

STATE OF NEW YORK

157--A

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. PAULIN, DINOWITZ, SEAWRIGHT, SIMON, SAYEGH, REYES
-- read once and referred to the Committee on Judiciary -- reported
and referred to the Committee on Codes -- reported and referred to the
Committee on Rules -- recommitted to the Committee on Codes in accord-
ance with Assembly Rule 3, sec. 2 -- committee discharged, bill
amended, ordered reprinted as amended and recommitted to said commit-
tee

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:

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

3 § 52-e. 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;

16 (b) The other person intentionally and without consent used a sexually
17 protective device during such sexual intercourse, oral sexual conduct or
18 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.