

# STATE OF NEW YORK

4400--C

2019-2020 Regular Sessions

## IN SENATE

March 11, 2019

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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-c to read as follows:

§ 52-c. 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

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

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1 in a manner likely to render such device ineffective for its common  
2 purpose; or

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

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

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

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

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

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