STATE OF NEW YORK

8734--A

2017-2018 Regular Sessions

IN ASSEMBLY

October 20, 2017

Introduced by M. of A. PAULIN, GALEF, MOSLEY, CROUCH, DINOWITZ -- Multi-Sponsored by -- M. of A. D'URSO, SOLAGES -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, do enact as follows:

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

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

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

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

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

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(c) The other person intentionally misled the person into believing that a sexually protective device was being used by such other person during such sexual intercourse, oral sexual conduct or anal sexual conduct, and such sexually protective device was known by such other person to be either not used or inoperable.

2. Past consent to sexual activity without the use of a sexually protective device shall not alone constitute consent to sexual activity without the use of a sexually protective device at any future time.

3. Any claim made pursuant to this section must meet the pleading requirements of subdivision (b) of rule three thousand sixteen of the civil practice law and rules.

4. Damages recovered by a plaintiff pursuant to this section shall include compensatory damages. In addition thereto, the trier of fact may award punitive damages and such other non-monetary relief as may be appropriate.

5. Nothing in this section shall be deemed to abrogate or otherwise limit any right or remedy otherwise conferred by federal or state law.

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

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