

# 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 Assem-  
bly, 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 inter-  
course, 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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1 (c) The other person intentionally misled the person into believing  
2 that a sexually protective device was being used by such other person  
3 during such sexual intercourse, oral sexual conduct or anal sexual  
4 conduct, and such sexually protective device was known by such other  
5 person to be either not used or inoperable.

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

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

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

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

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

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