

# ASSEMBLY, No. 4359

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED SEPTEMBER 13, 2018

**Sponsored by:**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**SYNOPSIS**

Revises civil remedies for victims of invasion of privacy due to unauthorized recording or disclosure of sexual or intimate images.

**CURRENT VERSION OF TEXT**

As introduced.



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1 AN ACT concerning civil remedies for victims of invasion of  
2 privacy under certain circumstances, and amending P.L.2003,  
3 c.206.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.2003, c.206 (C.2A:58D-1) is amended to  
9 read as follows:

10 2. a. **[An]** Except as provided in subsection e. of this  
11 section, an actor who, in violation of section 1 of P.L.2003, c.206  
12 (C.2C:14-9), photographs, films, videotapes, records, or otherwise  
13 reproduces in any manner without consent, the image of another  
14 person who is engaged in an act of sexual penetration or sexual  
15 contact, the exposed intimate parts of another person, or the  
16 undergarment-clad intimate parts of another person shall be liable  
17 to that person, who may bring a civil action in the Superior Court.

18 b. **[An]** Except as provided in subsection e. of this section, an  
19 actor who, in violation of section 1 of P.L.2003, c.206 (C.2C:14-9),  
20 discloses without consent any photograph, film, videotape,  
21 recording or any other reproduction of the image of another person  
22 who is engaged in an act of sexual penetration or sexual contact, the  
23 exposed intimate parts of another person, or the undergarment-clad  
24 intimate parts of another person, or threatens to commit a violation,  
25 shall be liable to that person, who may bring a civil action in the  
26 Superior Court.

27 For purposes of this section: **[(1)]** "consent" means affirmative,  
28 conscious, and voluntary authorization by a person with sufficient  
29 capacity to provide the authorization; "disclose" means sell,  
30 manufacture, give, provide, lend, trade, mail, deliver, transfer,  
31 publish, distribute, circulate, disseminate, present, exhibit,  
32 advertise, offer, share, or make available via the Internet or by any  
33 other means, whether for pecuniary gain or not; and **[(2)]** "intimate  
34 parts" has the meaning ascribed to it in N.J.S.2C:14-1.

35 The consent by a person to being photographed, filmed,  
36 videotaped, recorded, or otherwise having the person's image  
37 reproduced in any manner, or making a previous confidential  
38 disclosure of the person's image to the actor or another, does not  
39 establish by itself that the person consented to the disclosure of the  
40 image by an actor alleged to have violated or threatened to violate  
41 section 1 of P.L.2003, c.206 (C.2C:14-9).

42 c. In an action under this section:

43 (1) (a) A person may file the complaint in Superior Court and  
44 make other filings using a fictitious name or initials and without  
45 listing the person's address; and

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       **(b) The person may move to seal court records in accordance**  
2 **with the Rules of Court in order to prevent the public disclosure of**  
3 **the records or any information contained therein relating to the**  
4 **person's name, address, or other identifying information, image or**  
5 **part thereof displaying an identifying characteristic of the person, or**  
6 **any other matter concerning the person's interest in privacy, and the**  
7 **court may exclude or redact any identifying information, image or**  
8 **identifying part thereof from any court record available for public**  
9 **disclosure;**

10       **(c) A person to whom this paragraph applies shall file with the**  
11 **court and serve on the accused actor a confidential information**  
12 **form that includes the excluded or redacted person's name and other**  
13 **identifying information.**

14       **(2) Nothing contained in paragraph (1) of this subsection shall**  
15 **prohibit the court from imposing further restrictions with regard to**  
16 **the disclosure of the person's name, address, or other identifying**  
17 **information, or image or part thereof displaying an identifying**  
18 **characteristic of the person when it deems it necessary to protect the**  
19 **person's interest in privacy.**

20       **d. The court may award:**

21       **(1) (a) the greater of the actual economic and noneconomic**  
22 **damages proximately caused by the actor's violation or threatened**  
23 **violation of section 1 of P.L.2003, c.206 (C.2C:14-9), including**  
24 **damages for emotional distress whether or not accompanied by**  
25 **other damages, [but] or not less than liquidated damages computed**  
26 **at [the] a rate [of \$1,000] not to exceed \$10,000 for each violation**  
27 **[of this act] or threatened violation, which amount shall take into**  
28 **consideration the age of the actor who committed the violation or**  
29 **threatened violation, the number of times a violation or threatened**  
30 **violation occurred, the breadth of disclosure of the person's image**  
31 **by the actor, if applicable, and other relevant factors; and**

32       **(b) an amount equal to any financial gain achieved by the actor**  
33 **from the disclosure of the person's image, if applicable;**

34       **(2) punitive damages upon proof of willful or reckless disregard**  
35 **of the law;**

36       **(3) reasonable attorney's fees and other litigation costs**  
37 **reasonably incurred; and**

38       **(4) such other preliminary and equitable relief as the court**  
39 **determines to be appropriate.**

40       A conviction of a violation of section 1 of P.L.2003, c.206  
41 (C.2C:14-9) shall not be a prerequisite for a civil action brought  
42 pursuant to this section.

43       **e. The following represent exceptions or limitations to liability**  
44 **regarding any civil action brought pursuant to this section:**

45       **(1) An actor shall not be liable in a civil action brought pursuant**  
46 **to subsection b. of this section if a disclosure or threatened**  
47 **disclosure of an image of a person who is engaged in an act of**  
48 **sexual penetration or sexual contact, the exposed intimate parts of a**  
49 **person, or the undergarment-clad intimate parts of a person is:**

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1 (a) made in good faith to law enforcement, in a legal  
2 proceeding, or for medical education or treatment;

3 (b) made in good faith in the reporting or investigation of  
4 unlawful conduct, or unsolicited and unwelcome conduct;

5 (c) related to a matter of public concern or public interest; or

6 (d) reasonably intended to assist the person.

7 (2) A child's parent, guardian, or other lawful custodian, or a  
8 consistent caretaker shall not be liable in a civil action brought  
9 pursuant to subsection b. of this section if a disclosure of the child's  
10 image is:

11 (a) not prohibited by law; and

12 (b) not made for the purpose of sexual arousal, sexual  
13 gratification, humiliation, degradation, or monetary or commercial  
14 gain.

15 For purposes of this paragraph: "consistent caretaker" means an  
16 individual who, without expectation of compensation: lived with a  
17 child for at least 12 months, unless the court finds good cause to  
18 accept a shorter period; regularly exercised physical care and  
19 supervision of the child; made decisions regarding the child solely  
20 or in cooperation with a parent, guardian, or other lawful custodian,  
21 or as a result of the parent being unable, unavailable, or unwilling  
22 to provide physical care and supervision for the child; and  
23 established a bonded and dependent relationship with the child with  
24 the express or implied support of the parent of the child, or without  
25 consent if no parent has been able, available, or willing to provide  
26 physical care and supervision; "parent" means a child's natural  
27 parent or other person recognized as a parent under the laws of this  
28 State.

29 (3) The disclosure of an image of a person who is engaged in an  
30 act of sexual penetration or sexual contact, the exposed intimate  
31 parts of a person, or the undergarment-clad intimate parts of a  
32 person is not a matter of public concern or public interest solely  
33 because the person in the image is a public figure.

34 (4) The provisions of this section do not alter, conflict, or  
35 establish any liability that is inconsistent with section 230 of the  
36 "Communications Act of 1934" (47 U.S.C. s.230).

37 (cf: P.L.2016, c.2, s.2)

38  
39 2. This act shall take effect immediately, and apply to any civil  
40 action filed based upon an actor who commits a violation or  
41 threatens to commit a violation of section 1 of P.L.2003, c.206  
42 (C.2C:14-9) on or after that date.  
43  
44

45 STATEMENT

46  
47 This bill would revise the civil remedies for victims of invasion  
48 of privacy due to the unauthorized recording or disclosing of sexual  
49 or intimate images, or the threat of disclosing such images, in

1 violation of section 1 of P.L.2003, c.206 (C.2C:14-9). These  
2 remedies would be pursued in a civil action brought in Superior  
3 Court.

4 Under the bill, an unauthorized actor is clarified as being a party  
5 who is acting without consent, which is defined as “affirmative,  
6 conscious, and voluntary authorization by a person with sufficient  
7 capacity to provide the authorization.” Further clarifying the  
8 concept of consent, the bill notes that the consent by a person to  
9 being photographed, filmed, videotaped, recorded, or otherwise  
10 having the person’s sexual or intimate image reproduced in any  
11 manner, or making a previous confidential disclosure of such an  
12 image to the actor or another, does not establish by itself that the  
13 person consented to the disclosure of the image by an actor alleged  
14 to have violated or threatened to violate section 1 of P.L.2003,  
15 c.206 (C.2C:14-9).

16 In a civil action brought in Superior Court, a person could file  
17 the complaint and make other filings using a fictitious name or  
18 initials and without listing the person’s address, and the person  
19 could move to seal court records in accordance with the Rules of  
20 Court in order to prevent the public disclosure of the records or any  
21 information contained therein relating to the person’s name,  
22 address, or other identifying information, or image or part thereof  
23 displaying an identifying characteristic of the person, or any other  
24 matter concerning the person’s interest in privacy. Additionally,  
25 the court could exclude or redact any identifying information,  
26 image or identifying part thereof from any court record available for  
27 public disclosure. A person proceeding using a fictitious name or  
28 initial, or having court records sealed, or with excluded or redacted  
29 information would be required to file with the court and serve on  
30 the accused actor a confidential information form that includes the  
31 excluded or redacted person’s name and other identifying  
32 information.

33 Regarding damages for liability, the court could award:

34 - the greater of the actual economic and noneconomic damages  
35 proximately caused by the actor’s violation or threatened violation  
36 of section 1 of P.L.2003, c.206 (C.2C:14-9), including damages for  
37 emotional distress whether or not accompanied by other damages,  
38 or not less than liquidated damages computed at a rate not to exceed  
39 \$10,000 (increased from \$1,000 under current law) for each  
40 violation or threatened violation. The amount of liquidated  
41 damages adjudged would take into consideration the age of the  
42 actor who committed the violation or threatened violation, the  
43 number of times a violation or threatened violation occurred, the  
44 breadth of disclosure of the person’s image by the actor, if  
45 applicable, and other relevant factors; plus

46 - an amount equal to any financial gain achieved by the actor  
47 from the disclosure of the person’s image, if applicable.

48 Pursuant to current law, an award could also include punitive  
49 damages upon proof of willful or reckless disregard of the law,

1 reasonable attorney's fees and other litigation costs reasonably  
2 incurred, and such other preliminary and equitable relief as the  
3 court determines to be appropriate.

4 Lastly, the bill incorporates several exceptions or limitations to  
5 liability regarding any civil action.

6 An actor would not be liable if a disclosure or threatened  
7 disclosure of a sexual or intimate image of a person is:

- 8 - made in good faith to law enforcement, in a legal proceeding,  
9 or for medical education or treatment;
- 10 - made in good faith in the reporting or investigation of unlawful  
11 conduct, or unsolicited and unwelcome conduct;
- 12 - related to a matter of public concern or public interest; or
- 13 - reasonably intended to assist the person.

14 A child's parent, guardian, or other lawful custodian, or a  
15 consistent caretaker would not be liable if a disclosure of the child's  
16 image is not prohibited by law, and not made for the purpose of  
17 sexual arousal, sexual gratification, humiliation, degradation, or  
18 monetary or commercial gain.

19 A child's "consistent caretaker" would not be liable on the same  
20 basis as applicable to a parent, guardian, or other lawful custodian.  
21 The bill defines a "consistent caretaker" as "an individual who,  
22 without expectation of compensation: lived with a child for at least  
23 12 months, unless the court finds good cause to accept a shorter  
24 period; regularly exercised physical care and supervision of the  
25 child; made decisions regarding the child solely or in cooperation  
26 with a parent, guardian, or other lawful custodian, or as a result of  
27 the parent being unable, unavailable, or unwilling to provide  
28 physical care and supervision for the child; and established a  
29 bonded and dependent relationship with the child with the express  
30 or implied support of the parent of the child, or without consent if  
31 no parent has been able, available, or willing to provide physical  
32 care and supervision."

33 Indicating a limitation on liability, the bill states that the  
34 disclosure of a sexual or intimate image of a person is not a matter  
35 of public concern or public interest solely because the person in the  
36 image is a public figure. Additionally, the bill provides that its  
37 provisions do not alter, conflict, or establish any liability that is  
38 inconsistent with section 230 of the "Communications Act of 1934"  
39 (47 U.S.C. s.230), which provides civil immunity for a "provider of  
40 interactive computer service" (which is an Internet service provider  
41 or website that hosts content created by third-party users, and for  
42 purposes of this bill may host third-party generated sexual or  
43 intimate images), as state law must be consistent with this federal  
44 section of law in order for civil actions seeking damages to proceed.