

CHAPTER 138

AN ACT establishing a crime-fraud exception to the marital and civil union partnership privilege, and amending P.L.1960, c.52.

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

1. The Legislature finds and declares that:

a. Currently, section 22 of P.L.1960, c.52 (C.2A:84A-22), “The Evidence Act, 1960,” also enumerated as Rule 509 of the New Jersey Rules of Evidence, provides that no person shall disclose any communication made in confidence between such person and his or her spouse or partner in a civil union couple unless both consent to the disclosure, or unless the communication is relevant to an issue in an action between them, or in a criminal action or proceeding in which either spouse or partner consents to the disclosure, or in a criminal action or proceeding under section 17 of P.L.1960, c.52 (C.2A:84A-17), also referenced as Rule 501 of the New Jersey Rules of Evidence, for which a testimonial privilege does not apply. This privilege does not terminate with the couple’s divorce, dissolution of civil union, or separation.

b. This privilege arises from the strong public policy of encouraging free and uninhibited communication between spouses and partners, and, consequently, of protecting the sanctity and tranquility of marriages and civil unions. However, in its current form, this privilege also unintentionally serves to immunize conversations between spouses and partners about their ongoing and future joint criminal behavior.

c. In a unanimous decision, State v. Terry, 218 N.J. 224 (2014), the New Jersey Supreme Court proposed an amendment to Rule 509 of the New Jersey Rules of Evidence, which corresponds to section 22 of “The Evidence Act, 1960,” to include a crime-fraud exception to the communications privilege in an effort to strike an appropriate balance between marital and civil union partnership privacy and the public’s interest in attaining justice.

d. Amending “The Evidence Act, 1960” in accordance with the New Jersey Supreme Court’s proposal will aid in preventing the unintended consequence of immunizing the criminal activity of certain spouses and partners who invoke the privilege, while preserving the general privilege and its intended purpose of protecting and encouraging free and uninhibited communication and confidence between spouses and civil union partners.

2. Section 22 of P.L.1960, c.52 (C.2A:84A-22) is amended to read as follows:

C.2A:84A-22 Marital privilege – confidential communications.

22. Marital privilege--Confidential communications.

(1) Except as otherwise provided in this section, no person shall disclose any communication made in confidence between such person and his or her spouse or civil union partner.

(2) There is no privilege:

(a) if both spouses or partners consent to the disclosure;

(b) if the communication is relevant to an issue in an action between the spouses or partners;

(c) in a criminal action or proceeding in which either spouse or partner consents to the disclosure;

(d) in a criminal action or proceeding coming within section 17 of P.L.1960, c.52 (C.2A:84A-17); or

(e) in a criminal action or proceeding if the communication relates to an ongoing or future crime or fraud in which the spouses or partners were or are joint participants at the time of the communication.

(3) When a spouse or partner is incapacitated or deceased, consent to the disclosure may be given for such spouse or partner by the guardian, executor, or administrator. The requirement for consent shall not terminate with divorce, dissolution of civil union or separation. A communication between spouses or partners while living separate and apart under a divorce from bed and board or legal separation from a partner in a civil union shall not be a privileged communication.

3. This act shall take effect immediately.

Approved November 9, 2015.