

SENATE, No. 345

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

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District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Expands crime of invasion of privacy to include “upskirting”: photographing or filming the image of the undergarment-clad intimate parts of another.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning invasion of privacy and amending P.L.2003,
2 c.206.

3

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

6

7 1. Section 1 of P.L.2003, c.206 (C.2C:14-9) is amended to read
8 as follows:

9 1. a. An actor commits a crime of the fourth degree if, knowing
10 that he is not licensed or privileged to do so, and under
11 circumstances in which a reasonable person would know that
12 another may expose intimate parts or may engage in sexual
13 penetration or sexual contact, he observes another person without
14 that person's consent and under circumstances in which a reasonable
15 person would not expect to be observed.

16 b. (1) An actor commits a crime of the third degree if, knowing
17 that he is not licensed or privileged to do so, he photographs, films,
18 videotapes, records, or otherwise reproduces in any manner, the
19 image of another person whose intimate parts are exposed or who is
20 engaged in an act of sexual penetration or sexual contact, without
21 that person's consent and under circumstances in which a reasonable
22 person would not expect to be observed.

23 (2) An actor commits a crime of the fourth degree if, knowing
24 that he is not licensed or privileged to do so, he photographs, films,
25 videotapes, records, or otherwise reproduces in any manner, the
26 image of the undergarment-clad intimate parts of another person,
27 without that person's consent and under circumstances in which a
28 reasonable person would not expect to have his undergarment-clad
29 intimate parts observed.

30 c. An actor commits a crime of the third degree if, knowing
31 that he is not licensed or privileged to do so, he discloses any
32 photograph, film, videotape, recording or any other reproduction of
33 the image, taken in violation of subsection b. of this section, of: (1)
34 another person who is engaged in an act of sexual penetration or
35 sexual contact; (2) another person whose intimate parts are exposed;
36 or [who is engaged in an act of sexual penetration or sexual
37 contact] (3) another person's undergarment-clad intimate parts,
38 unless that person has consented to such disclosure.

39 For purposes of this subsection **[,]**: (1) "disclose" means sell,
40 manufacture, give, provide, lend, trade, mail, deliver, transfer,
41 publish, distribute, circulate, disseminate, present, exhibit, advertise
42 **[or]**, offer, share, or make available via the Internet or by any other
43 means, whether for pecuniary gain or not; and (2) "intimate parts"
44 has the meaning ascribed to it in N.J.S.2C:14-1. Notwithstanding

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 provisions of subsection b. of N.J.S.2C:43-3, a fine not to
2 exceed \$30,000 may be imposed for a violation of this subsection.

3 d. It is an affirmative defense to a crime under this section that:

4 (1) the actor posted or otherwise provided prior notice to the
5 person of the actor's intent to engage in the conduct specified in
6 subsection a., b., or c., and

7 (2) the actor acted with a lawful purpose.

8 e. (1) It shall not be a violation of subsection a. or b. to observe
9 another person in the access way, foyer or entrance to a fitting room
10 or dressing room operated by a retail establishment or to
11 photograph, film, videotape, record or otherwise reproduce the
12 image of such person, if the actor conspicuously posts at the
13 entrance to the fitting room or dressing room prior notice of his
14 intent to make the observations, photographs, films, videotapes,
15 recordings or other reproductions.

16 (2) It shall be a violation of subsection c. to disclose in any
17 manner any such photograph, film, videotape or recording of
18 another person using a fitting room or dressing room except under
19 the following circumstances:

20 (a) to law enforcement officers in connection with a criminal
21 prosecution;

22 (b) pursuant to subpoena or court order for use in a legal
23 proceeding; or

24 (c) to a co-worker, manager or supervisor acting within the
25 scope of his employment.

26 f. It shall be a violation of subsection a. or b. to observe
27 another person in a private dressing stall of a fitting room or
28 dressing room operated by a retail establishment or to photograph,
29 film, videotape, record or otherwise reproduce the image of another
30 person in a private dressing stall of a fitting room or dressing room.

31 g. For purposes of this act, a law enforcement officer, or a
32 corrections officer or guard in a correctional facility or jail, who is
33 engaged in the official performance of his duties shall be deemed to
34 be licensed or privileged to make and to disclose observations,
35 photographs, films, videotapes, recordings or any other
36 reproductions.

37 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
38 provisions of law, a conviction arising under subsection b. of this
39 section shall not merge with a conviction under subsection c. of this
40 section, nor shall a conviction under subsection c. merge with a
41 conviction under subsection b.

42 (cf: P.L.2003, c.206, s.1)

43

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

46 2. a. An actor who, **【without license or privilege to do so,】** in
47 violation of section 1 of P.L.2003, c.206 (C.2C:14-9), photographs,
48 films, videotapes, records, or otherwise reproduces in any manner,

1 the image of another person **【whose intimate parts are exposed or】**
2 who is engaged in an act of sexual penetration or sexual contact **【,**
3 without that person's consent and under circumstances in which a
4 reasonable person would not expect to be observed**】, the exposed**
5 **intimate parts of another person, or the undergarment-clad intimate**
6 **parts of another person** shall be liable to that person, who may bring
7 a civil action in the Superior Court.

8 b. An actor who, **【without license or privilege to do so,】** in
9 violation of section 1 of P.L.2003, c.206 (C.2C:14-9), discloses any
10 photograph, film, videotape, recording or any other reproduction of
11 the image of another person **【whose intimate parts are exposed or】**
12 who is engaged in an act of sexual penetration or sexual contact **【,**
13 without that person's consent and under circumstances in which a
14 reasonable person would not expect to be observed**】, the exposed**
15 **intimate parts of another person, or the undergarment-clad intimate**
16 **parts of another person** shall be liable to that person, who may bring
17 a civil action in the Superior Court. For purposes of this section
18 **【,】:** (1) "disclose" means sell, manufacture, give, provide, lend,
19 trade, mail, deliver, transfer, publish, distribute, circulate,
20 disseminate, present, exhibit, advertise **【or】**, offer, share, or make
21 available via the Internet or by any other means, whether for
22 pecuniary gain or not; and (2) "intimate parts" has the meaning
23 ascribed to it in N.J.S.2C:14-1.

24 c. The court may award:
25 (1) actual damages, but not less than liquidated damages
26 computed at the rate of **【\$1,000.00】** \$1,000 for each violation of
27 this act;
28 (2) punitive damages upon proof of willful or reckless disregard
29 of the law;
30 (3) reasonable attorney's fees and other litigation costs
31 reasonably incurred; and
32 (4) such other preliminary and equitable relief as the court
33 determines to be appropriate.

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

38
39 3. This act shall take effect immediately.
40
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42 STATEMENT

43
44 This bill would expand the crime of invasion of privacy to
45 include "upskirting": photographing or filming the image of the
46 undergarment-clad intimate parts of another, or disclosing such an
47 image.

1 Currently, section 1 of P.L.2003, c.206 (C.2C:14-9) provides that
2 it is a crime of the third degree if a person, knowing that he is not
3 licensed or privileged to do so, photographs, films, videotapes,
4 records, or otherwise reproduces in any manner, the image of
5 another person whose intimate parts are exposed or who is engaged
6 in an act of sexual penetration or sexual contact, without that
7 person's consent and under circumstances in which a reasonable
8 person would not expect to be observed.

9 Under the bill, it would be a crime of the fourth degree if a
10 person, knowing that he is not licensed or privileged to do so,
11 photographs, films, videotapes, records, or otherwise reproduces in
12 any manner, the image of the undergarment-clad intimate parts of
13 another person, without that person's consent and under
14 circumstances in which a reasonable person would not expect to
15 have his undergarment-clad intimate parts observed. A crime of the
16 fourth degree is ordinarily punishable by a term of imprisonment of
17 up to 18 months, a fine of up to \$10,000, or both.

18 The bill would also make it a crime of the third degree to
19 disclose any such photograph, film, videotape, recording, or any
20 other reproduction of the image of another person's undergarment-
21 clad intimate parts. A crime of the third degree is ordinarily
22 punishable by a term of imprisonment of three to five years, a fine
23 of up to \$15,000, or both.

24 The bill also clarifies the definition of "disclose" with respect to
25 all invasion of privacy crimes set forth in section 1 of P.L.2003,
26 c.206 (C.2C:14-9). Currently, the term means "sell, manufacture,
27 give, provide, lend, trade, mail, deliver, transfer, publish, distribute,
28 circulate, disseminate, present, exhibit, advertise or offer." Under
29 the bill, the term "disclose" would also include "share, or make
30 available via the Internet or by any other means, whether for
31 pecuniary gain or not." In addition, the bill specifies that the term
32 "intimate parts" has the meaning ascribed to it in N.J.S.2C:14-1
33 ("sexual organs, genital area, anal area, inner thigh, groin, buttock
34 or breast of a person").

35 Finally, the bill amends section 2 of P.L.2003, c.206 (C.2A:58D-
36 1), which authorizes civil actions for monetary and equitable relief
37 by persons who are victims of the crime of invasion of privacy, to
38 add references to the new criminal categories of photographing or
39 filming the image of the undergarment-clad intimate parts of
40 another, or disclosing such an image. The amendments further
41 specify that a conviction for an invasion of privacy crime is not a
42 prerequisite for a victim to commence a civil action.

43 The bill is not intended to impose any liability on the news
44 media, as that term is defined in subsection a. of section 2 of
45 P.L.1977, c.253 (C.2A:84A-21a), or on reporters while acting in the
46 course of pursuing their professional activities, as that phrase in
47 defined in subsection h. of that section.