

**2C:14-9 & 2A:58D-1**  
**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2016                      **CHAPTER:** 2

**NJSA:** 2C:14-9 & 2A:58D-1      (Expands crime of invasion of privacy to include “upskirting”; photographing or  
filming the image of the undergarment-clad intimate parts of another)

**BILL NO:** A156                      (Substituted for S345)

**SPONSOR(S)** Tucker and others

**DATE INTRODUCED:** January 27, 2016

**COMMITTEE:**                      **ASSEMBLY:**      Judiciary  
**SENATE:**                      Law and Public Safety

**AMENDED DURING PASSAGE:**      Yes

**DATE OF PASSAGE:**                      **ASSEMBLY:**      February 18, 2016

**SENATE:**                      March 14, 2016

**DATE OF APPROVAL:**                      May 5, 2016

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (First reprint enacted)

**A156**

**SPONSOR'S STATEMENT:** (Begins on page 4 of introduced bill)                      Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:**                      Yes

**SENATE:**                      Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:**                      No

**LEGISLATIVE FISCAL ESTIMATE:**                      No

**S345**

**SPONSOR'S STATEMENT:** (Begins on page 4 of introduced bill)                      Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:**                      No

**SENATE:**                      Yes

**FLOOR AMENDMENT STATEMENT:**                      No

**LEGISLATIVE FISCAL ESTIMATE:**                      No

(continued)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Gov. Christie approves making 'upskirting' a crime," New Jersey 101.5, May 5, 2016

"Gov. Chris Christie approves making 'upskirting' a crime, News 12 New Jersey, May 5, 2016

"Christie signs ban on 'upskirting'" nj.com True Jersey, May 5, 2016

"Gov. Chris Christie approves making 'upskirting' a crime," New Jersey Herald, May 5, 2016

"Christie signs bill outlawing 'upskirt' photos," NorthJersey.com, May 5, 2016

"New law makes 'upskirting' a crime in New Jersey," The Philadelphia Inquirer, May 6, 2016

"New Jersey cracks down on voyeuristic photography by banning upskirting," Newark Examiner, May 7, 2016

"'Upskirting' now a crime in N.J.," The Press of Atlantic City, May 6, 2016

"Legislative roundup," The Record, May 6, 2016

"Christie signs bill that bans 'upskirting,'" The Star-Ledger, May 6, 2016

"Politics," The Trenton Times, May 6, 2016

RWH/CL

P.L.2016, CHAPTER 2, *approved May 5, 2016*  
Assembly, No. 156 (*First Reprint*)

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,  
10 knowing 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,  
17 knowing that he is not licensed or privileged to do so, he  
18 photographs, films, videotapes, records, or otherwise reproduces in  
19 any manner, the image of another person whose intimate parts are  
20 exposed or who is engaged in an act of sexual penetration or sexual  
21 contact, without that person's consent and under circumstances in  
22 which a reasonable 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,

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AJU committee amendments adopted February 8, 2016.

1 publish, distribute, circulate, disseminate, present, exhibit, advertise  
2 **【or】, offer, share, or make available via the Internet or by any other**  
3 **means, whether for pecuniary gain or not; and (2) “intimate parts”**  
4 **has the meaning ascribed to it in N.J.S.2C:14-1.** Notwithstanding  
5 the provisions of subsection b. of N.J.S.2C:43-3, a fine not to  
6 exceed \$30,000 may be imposed for a violation of this subsection.

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

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

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

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

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

24 (a) to law enforcement officers in connection with a criminal  
25 prosecution;

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

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

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

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

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

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

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

3       2. a. An actor who, **【without license or privilege to do so,】** in  
4 violation of <sup>1</sup>section 1 of<sup>1</sup> P.L.2003, c.206 (C.2C:14-9),  
5 photographs, films, videotapes, records, or otherwise reproduces in  
6 any manner, the image of another person **【whose intimate parts are**  
7 **exposed or】** who is engaged in an act of sexual penetration or  
8 sexual contact**【,** without that person's consent and under  
9 circumstances in which a reasonable person would not expect to be  
10 **observed】**, the exposed intimate parts of another person, or the  
11 undergarment-clad intimate parts of another person shall be liable  
12 to that person, who may bring a civil action in the Superior Court.

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

29       c. The court may award:

30       (1) actual damages, but not less than liquidated damages  
31 computed at the rate of **【\$1,000.00】** \$1,000 for each violation of  
32 this act;

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

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

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

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

42 (cf: P.L.2003, c.206, s.2)

43

44       3. This act shall take effect immediately.

**A156 [1R]**

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

**ASSEMBLY, No. 156**

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**STATE OF NEW JERSEY**

**217th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblywoman CLEOPATRA G. TUCKER**

**District 28 (Essex)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman RONALD S. DANCER**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman GABRIELA M. MOSQUERA**

**District 4 (Camden and Gloucester)**

**Co-Sponsored by:**

**Assemblywoman Muoio**

**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.



A156 TUCKER, VAINIERI HUTTLE

2

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,  
10 knowing 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,  
17 knowing that he is not licensed or privileged to do so, he  
18 photographs, films, videotapes, records, or otherwise reproduces in  
19 any manner, the image of another person whose intimate parts are  
20 exposed or who is engaged in an act of sexual penetration or sexual  
21 contact, without that person's consent and under circumstances in  
22 which a reasonable 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.



A156 TUCKER, VAINIERI HUTTLE

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 P.L.2003, c.206 (C.2C:14-9), photographs, films,  
48 videotapes, records, or otherwise reproduces in any manner, the

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

35  
 36 3. This act shall take effect immediately.  
 37  
 38

#### 39 STATEMENT

40  
 41 This bill would expand the crime of invasion of privacy to  
 42 include "upskirting": photographing or filming the image of the  
 43 undergarment-clad intimate parts of another, or disclosing such an  
 44 image.

45 Currently, P.L.2003, c.206 (C.2C:14-9) provides that it is a crime  
 46 of the third degree if a person, knowing that he is not licensed or  
 47 privileged to do so, photographs, films, videotapes, records, or

1 otherwise reproduces in any manner, the image of another person  
2 whose intimate parts are exposed or who is engaged in an act of  
3 sexual penetration or sexual contact, without that person's consent  
4 and under circumstances in which a reasonable person would not  
5 expect to be observed.

6 Under the bill, it would be a crime of the fourth degree if a  
7 person, knowing that he is not licensed or privileged to do so,  
8 photographs, films, videotapes, records, or otherwise reproduces in  
9 any manner, the image of the undergarment-clad intimate parts of  
10 another person, without that person's consent and under  
11 circumstances in which a reasonable person would not expect to  
12 have his undergarment-clad intimate parts observed.

13 It would be a crime of the third degree to disclose any such  
14 photograph, film, videotape, recording, or any other reproduction of  
15 the image.

16 A crime of the third degree is punishable by a term of  
17 imprisonment of three to five years or a fine up to \$15,000, or both;  
18 a crime of the fourth degree, by a term up to 18 months or a fine up  
19 to \$10,000, or both.

20 The bill also clarifies the definition of "disclose" in the statute.  
21 Currently, the term is defined as "sell, manufacture, give, provide,  
22 lend, trade, mail, deliver, transfer, publish, distribute, circulate,  
23 disseminate, present, exhibit, advertise or offer." Under the bill, the  
24 term "disclose" would also include "share, or make available via the  
25 Internet or by any other means, whether for pecuniary gain or not."  
26 In addition, the bill specifies that the term "intimate parts" has the  
27 meaning ascribed to it in N.J.S.2C:14-1 ("sexual organs, genital  
28 area, anal area, inner thigh, groin, buttock or breast of a person").

29 The bill also amends section 2 of P.L.2003, c.206 (C.2A:58D-1),  
30 which authorizes civil actions by persons who are victims of the  
31 crime of invasion of privacy, to add photographing or filming the  
32 image of the undergarment-clad intimate parts of another, or  
33 disclosing such an image. Under section 2 of P.L.2003, c.206  
34 (C.2A:58D-1), the court may award a victim:

35 (1) actual damages, but not less than liquidated damages  
36 computed at the rate of \$1,000 for each violation;

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

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

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

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 156**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 8, 2016

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 156.

This bill, as amended, would expand the crime of invasion of privacy to include “upskirting”: photographing or filming the image of the undergarment-clad intimate parts of another, or disclosing such an image.

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

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

It would be a crime of the third degree to disclose any such photograph, film, videotape, recording, or any other reproduction of the image. A crime of the third degree is punishable by a term of imprisonment of three to five years or a fine up to \$15,000, or both.

This bill also clarifies the definition of “disclose” with respect to all invasion of privacy crimes set forth in section 1 of P.L.2003, c.206 (C.2C:14-9). Currently, the term means “sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer.” Under the bill, the term “disclose” would also include “share, or make available via the Internet or by any other means, whether for pecuniary gain or not.” In addition, the bill specifies that the term

“intimate parts” has the meaning ascribed to it in N.J.S.2C:14-1 (“sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person”).

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

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

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

#### COMMITTEE AMENDMENTS

Section 2 is amended to specify that a conviction for an invasion of privacy is not a prerequisite for a victim to commence a civil action. The remaining changes to the section are technical in nature.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 156

# STATE OF NEW JERSEY

DATED: MARCH 3, 2016

The Senate Law and Public Safety Committee reports favorably Assembly Bill No. 156 (1R).

As reported by the committee, Assembly Bill No. 156 1R expands the crime of invasion of privacy to include “upskirting,” a term commonly used to describe the practice of secretly photographing underneath a person’s clothing.

The bill specifically makes it a crime of the fourth degree for a person, knowing that he or she is not licensed or privileged to do so, to photograph, film, videotape, record, or otherwise reproduce in any manner, the image of the undergarment-clad intimate parts of another person, without that person’s consent and under circumstances in which a reasonable person would not expect to have observed his or her undergarment-clad intimate parts. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Under the State’s invasion of privacy law, it currently is a crime of the third degree for a person, knowing that he or she is not licensed or privileged to do so, photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

The bill also makes it a crime of the third degree to disclose any photograph, film, videotape, recording, or any other reproduction of the image of another person’s undergarment-clad intimate parts. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill also expands the definition of “disclose.” Currently, the term means “sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer.” Under the bill, the term “disclose” also includes “share, or make available via the Internet or by any other means, whether for pecuniary gain or not.” In addition, the bill specifies that the term “intimate parts” refers to “sexual organs,

genital area, anal area, inner thigh, groin, buttock or breast of a person.”

Finally, the bill adds to the current law authorizing civil actions for monetary and equitable relief by persons who are victims of the crime of invasion of privacy references to the new criminal categories of photographing or filming the image of the undergarment-clad intimate parts of another, or disclosing such an image. The bill specifies that a conviction for an invasion of privacy crime is not a prerequisite for a victim to commence a civil action.

As reported by the committee, this bill is identical to Senate Bill No. 345, also reported by the committee on this same date.

# 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)**

**Senator KEVIN J. O'TOOLE**

**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  
41

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.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE, No. 345

# STATE OF NEW JERSEY

DATED: MARCH 3, 2016

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 345.

As reported by the committee, Senate Bill No. 345 expands the crime of invasion of privacy to include “upskirting,” a term commonly used to describe the practice of secretly photographing underneath a person’s clothing.

The bill specifically makes it a crime of the fourth degree for a person, knowing that he or she is not licensed or privileged to do so, to photograph, film, videotape, record, or otherwise reproduce in any manner, the image of the undergarment-clad intimate parts of another person, without that person’s consent and under circumstances in which a reasonable person would not expect to have observed his or her undergarment-clad intimate parts. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Under the State’s invasion of privacy law, it currently is a crime of the third degree for a person, knowing that he or she is not licensed or privileged to do so, photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person’s consent and under circumstances in which a reasonable person would not expect to be observed.

The bill also makes it a crime of the third degree to disclose any photograph, film, videotape, recording, or any other reproduction of the image of another person’s undergarment-clad intimate parts. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The bill also expands the definition of “disclose.” Currently, the term means “sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer.” Under the bill, the term “disclose” also includes “share, or make available via the Internet or by any other means, whether for pecuniary gain or not.” In addition, the bill specifies that the term “intimate parts” refers to “sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.”

Finally, the bill adds to the current law authorizing civil actions for monetary and equitable relief by persons who are victims of the crime of invasion of privacy references to the new criminal categories of photographing or filming the image of the undergarment-clad intimate parts of another, or disclosing such an image. The bill specifies that a conviction for an invasion of privacy crime is not a prerequisite for a victim to commence a civil action.

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As reported by the committee, this bill is identical to Assembly Bill No. 156 (1R), also reported by the committee on this same date.

# Governor Christie Takes Action On Pending Legislation, Signs Bill Prohibiting "Upskirting"

Thursday, May 5, 2016 Tags: [Bill Action](#)



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**Trenton, NJ** - Governor Chris Christie today signed A-156 (Tucker, Vainieri Huttle, Dancer, Quijano, Wimberly, Mosquera, Kean, O'Toole) to criminalize "upskirting" under New Jersey's invasion of privacy laws.

"As parents in this highly digital age, we're always concerned about protecting our children and our privacy, and a big part of doing that is for state criminal laws to keep up with new and emerging technologies," Governor Christie said. "This new law targets perpetrators of a perverse and growing form of pornography that victimizes vulnerable women and children in a matter of seconds."

This new law prohibits a person from photographing, filming, publishing and sharing the image of the clothed intimate parts of another person without consent and under circumstances in which a reasonable person would not expect to have his or her private body parts observed. The act of recording "upskirt" images or videos is a fourth-degree crime; the act of publishing or sharing is a third-degree crime; and the law allows victims to seek civil damages.

A fourth-degree crime is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. A third-degree crime is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

The Governor also took the following action on other pending legislation:

### BILLS VETOED:

**A-3417 (Pintor Marin, Ruiz) – CONDITIONAL** - Designates portion of State Highway Route No. 21 in City of Newark as "Roberto Clemente Memorial Highway"

**A-1210 (Mosquera, Prieto, DeAngelo, Quijano, Sumter, Oliver, Schaer, Lampitt, Turner, Vitale) – CONDITIONAL** - Provides \$21 minimum annual energy assistance to qualified families; qualifies families to receive additional nutritional assistance

###

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