

1 *Senate* BILL NO. *418*
 2 INTRODUCED BY *Robert F. ...*
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH, IN
 5 PROSECUTIONS FOR CERTAIN SEXUAL CRIMES, THE DEFENSE THAT THE
 6 VICTIM WAS A VOLUNTARY SOCIAL COMPANION OF THE DEFENDANT
 7 WHEN THE VICTIM'S LACK OF CONSENT IS BASED SOLELY ON
 8 INTOXICATION; AMENDING SECTION 94-5-506, R.C.M. 1947."
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 94-5-506, R.C.M. 1947, is amended
 12 to read as follows:

13 *94-5-506. Provisions generally applicable to sexual
 14 crimes. (1) When criminality depends on the victim being
 15 less than sixteen (16) years old, it is a defense for the
 16 offender to prove that he reasonably believed the child to
 17 be above that age. Such belief shall not be deemed
 18 reasonable if the child is less than fourteen (14) years
 19 old.

20 (2) Whenever the definition of an offense excludes
 21 conduct with a spouse, the extension shall be deemed to
 22 extend to persons living as man and wife, regardless of the
 23 legal status of their relationship. The exclusion shall be
 24 inoperative as respects spouses living apart under a decree
 25 of judicial separation. Where the definition of an offense

1 excludes conduct with a spouse, this shall not preclude
 2 conviction of a spouse in a sexual act which he or she
 3 causes another person, not within the exclusion, to perform.
 4 ~~(3) In a prosecution under the preceding sections on~~
 5 ~~sexual crimes (94-5-502 to 94-5-504) in which the victim's~~
 6 ~~lack of consent is based solely upon his incapacity to~~
 7 ~~consent because he was mentally incapacitated, it is a~~
 8 ~~defense to such prosecution that the victim was a voluntary~~
 9 ~~social companion of the defendant and the intoxicating~~
 10 ~~substance was voluntarily and knowingly taken."~~

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