

DIVORCE LAW - ALIMONY AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

AN ACT RELATING TO HUSBAND AND WIFE; ADDING CONDITIONS FOR THE COURT TO CONSIDER BEFORE ORDERING ALIMONY; AND CAPPING THE AMOUNT OF TIME ALIMONY CAN BE COLLECTED WITHOUT A JUSTIFICATION BY THE RECIPIENT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-3-5, as last amended by Chapter 232, Laws of Utah 1997

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 visitation -- Determination of alimony -- Nonmeritorious petition for modification.

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

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

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

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

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

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the

court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

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

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

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

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

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

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

(6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

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

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

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

(iii) the ability of the payor spouse to provide support; [and]

(iv) the length of the marriage[-];

~~[(b) The court may consider the fault of the parties in determining alimony.]~~

(v) whether the recipient spouse has children to support;

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

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse.

~~[(c)]~~ (b) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (7)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

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

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

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

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

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

90 extenuating circumstances that justify that action.

91 (iii) In determining alimony, the income of any subsequent spouse of the payor may not
92 be considered, except as provided in this Subsection (7).

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

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

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

100 (h) Alimony may not be ordered for a period of more than four years unless the recipient
101 spouse proves to the court that extenuating circumstances exist that justify alimony for a longer
102 period of time.

103 (8) Unless a decree of divorce specifically provides otherwise, any order of the court that
104 a party pay alimony to a former spouse automatically terminates upon the remarriage of that former
105 spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony
106 shall resume if the party paying alimony is made a party to the action of annulment and his rights
107 are determined.

108 (9) Any order of the court that a party pay alimony to a former spouse terminates upon
109 establishment by the party paying alimony that the former spouse is cohabitating with another
110 person.

Legislative Review Note as of 2-3-99 4:21 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel