

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 478**

Introduced by Vargas, 7; Hunt, 8; Lathrop, 12; Wayne, 13.

Read first time January 18, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil actions; to prohibit use of a minor's
- 2 consent as a defense or mitigation of damages or liability in civil
- 3 actions arising from sexual assaults by adults in positions of
- 4 authority; and to define terms.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) Consent shall not be a defense, mitigate or reduce  
2 damages, establish contributory or comparative negligence, or otherwise  
3 mitigate liability or damages in a civil action arising from a sexual  
4 assault in which the victim was under eighteen years of age and the  
5 perpetrator was an adult in a position of authority over the minor.

6           (2) For purposes of this section:

7           (a) An adult is in a position of authority over a minor if such  
8 adult, by reason of that position, is able to exercise undue influence  
9 over a minor. A position of authority includes, but is not limited to, a  
10 natural parent, a stepparent, a foster parent, a relative, a partner of  
11 any such parent or relative, a caretaker, a youth leader, a recreational  
12 director, an athletic manager, a coach, a teacher, a principal, a  
13 counselor, any other school administrator, a therapist, a religious  
14 leader, a doctor, a coworker, or an employee of any such persons;

15           (b) Adult means a person eighteen years of age or older; and

16           (c)(i) Undue influence means excessive persuasion that causes  
17 another person to act or refrain from acting by overcoming that person's  
18 free will and results in inequity. In determining whether a result was  
19 produced by undue influence, all of the following shall be considered:

20           (A) The vulnerability of the victim. Evidence of vulnerability may  
21 include, but is not limited to, incapacity, illness, disability, injury,  
22 age, education, impaired cognitive function, emotional distress,  
23 isolation, or dependency, and whether the influencer knew or should have  
24 known of the alleged victim's vulnerability;

25           (B) The influencer's apparent authority. Evidence of apparent  
26 authority may include, but is not limited to, status as an educator, a  
27 fiduciary, a family member, a care provider, a health care professional,  
28 a legal professional, a spiritual adviser, an expert, or another  
29 qualification;

30           (C) The actions or tactics used by the influencer. Evidence of  
31 actions or tactics used may include, but is not limited to, all of the

1 following:

2 (I) Controlling necessities of life, medication, the victim's  
3 interactions with others, access to information, or sleep;

4 (II) Use of affection, intimidation, or coercion; or

5 (III) Initiation of changes in personal or property rights, use of  
6 haste or secrecy in effecting those changes, effecting changes at  
7 inappropriate times and places, and claims of expertise in effecting  
8 changes; and

9 (D) The equity of the result. Evidence of the equity of the result  
10 may include, but is not limited to, the economic consequences to the  
11 victim, any divergence from the victim's prior intent or course of  
12 conduct or dealing, the relationship of the value conveyed to the value  
13 of any services or consideration received, or the appropriateness of the  
14 change in light of the length and nature of the relationship; and

15 (ii) Evidence of an inequitable result, without more, is not  
16 sufficient to prove undue influence.