

SENATE, No. 2917

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2018

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

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.



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 section, an
11 actor who, in violation of section 1 of P.L.2003, c.206 (C.2C:14-9),
12 photographs, films, videotapes, records, or otherwise reproduces in
13 any manner without consent, the image of another person who is
14 engaged in an act of sexual penetration or sexual contact, the
15 exposed intimate parts of another person, or the undergarment-clad
16 intimate parts of another person shall be liable to that person, who
17 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

46 (b) The person may move to seal court records in accordance
47 with the Rules of Court in order to prevent the public disclosure of

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 the records or any information contained therein relating to the
2 person's name, address, or other identifying information, image or
3 part thereof displaying an identifying characteristic of the person, or
4 any other matter concerning the person's interest in privacy, and the
5 court may exclude or redact any identifying information, image or
6 identifying part thereof from any court record available for public
7 disclosure;

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

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

18 d. The court may award:

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

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

32 (2) punitive damages upon proof of willful or reckless disregard
33 of the law;

34 (3) reasonable attorney's fees and other litigation costs
35 reasonably incurred; and

36 (4) such other preliminary and equitable relief as the court
37 determines to be appropriate.

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

41 e. The following represent exceptions or limitations to liability
42 regarding any civil action brought pursuant to this section:

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

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)

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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.

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STATEMENT

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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.

1 Pursuant to current law, an award could also include punitive
2 damages upon proof of willful or reckless disregard of the law,
3 reasonable attorney's fees and other litigation costs reasonably
4 incurred, and such other preliminary and equitable relief as the
5 court determines to be appropriate.

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

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

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

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

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

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