

# 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 Assem-  
bly, do enact as follows:

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

3 § 52-d. 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  
19 in a manner likely to render such device ineffective for its common  
20 purpose; or

21 (c) The other person intentionally misled the person into believing  
22 that a sexually protective device was being used by such other person  
23 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.

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1 conduct, and such sexually protective device was known by such other  
2 person to be either not used or inoperable.

3 2. Past consent to sexual activity without the use of a sexually  
4 protective device shall not alone constitute consent to sexual activity  
5 without the use of a sexually protective device at any future time.

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

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

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

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