

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 2190

4
5 By: Representative Fuqua

For An Act To Be Entitled

9 "AN ACT TO REPEAL ARKANSAS CODE 9-3-101 ET SEQ. PERTAINING
10 TO THE DOMICILE LAWS OF THE STATE OF ARKANSAS; AND FOR
11 OTHER PURPOSES."

Subtitle

13 "AN ACT TO REPEAL ARKANSAS CODE 9-3-101
14 ET SEQ. PERTAINING TO THE DOMICILE LAWS
15 OF THE STATE OF ARKANSAS; AND FOR OTHER
16 PURPOSES."

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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. The General Assembly of the State of Arkansas finds and
22 declares that the Supreme Court has determined that the issue of domicile is a
23 factual question and that the domicile of a person is determined by the intent
24 of a person to remain at a location for the indefinite future. Therefore, the
25 laws of domicile of the State of Arkansas are in conflict with the Supreme
26 Court ruling.

27
28 SECTION 2. Arkansas Code 9-3-101 et seq. is hereby repealed.
29 ~~9-3-101. Chapter supplemental.~~
30 ~~It is the purpose of this chapter to set up a method, in addition to all~~
31 ~~others now provided by law, for determining the establishment of residence and~~
32 ~~domicile in Arkansas.~~
33 ~~9-3-102. Voting privileges unaffected.~~
34 ~~Nothing in this chapter shall be construed to affect or extend the privilege~~
35 ~~of franchise to vote at any election held within the state because of having~~
36 ~~been admitted to become a resident domiciled within the state under this~~

1 ~~chapter.~~

2 ~~—— 9-3-103. Jurisdiction of courts.~~

3 ~~Exclusive jurisdiction to declare a person a resident domiciled in the State~~
 4 ~~of Arkansas is conferred upon the circuit and chancery courts.~~

5 ~~—— 9-3-104. Administration by Secretary of State.~~

6 ~~The Secretary of State shall be the administrative officer of this chapter.~~

7 ~~—— 9-3-105. Rules and regulations.~~

8 ~~The Secretary of State shall have power to make such rules and regulations as~~
 9 ~~may be necessary for properly carrying into execution the various provisions~~
 10 ~~of this chapter.~~

11 ~~—— 9-3-106. Qualifications to become domiciled.~~

12 ~~—— (a) Any person who is a citizen of the United States may become a~~
 13 ~~resident and domiciled in the State of Arkansas.~~

14 ~~—— (b) No person shall be admitted to become a resident domiciled in the~~
 15 ~~State of Arkansas who has not resided in the state for at least thirty (30)~~
 16 ~~days preceding his application for admission as a resident domiciled in the~~
 17 ~~State of Arkansas.~~

18 ~~—— 9-3-107. Sex or marital status not a bar.~~

19 ~~The right of any citizen of the United States to become a resident domiciled~~
 20 ~~in the State of Arkansas shall not be denied or abridged because of sex or~~
 21 ~~marital status.~~

22 ~~—— 9-3-108. Effect of marriage to resident.~~

23 ~~Any woman who marries a resident domiciled under this chapter shall not become~~
 24 ~~a resident domiciled in this state by reason of the marriage. However, if~~
 25 ~~eligible to become a resident domiciled under this chapter, she may become a~~
 26 ~~resident domiciled in this state upon full and complete compliance with all~~
 27 ~~requirements of this chapter.~~

28 ~~—— 9-3-109. Status of women who lost domicile by marriage.~~

29 ~~A woman who, before March 26, 1941, had ceased to be a resident domiciled in~~
 30 ~~this state may become a resident domiciled in this state as provided in ~~§ 9-3-~~~~
 31 ~~108. After having received a certificate of domicile, she shall have the same~~
 32 ~~status as if her marriage had taken place after March 26, 1941.~~

33 ~~—— 9-3-110. Declaration of intent - Publication of notice - Exceptions.~~

34 ~~—— (a) Any person desiring to make a declaration of domicile under this~~
 35 ~~chapter shall declare on oath before the clerk of any court authorized under~~
 36 ~~this chapter to have jurisdiction, or the clerk's authorized deputy, in the~~

~~1 county in which the person owns real estate and has resided for thirty (30)
2 days after reaching the age of eighteen (18) years, that it is his bona fide
3 intention to become a resident domiciled in the State of Arkansas and that he
4 renounces his residence and domicile in the state in which he was last
5 domiciled.~~

~~6 (b)(1) The declaration shall set forth the name, date of birth, place
7 of birth, occupation, personal description, name of the state and address of
8 last residence, and the state in which he owns real or personal property. The
9 declaration shall also state the name of his or her spouse, the date of
10 spouse's birth, the place of their marriage, the name of each child and the
11 date of each child's birth, the name of the state, and the address at the date
12 of the declaration.~~

~~13 (2) The declaration shall have attached a certified copy of the
14 notice published thirty (30) days prior to the declaration renouncing domicile
15 in the states in which he owned real or personal property and in which the
16 person formerly resided. The notice shall have been given by publication, in
17 the manner provided for the service of summons by publication or upon
18 absentees by the laws of the state or states in which the notices are
19 published.~~

~~20 (c)(1) No resident domiciled in the State of Arkansas in conformity
21 with the law in force at the date of the declaration, who has declared his
22 intention to become a resident domiciled in this state, shall be required to
23 renew the declaration.~~

~~24 (2) Any person who, on or after March 26, 1941, has become a
25 resident domiciled in this state under the provisions of the common law of the
26 state or of ^A 9-12-307 shall not be required to make a declaration as provided
27 in this chapter.~~

~~28 9-3-111. Petition for domicile.~~

~~29 (a) Not less than ninety (90) days nor more than two (2) years after a
30 declaration of intention has been made, the person shall make and file, in
31 duplicate, a petition in writing. The petition shall be signed by the
32 applicant in his own handwriting and duly verified.~~

~~33 (b)(1) In the petition, the applicant shall state his full name, his
34 place of residence, street number if possible, his occupation, the date and
35 place of birth, the state where he last resided, the date and place of his
36 first address within this state, and the time when and place and name of the~~

1 ~~court where he declared his intention to become a resident domiciled in the~~
2 ~~State of Arkansas. If the applicant is married, he shall state the name of his~~
3 ~~spouse and, if possible, the spouse's place of residence at the time of filing~~
4 ~~his petition. If he has children, he shall state the name, date, and place of~~
5 ~~birth, and place of residence of each child living at the time of filing his~~
6 ~~petition.~~

7 ~~_____ (2) The petition shall set forth that it is his intention to become~~
8 ~~a resident domiciled in the State of Arkansas, that he renounces absolutely~~
9 ~~domicile in the state in which he last resided or was domiciled, and that it~~
10 ~~is his intention to reside permanently in the State of Arkansas. The petition~~
11 ~~shall set forth whether he has been denied admission as a resident domiciled~~
12 ~~in the State of Arkansas and, if so, the ground or grounds of the denial, the~~
13 ~~court in which such decision was rendered, and that the cause for the denial~~
14 ~~has since been cured or removed and shall set forth every fact material to~~
15 ~~becoming a resident domiciled in the State of Arkansas and required to be~~
16 ~~proved upon the final hearing of his application.~~

17 ~~_____ (c) The petition shall be verified by the affidavits of at least two~~
18 ~~(2) credible witnesses, who are citizens of the State of Arkansas and who~~
19 ~~state in their affidavits that they personally know the applicant to have been~~
20 ~~a resident of the State of Arkansas for a period of at least ninety (90) days~~
21 ~~continuously next prior to the date of filing of his petition and that they~~
22 ~~each have personal knowledge that the petitioner is a person of good moral~~
23 ~~character and that he is in every way qualified in their opinion to become and~~
24 ~~to be a resident domiciled in the State of Arkansas.~~

25 ~~_____ (d) A petition to become a resident domiciled in the State of Arkansas~~
26 ~~may be made and filed during term time or in vacation and shall be docketed~~
27 ~~the same day as filed.~~

28 ~~_____ (e) However, in no case shall final action be had upon a petition until~~
29 ~~at least thirty (30) days have elapsed after its filing and the posting of the~~
30 ~~notice of the petition as provided for in ~~§~~ 9-3-112.~~

31 ~~_____ 9-3-112. Public notice of petition and final hearing.~~

32 ~~Immediately after filing of the petition, the clerk of the court shall give~~
33 ~~notice thereof by posting in a public and conspicuous place in his office or~~
34 ~~in the building in which the clerk's office is situated, under an appropriate~~
35 ~~heading, the name, residence, the state in which petitioner formerly resided,~~
36 ~~the date and place of residence in Arkansas, the tentative date for final~~

1 hearing of his petition, and the names of the witnesses whom the applicant
2 expects to summon in his behalf.

3 ~~9-3-113. Declarations of applicant.~~

4 ~~Before he is permitted under this chapter to be declared a resident domiciled~~
5 ~~in the State of Arkansas, the applicant shall declare in open court that he is~~
6 ~~a resident of Arkansas and that Arkansas is his domicile, that he absolutely~~
7 ~~and entirely renounces residence and domicile in the state in which he~~
8 ~~formerly resided, and that he will support and defend the Constitution and~~
9 ~~laws of the United States of America and of the State of Arkansas.~~

10 ~~9-3-114. Hearings upon petitions - Final orders.~~

11 ~~(a) Every final hearing upon a petition to become a resident domiciled~~
12 ~~in the State of Arkansas shall be held in open court before a judge of this~~
13 ~~state. Every final order which may be made upon the petition shall be under~~
14 ~~the hand of the court and entered in full upon the records of the court.~~

15 ~~(b)(1) The clerk of the court, if the applicant requests it, shall~~
16 ~~issue a subpoena for the witnesses named by the applicant to appear upon the~~
17 ~~day set for final hearing. However, if the witnesses cannot be produced upon~~
18 ~~the final hearing, other witnesses may be summoned.~~

19 ~~(2) At the final hearing of the petition, the applicant and~~
20 ~~witnesses shall be examined under oath in the presence of the court.~~

21 ~~(c) The court, upon proper finding, shall enter a final order that the~~
22 ~~person applying to be declared a resident domiciled in the State of Arkansas~~
23 ~~has complied with the provisions of this chapter and is entitled to be~~
24 ~~declared a resident domiciled in the state, and the court shall order to be~~
25 ~~issued to the person such form of certificate of residence and domicile as~~
26 ~~shall be prescribed by the Secretary of State.~~

27 ~~9-3-115. Admission within 30 days of general election prohibited.~~

28 ~~No person shall be admitted as a resident domiciled in the State of Arkansas~~
29 ~~under this chapter, nor shall any certificate of residence and domicile be~~
30 ~~issued by any court, within thirty (30) days preceding the holding of any~~
31 ~~general election within the state.~~

32 ~~9-3-116. Admission of surviving spouse and minor children.~~

33 ~~When any person who has declared his intention to become a resident domiciled~~
34 ~~in the State of Arkansas dies before he has received a certificate from the~~
35 ~~Secretary of State showing him to be a resident domiciled in this state, the~~
36 ~~surviving spouse and minor children of the person, by complying with the other~~

1 ~~provisions of this chapter, may become residents domiciled in the State of~~
 2 ~~Arkansas without making any declaration of intention.~~

3 ~~9-3-117. Duties of clerks of court.~~

4 ~~(a) It shall be the duty of the clerk of the court exercising~~
 5 ~~jurisdiction in matters of residence and domicile to send to the Secretary of~~
 6 ~~State at Little Rock, within thirty (30) days after the issuance of a~~
 7 ~~certificate of residence and domicile in the State of Arkansas, a duplicate of~~
 8 ~~such certificate, and to make and keep on file in his office a stub for each~~
 9 ~~certificate so issued by him. On the certificate shall be entered a memorandum~~
 10 ~~of all the essential facts set forth in the certificate.~~

11 ~~(b) It shall also be the duty of the clerk of the court to report to~~
 12 ~~the Secretary of State, within thirty (30) days after the final hearing and~~
 13 ~~decision of the court, the name of every person who was denied residence and~~
 14 ~~domicile under provisions of this chapter. The clerk shall furnish to the~~
 15 ~~Secretary of State duplicates of all petitions within thirty (30) days after~~
 16 ~~the filing of the petitions and certified copies of such other proceedings and~~
 17 ~~orders instituted in or issued out of the court affecting or relating to~~
 18 ~~residence and domicile as provided for under this chapter, as may be required~~
 19 ~~from time to time by the Secretary of State.~~

20 ~~9-3-118. Clerk's fees - Deposits for witness expenses.~~

21 ~~(a)(1) The clerk of the court exercising jurisdiction in matters~~
 22 ~~provided for under this chapter shall charge, collect, and account for the~~
 23 ~~following fees in each proceeding:~~

24 ~~(A) For receiving and filing a declaration of intention and~~
 25 ~~issuing a duplicate, five dollars (\$5.00);~~

26 ~~(B) For making, filing, and docketing the petition of a~~
 27 ~~person petitioning for admission under this chapter as a resident domiciled in~~
 28 ~~the State of Arkansas and for the final hearing, twenty-five dollars (\$25.00);~~

29 ~~(C) For entering the final order and issuing certificate of~~
 30 ~~residence and domicile thereunder, if granted, twenty-five dollars (\$25.00).~~

31 ~~(2) The fees collected by the clerk of the court in the residence~~
 32 ~~and domicile proceeding shall be paid into the county general fund.~~

33 ~~(b) In addition to the fees required by this section and upon the~~
 34 ~~filing of the petition to become a resident domiciled in the State of~~
 35 ~~Arkansas, the petitioner shall deposit with, and pay to, the clerk of the~~
 36 ~~court a sum of money sufficient to cover the expenses of subpoenaing and~~

1 ~~paying the legal fees of any witnesses for whom he may request a subpoena.~~
2 ~~Upon the final discharge of the witnesses, the witnesses shall receive, if~~
3 ~~they demand from the clerk, the customary and usual fees from the moneys which~~
4 ~~the petitioner shall have paid to the clerk for such purposes. The residue, if~~
5 ~~any, shall be returned by the clerk to the petitioner.~~

6 ~~———— 9-3-119. Cancellation of certificate — Renunciation of residence and~~
7 ~~domicile.~~

8 ~~———— (a)(1) It shall be the duty of the prosecuting attorney of a county,~~
9 ~~upon affidavit showing good cause, to institute proceedings in any court~~
10 ~~having jurisdiction under this chapter for the purpose of setting aside and~~
11 ~~cancelling any certificate issued under this chapter on the ground of fraud or~~
12 ~~on the ground that the certificate was illegally procured.~~

13 ~~———— (2) In any such proceeding, the party holding the certificate~~
14 ~~alleged to have been fraudulently or illegally procured shall have sixty (60)~~
15 ~~days' personal notice in which to make answer to the petition of the State of~~
16 ~~Arkansas. If the holder of the certificate is absent from the State of~~
17 ~~Arkansas or from the district in which he last had residence, the notice shall~~
18 ~~be given by publication in the manner provided for the service of summons by~~
19 ~~publication or upon absentees by the laws of the State of Arkansas.~~

20 ~~———— (3) If any person who secures a certificate of residence and~~
21 ~~domicile under the provisions of this chapter shall, within two (2) years~~
22 ~~after the issuance of such certificate, cease to reside in the State of~~
23 ~~Arkansas more than thirty (30) days in any one (1) year, it shall be~~
24 ~~considered prima facie evidence of a lack of intention on the part of the~~
25 ~~person to become a permanent resident of the State of Arkansas at the time of~~
26 ~~the filing of the application for a certificate of residence and domicile,~~
27 ~~and, in the absence of contrary evidence, it shall be sufficient evidence, in~~
28 ~~the proper proceeding, to authorize the cancellation of his certificate of~~
29 ~~residence and domicile as fraudulent.~~

30 ~~———— (b)(1) Not less than two (2) years after a certificate of residence and~~
31 ~~domicile has been issued under this chapter, the person to whom the~~
32 ~~certificate has been issued may file, in duplicate, a petition signed in his~~
33 ~~own handwriting, duly verified, which shall state his full name, his place of~~
34 ~~residence with the street number, if possible, his occupation, his date and~~
35 ~~place of birth, the state in which he intends to reside, the date and place of~~
36 ~~his first address within this state, the time when and place and name of the~~

1 ~~court where he declared his intention to become a resident domiciled in the~~
 2 ~~State of Arkansas, and the name of the court where he received his certificate~~
 3 ~~of residence and domicile. If married, he shall state the name of his spouse,~~
 4 ~~his place of residence at the time of filing this petition, and if he has~~
 5 ~~children, the name, date, and place of birth, and place of residence of each~~
 6 ~~child living at the time of filing this petition.~~

7 ~~_____ (2) The petition shall set forth that he renounces absolutely his~~
 8 ~~residence and domicile in the State of Arkansas and that it is his intention~~
 9 ~~to reside permanently in a state other than Arkansas.~~

10 ~~_____ (c)(1) Whenever a certificate of residence and domicile is set aside or~~
 11 ~~cancelled as provided in this section, the court in which the judgment or~~
 12 ~~decree is rendered shall make an order cancelling the certificate and shall~~
 13 ~~order a certified copy of the judgment to be sent to the Secretary of State.~~

14 ~~_____ (2) If the certificate was not originally issued by the court making~~
 15 ~~the order, the court shall direct the clerk of the court to transmit a copy of~~
 16 ~~the order and judgment to the court out of which the certificate of residence~~
 17 ~~and domicile was originally issued. It shall be the duty of the clerk of the~~
 18 ~~court receiving the certified copy of the order and judgment of the court to~~
 19 ~~enter the certified copy of the order and judgment of record and to cancel the~~
 20 ~~original certificate of residence and domicile upon the records and to notify~~
 21 ~~the Secretary of State of the cancellation.~~

22 ~~_____ 9-3-120. Certified copies of papers, etc., as evidence.~~
 23 ~~Certified copies of all papers, documents, certificates, and records required~~
 24 ~~to be used, filed, recorded, or kept under any and all of the provisions of~~
 25 ~~this chapter shall be admitted in evidence equally with the originals in any~~
 26 ~~and all proceedings under this chapter and in all cases in which the originals~~
 27 ~~might be admissible as evidence.~~

28

29 SECTION 3. All provisions of this act of a general and permanent nature
 30 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 31 Revision Commission shall incorporate the same in the Code.

32

33 SECTION 4. If any provision of this act or the application thereof to
 34 any person or circumstance is held invalid, such invalidity shall not affect
 35 other provisions or applications of the act which can be given effect without
 36 the invalid provision or application, and to this end the provisions of this

1 act are declared to be severable.

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3 SECTION 5. All laws and parts of laws in conflict with this act are
4 hereby repealed.

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