

AMENDED IN SENATE MARCH 16, 2015

SENATE BILL

No. 14

Introduced by Senator Lara

(Coauthors: Senators Anderson and, Mitchell, and Vidak)

~~(Coauthor: Coauthors: Assembly Member Members Chávez, Cooper, Gonzalez, Lopez, Maienschein, Olsen, Rodriguez, Mark Stone, and Steinorth)~~

December 1, 2014

An act to add Section 1708.5.5 to the Civil Code, and to amend Section 1106 of the Evidence Code, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 14, as amended, Lara. ~~Nonconsensual sexual intercourse: sexual history: minors. Sexual battery: consent defense: minors, sexual conduct.~~

~~Under existing criminal law, unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is under 18 years of age. Existing~~

~~Existing civil law makes a person who commits a sexual battery, as defined, upon another liable to that person for damages and authorizes a court to award equitable relief, as specified. Existing civil law provides that he or she who consents to an act is not wronged by it.~~

~~This bill would, under civil law, define nonconsensual sexual intercourse as an act of sexual intercourse between an adult and a person who is not the spouse of the adult, if the person is under 18 years of age. would prohibit consent from being a defense in any sexual battery civil action if the person committing the sexual battery is a specified adult who is in a position of authority and is able to exercise undue influence, as defined, over the minor.~~

Under existing law, in any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, opinion evidence, reputation evidence, and evidence of specific instances of plaintiff's sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff. ~~Under existing case law, the elements of a civil cause of action for negligence are the existence of a duty (the obligation to other persons to conform to a standard of care to avoid unreasonable risk of harm to them); breach of that duty (conduct below the standard of care); causation (between the defendant's act or omission and the plaintiff's injuries); and damages. Existing law requires specified procedures to be followed in any civil action alleging conduct constituting sexual harassment, sexual assault, or sexual battery if evidence of sexual conduct of the plaintiff is offered to attack the credibility of the plaintiff, as specified. Existing law authorizes the court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury.~~

~~This bill would, in any negligence civil action, prohibit the admissibility of any evidence of a minor plaintiff's sexual history by the defendant in order to prove consent by the minor plaintiff. would, in any sexual battery civil action involving a minor and an adult who is in a position of authority as described above, prohibit evidence of the plaintiff minor's sexual conduct with the defendant adult from being admissible to prove consent by the plaintiff or the absence of injury to the plaintiff. The bill would authorize such evidence of the plaintiff's sexual conduct to be introduced only to attack the credibility of the plaintiff or to prove something other than consent by the plaintiff if, upon a hearing of the court out of the presence of the jury, the defendant proves that the probative value of that evidence outweighs the prejudice to the plaintiff, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1708.5.5 is added to the Civil Code, to
2 read:

1 1708.5.5. Nonconsensual sexual intercourse is an act of sexual
2 intercourse between an adult and a person who is not the spouse
3 of the adult, if the person is a minor. For purposes of this section,
4 a “minor” is a person who is under 18 years of age and an “adult”
5 is a person who is at least 18 years of age.

6 1708.5.5. (a) *Notwithstanding Section 3515, consent shall not*
7 *be a defense in any civil action under Section 1708.5 if the person*
8 *who commits the sexual battery is an adult who is in a position of*
9 *authority over the minor.*

10 (b) *For purposes of this section, a person is in a “position of*
11 *authority” if he or she, by reason of that position, is able to*
12 *exercise undue influence over a minor. A “position of authority”*
13 *includes, but is not limited to, a natural parent, step-parent, foster*
14 *parent, relative, partner of any such parent or relative, caretaker,*
15 *adult youth leader, recreational director who is an adult, adult*
16 *athletic manager, adult coach, teacher, counselor, therapist,*
17 *religious leader, doctor, adult employee of one of those*
18 *aforementioned persons, or adult coworker.*

19 (c) *For purposes of this section “undue influence” has the same*
20 *meaning as in Section 15610.70 of the Welfare and Institutions*
21 *Code.*

22 SEC. 2. Section 1106 of the Evidence Code is amended to read:

23 1106. (a) ~~(1)~~ In any civil action alleging conduct which
24 constitutes sexual harassment, sexual assault, or sexual battery,
25 opinion evidence, reputation evidence, and evidence of specific
26 instances of plaintiff’s sexual conduct, or any of that evidence, is
27 not admissible by the defendant in order to prove consent by the
28 plaintiff or the absence of injury to the plaintiff, unless the injury
29 alleged by the plaintiff is in the nature of loss of consortium.

30 ~~(2) Notwithstanding any other law, in any negligence civil~~
31 ~~action, no evidence of a minor plaintiff’s sexual history is~~
32 ~~admissible by the defendant in order to prove consent by the~~
33 ~~plaintiff. For purposes of this paragraph, a “minor” is a person~~
34 ~~who is under 18 years of age.~~

35 (b) ~~Paragraph (1) of subdivision~~ *Subdivision (a)* shall not be
36 applicable to evidence of the plaintiff’s sexual conduct with the
37 alleged perpetrator.

38 (c) *Notwithstanding subdivision (b), in any civil action brought*
39 *pursuant to Section 1708.5 of the Civil Code involving a minor*
40 *and adult as described in Section 1708.5.5 of the Civil Code,*

1 *evidence of the plaintiff minor's sexual conduct with the defendant*
2 *adult shall not be admissible to prove consent by the plaintiff or*
3 *the absence of injury to the plaintiff. Such evidence of the plaintiff's*
4 *sexual conduct may only be introduced to attack the credibility of*
5 *the plaintiff in accordance with Section 783 or to prove something*
6 *other than consent by the plaintiff if, upon a hearing of the court*
7 *out of the presence of the jury, the defendant proves that the*
8 *probative value of that evidence outweighs the prejudice to the*
9 *plaintiff consistent with Section 352.*

10 (e)

11 (d) If the plaintiff introduces evidence, including testimony of
12 a witness, or the plaintiff as a witness gives testimony, and the
13 evidence or testimony relates to the plaintiff's sexual conduct, the
14 defendant may cross-examine the witness who gives the testimony
15 and offer relevant evidence limited specifically to the rebuttal of
16 the evidence introduced by the plaintiff or given by the plaintiff.

17 ~~(d) Except as provided in paragraph (2), nothing~~

18 (e) *Nothing* in this section shall be construed to make
19 inadmissible any evidence offered to attack the credibility of the
20 plaintiff as provided in Section 783.