

STATE OF NEW YORK

8734

2017-2018 Regular Sessions

IN ASSEMBLY

October 20, 2017

Introduced by M. of A. PAULIN, GALEF, MOSLEY, CROUCH -- Multi-Sponsored
by -- M. of A. D'URSO, SOLAGES -- read once and referred to the
Committee on Judiciary

AN ACT to amend the civil rights law, in relation to creating a private
right of action for unconsented removal or tampering with a sexually
protective device

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The civil rights law is amended by adding a new section
2 52-b to read as follows:

3 § 52-b. Private right of action for unconsented removal or tampering
4 with a sexually protective device. 1. Any person who engaged in sexual
5 intercourse, oral sexual conduct or anal sexual conduct, as defined in
6 section 130.00 of the penal law, with another person that was mutually
7 agreed upon by the parties involved with the explicit understanding and
8 knowledge that a sexually protective device would be used shall have a
9 private right of action for damages against such other person under any
10 of the following conditions:

11 (a) The other person intentionally and without consent removed or
12 tampered with such sexually protective device during such sexual inter-
13 course, oral sexual conduct or anal sexual conduct, in a manner likely
14 to render such device ineffective for its common purpose;

15 (b) The other person intentionally and without consent used a sexually
16 protective device during such sexual intercourse, oral sexual conduct or
17 anal sexual conduct that such other person knew had been tampered with
18 in a manner likely to render such device ineffective for its common
19 purpose; or

20 (c) The other person intentionally misled the person into believing
21 that a sexually protective device was being used by such other person
22 during such sexual intercourse, oral sexual conduct or anal sexual

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 conduct, and such sexually protective device was known by such other
2 person to be either not used or inoperable.

3 2. Any claim made pursuant to this section must meet the pleading
4 requirements of subdivision (b) of rule three thousand sixteen of the
5 civil practice law and rules and shall be demonstrated to the satisfac-
6 tion of the finder of fact by clear and convincing evidence.

7 3. Damages recovered by a plaintiff pursuant to this section shall be
8 limited to compensatory damages.

9 4. For purposes of this section, the term "sexually protective device"
10 shall mean any one of the following intended to prevent pregnancy or
11 sexually transmitted infection: male or female condom, spermicide,
12 diaphragm, cervical cap, contraceptive sponge, dental dam, or another
13 physical device.

14 § 2. This act shall take effect on the ninetieth day after it shall
15 have become a law, and shall apply to acts occurring on or after such
16 date.