

DIVORCE AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Peggy Wallace

LONG TITLE

General Description:

This bill limits the circumstances under which irreconcilable differences may be used as grounds for divorce.

Highlighted Provisions:

This bill:

► provides that a divorce may not be granted on the grounds of irreconcilable differences if:

- there are minor children of the marriage;
- the parties have been married longer than ten years; or
- one of the spouses objects.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-1, as last amended by Chapter 47, Laws of Utah 1997

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

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

30-3-1. Procedure -- Residence -- Grounds.



28 (1) Proceedings in divorce are commenced and conducted as provided by law for
29 proceedings in civil causes, except as provided in this chapter.

30 (2) The court may decree a dissolution of the marriage contract between the petitioner
31 and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or
32 respondent has been an actual and bona fide resident of this state and of the county where the
33 action is brought, or if members of the armed forces of the United States who are not legal
34 residents of this state, where the petitioner has been stationed in this state under military orders,
35 for three months next prior to the commencement of the action.

36 (3) Grounds for divorce:

37 (a) impotency of the respondent at the time of marriage;

38 (b) adultery committed by the respondent subsequent to marriage;

39 (c) willful desertion of the petitioner by the respondent for more than one year;

40 (d) willful neglect of the respondent to provide for the petitioner the common
41 necessities of life;

42 (e) habitual drunkenness of the respondent;

43 (f) conviction of the respondent for a felony;

44 (g) cruel treatment of the petitioner by the respondent to the extent of causing bodily
45 injury or great mental distress to the petitioner;

46 (h) irreconcilable differences of the marriage;

47 (i) incurable insanity; or

48 (j) when the husband and wife have lived separately under a decree of separate
49 maintenance of any state for three consecutive years without cohabitation.

50 (4) A divorce may not be granted under Subsection (3)(h) if:

51 (a) there are living minor children of the marriage;

52 (b) the parties have been married ten years or longer; or

53 (c) one of the spouses contests the action.

54 [~~4~~] (5) A decree of divorce granted under Subsection (3)(j) does not affect the
55 liability of either party under any provision for separate maintenance previously granted.

56 [~~5~~] (6) (a) A divorce may not be granted on the grounds of insanity unless:

57 (i) the respondent has been adjudged insane by the appropriate authorities of this or
58 another state prior to the commencement of the action; and

59 (ii) the court finds by the testimony of competent witnesses that the insanity of the
60 respondent is incurable.

61 (b) The court shall appoint for the respondent a guardian ad litem who shall protect the
62 interests of the respondent. A copy of the summons and complaint shall be served on the
63 respondent in person or by publication, as provided by the laws of this state in other actions for
64 divorce, or upon his guardian ad litem, and upon the county attorney for the county where the
65 action is prosecuted.

66 (c) The county attorney shall investigate the merits of the case and if the respondent
67 resides out of this state, take depositions as necessary, attend the proceedings, and make a
68 defense as is just to protect the rights of the respondent and the interests of the state.

69 (d) In all actions the court and judge have jurisdiction over the payment of alimony, the
70 distribution of property, and the custody and maintenance of minor children, as the courts and
71 judges possess in other actions for divorce.

72 (e) The petitioner or respondent may, if the respondent resides in this state, upon
73 notice, have the respondent brought into the court at trial, or have an examination of the
74 respondent by two or more competent physicians, to determine the mental condition of the
75 respondent. For this purpose either party may have leave from the court to enter any asylum or
76 institution where the respondent may be confined. The costs of court in this action shall be
77 apportioned by the court.

Legislative Review Note
as of 12-13-04 7:13 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

An ongoing General Fund appropriation to the Courts of \$935,000 for an additional judge and additional commissioners is required to handle the increased workload created by this legislation.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$935,000	\$935,000	\$0	\$0
TOTAL	\$935,000	\$935,000	\$0	\$0

Individual and Business Impact

Provisions of this bill could increase the cost of divorce in some cases.
