

1 **ALIMONY MODIFICATIONS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Dana L. Layton**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill amends provisions related to alimony.

9 **Highlighted Provisions:**

10 This bill:

- 11 ► amends the criteria for the determination of alimony, including the creation of an
- 12 additional category for family expenses to be awarded to the recipient spouse under
- 13 certain circumstances.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **30-3-5**, as last amended by Laws of Utah 2013, Chapters 264 and 373

21

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

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

23 **30-3-5. Disposition of property -- Maintenance and health care of parties and**

24 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**

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



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

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

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

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

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

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

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

47 (iii) provisions for the enforcement of these orders;

48 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
49 Recovery Services; and

50 (e) if either party owns a life insurance policy or an annuity contract, an
51 acknowledgment by the court that the owner:

52 (i) has reviewed and updated, where appropriate, the list of beneficiaries;

53 (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries
54 after the divorce becomes final; and

55 (iii) understands that if no changes are made to the policy or contract, the beneficiaries
56 currently listed will receive any funds paid by the insurance company under the terms of the
57 policy or contract.

58 (2) The court may include, in an order determining child support, an order assigning

59 financial responsibility for all or a portion of child care expenses incurred on behalf of the
60 dependent children, necessitated by the employment or training of the custodial parent. If the
61 court determines that the circumstances are appropriate and that the dependent children would
62 be adequately cared for, it may include an order allowing the noncustodial parent to provide
63 child care for the dependent children, necessitated by the employment or training of the
64 custodial parent.

65 (3) The court has continuing jurisdiction to make subsequent changes or new orders for
66 the custody of the children [~~and their~~], for the children's support, maintenance, health, and
67 dental care, for family expenses determined under Subsection (8)(a)(i)(B), and for distribution
68 of the property and obligations for debts as is reasonable and necessary.

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

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

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

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

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

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

90 (i) the financial condition and needs of the recipient spouse[;], including the need for
91 family expenses, which shall be determined if there are expenses that:

92 (A) benefit both a child and the recipient spouse and are consistent with the standard of
93 living enjoyed during the marriage; or

94 (B) are related to the benefit of a child, and are consistent with the standard of living
95 enjoyed during the time of marriage, but exceed the payor's child support amount that would be
96 required under the guidelines and are not specifically included in the deviated child support
97 award;

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

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

100 (iv) the length of the marriage;

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

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

104 (vii) whether the recipient spouse directly contributed to any increase in the payor
105 spouse's skill by paying for education received by the payor spouse or enabling the payor
106 spouse to attend school during the marriage.

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

109 (c) "Fault" means any of the following wrongful conduct during the marriage that
110 substantially contributed to the breakup of the marriage relationship:

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

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

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

116 (iv) substantially undermining the financial stability of the other party or the minor
117 children.

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

120 (e) As a general rule, the court should look to the standard of living, existing at the

121 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the
122 court shall consider all relevant facts and equitable principles and may, in its discretion, base
123 alimony on the standard of living that existed at the time of trial. In marriages of short
124 duration, when no children have been conceived or born during the marriage, the court may
125 consider the standard of living that existed at the time of the marriage.

126 (f) The court may, under appropriate circumstances, attempt to equalize the parties'
127 respective standards of living.

128 (g) When a marriage of long duration dissolves on the threshold of a major change in
129 the income of one of the spouses due to the collective efforts of both, that change shall be
130 considered in dividing the marital property and in determining the amount of alimony. If one
131 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
132 the marriage, the court may make a compensating adjustment in dividing the marital property
133 and awarding alimony.

134 (h) In determining alimony when a marriage of short duration dissolves, and no
135 children have been conceived or born during the marriage, the court may consider restoring
136 each party to the condition which existed at the time of the marriage.

137 (i) (i) The court has continuing jurisdiction to make substantive changes and new
138 orders regarding alimony based on a substantial material change in circumstances not
139 foreseeable at the time of the divorce.

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

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

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

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

149 (j) Alimony may not be ordered for a duration longer than the number of years that the
150 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
151 circumstances that justify the payment of alimony for a longer period of time~~[-]~~, except that:

152 (i) family expenses included in the alimony award under Subsection (8)(a)(i)(B) may
153 last until the last child reaches the age of 18; and

154 (ii) family expenses awarded under Subsection (8)(a)(i)(B) shall end upon the child's
155 18th birthday or a change of custody of the child.

156 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
157 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
158 death of that former spouse, except that family expenses awarded under Subsection (8)(a)(i)(B)
159 may not end upon the remarriage of the former spouse. However, if the remarriage is annulled
160 and found to be void ab initio, payment of alimony shall resume if the party paying alimony is
161 made a party to the action of annulment and the payor party's rights are determined.

162 (10) Any order of the court that a party pay alimony to a former spouse terminates
163 upon establishment by the party paying alimony that the former spouse is cohabitating with
164 another person, except that family expenses awarded under Subsection (8)(a)(i)(B) may not
165 terminate.

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Office of Legislative Research and General Counsel