

SENATE, No. 2917
STATE OF NEW JERSEY
218th LEGISLATURE

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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.

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

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

c. In an action under this section:

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

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

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

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

d. The court may award:

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

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

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

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

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

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

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

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

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

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

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

(d) reasonably intended to assist the person.

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

(a) not prohibited by law; and

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

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

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

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

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

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

STATEMENT

This bill would revise the civil remedies for victims of invasion of privacy due to the unauthorized recording or disclosing of sexual or intimate images, or the threat of disclosing such images, in violation of section 1 of P.L.2003, c.206 (C.2C:14-9). These remedies would be pursued in a civil action brought in Superior Court.

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

In a civil action brought in Superior Court, a person could file the complaint and make other filings using a fictitious name or initials and without listing the person's address, and the person could move to seal court records in accordance with the Rules of Court in order to prevent the public disclosure of the records or any information contained therein relating to the person's name, address, or other identifying information, or

image or part thereof displaying an identifying characteristic of the person, or any other matter concerning the person's interest in privacy. Additionally, the court could exclude or redact any identifying information, image or identifying part thereof from any court record available for public disclosure. A person proceeding using a fictitious name or initial, or having court records sealed, or with excluded or redacted information would be required to file with the court and serve on the accused actor a confidential information form that includes the excluded or redacted person's name and other identifying information.

Regarding damages for liability, the court could award:

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

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

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

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

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

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

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

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