

1 **LIMITATION ON ALIMONY**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

5 **This act modifies provisions pertaining to alimony. It repeals any justification for continuing**
6 **alimony for more years than the duration of the marriage, and allows for retrospective**
7 **application to all orders currently requiring the payment of alimony.**

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

9 AMENDS:

10 **30-3-5**, as last amended by Chapter 255, Laws of Utah 2001

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

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

13 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
14 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
15 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

52 (6) If a petition alleges substantial noncompliance with a parent-time order by a parent,
53 or a visitation order by a grandparent or other member of the immediate family pursuant to Section
54 78-32-12.2 where a visitation or parent-time right has been previously granted by the court, the
55 court may award to the prevailing party costs, including actual attorney fees and court costs
56 incurred by the prevailing party because of the other party's failure to provide or exercise
57 court-ordered visitation or parent-time.

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

- 59 (i) the financial condition and needs of the recipient spouse;
- 60 (ii) the recipient's earning capacity or ability to produce income;
- 61 (iii) the ability of the payor spouse to provide support;
- 62 (iv) the length of the marriage;
- 63 (v) whether the recipient spouse has custody of minor children requiring support;
- 64 (vi) whether the recipient spouse worked in a business owned or operated by the payor
- 65 spouse; and
- 66 (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's
- 67 skill by paying for education received by the payor spouse or allowing the payor spouse to attend
- 68 school during the marriage.
- 69 (b) The court may consider the fault of the parties in determining alimony.
- 70 (c) As a general rule, the court should look to the standard of living, existing at the time
- 71 of separation, in determining alimony in accordance with Subsection (7)(a). However, the court
- 72 shall consider all relevant facts and equitable principles and may, in its discretion, base alimony
- 73 on the standard of living that existed at the time of trial. In marriages of short duration, when no
- 74 children have been conceived or born during the marriage, the court may consider the standard of
- 75 living that existed at the time of the marriage.
- 76 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
- 77 respective standards of living.
- 78 (e) When a marriage of long duration dissolves on the threshold of a major change in the
- 79 income of one of the spouses due to the collective efforts of both, that change shall be considered
- 80 in dividing the marital property and in determining the amount of alimony. If one spouse's earning
- 81 capacity has been greatly enhanced through the efforts of both spouses during the marriage, the
- 82 court may make a compensating adjustment in dividing the marital property and awarding alimony.
- 83 (f) In determining alimony when a marriage of short duration dissolves, and no children
- 84 have been conceived or born during the marriage, the court may consider restoring each party to
- 85 the condition which existed at the time of the marriage.
- 86 (g) (i) The court has continuing jurisdiction to make substantive changes and new orders
- 87 regarding alimony based on a substantial material change in circumstances not foreseeable at the
- 88 time of the divorce.
- 89 (ii) The court may not modify alimony or issue a new order for alimony to address needs

90 of the recipient that did not exist at the time the decree was entered, unless the court finds
 91 extenuating circumstances that justify that action.

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

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

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

98 (h) Alimony may not be ordered for a duration longer than the number of years that the
 99 marriage existed § [f] **unless, at any time prior to termination of alimony, the court finds**
 99a **extenuating**

100 **circumstances that justify the payment of alimony for a longer period of time [f] § . This**
 100a **Subsection**

101 **(7) shall apply to all orders for which there is a current or continuing alimony obligation regardless**
 102 **of the date of entry of the original order § , UNLESS THE COURT ORDERS OTHERWISE AT A**
 102a **HEARING HELD AFTER JANUARY 1, 2002, UPON THE SHOWING OF EXTENUATING**
 102b **CIRCUMSTANCES. ALIMONY MAY NOT BE TERMINATED UNTIL A HEARING IS HELD ON THE ISSUE**
 102c **OF ALIMONY. §**

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 or death of
 105 that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment
 106 of alimony shall resume if the party paying alimony is made a party to the action of annulment and
 107 his rights 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 1-29-02 4:39 PM

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

Office of Legislative Research and General Counsel