STATE OF NEW YORK

4032

2023-2024 Regular Sessions

IN SENATE

February 2, 2023

Introduced by Sen. SCARCELLA-SPANTON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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-d to read as follows:

§ 52-d. 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

(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

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

LBD02111-01-3

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. 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. In awarding damages, the court may consider the emotional impact of the defendant's conduct, including but not limited to, the risk of sexually transmitted diseases, and the risk of nonconsensual pregnancy.

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

5. 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.