

# STATE OF NEW YORK

---

1313--C

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

---

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.

LBD01747-06-0

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.