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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 8, 2022
Subject: Bill Brief for SB 385

Senate Bill 385 requires registration as a sex offender for certain violations of the crime of breach of privacy.

Section 1 amends K.S.A. 22-4902, the statute that defines who is required to register under the Kansas offender registration act. The bill amends the definition of “sex offender” in subsection (b) to include any person convicted of breach of privacy, as defined in K.S.A. 21-6101(a)(6) or (a)(7). A copy of K.S.A. 21-6101 is attached for reference.

Section 2 amends K.S.A. 22-4906, the statute that provides the duration of offender registration requirements. The amendment to subsection (a) provides that a person is required to register as a sex offender for 15 years if convicted of breach of privacy, as defined in K.S.A. 21-6101(a)(6) or (a)(7).

21-6101. Breach of privacy. (a) Breach of privacy is knowingly and without lawful authority:

(1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;

(2) divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it;

(3) entering with intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;

(4) installing or using outside or inside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible without the use of such device, without the consent of the person or persons entitled to privacy therein;

(5) installing or using any device or equipment for the interception of any telephone, telegraph or other wire or wireless communication without the consent of the person in possession or control of the facilities for such communication;

(6) installing or using a concealed camcorder, motion picture camera or photographic camera of any type to secretly videotape, film, photograph or record, by electronic or other means, another identifiable person under or through the clothing being worn by that other person or another identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which that other person has a reasonable expectation of privacy;

(7) disseminating or permitting the dissemination of any videotape, photograph, film or image obtained in violation of subsection (a)(6); or

(8) disseminating any videotape, photograph, film or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which such identifiable person had a reasonable expectation of privacy, with the intent to harass, threaten or intimidate such identifiable person, and such identifiable person did not consent to such dissemination.

(b) Breach of privacy as defined in:

(1) Subsection (a)(1) through (a)(5) is a class A nonperson misdemeanor;

(2) subsection (a)(6) or (a)(8) is a:

(A) Severity level 8, person felony, except as provided in subsection (b)(2)(B); and

(B) severity level 5, person felony upon a second or subsequent conviction within the previous five years; and

(3) subsection (a)(7) is a severity level 5, person felony.

(c) Subsection (a)(1) shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

(d) The provisions of this section shall not apply to: (1) An operator of a switchboard, or any officer, employee or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility; (2) a provider of an interactive computer service, as defined in 47 U.S.C. § 230, for content provided by another person; (3) a radio common carrier, as defined in K.S.A. [66-1,143](#), and amendments thereto; and (4) a local exchange carrier or telecommunications carrier as defined in K.S.A. [66-1,187](#), and amendments thereto.

(e) The provisions of subsection (a)(8) shall not apply to a person acting with a bona fide and lawful scientific, educational, governmental, news or other similar public purpose.

(f) As used in this section, "private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

History: L. 2010, ch. 136, § 171; L. 2011, ch. 63, § 1; L. 2016, ch. 96, § 5; July 1.

Source or Prior Law:

21-4001, 21-4002.