

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2281

# STATE OF NEW JERSEY

DATED: JUNE 15, 2023

The Assembly Judiciary Committee reports favorably Assembly Bill No. 2281.

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 N.J.S.A.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. The bill defines consent as “affirmative, conscious, and voluntary authorization by a person with sufficient capacity to provide the authorization.” 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 N.J.S.A.2C:14-9.

In a civil action brought in Superior Court, a person is permitted to file the complaint and make other filings using a fictitious name or initials and without listing the person’s address. The person may also 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 is permitted to exclude or redact any identifying information, image or identifying part thereof from any court record available for public disclosure. A person who proceeds with 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 N.J.S.A.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:

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

A child's parent, guardian, or other lawful custodian 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 also not be liable on the same basis as applicable to a parent, guardian, or other lawful custodian.

Finally, 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.