

ALIMONY MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies provisions related to alimony.

Highlighted Provisions:

This bill:

- ▶ addresses when cohabitation results in the termination of alimony; and
- ▶ makes technical changes.

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 2017, Chapter 31

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

(1) When a decree of divorce is rendered, the court may include in it equitable orders



28 relating to the children, property, debts or obligations, and parties. The court shall include the
29 following in every decree of divorce:

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

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

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

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

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

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

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

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

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

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

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

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

57 (2) The court may include, in an order determining child support, an order assigning
58 financial responsibility for all or a portion of child care expenses incurred on behalf of [~~the~~] a

59 dependent [~~children~~] child, necessitated by the employment or training of the custodial parent.
60 If the court determines that the circumstances are appropriate and that the dependent [~~children~~]
61 child would be adequately cared for, [~~it~~] the court may include an order allowing the
62 noncustodial parent to provide child care for the dependent [~~children~~] child, necessitated by the
63 employment or training of the custodial parent.

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

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

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

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

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

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

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

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

90 (ii) the recipient's earning capacity or ability to produce income, including the impact
91 of diminished workplace experience resulting from primarily caring for a child of the payor
92 spouse;

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

94 (iv) the length of the marriage;

95 (v) whether the recipient spouse has custody of a minor [~~children~~] child requiring
96 support;

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

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

102 (b) The court may consider the fault of the parties in determining whether to award
103 alimony and the terms [~~thereof~~] of the alimony.

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

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

107 (ii) knowingly and intentionally causing or attempting to cause physical harm to the
108 other party or a minor [~~children~~] child;

109 (iii) knowingly and intentionally causing the other party or a minor [~~children~~] child to
110 reasonably fear life-threatening harm; or

111 (iv) substantially undermining the financial stability of the other party or the minor
112 [~~children~~] child.

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

115 (e) As a general rule, the court should look to the standard of living, existing at the
116 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the
117 court shall consider all relevant facts and equitable principles and may, in [~~its~~] the court's
118 discretion, base alimony on the standard of living that existed at the time of trial. In marriages
119 of short duration, when no [~~children have~~] child has been conceived or born during the
120 marriage, the court may consider the standard of living that existed at the time of the marriage.

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

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

129 (h) In determining alimony when a marriage of short duration dissolves, and no
130 [~~children have~~] child has been conceived or born during the marriage, the court may consider
131 restoring each party to the condition which existed at the time of the marriage.

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

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

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

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

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

144 (j) Alimony may not be ordered for a duration longer than the number of years that the
145 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
146 circumstances that justify the payment of alimony for a longer period of time.

147 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
148 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
149 death of that former spouse. However, if the remarriage is annulled and found to be void ab
150 initio, payment of alimony shall resume if the party paying alimony is made a party to the
151 action of annulment and the payor party's rights are determined.

152 (10) ~~Any~~ **(a) Subject to Subsection (10)(b), an** order of the court that a party pay
152a alimony to a former spouse terminates
153 upon establishment by the party paying alimony that the former spouse ~~[is cohabitating]~~, after
154 the order for alimony is issued, cohabits with another person, even if the former spouse is not
155 cohabiting with another person when the party paying alimony files the motion to terminate
156 alimony.
156a **→ (b) A party paying alimony to a former spouse may not seek termination of alimony**
156b **under Subsection (10)(a), later than one year from the day on which the party knew or should**
156c **have known that the former spouse has cohabited with another person.** ←

Legislative Review Note
Office of Legislative Research and General Counsel