

HOUSE BILL NO. 409

INTRODUCED BY GOOD, COBB, RICE,  
SPAETH, WHALEN, MERCER

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 3, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 4, 1989	PRINTING REPORT.
FEBRUARY 6, 1989	SECOND READING, DO PASS.
FEBRUARY 7, 1989	ENGROSSING REPORT.
FEBRUARY 8, 1989	THIRD READING, PASSED. AYES, 98; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 9, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 11, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 13, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 ~~House~~ BILL NO. 409  
2 INTRODUCED BY Sen. Bill Kirkpatrick Whalen  
3 MERCER

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE  
5 ATTORNEY-CLIENT PRIVILEGE APPLIES TO THE CLIENT; AMENDING  
6 SECTION 26-1-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
7 DATE."

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

10 **Section 1.** Section 26-1-803, MCA, is amended to read:

11 "26-1-803. Attorney-client privilege. (1) An attorney  
12 cannot, without the consent of his client, be examined as to  
13 any communication made by the client to him or his advice  
14 given thereon to the client in the course of professional  
15 employment.

16 (2) A client cannot, except voluntarily, be examined  
17 as to any communication made by him to his attorney or the  
18 advice given to him by his attorney in the course of the  
19 attorney's professional employment."

20 NEW SECTION. **Section 2.** Effective date. [This act] is  
21 effective on passage and approval.

-End-

INTRODUCED BILL  
HB409

APPROVED BY COMMITTEE  
ON JUDICIARY

1 House BILL NO. 409  
2 INTRODUCED BY Rep. (H) Bill Spatch Whalen  
3 MERCER

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18 advice given to him by his attorney in the course of the  
19 attorney's professional employment."

20 **NEW SECTION. Section 2.** Effective date. [This act] is  
21 effective on passage and approval.

-End-

1 House BILL NO. 409  
 2 INTRODUCED BY Sen. Bill Rice Spatch Whalen  
 3 MERCER

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 18 advice given to him by his attorney in the course of the  
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-End-

(41A)

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 409 (third reading copy -- blue), respectfully report that HB 409 be amended and as so amended be concurred in:

Sponsor: Good (Halligan)

1. Page 1, line 9.

Insert: "WHEREAS, a majority of courts in the United States have broadly construed the attorney-client privilege as protecting the client as well as his attorney from being compelled to disclose their confidential communications; and

WHEREAS, the United States District Court for the District of Montana, in the recent case of Lane v. All Nation Insurance Company, CV-86-054-GF (June 17, 1987), strictly construed Montana's statute regarding attorney-client privilege to allow the client to be examined concerning his confidential communications with his attorney; and

WHEREAS, the Legislature intends to amend and clarify the Montana statute to make it clear that, contrary to the Lane decision, the attorney-client privilege extends to protect the client from being required to disclose confidential communications between him and his attorney; and

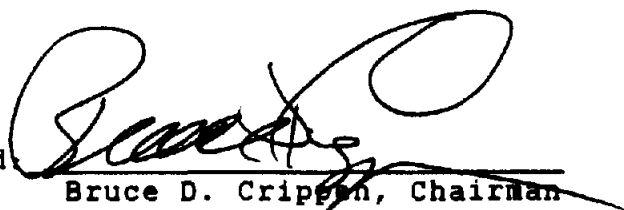
WHEREAS, the courts through the common law have developed several exceptions to the attorney-client privilege; and

WHEREAS, the Legislature does not intend by this act to abolish, amend, or otherwise affect any other exceptions to the attorney-client privilege.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the statute regarding attorney-client privilege."

AND AS AMENDED BE CONCURRED IN

Signed



Bruce D. Crippen, Chairman

SENATE

scrhb409.306

HB 409

## HOUSE BILL NO. 409

INTRODUCED BY GOOD, COBB, RICE,

SPAETH, WHALEN, MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE ATTORNEY-CLIENT PRIVILEGE APPLIES TO THE CLIENT; AMENDING SECTION 26-1-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, A MAJORITY OF COURTS IN THE UNITED STATES HAVE BROADLY CONSTRUED THE ATTORNEY-CLIENT PRIVILEGE AS PROTECTING THE CLIENT AS WELL AS HIS ATTORNEY FROM BEING COMPELLED TO DISCLOSE THEIR CONFIDENTIAL COMMUNICATIONS; AND

WHEREAS, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, IN THE RECENT CASE OF Lane v. All Nation Insurance Company, CV-86-054-GF (JUNE 17, 1987), STRICTLY CONSTRUED MONTANA'S STATUTE REGARDING ATTORNEY-CLIENT PRIVILEGE TO ALLOW THE CLIENT TO BE EXAMINED CONCERNING HIS CONFIDENTIAL COMMUNICATIONS WITH HIS ATTORNEY; AND

WHEREAS, THE LEGISLATURE INTENDS TO AMEND AND CLARIFY THE MONTANA STATUTE TO MAKE IT CLEAR THAT, CONTRARY TO THE Lane DECISION, THE ATTORNEY-CLIENT PRIVILEGE EXTENDS TO PROTECT THE CLIENT FROM BEING REQUIRED TO DISCLOSE CONFIDENTIAL COMMUNICATIONS BETWEEN HIM AND HIS ATTORNEY;

AND

WHEREAS, THE COURTS THROUGH THE COMMON LAW HAVE DEVELOPED SEVERAL EXCEPTIONS TO THE ATTORNEY-CLIENT PRIVILEGE; AND

WHEREAS, THE LEGISLATURE DOES NOT INTEND BY THIS ACT TO ABOLISH, AMEND, OR OTHERWISE AFFECT ANY OTHER EXCEPTIONS TO THE ATTORNEY-CLIENT PRIVILEGE.

THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA FINDS IT APPROPRIATE TO AMEND THE STATUTE REGARDING ATTORNEY-CLIENT PRIVILEGE.

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

Section 1. Section 26-1-803, MCA, is amended to read:

"26-1-803. Attorney-client privilege. (1) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon to the client in the course of professional employment.

(2) A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or the advice given to him by his attorney in the course of the attorney's professional employment."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

-End-

-2-



HB 409  
REFERENCE BILL  
AS AMENDED