

ALIMONY REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill expands the circumstances under which a court may order alimony.

Highlighted Provisions:

This bill:

- ▶ allows a court to consider fault when awarding alimony; and
- ▶ defines fault to include acts that intentionally and knowingly harm or cause

substantial harm, physically or financially, to a spouse or the children of the marriage.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Laws of Utah 2010, Chapter 285

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **30-3-5** is amended to read:

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and



28 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

29 (1) When a decree of divorce is rendered, the court may include in it equitable orders
30 relating to the children, property, debts or obligations, and parties. The court shall include the
31 following in every decree of divorce:

32 (a) an order assigning responsibility for the payment of reasonable and necessary
33 medical and dental expenses of the dependent children including responsibility for health
34 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

35 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
36 purchase and maintenance of appropriate health, hospital, and dental care insurance for the
37 dependent children; and

38 (ii) a designation of which health, hospital, or dental insurance plan is primary and
39 which health, hospital, or dental insurance plan is secondary in accordance with the provisions
40 of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both
41 parents' health, hospital, or dental insurance plans;

42 (c) pursuant to Section 15-4-6.5:

43 (i) an order specifying which party is responsible for the payment of joint debts,
44 obligations, or liabilities of the parties contracted or incurred during marriage;

45 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
46 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
47 current addresses; and

48 (iii) provisions for the enforcement of these orders; and

49 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
50 Recovery Services.

51 (2) The court may include, in an order determining child support, an order assigning
52 financial responsibility for all or a portion of child care expenses incurred on behalf of the
53 dependent children, necessitated by the employment or training of the custodial parent. If the
54 court determines that the circumstances are appropriate and that the dependent children would
55 be adequately cared for, it may include an order allowing the noncustodial parent to provide
56 child care for the dependent children, necessitated by the employment or training of the
57 custodial parent.

58 (3) The court has continuing jurisdiction to make subsequent changes or new orders for

59 the custody of the children and their support, maintenance, health, and dental care, and for
60 distribution of the property and obligations for debts as is reasonable and necessary.

61 (4) Child support, custody, visitation, and other matters related to children born to the
62 mother and father after entry of the decree of divorce may be added to the decree by
63 modification.

64 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents
65 and other members of the immediate family, the court shall consider the best interest of the
66 child.

67 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
68 court may include in an order establishing a parent-time or visitation schedule a provision,
69 among other things, authorizing any peace officer to enforce a court-ordered parent-time or
70 visitation schedule entered under this chapter.

71 (6) If a petition for modification of child custody or parent-time provisions of a court
72 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'
73 fees expended by the prevailing party in that action, if the court determines that the petition
74 was without merit and not asserted or defended against in good faith.

75 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a
76 visitation order by a grandparent or other member of the immediate family where a visitation or
77 parent-time right has been previously granted by the court, the court may award to the
78 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing
79 party because of the other party's failure to provide or exercise court-ordered visitation or
80 parent-time.

81 (8) (a) The court shall consider at least the following factors in determining alimony:

82 (i) the financial condition and needs of the recipient spouse;

83 (ii) the recipient's earning capacity or ability to produce income;

84 (iii) the ability of the payor spouse to provide support;

85 (iv) the length of the marriage;

86 (v) whether the recipient spouse has custody of minor children requiring support;

87 (vi) whether the recipient spouse worked in a business owned or operated by the payor
88 spouse; and

89 (vii) whether the recipient spouse directly contributed to any increase in the payor

90 spouse's skill by paying for education received by the payor spouse or ~~[allowing]~~ enabling the
91 payor spouse to attend school during the marriage.

92 (b) The court may consider the fault of the parties in determining whether to award
93 alimony and the terms thereof.

94 (c) "Fault" means wrongful conduct during the marriage that substantially contributed
95 to the breakup of the marriage relationship, including:

96 (i) engaging in sexual relations with a person other than the party's spouse;

97 (ii) knowingly and intentionally causing or attempting to cause physical harm to the
98 other party or minor children;

99 (iii) knowingly and intentionally causing the other party or minor children to
100 reasonably fear life-threatening harm; or

101 (iv) substantially undermining the financial stability of the other party or the minor
102 children.

103 (d) The court may, when fault is at issue, close the proceedings and seal the court
104 records.

105 ~~[(e)]~~ (e) As a general rule, the court should look to the standard of living, existing at
106 the time of separation, in determining alimony in accordance with Subsection (8)(a). However,
107 the court shall consider all relevant facts and equitable principles and may, in its discretion,
108 base alimony on the standard of living that existed at the time of trial. In marriages of short
109 duration, when no children have been conceived or born during the marriage, the court may
110 consider the standard of living that existed at the time of the marriage.

111 ~~[(f)]~~ (f) The court may, under appropriate circumstances, attempt to equalize the
112 parties' respective standards of living.

113 ~~[(g)]~~ (g) When a marriage of long duration dissolves on the threshold of a major
114 change in the income of one of the spouses due to the collective efforts of both, that change
115 shall be considered in dividing the marital property and in determining the amount of alimony.
116 If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses
117 during the marriage, the court may make a compensating adjustment in dividing the marital
118 property and awarding alimony.

119 ~~[(h)]~~ (h) In determining alimony when a marriage of short duration dissolves, and no
120 children have been conceived or born during the marriage, the court may consider restoring

121 each party to the condition which existed at the time of the marriage.

122 ~~[(g)]~~ (i) (i) The court has continuing jurisdiction to make substantive changes and new
123 orders regarding alimony based on a substantial material change in circumstances not
124 foreseeable at the time of the divorce.

125 (ii) The court may not modify alimony or issue a new order for alimony to address
126 needs of the recipient that did not exist at the time the decree was entered, unless the court
127 finds extenuating circumstances that justify that action.

128 (iii) In determining alimony, the income of any subsequent spouse of the payor may not
129 be considered, except as provided in this Subsection (8).

130 (A) The court may consider the subsequent spouse's financial ability to share living
131 expenses.

132 (B) The court may consider the income of a subsequent spouse if the court finds that
133 the payor's improper conduct justifies that consideration.

134 ~~[(h)]~~ (j) Alimony may not be ordered for a duration longer than the number of years
135 that the marriage existed unless, at any time prior to termination of alimony, the court finds
136 extenuating circumstances that justify the payment of alimony for a longer period of time.

137 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
138 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
139 death of that former spouse. However, if the remarriage is annulled and found to be void ab
140 initio, payment of alimony shall resume if the party paying alimony is made a party to the
141 action of annulment and ~~[his]~~ the payor party's rights are determined.

142 (10) Any order of the court that a party pay alimony to a former spouse terminates
143 upon establishment by the party paying alimony that the former spouse is cohabitating with
144 another person.

Legislative Review Note
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Office of Legislative Research and General Counsel