

1                    HOUSE BILL NO. 5  
 2 INTRODUCTION BY STOLTZ, YARDLEY  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS  
 5 RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL  
 6 DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704  
 7 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102,  
 8 R.C.M. 1947."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11        Section 1. Section 23-3022, R.C.M. 1947, is amended to  
 12 read as follows:  
 13        "23-3022. Residence, rules for determining. For  
 14 registration or voting, the residence of any person shall be  
 15 determined by the following rules as far as they are  
 16 applicable.  
 17        (1) The residence of a person is where his habitation  
 18 is fixed, and to which, whenever he is absent, he has the  
 19 intention of returning.  
 20        (2) A person may not gain or lose a residence while a  
 21 student at any institution of learning, while kept  
 22 involuntarily at any public institution not necessarily at  
 23 public expense, while confined in any public prison, or  
 24 while residing on a military reservation.  
 25        (3) A person in the armed forces of the United States

1 may not become a resident in consequence of being stationed  
 2 at a military facility in the state. A person may not  
 3 acquire a residence by reason of being employed or stationed  
 4 at a training or other transient camp maintained by the  
 5 United States within the state.

6        (4) A person does not lose his residence if he goes  
 7 into another state, or other district of this state, for  
 8 temporary purposes with the intention of returning unless he  
 9 exercises the election franchise in the other state or  
 10 district.

11        (5) A person may not gain a residence in a county if  
 12 he comes in for temporary purposes without the intention of  
 13 making that county his home.

14        (6) If a person moves to another state with the  
 15 intention of making it his residence, he loses his residence  
 16 in this state.

17        (7) If a person moves to another state with the  
 18 intention of residing there for an indefinite time, he loses  
 19 his residence in this state even though he intends to return  
 20 to this state at some future period.

21        (8) The place where a man's person's family resides is  
 22 presumed his that person's place of residence. However, a  
 23 man person who takes up or continues his a residence at a  
 24 place other than where his family resided resides with the  
 25 intention of remaining is a resident of the place where he

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1 resides.

2 (9) A change of residence can only be made by the act  
3 of removal joined with intent to remain in another place.  
4 There can only be one residence.

5 (10) The term of residence must be computed by  
6 including the day of election."

7 Section 2. Section 75-8703, R.C.M. 1947, is amended to  
8 read as follows:

9 "75-8703. Presumptions as to domicile. Unless the  
10 contrary appears to the unit registering authority, it is  
11 presumed that:

12 (1) The domicile of a minor is that:

13 (a) ~~of his father, or~~ of the parents, or, if one of  
14 them is deceased or they do not share the same domicile, of  
15 the parent with whom the minor customarily resides; or

16 ~~(b) of his mother if there is no father, or~~

17 ~~(c) (b)~~ of his guardian when the court appointing the  
18 guardian certifies that the primary purpose of the  
19 appointment is not to qualify the minor as a resident of  
20 this state; or

21 ~~(d) (c)~~ of the parent who has custody of the minor.

22 ~~(2) The domicile of a married woman is that of her~~  
23 ~~husband, except that a~~ A resident woman student who marries  
24 a nonresident does not by that fact alone lose her resident  
25 status for tuition and fee purposes for a period of four (4)

1 years after her marriage.

2 (3) Except as provided in the next subsection,  
3 residence is not gained or lost because of relocation as a  
4 member of the armed forces of the United States.

5 (4) Residence may be gained by a member of the armed  
6 forces of the United States, his spouse, or his children by  
7 living in Montana for one (1) year, and complying with the  
8 provisions of this section.

9 (5) A new domicile is established by a qualified  
10 person if he is physically present in Montana with no  
11 intention to acquire a domicile outside of Montana.

12 (6) Domicile is not lost by absence from Montana with  
13 no intention to establish a new domicile.

14 (7) Montana high school graduates are resident  
15 students of the system for four (4) consecutive years of  
16 attendance if:

17 (a) they apply for admittance to the system within one  
18 (1) year after graduation; or

19 (b) their parents or the parent with whom they  
20 customarily reside have resided in Montana in one (1) of the  
21 two (2) years immediately preceding the graduation.

22 (8) Upon moving to Montana, an adult employed on a  
23 full-time basis within the state of Montana may apply for  
24 in-state tuition classification for his spouse or any  
25 dependent minor child or both. If such person meets the

1 requirement of full-time employment within the state of  
 2 Montana and he files for the payment of Montana state income  
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 5 any other state, and is not himself in the state primarily  
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 7 both, may at the next registration after qualifying be  
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 9 Montana domicile. In the administration of this paragraph,  
 10 neither the full-time employee or spouse shall be eligible  
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 12 for coming to Montana was the education of the employee or  
 13 spouse."

14 Section 3. Section 75-8704, R.C.M. 1947, is amended to  
 15 read as follows:

16 "75-8704. Evidence as to domiciliary intent--changes  
 17 in status. (1) To determine the domicile of a person, the  
 18 units of the system shall apply the following rules:

19 (a) Nonpayment of Montana income tax by a person whose  
 20 income is sufficient to be taxed is highly persuasive  
 21 evidence of nonMontana domicile.

22 (b) A person must intend to establish a domicile in  
 23 Montana.

24 (2) After registration, a student's classification for  
 25 tuition and fee purposes remains unchanged in the absence of

1 evidence to the contrary:

2 (a) A written statement of the evidence shall be filed  
 3 with the registering authority of the unit.

4 (b) Changes in classification shall be in writing  
 5 signed by the registering authority, and shall take effect  
 6 at the student's next registration.

7 (3) A minor shall qualify for a change in status only  
 8 if his parents or the parent with whom he customarily  
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 10 completes the requirements for establishing domicile  
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12 (4) It is presumed a minor or adult registered as a  
 13 full-time student at any unit is not qualified for a change  
 14 in his or his dependents classification for tuition and fee  
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 16 of residence while not attending a unit of the system or  
 17 other institution of higher learning or while serving in the  
 18 armed forces.

19 (5) Any student whose request for classification as a  
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 21 executive secretary of the Montana university system:

22 (a) Immediately upon rejection and at the request of  
 23 the student, the registering authority shall forward a copy  
 24 of his decision and a complete file on the student to the  
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1 (i) The executive secretary may accept other evidence  
2 of residence from either the student, the registering  
3 authority, or other interested persons.

4 (b) Within thirty (30) days of the receipt of the  
5 decision of the registering authority, the executive  
6 secretary shall determine the resident status of the student  
7 and shall notify the student and the registering authority  
8 of his decision.

9 (c) The executive secretary's decision may be appealed  
10 to the regents if the regents agree to entertain such an  
11 appeal."

12 Section 4. Section 83-303, R.C.M. 1947, is amended to  
13 read as follows:

14 "83-303. Residence, rules for determining. Every  
15 person has, in law, a residence. In determining the place  
16 of residence the following rules are to be observed:

17 1. It is the place where one remains when not called  
18 elsewhere for labor or other special or temporary purpose,  
19 and to which he returns in seasons of repose.

20 2. There can only be one residence.

21 3. A residence cannot be lost until another is gained.

22 4. ~~The--residence--of--the--father--during--his--life,--and~~  
23 ~~after--his--death--the--residence--of--the--mother,--while--she~~  
24 ~~remains--unmarried,--is--the--residence--of--the--unmarried--minor~~  
25 ~~children.~~ The residence of his parents, or if one of them

1 is deceased or they do not share the same residence, the  
2 residence of the parent with whom he customarily resides, is  
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4 controversy the district court may declare which parental  
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6 ~~5.--The--residence--of--the--husband--is--presumptively--the~~  
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8 ~~6--5.~~ The residence of an unmarried minor who has a  
9 parent living cannot be changed by either his own act or  
10 that of his guardian.

11 ~~7--6.~~ The residence can be changed only by the union  
12 of act and intent."

13 Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-

Approved by Committee  
on Judiciary

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20 Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-



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21 of residence the following rules are to be observed:

22 1. It is the place where one remains when not called  
23 elsewhere for labor or other special or temporary purpose,  
24 and to which he returns in seasons of repose.

25 2. There can only be one residence.

1 3. A residence cannot be lost until another is gained.

2 4. ~~The residence of the father during his life, and~~  
3 ~~after his death the residence of the mother, while she~~  
4 ~~remains unmarried, is the residence of the unmarried minor~~  
5 ~~children. The residence of his parents, or if one of them~~  
6 ~~is deceased or they do not share the same residence, the~~  
7 ~~residence of the parent HAVING LEGAL CUSTODY, OR IF NEITHER~~  
8 ~~PARENT HAS LEGAL CUSTODY THE PARENT with whom he customarily~~  
9 ~~resides, is the residence of the unmarried minor child. In~~  
10 ~~case of a controversy the district court may declare which~~  
11 ~~parental residence is the residence of an unmarried minor~~  
12 ~~child.~~

13 ~~5. The residence of the husband is presumptively the~~  
14 ~~residence of the wife.~~

15 6-5. The residence of an unmarried minor who has a  
16 parent living cannot be changed by either his own act or  
17 that of his guardian.

18 7-6. The residence can be changed only by the union  
19 of act and intent."

20 Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-

## 1 HOUSE BILL NO. 5

2 INTRODUCED BY STOLTZ, YARDLEY, KIMBLE,

3 BRADLEY, HUENNEKENS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS  
6 RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL  
7 DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704  
8 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102,  
9 R.C.M. 1947."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Section 23-3022, R.C.M. 1947, is amended to  
13 read as follows:14 "23-3022. Residence, rules for determining. For  
15 registration or voting, the residence of any person shall be  
16 determined by the following rules as far as they are  
17 applicable.18 (1) The residence of a person is where his habitation  
19 is fixed, and to which, whenever he is absent, he has the  
20 intention of returning.21 (2) A person may not gain or lose a residence while a  
22 student at any institution of learning, while kept  
23 involuntarily at any public institution not necessarily at  
24 public expense, while confined in any public prison, or  
25 while residing on a military reservation.1 (3) A person in the armed forces of the United States  
2 may not become a resident in consequence of being stationed  
3 at a military facility in the state. A person may not  
4 acquire a residence by reason of being employed or stationed  
5 at a training or other transient camp maintained by the  
6 United States within the state.7 (4) A person does not lose his residence if he goes  
8 into another state, or other district of this state, for  
9 temporary purposes with the intention of returning unless he  
10 exercises the election franchise in the other state or  
11 district.12 (5) A person may not gain a residence in a county if  
13 he comes in for temporary purposes without the intention of  
14 making that county his home.15 (6) If a person moves to another state with the  
16 intention of making it his residence, he loses his residence  
17 in this state.18 (7) If a person moves to another state with the  
19 intention of residing there for an indefinite time, he loses  
20 his residence in this state even though he intends to return  
21 to this state at some future period.22 (8) The place where a ~~man's~~ person's family resides is  
23 presumed ~~his~~ that person's place of residence. However, a  
24 man person who takes up or continues ~~his~~ a residence at a  
25 place other than where his family ~~resided~~ resides with the

1 intention of remaining is a resident of the place where he  
2 resides.

3 (9) A change of residence can only be made by the act  
4 of removal joined with intent to remain in another place.  
5 There can only be one residence.

6 (10) The term of residence must be computed by  
7 including the day of election."

8 Section 2. Section 75-8703, R.C.M. 1947, is amended to  
9 read as follows:

10 "75-8703. Presumptions as to domicile. Unless the  
11 contrary appears to the unit registering authority, it is  
12 presumed that:

13 (1) The domicile of a minor is that:

14 (a) ~~of his father, or~~ of the parents, or, if one of  
15 them is deceased or they do not share the same domicile, of  
16 the parent HAVING LEGAL CUSTODY, OR IF NEITHER PARENT HAS  
17 LEGAL CUSTODY THE PARENT with whom the minor customarily  
18 resides; or

19 ~~(b) of his mother if there is no father, or~~

20 ~~(c) (b)~~ of his guardian when the court appointing the  
21 guardian certifies that the primary purpose of the  
22 appointment is not to qualify the minor as a resident of  
23 this state; or

24 ~~(d) (e) of the parent who has custody of the minor.~~

25 (2) ~~The domicile of a married woman is that of her~~

1 ~~husband, except that a~~ A resident ~~woman~~ student who marries  
2 a nonresident does not by that fact alone lose ~~her~~ resident  
3 status for tuition and fee purposes for a period of four (4)  
4 years after ~~her~~ marriage.

5 (3) Except as provided in the next subsection,  
6 residence is not gained or lost because of relocation as a  
7 member of the armed forces of the United States.

8 (4) Residence may be gained by a member of the armed  
9 forces of the United States, his spouse, or his children by  
10 living in Montana for one (1) year, and complying with the  
11 provisions of this section.

12 (5) A new domicile is established by a qualified  
13 person if he is physically present in Montana with no  
14 intention to acquire a domicile outside of Montana.

15 (6) Domicile is not lost by absence from Montana with  
16 no intention to establish a new domicile.

17 (7) Montana high school graduates are resident  
18 students of the system for four (4) consecutive years of  
19 attendance if:

20 (a) they apply for admittance to the system within one  
21 (1) year after graduation; or

22 (b) their parents or the parent HAVING LEGAL CUSTODY,  
23 OR IF NEITHER PARENT HAS LEGAL CUSTODY THE PARENT with whom  
24 they customarily reside have resided in Montana in one (1)  
25 of the two (2) years immediately preceding the graduation.

1           (8) Upon moving to Montana, an adult employed on a  
 2 full-time basis within the state of Montana may apply for  
 3 in-state tuition classification for his spouse or any  
 4 dependent minor child or both. If such person meets the  
 5 requirement of full-time employment within the state of  
 6 Montana and he files for the payment of Montana state income  
 7 taxes, or files estimates of such taxes, or is subject to  
 8 withholding of said taxes, and renounces his residency in  
 9 any other state, and is not himself in the state primarily  
 10 as a student, his spouse or any dependent minor child, or  
 11 both, may at the next registration after qualifying be  
 12 classified at the in-state rate, so long as he continues his  
 13 Montana domicile. In the administration of this paragraph,  
 14 neither the full-time employee or spouse shall be eligible  
 15 for in-state tuition classification if the primary purpose  
 16 for coming to Montana was the education of the employee or  
 17 spouse."

18           Section 3. Section 75-8704, R.C.M. 1947, is amended to  
 19 read as follows:

20           "75-8704. Evidence as to domiciliary intent -- changes  
 21 in status. (1) To determine the domicile of a person, the  
 22 units of the system shall apply the following rules:

23           (a) Nonpayment of Montana income tax by a person whose  
 24 income is sufficient to be taxed is highly persuasive  
 25 evidence of non-Montana domicile.

1           (b) A person must intend to establish a domicile in  
 2 Montana.

3           (2) After registration, a student's classification for  
 4 tuition and fee purposes remains unchanged in the absence of  
 5 evidence to the contrary:

6           (a) A written statement of the evidence shall be filed  
 7 with the registering authority of the unit.

8           (b) Changes in classification shall be in writing  
 9 signed by the registering authority, and shall take effect  
 10 at the student's next registration.

11           (3) A minor shall qualify for a change in status only  
 12 if his parents or the parent HAVING LEGAL CUSTODY, OR IF  
 13 NEITHER PARENT HAS LEGAL CUSTODY THE PARENT with whom he  
 14 customarily resides or legal guardian or person having legal  
 15 custody completes the requirements for establishing domicile  
 16 heretofore set forth.

17           (4) It is presumed a minor or adult registered as a  
 18 full-time student at any unit is not qualified for a change  
 19 in his or his dependents classification for tuition and fee  
 20 purposes unless he completes twelve (12) continuous months  
 21 of residence while not attending a unit of the system or  
 22 other institution of higher learning or while serving in the  
 23 armed forces.

24           (5) Any student whose request for classification as a  
 25 resident student is denied has the right of appeal to the

1 executive secretary of the Montana university system:

2 (a) Immediately upon rejection and at the request of  
3 the student, the registering authority shall forward a copy  
4 of his decision and a complete file on the student to the  
5 executive secretary.

6 (i) The executive secretary may accept other evidence  
7 of residence from either the student, the registering  
8 authority, or other interested persons.

9 (b) Within thirty (30) days of the receipt of the  
10 decision of the registering authority, the executive  
11 secretary shall determine the resident status of the student  
12 and shall notify the student and the registering authority  
13 of his decision.

14 (c) The executive secretary's decision may be appealed  
15 to the regents if the regents agree to entertain such an  
16 appeal."

17 Section 4. Section 83-303, R.C.M. 1947, is amended to  
18 read as follows:

19 "83-303. Residence, rules for determining. Every  
20 person has, in law, a residence. In determining the place  
21 of residence the following rules are to be observed:

22 1. It is the place where one remains when not called  
23 elsewhere for labor or other special or temporary purpose,  
24 and to which he returns in seasons of repose.

25 2. There can only be one residence.

1 3. A residence cannot be lost until another is gained.

2 4. ~~The residence of the father during his life, and~~  
3 ~~after his death the residence of the mother, while she~~  
4 ~~remains unmarried, is the residence of the unmarried minor~~  
5 ~~children. The residence of his parents, or if one of them~~  
6 ~~is deceased or they do not share the same residence, the~~  
7 ~~residence of the parent HAVING LEGAL CUSTODY, OR IF NEITHER~~  
8 ~~PARENT HAS LEGAL CUSTODY THE PARENT with whom he customarily~~  
9 ~~resides, is the residence of the unmarried minor child. In~~  
10 ~~case of a controversy the district court may declare which~~  
11 ~~parental residence is the residence of an unmarried minor~~  
12 ~~child.~~

13 ~~5. The residence of the husband is presumptively the~~  
14 ~~residence of the wife.~~

15 ~~6. 5.~~ The residence of an unmarried minor who has a  
16 parent living cannot be changed by either his own act or  
17 that of his guardian.

18 ~~7. 6.~~ The residence can be changed only by the union  
19 of act and intent."

20 Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-