

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1683

H.P. 1082

House of Representatives, April 18, 2023

**An Act to Provide for Civil Recovery Based on Nonconsensual
Removal of or Tampering with a Condom and Considering Sexual
Assault in Evaluating Parental Rights**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MILLIKEN of Blue Hill.
Cosponsored by Senator BENNETT of Oxford and
Representatives: BOYER of Poland, COLLINGS of Portland, DANA of the Passamaquoddy
Tribe, PLUECKER of Warren, RANA of Bangor, RIELLY of Westbrook, Senators: BEEBE-
CENTER of Knox, BRAKEY of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA c. 750** is enacted to read:

3 **CHAPTER 750**

4 **CIVIL RECOVERY FOR NONCONSENSUAL REMOVAL OF OR TAMPERING**
5 **WITH A CONDOM**

6 **§8305. Civil recovery for nonconsensual removal of or tampering with a condom**

7 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
8 following terms have the following meanings.

9 A. "Sexual act" has the same meaning as in Title 17-A, section 251, subsection 1,
10 paragraph C.

11 B. "Tamper" means to alter or use an item in a way that renders the item ineffective.

12 **2. Liability.** A person who engages in a consensual sexual act with another person
13 with the understanding that a condom would be used during the sexual act and who
14 knowingly removes or tampers with the condom is liable to the other person in accordance
15 with the provisions of this chapter.

16 **3. Civil recovery.** A person who engages in a consensual sexual act with another
17 person with the understanding that a condom would be used during the sexual act has a
18 civil cause of action for damages for the nonconsensual removal of or tampering with a
19 condom if the other person:

20 A. Knowingly removes or tampers with the condom;

21 B. Knowingly used a damaged condom; or

22 C. Misrepresented the person's intentions to use a condom.

23 **4. Previous consent.** Consent to engage in a previous sexual act without a condom
24 does not constitute consent for engaging in a subsequent sexual act without a condom.

25 **5. Damages.** Damages awarded in a civil cause of action brought under this section:

26 A. Must include compensatory damages including medical expenses, lost earnings,
27 pain and suffering, emotional distress and loss of enjoyment of life, for damages
28 suffered and reasonably certain to occur in the future;

29 B. May include:

30 (1) Punitive damages; and

31 (2) Other relief as may be appropriate.

32 Damages awarded under paragraph B may take into account the emotional impact on the
33 person bringing the cause of action, including the risk of nonconsensual pregnancy and
34 sexually transmitted disease.

35 An award made under this section may not be used to offset a child support obligation.

1 6. No limitation. The provisions of this chapter may not be construed to prohibit or
2 limit any other cause of action that a person may have against another person who performs
3 an action described by subsection 2.

4 7. Statute of limitations. An action brought pursuant to this section must be
5 commenced no later than 20 years after the date the actionable conduct occurred.

6 **Sec. 2. 19-A MRSA §1653, sub-§6-D** is enacted to read:

7 6-D. Considerations for cases in which a child is conceived as a result of sexual
8 assault or nonconsensual removal of or tampering with a condom. The court shall
9 establish conditions of parent-child contact in cases in which a child was conceived as a
10 result of sexual assault as described in Title 17-A, chapter 11 or nonconsensual removal of
11 or tampering with a condom as defined in Title 19-A, section 4102, subsection 7-A as
12 follows.

13 A. In evaluating parental rights and responsibilities, the court shall evaluate the
14 specific facts of the case to assess:

15 (1) Whether the sexual assault or nonconsensual removal of or tampering with a
16 condom indicates that there may be safety concerns for the child;

17 (2) Whether it would be in the best interest of the child for the parent who
18 committed sexual assault or nonconsensual removal of or tampering with a condom
19 to receive any specific counseling or treatment; and

20 (3) Any effect contact between the parents would have on the parent who was a
21 victim of sexual assault or nonconsensual removal of or tampering with a condom.

22 In response to this evaluation, the court shall order any conditions the court concludes
23 are appropriate to meet the child’s best interest while minimizing the effect on the
24 parent who experienced the sexual assault or nonconsensual removal of or tampering
25 with a condom. The court may order specific conditions, including but not limited to
26 limiting the contact between the parents or limiting or putting specific conditions on
27 parent-child contact, including supervision.

28 B. The court may not order a victim of sexual assault or nonconsensual removal of or
29 tampering with a condom to attend counseling with the parent who has committed
30 sexual assault or nonconsensual removal of or tampering with a condom.

31 **Sec. 3. 19-A MRSA §4103, sub-§1, ¶B**, as enacted by PL 2021, c. 647, Pt. A, §3
32 and affected by Pt. B, §65, is amended to read:

33 B. Who has been a victim of conduct:

34 (1) Described as stalking in Title 17-A, section 210-A;

35 (2) Constituting any crime described in Title 17-A, chapter 11;

36 (3) Described as unauthorized dissemination of certain private images in Title
37 17-A, section 511-A; or

38 (4) Described as aggravated sex trafficking or sex trafficking in Title 17-A, section
39 852 or 853, respectively; or

40 (5) Constituting a civil cause of action under Title 14, section 8305.

1 For purposes of this paragraph, the conduct need not have been perpetrated by a family
2 or household member, a dating partner or an individual related by consanguinity or
3 affinity;

4 **Sec. 4. 19-A MRSA §4103, sub-§2, ¶B,** as corrected by RR 2021, c. 2, Pt. A, §40,
5 is amended by amending subparagraph (5) to read:

6 (5) Described as sexual exploitation of a minor or dissemination of sexually
7 explicit material in Title 17-A, section 282 or 283, respectively; ~~or~~

8 **Sec. 5. 19-A MRSA §4103, sub-§2, ¶B,** as corrected by RR 2021, c. 2, Pt. A, §40,
9 is amended by amending subparagraph (6) to read:

10 (6) Described as harassment by telephone or by electronic communication device
11 in Title 17-A, section 506, subsection 1, paragraph A-1 or A-2; or

12 **Sec. 6. 19-A MRSA §4103, sub-§2, ¶B,** as corrected by RR 2021, c. 2, Pt. A, §40,
13 is amended by enacting a new subparagraph (7) to read:

14 (7) Constituting a civil cause of action under Title 14, section 8305.

15 **SUMMARY**

16 This bill creates a civil cause of action for the act of nonconsensual removal of or
17 tampering with a condom. The bill adds considerations for when a child was conceived by
18 sexual assault or nonconsensual removal of or tampering with a condom in awarding
19 parental rights and responsibilities. The bill also adds victims of nonconsensual removal of
20 or tampering with a condom to the list of persons eligible to seek relief under Title 19-A,
21 chapter 103 regarding protection from domestic abuse.