

CHAPTER NO. 409.

SENATE BILL NO. 409

INTRODUCED BY REGAN, LENSINK, DUSSAULT

IN THE SENATE

February 7, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 15, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1979	Second reading, concurred in.
March 20, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 21, 1979	Returned from second house. Concurred in as amended.
March 22, 1979	Second reading, pass consideration.

March 23, 1979

Second reading, amendments  
adopted.

March 24, 1979

Third reading, amendments  
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *409*  
2 INTRODUCED BY *Rep. Zamboni*

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
5 LAW RELATING TO ASSAULTS OCCURRING BETWEEN SPOUSES; AMENDING  
6 SECTIONS 27-19-306, 40-2-201, AND 45-5-506, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Right of person to sue spouse  
10 for assault. A person has a cause of action against his  
11 spouse for damages for personal injury caused by the  
12 spouse's intentional assault on such person, and the common  
13 law doctrine of interspousal tort immunity is, to that  
14 extent, abolished.

15 NEW SECTION. Section 2. Action for injunction to  
16 prevent disruption of home by family member. A person may  
17 file a verified complaint in the district court showing that  
18 physical or emotional harm will result from the physical  
19 presence of a family member in the family home and  
20 requesting an injunction restraining such family member from  
21 molesting or disturbing the peace of the family home or  
22 excluding him therefrom. The court shall act on the  
23 complaint as in other actions for injunctions as provided in  
24 Title 27, chapter 19, as amended, including those provisions  
25 relating to temporary restraining orders.

1 Section 3. Section 27-19-306, MCA, is amended to read:  
2 "27-19-306. Security for damages. (1) On granting an  
3 injunction or restraining order, the court or judge may  
4 require, except when the state, a county, or any subdivision  
5 thereof or a municipal corporation or a married person in a  
6 suit for divorce against his or her spouse is a party  
7 plaintiff ~~or the complaint was filed pursuant to [section~~  
8 ~~2]~~, a written undertaking on the part of the plaintiff, with  
9 sufficient sureties, to the effect that the plaintiff will  
10 pay to the party enjoined such damages, not exceeding an  
11 amount to be specified, as such party may sustain by reason  
12 of the injunction if the court finally decide that the  
13 plaintiff was not entitled thereto.

14 (2) Within 5 days after the service of the injunction,  
15 the defendant may except to the sufficiency of the sureties.  
16 If the plaintiff fails to do so, such plaintiff is deemed to  
17 have waived all objections to them. When excepted to, the  
18 plaintiff's sureties, upon notice to the defendant of not  
19 less than 2 or more than 5 days, must justify before a judge  
20 or clerk in the same manner as upon bail on arrest, and upon  
21 failure to justify or if others in their place fail to  
22 justify at the time and place appointed, the order granting  
23 an injunction shall be dissolved."

24 Section 4. Section 40-2-201, MCA, is amended to read:  
25 "40-2-201. When husband's and wife's interests

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INTRODUCED BILL

1 separate. Neither husband nor wife has any interest in the  
 2 property of the other, except as mentioned in 40-2-102, but  
 3 neither can be excluded from the other's dwelling except as  
 4 provided by statute."

5 Section 5. Section 45-5-506, MCA, is amended to read:

6 "45-5-506. Provisions generally applicable to sexual  
 7 crimes. (1) When criminality depends on the victim being  
 8 less than 16 years old, it is a defense for the offender to  
 9 prove that he reasonably believed the child to be above that  
 10 age. Such belief shall not be deemed reasonable if the child  
 11 is less than 14 years old.

12 (2) Whenever the definition of an offense excludes  
 13 conduct with a spouse, the exclusion shall be deemed to  
 14 extend to persons living as husband and wife regardless of  
 15 the legal status of their relationship. The exclusion shall  
 16 be inoperative as respects spouses living apart whether  
 17 under a decree of judicial separation or otherwise. Where  
 18 the definition of an offense excludes conduct with a spouse,  
 19 this shall not preclude conviction of a spouse in a sexual  
 20 act which he or she causes another person, not within the  
 21 exclusion, to perform.

22 (3) In a prosecution under the preceding sections on  
 23 sexual crimes (45-5-502 through 45-5-504) in which the  
 24 victim's lack of consent is based solely upon his incapacity  
 25 to consent because he was mentally incapacitated, it is a

1 defense to such prosecution that the victim was a voluntary  
 2 social companion of the defendant and the intoxicating  
 3 substance was voluntarily and knowingly taken."

-End-

SENATE BILL NO. 409

INTRODUCED BY REGAN, LENSINK, DUSSAULT

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Right of person to sue spouse for assault INTENTIONAL TORT. A person has a cause of action against his spouse for damages for personal injury caused by the spouse's intentional assault on TORT AGAINST such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

~~NEW SECTION.~~ Section 2. Action for injunction to prevent disruption of home by family members. A person may file a verified complaint in the district court showing that physical or emotional harm will result from the physical presence of a family member in the family home and requesting an injunction restraining such family member from molesting or disturbing the peace of the family home or excluding him therefrom. The court shall act on the complaint as in other actions for injunctions as provided in ~~title 27, chapter 19, as amended, including those provisions~~

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relating to temporary restraining orders.

~~Section 3. Section 27-19-306, MCA, is amended to read: "27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge may require, except when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party plaintiff or the complaint was filed pursuant to section 21, a written undertaking on the part of the plaintiff with sufficient sureties to the effect that the plaintiff will pay to the party enjoined such damages not exceeding an amount to be specified as such party may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled thereto.~~

~~(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties if the plaintiff fails to do so. Such plaintiff is deemed to have waived all objections to these when excepted to by the plaintiff's sureties upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."~~

Section 2. Section 40-2-201, MCA, is amended to read:

1       "40-2-201. When husband's and wife's interests  
2 separate. Neither husband nor wife has any interest in the  
3 property of the other, except as mentioned in 40-2-102, but  
4 neither can be excluded from the other's dwelling ~~except--as~~  
5 ~~provided-by-statute~~ UNLESS ENJOINED BY A COURT."

6       Section 3. Section 45-5-506, MCA, is amended to read:

7       "45-5-506. Provisions generally applicable to sexual  
8 crimes. (1) When criminality depends on the victim being  
9 less than 16 years old, it is a defense for the offender to  
10 prove that he reasonably believed the child to be above that  
11 age. Such belief shall not be deemed reasonable if the child  
12 is less than 14 years old.

13       (2) Whenever the definition of an offense excludes  
14 conduct with a spouse, the exclusion shall be deemed to  
15 extend to persons living as husband and wife regardless of  
16 the legal status of their relationship. The exclusion shall  
17 be inoperative as respects spouses living apart ~~whether~~  
18 ~~under a decree--of judicial separation or--otherwise ORDER.~~  
19 Where the definition of an offense excludes conduct with a  
20 spouse, this shall not preclude conviction of a spouse in a  
21 sexual act which he or she causes another person, not within  
22 the exclusion, to perform.

23       (3) In a prosecution under the preceding sections on  
24 sexual crimes (45-5-502 through 45-5-504) in which the  
25 victim's lack of consent is based solely upon his incapacity

1       to consent because he was mentally incapacitated, it is a  
2 defense to such prosecution that the victim was a voluntary  
3 social companion of the defendant and the intoxicating  
4 substance was voluntarily and knowingly taken."

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 7 suit for divorce against his or her spouse is a party  
 8 plaintiff ~~or the complaint was filed pursuant to section~~  
 9 ~~23,~~ a written undertaking on the part of the plaintiff, with  
 10 sufficient sureties, to the effect that the plaintiff will  
 11 pay to the party enjoined such damages, not exceeding an  
 12 amount to be specified, as such party may sustain by reason  
 13 of the injunction, if the court finally decide that the  
 14 plaintiff was not entitled thereto.  
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 19 plaintiff's sureties, upon notice to the defendant of not  
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 15 extend to persons living as husband and wife regardless of  
 16 the legal status of their relationship. The exclusion shall  
 17 be inoperative as respects spouses living apart ~~whether~~  
 18 ~~whether~~ under a decree of judicial separation or otherwise  
 19 OR DEGREE OF JUDICIAL SEPARATION OR OTHERWISE. Where the  
 20 definition of an offense excludes conduct with a spouse,  
 21 this shall not preclude conviction of a spouse in a sexual  
 22 act which he or she causes another person, not within the  
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-End-



March 14, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 409,  
third reading copy, as follows:

1. Page 3, line 18.

Following: Line 17

Insert: "whether"

Following: "under a"

Strike: remainder of line 18

Insert: "decree of judicial separation or otherwise."