
HOUSE BILL 1958

State of Washington

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2024 Regular Session

By Representatives Berry, Orwall, Ryu, Fitzgibbon, Leavitt, Ramel, Reed, Simmons, Ormsby, Fosse, Lekanoff, Reeves, Pollet, Davis, and Doglio

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1 AN ACT Relating to nonconsensual removal of or tampering with a
2 sexually protective device; adding a new chapter to Title 7 RCW;
3 prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter unless the context clearly
7 requires otherwise.

8 (1) "Consent" means that at the time of sexual contact or sexual
9 penetration, there are actual words or conduct indicating freely
10 given agreement. Consent may be revoked at any time. Conduct short of
11 voluntary agreement does not constitute consent as a matter of law.
12 Consent cannot be freely given when a person does not have capacity
13 due to disability, intoxication, or age. Consent cannot be freely
14 given when the other party has authority or control over the care or
15 custody of a person incarcerated or detained.

16 (2) "Sexual contact" means any touching of the sexual or other
17 intimate parts of a person done for the purpose of gratifying sexual
18 desire of either party or a third party.

19 (3) "Sexual penetration" has the same meaning as in RCW
20 7.105.010.

1 (4) "Sexually protective device" means an internal or external
2 condom, spermicide, diaphragm, cervical cap, contraceptive sponge,
3 dental dam, or any other physical barrier device intended to prevent
4 pregnancy or sexually transmitted infection. "Sexually protective
5 device" does not include an intrauterine device or any hormonal birth
6 control method.

7 NEW SECTION. **Sec. 2.** CIVIL CAUSE OF ACTION. (1) A person who
8 engaged in sexual contact or sexual penetration with another person
9 may bring a civil action against that other person if prior to sexual
10 contact or sexual penetration both persons understood and agreed that
11 a sexually protective device would be used, and the other person:

12 (a) Engaged or continued to engage in sexual contact or sexual
13 penetration after the other person:

14 (i) Removed the sexually protective device without consent of the
15 person bringing the action; or

16 (ii) Knew or became aware that the sexually protective device had
17 been unintentionally removed, but did not obtain consent from the
18 person bringing the action to engage or continue engaging in sexual
19 contact or sexual penetration without the use of a sexually
20 protective device;

21 (b) Engaged or continued engaging in sexual contact or sexual
22 penetration after tampering with the sexually protective device
23 without the consent of the person bringing the action and in a manner
24 likely to render the device ineffective for its common purpose;

25 (c) Without consent of the person bringing the action used a
26 sexually protective device that the other person knew had been
27 tampered with in a manner likely to render the device ineffective for
28 its common purpose; or

29 (d) Misled the person bringing the action into believing that a
30 sexually protective device was used by the other person and the other
31 person knew that the device was not used, had been tampered with, or
32 was otherwise inoperable.

33 (2) Evidence that the person bringing the action consented to
34 previous sexual contact or sexual penetration without a sexually
35 protective device or to removing or tampering with a sexually
36 protective device during previous sexual contact or sexual
37 penetration does not by itself establish consent to any subsequent
38 sexual contact or sexual penetration without a sexually protective

1 device or to removing or tampering with a sexually protective device
2 in any subsequent sexual contact or sexual penetration.

3 NEW SECTION. **Sec. 3.** REMEDIES. (1) In an action under this
4 chapter, the court may award any or all of the following remedies
5 upon request:

- 6 (a) Compensatory damages;
- 7 (b) Punitive damages;
- 8 (c) Statutory damages of \$5,000 per violation;
- 9 (d) Injunctive relief; and
- 10 (e) Any other relief the court deems appropriate.

11 (2) In determining punitive damages, the court may take into
12 consideration any previous findings of liability against a defendant
13 pursuant to this section.

14 (3) The court shall award costs and reasonable attorneys' fees to
15 the prevailing plaintiff.

16 (4) In an action brought under this section, the plaintiff may
17 ask the court to require the defendant to attend counseling sessions.
18 If ordered to attend counseling, the defendant shall be financially
19 responsible for the counseling fees and any related expenses.

20 (5) An award under this section may not be used to offset any
21 child support obligations.

22 (6) The rights and remedies provided in this section are in
23 addition to any other rights and remedies provided by law and may not
24 be construed to prohibit, limit, or to be a prerequisite to any other
25 cause of action or remedy.

26 NEW SECTION. **Sec. 4.** PLAINTIFF MAY USE PSEUDONYM. In an action
27 under this chapter, a plaintiff may proceed using a pseudonym in
28 place of the true name of the plaintiff under applicable state law or
29 procedural rules.

30 NEW SECTION. **Sec. 5.** APPLICATION. This chapter applies to
31 causes of action accruing on and after the effective date of this
32 section.

33 NEW SECTION. **Sec. 6.** EFFECTIVE DATE. This act takes effect July
34 1, 2024.

1 NEW SECTION. **Sec. 7.** CODIFICATION. Sections 1 through 6 of this
2 act constitute a new chapter in Title 7 RCW.

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