

1 H.40

2 Introduced by Representative Rachelson of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Sexual assault; nonconsensual removal of or tampering with a
6 sexually protective device

7 Statement of purpose of bill as introduced: This bill proposes to prohibit the
8 nonconsensual removal or tampering of a sexually protective device,
9 establishing the offense as a criminal misdemeanor and an offense for which
10 the victim may bring an action against the perpetrator in the Civil Division of
11 the Superior Court to recover damages.

12 An act relating to nonconsensual removal of or tampering with a ~~sexually~~
13 ~~protective device~~ *condom*

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 ~~Sec. 1. 13 V.S.A. § 3251 is amended to read:~~

16 § 3251. DEFINITIONS

17 As used in this chapter:

18 (1) A “sexual act” means conduct between persons consisting of contact
19 ~~between the penis and the vulva, the penis and the anus, the mouth and the~~

1 ~~penis, the mouth and the vulva, or any intrusion, however slight, by any part of~~
2 a person's body or any object into the genital or anal opening of another.

3 (2) "Sexual conduct" means any conduct or behavior relating to sexual
4 activities of the complaining witness, including ~~but not limited to~~ prior
5 experience of sexual acts, use of contraceptives, living arrangement, and mode
6 of living.

7 (3) "Consent" means the affirmative, unambiguous, and voluntary
8 agreement to engage in a sexual act, which can be revoked at any time.

9 * * *

10 (11) "Sexually protective device" means any one of the following
11 intended to prevent pregnancy or sexually transmitted infection: male or
12 female condom, spermicide, diaphragm, cervical cap, contraceptive sponge,
13 dental dam, or another physical device.

14 Sec. 2. 13 V.S.A. § 3260 is added to read:

15 § 3260. NONCONSENSUAL REMOVAL OR TAMPERING WITH A

16 SEXUALLY PROTECTIVE DEVICE

17 (a) No person shall engage in a sexual act with another person that was
18 mutually agreed upon by the parties involved with the explicit understanding
19 and knowledge that a sexually protective device would be used and do any of
20 the following.

1 ~~(1) intentionally and without consent remove or tamper with such~~
2 ~~sexually protective device during sexual intercourse, an oral sexual act, or an~~
3 ~~anal sexual act in a manner likely to render such device ineffective for its~~
4 ~~common purpose;~~

5 ~~(2) intentionally and without consent use a sexually protective device~~
6 ~~during sexual intercourse, oral sexual conduct, or anal sexual conduct that the~~
7 ~~person knows has been tampered with in a manner likely to render such device~~
8 ~~ineffective for its common purpose; or~~

9 ~~(3) intentionally mislead the other person into believing that a sexually~~
10 ~~protective device is being used during sexual intercourse, oral sexual conduct,~~
11 ~~or anal sexual conduct when the actor knows that the sexually protective~~
12 ~~device is either not being used or inoperable.~~

13 ~~(b) A person who violates subsection (a) of this section shall be imprisoned~~
14 ~~not more than two years or fined not more than \$2,000.00, or both.~~

15 ~~(c) A person harmed by a violation of subsection (a) of this section may~~
16 ~~bring an action in the Civil Division of the Superior Court for compensatory~~
17 ~~damages, punitive damages, and reasonable costs and attorney's fees.~~

18 Sec. 3. EFFECTIVE DATE

19 ~~This act shall take effect on July 1, 2023.~~

Sec. 1. 13 V.S.A. § 3251 is amended to read:

§ 3251. DEFINITIONS

As used in this chapter:

(1) A “sexual act” means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person’s body or any object into the genital or anal opening of another.

(2) “Sexual conduct” means any conduct or behavior relating to sexual activities of the complaining witness, including ~~but not limited to~~ prior experience of sexual acts, use of contraceptives, living arrangement, and mode of living.

(3) “Consent” means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time.

** * **

Sec. 2. 13 V.S.A. § 3260 is added to read:

§ 3260. NONCONSENSUAL REMOVAL OR TAMPERING WITH A

CONDOM

(a) No person shall engage in a sexual act with another person when consent to the sexual act is made with the explicit understanding that a condom would be used and intentionally and without consent remove or tamper with the condom prior to or during the sexual act in a manner likely to render it ineffective for its common purpose.

(b) A person harmed by a violation of subsection (a) of this section may bring an action in the Civil Division of the Superior Court for compensatory damages, punitive damages, and reasonable costs and attorney's fees.

(c) An action under subsection (b) of this section shall be subject to the statute of limitations in 12 V.S.A. § 511.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2023.