



## 2021 ASSEMBLY BILL 867

January 18, 2022 - Introduced by Representatives SNODGRASS, CABRERA, HEBL, HESSELBEIN, POPE, SHELTON, SPREITZER, SUBECK and SINICKI, cosponsored by Senators AGARD and ROYS. Referred to Committee on Judiciary.

1     **AN ACT** *to create* 895.439 of the statutes; **relating to:** establishing a civil cause  
2             of action for nonconsensual removal or tampering with a sexually protective  
3             device.

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### *Analysis by the Legislative Reference Bureau*

This bill establishes a civil cause of action for damages for nonconsensual removal or tampering with a sexually protective device. The bill defines a sexually protective device as a male or female condom, spermicide, diaphragm, cervical cap, contraceptive sponge, dental dam, or any other physical device intended to prevent pregnancy or sexually transmitted infection.

Under the bill, a person who engaged in sexual intercourse or sexual contact 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 has a civil cause of action against that other person if the other person 1) intentionally and without consent removed or tampered with the sexually protective device during sexual intercourse or sexual contact, in a manner likely to render such device ineffective for its common purpose; 2) intentionally and without consent used a sexually protective device during such sexual intercourse or sexual contact that the other person knew had been tampered with in a manner likely to render such device ineffective for its common purpose; or 3) intentionally misled the plaintiff into believing that a sexually protective device was being used by that other person

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during sexual intercourse or sexual contact, and that sexually protective device was known by the other person to be either not used or inoperable.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 895.439 of the statutes is created to read:

2           **895.439 Action for nonconsensual removal or tampering with a**  
3 **sexually protective device. (1)** In this section:

4           (a) “Sexual contact” has the meaning given in s. 940.225 (5) (b).

5           (b) “Sexual intercourse” has the meaning given in s. 940.225 (5) (c).

6           (c) “Sexually protective device” means a male or female condom, spermicide,  
7 diaphragm, cervical cap, contraceptive sponge, dental dam, or any other physical  
8 device intended to prevent pregnancy or sexually transmitted infection.

9           **(2)** Any person who engaged in sexual intercourse or sexual contact with  
10 another person that was mutually agreed upon by the parties involved with the  
11 explicit understanding and knowledge that a sexually protective device would be  
12 used to help prevent or safeguard against pregnancy or a sexually transmitted  
13 infection has a civil a cause of action for damages against that other person under  
14 any of the following conditions:

15           (a) The other person intentionally and without consent removed or tampered  
16 with the sexually protective device during sexual intercourse or sexual contact, in a  
17 manner likely to render such device ineffective for its common purpose.

18           (b) The other person intentionally and without consent used a sexually  
19 protective device during such sexual intercourse or sexual contact that the other  
20 person knew had been tampered with in a manner likely to render such device  
21 ineffective for its common purpose.

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1 (c) The other person intentionally misled the person into believing that a  
2 sexually protective device was being used by that other person during sexual  
3 intercourse or sexual contact, and that sexually protective device was known by the  
4 other person to be either not used or inoperable.

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

8 (4) Damages recovered by a plaintiff under this section shall include  
9 compensatory damages and, in addition, the court may award punitive damages and  
10 such other nonmonetary relief as may be appropriate. In awarding damages, the  
11 court may consider the emotional impact of the defendant's conduct, including the  
12 risk of sexually transmitted diseases, and the risk of nonconsensual pregnancy.

13 (5) Nothing in this section may be considered to abrogate or otherwise limit any  
14 right or remedy otherwise conferred by federal or state law, including any right or  
15 remedy related to child support. No award under this section may be used to offset  
16 any child support obligations.

17 **SECTION 2. Initial applicability.**

18 (1) This act first applies to acts occurring on the effective date of this subsection.

19 **SECTION 3. Effective date.**

20 (1) This act takes effect on first day of the 3rd month beginning after  
21 publication.

22 (END)