

# STATE OF NEW YORK

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1313--C

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

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Introduced by M. of A. PAULIN, GALEF, MOSLEY, CROUCH, DINOWITZ, SEAWRIGHT -- Multi-Sponsored by -- M. of A. D'URSO, SOLAGES -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes 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:

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

3 § 52-c. 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 to help  
9 prevent or safeguard against pregnancy or a sexually transmitted  
10 infection shall have a private right of action for damages against such  
11 other person under any of the following conditions:

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

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

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

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

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

14 3. Damages recovered by a plaintiff pursuant to this section shall  
15 include compensatory damages. In addition thereto, the trier of fact  
16 may award punitive damages and such other non-monetary relief as may be  
17 appropriate. In awarding damages, the court may consider the emotional  
18 impact of the defendant's conduct, including but not limited to, the  
19 risk of sexually transmitted diseases, and the risk of nonconsensual  
20 pregnancy.

21 4. Nothing in this section shall be deemed to abrogate or otherwise  
22 limit any right or remedy otherwise conferred by federal or state law  
23 including but not limited to, any right or remedy related to child  
24 support, nor shall any award under this section be used to offset child  
25 support obligations that may arise in connection with this section.

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

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