

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Obsolete provisions-judiciary committee.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the general revision of laws;
2 amending archaic and obsolete provisions; correcting
3 and updating references; conforming provisions to
4 previous enactments; repealing provisions held to be
5 unconstitutional; repealing fully executed and
6 otherwise archaic or obsolete provisions; and
7 providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of*
10 *Wyoming:*

11

12 [SECTION 1. PROVISIONS AFFECTED BY COURT
13 DECISIONS]

14 [a. PROVISIONS HELD TO BE UNCONSTITUTIONAL]

15

1 **Section 1.** W.S. 1-39-117(a) is amended to read:

2

3 **1-39-117. Jurisdiction; appeals; venue; trial by**
4 **jury; liability insurance.**

5

6 (a) Original ~~and exclusive~~ jurisdiction for any
7 claim under this act shall be in the district courts
8 of Wyoming. Appeals may be taken as provided by law.

9

***** STAFF COMMENT *****

10 **Section declared unconstitutional by U.S. district court in Scott**
11 **v. School District No. 6, 815 F. Supp. 424, (1993) to the extent it**
12 **limits supplemental jurisdiction of federal courts by conferring**
13 **exclusive jurisdiction in governmental claims cases to**
14 **Wyoming state district courts.**
15 **Recommendation – strike "and exclusive".**

16

17 [SECTION 2. PROVISIONS WHICH ARE OBSOLETE]
18 [a. DUE TO EARLIER LEGISLATIVE ACTION AND
19 SUBSEQUENT IMPLEMENTATION]
20 [i. JUSTICE OF THE PEACE REFERENCES]
21

22 **Section 201.** W.S. 5-6-301(b) is amended to read:

23

24 **5-6-301. Punishment of persons convicted before**
25 **judge; maximum penalty permitted; power to punish for**
26 **contempt.**

27

1 (b) The municipal judge shall punish for
 2 contempt in the same manner as ~~justices of the peace~~
 3 district court.

4 ***** STAFF COMMENT *****

5 **2000 Wyo. Sess. Laws, Chap. 24, reorganized courts. Since that**
 6 **law was enacted, the justice of peace courts have been phased**
 7 **out; therefore, references to justices of peace are obsolete.**
 8 **W.S. 5-6-202(b) was previously amended to provide that**
 9 **municipal court judges in first class cities have the same**
 10 **contempt powers as district court judges, but W.S. 5-6-301,**
 11 **still provides that municipal court judges in incorporated**
 12 **towns have the same contempt powers as justices of the peace.**
 13 **Recommendation – strike "justices of the peace" and insert**
 14 **"district court".**
 15

16 [SECTION 2. PROVISIONS WHICH ARE OBSOLETE]
 17 [c. ARCHAIC REFERENCES]
 18 [ii. OTHER ARCHAIC USES]
 19

20 **Section 209.** W.S. 1-17-102(c), 2-2-306, 2-2-307,
 21 2-2-311 and 2-0-106(e) are amended to read:
 22

23 **1-17-102. Request for hearing when property**
 24 **seized under execution.**
 25

26 (c) ~~As to any judgment entered prior to June 11,~~
 27 ~~1986,~~ The notice provided in this section shall be
 28 sent to the last known address of the judgment debtor
 29 by the clerk of court upon the request of any person

1 before any property of the judgment debtor is seized
2 by execution or garnishment.

3 ***** STAFF COMMENT *****

4 **The stricken language in the preceding subsection was apparently**
5 **intended to address due process with respect to providing notice to a**
6 **judgment debtor and opportunity for a hearing before property was seized**
7 **for judgments entered before June 11, 1986. Clerks of court nevertheless are**
8 **sending the notice specified in this subsection to the judgment debtor,**
9 **without regard to the date that judgment was entered.**

10 **Recommendation: Strike the language addressing judgments entered**
11 **prior to June 11, 1986, thereby allowing similar treatment for the sending of**
12 **the notice, regardless of when the judgment was entered.**
13

14 **2-2-306. Citations; used to give personal**
15 **notice.**

16
17 When a personal notice is required, and no mode of
18 giving it is prescribed in this ~~act~~chapter, it shall
19 be given by citation.
20

21 **2-2-307. Citations; when to be served.**

22
23 When no other time is specially prescribed in this ~~act~~
24 chapter, citations shall be served at least five (5)
25 days before the return day thereof.
26

27 **2-2-311. Payment of costs.**
28

1 When it is not otherwise prescribed in this ~~act~~
2 chapter, the district court, or the supreme court on
3 appeal, may order costs to be paid by any party to the
4 proceedings, or out of the assets of the estate.
5 Execution for the costs may issue out of the court.

6 ***** STAFF COMMENT *****

7 **The preceding three sections, W.S. 2-2-306, 2-2-307 and 2-2-311, all contain**
8 **references to "this act", referring to the original Probate Act, enacted in**
9 **1890-91.**

10 **Recommendation: Delete reference to "this act" and insert "this chapter"**
11 **because chapter 2 addresses matters in probate court, notwithstanding the**
12 **annotation to W.S. 2-2-301 that suggests that the change be to "this article",**
13 **i.e., article 3 which addresses procedures only.**
14

15 **2-10-106. Allowances for exemptions or**
16 **deductions and credits.**

17
18 (e) To the extent that property passing to or in
19 trust for a surviving spouse or any charitable, public
20 or similar gift or bequest does not constitute an
21 allowable deduction for purposes of the tax solely by
22 reason of an inheritance tax or other death tax
23 imposed upon and deductible from the property, the
24 property shall not be included in the computation
25 provided for in W.S. 2-10-103 and to that extent no
26 apportionment shall be made against the property. The
27 sentence immediately preceding shall not apply to any

1 case where the result will be to deprive the estate of
2 a deduction otherwise allowable under ~~section 2053 (d)~~
3 ~~of the Internal Revenue Code of 1954 of the United~~
4 ~~States~~ applicable gift and estate laws, relating to
5 deduction for state death taxes on transfers for
6 public, charitable or religious uses.

7 ***** STAFF COMMENT *****

8 **The preceding reference to section 2053(d) of the Internal Revenue Code**
9 **(IRC) is obsolete. Because of temporary changes to the IRC that are due to**
10 **expire within 2 years, a specific reference to the IRC may be an exercise in**
11 **futility.**

12 **Recommendation: replace the specific reference to the IRC with a more**
13 **generic reference.**

14
15 [SECTION 3. INCORRECT CITATIONS OR FAILURE TO
16 UPDATE CROSS REFERENCED PROVISIONS]

17 [a. WYOMING OR INTERNAL CITATIONS]
18

19 **Section 301.** W.S. 1-15-107(b)(v) and (ix), 1-17-
20 102(b)(v) and (ix), 1-40-112(c)(intro) and 7-13-
21 301(a)(v) are amended to read:

22
23 **1-15-107. Notice of exemptions; right to a**
24 **hearing; procedures.**

25
26 (b) The notice required by this section shall
27 inform the person of his right to request a hearing.
28 The notice shall inform him that certain benefits and

1 property cannot be taken to pay a debt and shall list
2 the exempted benefits and property set forth in
3 paragraphs (i) through (x) of this subsection. The
4 notice shall also include a form for requesting a
5 hearing and instructions that if the person believes
6 he is entitled to retain or recover the property
7 because it is exempt, or for any other reason, he
8 should sign the form requesting a hearing and return
9 or mail the form to the office of the clerk of court
10 within ten (10) days after the date the notice was
11 mailed to him. The request for hearing form shall set
12 forth the following exemptions and provide a place for
13 the person to designate which exemptions he claims:

14

15 (v) Federal civil service and state
16 retirement system benefits as provided in 5 U.S.C.
17 8346 and W.S. 9-3-426, ~~and 9-3-620,~~ 9-3-712 and 15-5-
18 313;

19

20 (ix) Homestead, personal articles and
21 articles used for carrying on a trade or business to
22 the extent provided by W.S. 1-20-101 through ~~1-20-109~~
23 1-20-111;

1 ***** STAFF COMMENT *****

2 **Paragraph (b)(v) did not cross refer to judicial retirement and municipal**
3 **police pensions that are also statutorily not subject to execution or**
4 **attachment.**

5 **The cross reference in paragraph (b)(ix) did not include subsequent**
6 **enactments of W.S. 1-20-110 and 1-20-111.**

7 **Recommendation: Update the cross references to include those subsequent**
8 **enacted statutes.**
9

10 **1-17-102. Request for hearing when property**
11 **seized under execution.**

12

13 (b) Except where the judgment is solely against
14 corporate entities, the court shall attach to every
15 money judgment a notice containing the following
16 information:

17

18 "You are informed that since the judgment is
19 entered the prevailing party may proceed to seize your
20 property, funds or wages by execution or garnishment.
21 In that event you may be entitled to the following
22 exemptions:

23

24 (v) Federal civil service and state
25 retirement system benefits as provided in 5 U.S.C.
26 8346 and W.S. 9-3-426, ~~and 9-3-620~~, 9-3-712 and 15-5-
27 313;

1

2 (ix) Homestead, personal articles and
 3 articles used for carrying on a trade or business to
 4 the extent provided by W.S. 1-20-101 through ~~1-20-109~~
 5 1-20-111;

6

***** STAFF COMMENT *****

Paragraph (b)(v) did not cross refer to judicial retirement and municipal police pensions that are also statutorily not subject to execution or attachment.

10 **The cross reference in paragraph (b)(ix) did not include subsequent**
 11 **enactments of W.S. 1-20-110 and 1-20-111.**

12 **Recommendation: Update the cross references to include those subsequent**
 13 **enacted statutes.**

14

15

16 **1-40-112. Recovery from offender; restitution.**

17

18 (c) Restitution by an offender under W.S. 7-9-
 19 101 through ~~7-9-112-7-9-115~~ shall:

20

***** STAFF COMMENT *****

The preceding provision is from the Crime Victims Compensation Act and subrogates the State to the victim’s right of action for restitution to the extent payment is made to the victim from the state fund. After this provision was enacted in 1985 (and amended in 1998), W.S. 7-9-113 through 7-9-115 were enacted authorizing victim restitution for long term care.

Recommendation: Update the cross reference to include subsequently enacted provisions

26

27

30 **7-13-301. Placing person found guilty, but not**
 31 **convicted, on probation.**

32

1 (a) If a person who has not previously been
2 convicted of any felony is charged with or is found
3 guilty of or pleads guilty or no contest to any
4 misdemeanor except any second or subsequent violation
5 of W.S. 31-5-233 or any similar provision of law, or
6 any second or subsequent violation of W.S. 6-2-501(a)
7 or (b) by a household member as defined by W.S. 35-21-
8 102 against any other household member or any similar
9 provision of law, or any felony except murder, sexual
10 assault in the first or second degree, aggravated
11 assault and battery or arson in the first or second
12 degree, the court may, with the consent of the
13 defendant and the state and without entering a
14 judgment of guilt or conviction, defer further
15 proceedings and place the person on probation for a
16 term not to exceed five (5) years upon terms and
17 conditions set by the court. The terms of probation
18 shall include that he:

19

20 (v) Pay restitution to each victim in
21 accordance with W.S. 7-9-101 and 7-9-103 through ~~7-9-~~
22 ~~112-7-9-115~~.

23

***** STAFF COMMENT *****

1 **W.S. 7-13-301 contains the same obsolete reference relating to victim**
2 **restitution as contained in the Crime Victims Compensation Act in W.S. 1-**
3 **40-112(c), *supra*.**
4 **Recommendation: Update the cross reference to include subsequently**
5 **enacted provisions.**
6

7

(END)