

Senator Terry R. Spencer proposes the following substitute bill:

**DIVISION OF HOME IN A DIVORCE**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Terry R. Spencer**

**This act modifies provisions relating to Divorce, providing that if a family home is awarded in a divorce to one party, the other party should receive an equitable lien on the home to protect any interest they may have.**

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

AMENDS:

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

*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 relating to the children, property, debts or obligations, and parties.

(a) If the family home is awarded to one party and the other party is awarded an equitable lien on the property, the equitable lien shall accrue interest at the current postjudgment interest rate specified in Section 15-1-4, unless the court orders otherwise.

(b) The court shall include the following in every decree of divorce:

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

~~(b)~~ (ii) 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



26 dependent children;

27       ~~[(e)]~~ (iii) pursuant to Section 15-4-6.5:

28       ~~[(f)]~~ (A) an order specifying which party is responsible for the payment of joint debts,  
29 obligations, or liabilities of the parties contracted or incurred during marriage;

30       ~~[(g)]~~ (B) an order requiring the parties to notify respective creditors or obligees, regarding  
31 the court's division of debts, obligations, or liabilities and regarding the parties' separate, current  
32 addresses; and

33       ~~[(h)]~~ (C) provisions for the enforcement of these orders; and

34       ~~[(i)]~~ (iv) provisions for income withholding in accordance with Title 62A, Chapter 11,  
35 Recovery Services.

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

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

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

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

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

55       (6) If a petition alleges substantial noncompliance with a parent-time order by a parent,  
56 or a visitation order by a grandparent or other member of the immediate family pursuant to Section

57 78-32-12.2 where a visitation or parent-time right has been previously granted by the court, the  
58 court may award to the prevailing party costs, including actual attorney fees and court costs  
59 incurred by the prevailing party because of the other party's failure to provide or exercise  
60 court-ordered visitation or parent-time.

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

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

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

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

65 (iv) the length of the marriage;

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

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

69 (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's  
70 skill by paying for education received by the payor spouse or allowing the payor spouse to attend  
71 school during the marriage.

72 (b) The court may consider the fault of the parties in determining alimony.

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

79 (d) The court may, under appropriate circumstances, attempt to equalize the parties'  
80 respective standards of living.

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

86 (f) In determining alimony when a marriage of short duration dissolves, and no children  
87 have been conceived or born during the marriage, the court may consider restoring each party to

88 the condition which existed at the time of the marriage.

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

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

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

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

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

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

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

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