245 recording with third parties for something other than an administrative or legal  
246 proceeding

247  Other Conditions/Restrictions (please specify) \_\_\_\_\_

248 \_\_\_\_\_

249 For Internal Use Only

250 Date Received \_\_\_\_\_ Received By \_\_\_\_\_

251 (b) The department shall maintain a link on its website to the document set out in  
252 subsection (a) of this Code section. Such linked document shall be in a format which shall  
253 enable a person to complete the document online and print it or to print the document and  
254 complete the document in writing.

255 31-8-149.

256 Nothing in this article shall be construed to preclude the use of electronic monitoring  
257 devices nor the admissibility of audio or video recordings in criminal proceedings as  
258 otherwise authorized by law, including, but not limited to, recordings obtained in  
259 accordance with subparagraph (2)(B) of Code Section 16-11-62."

260

## **SECTION 2.**

261 All laws and parts of laws in conflict with this Act are repealed.