

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3730

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2024

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3730.

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 the Law Division of the Superior Court.

To clarify the concept of consent, the bill provides 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).

As amended, a person is permitted to file the complaint in the Law Division of the Superior Court as a confidential matter and may use a fictitious name or initials, and does not have to list the person's address.

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, lawful custodian, or "consistent caretaker," as the term is defined in the bill, 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.

Finally, the bill provides that its provisions do not alter, conflict, or establish any liability that is inconsistent with section 230 of the Federal 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.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- (1) Require a person file a complaint in the Law Division of the Superior Court as a confidential matter; and
- (2) Remove provisions related to the sealing of court records and providing certain records to accused actor.