

PILOT PROGRAM REPEAL CLEAN-UP

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ross I. Romero

LONG TITLE

General Description:

This bill repeals sanctions for a pilot program no longer in existence.

Highlighted Provisions:

This bill:

- ▶ repeals the sanctions for a pilot program that no longer exists; and
- ▶ makes technical cross-reference changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Chapter 176, Laws of Utah 2003

30-5-2, as last amended by Chapter 85, Laws of Utah 2002

78-32-12.1, as last amended by Chapter 255, Laws of Utah 2001

REPEALS:

78-32-12.2, 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



28 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
29 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

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

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

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

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

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

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

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

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

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

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

57 (4) Child support, custody, visitation, and other matters related to children born to the
58 mother and father after entry of the decree of divorce may be added to the decree by

59 modification.

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

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

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

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

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

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

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

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

81 (iv) the length of the marriage;

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

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

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

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

89 (c) As a general rule, the court should look to the standard of living, existing at the

90 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the
91 court shall consider all relevant facts and equitable principles and may, in its discretion, base
92 alimony on the standard of living that existed at the time of trial. In marriages of short
93 duration, when no children have been conceived or born during the marriage, the court may
94 consider the standard of living that existed at the time of the marriage.

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

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

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

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

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

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

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

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

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

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

126 (10) Any order of the court that a party pay alimony to a former spouse terminates
127 upon establishment by the party paying alimony that the former spouse is cohabitating with
128 another person.

129 Section 2. Section **30-5-2** is amended to read:

130 **30-5-2. Visitation rights of grandparents.**

131 (1) Grandparents have standing to bring an action in district court by petition,
132 requesting visitation in accordance with the provisions and requirements of this section.
133 Grandparents may also file a petition for visitation rights in a pending divorce proceeding or
134 other proceeding involving custody and visitation issues.

135 (2) There is a rebuttable presumption that a parent's decision with regard to
136 grandparent visitation is in the grandchild's best interests. However, the court may override the
137 parent's decision and grant the petitioner reasonable rights of visitation if the court finds that
138 the petitioner has rebutted the presumption based upon factors which the court considers to be
139 relevant, such as whether:

140 (a) the petitioner is a fit and proper person to have visitation with the grandchild;

141 (b) visitation with the grandchild has been denied or unreasonably limited;

142 (c) the parent is unfit or incompetent;

143 (d) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has
144 had a substantial relationship with the grandchild, and the loss or cessation of that relationship
145 is likely to cause harm to the grandchild;

146 (e) the petitioner's child, who is a parent of the grandchild, has died, or has become a
147 noncustodial parent through divorce or legal separation;

148 (f) the petitioner's child, who is a parent of the grandchild, has been missing for an
149 extended period of time; or

150 (g) visitation is in the best interest of the grandchild.

151 (3) The adoption of a grandchild by the grandchild's stepparent does not diminish or

152 alter visitation rights previously ordered under this section.

153 (4) Subject to the provisions of Subsections (2) and (3), the court may inquire of the
154 grandchild and take into account the grandchild's desires regarding visitation.

155 (5) On the petition of a grandparent or the legal custodian of a grandchild the court
156 may, after a hearing, modify an order regarding grandparent visitation if:

157 (a) the circumstances of the grandchild, the grandparent, or the custodian have
158 materially and substantially changed since the entry of the order to be modified, or the order
159 has become unworkable or inappropriate under existing circumstances; and

160 (b) the court determines that a modification is appropriate based upon the factors set
161 forth in Subsection (2).

162 (6) Grandparents may petition the court [~~as provided in Section 78-32-12.2~~] to remedy
163 a parent's wrongful noncompliance with a visitation order.

164 Section 3. Section **78-32-12.1** is amended to read:

165 **78-32-12.1. Compensatory service for violation of parent-time order or failure to**
166 **pay child support.**

167 (1) If a court finds by a preponderance of the evidence that a parent has refused to
168 comply with the minimum amount of parent-time ordered in a decree of divorce, the court shall
169 order the parent to:

170 (a) perform a minimum of ten hours of compensatory service; and

171 (b) participate in workshops, classes, or individual counseling to educate the parent
172 about the importance of complying with the court order and providing a child a continuing
173 relationship with both parents.

174 (2) If a custodial parent is ordered to perform compensatory service or undergo
175 court-ordered education, there is a rebuttable presumption that the noncustodial parent be
176 granted parent-time by the court to provide child care during the time the custodial parent is
177 complying with compensatory service or education in order to recompense him for parent-time
178 wrongfully denied by the custodial parent under the divorce decree.

179 (3) If a noncustodial parent is ordered to perform compensatory service or undergo
180 court-ordered education, the court shall attempt to schedule the compensatory service or
181 education at times that will not interfere with the noncustodial parent's parent-time with the
182 child.

183 (4) The person ordered to participate in court-ordered education is responsible for
184 expenses of workshops, classes, and individual counseling.

185 (5) If a court finds by a preponderance of the evidence that an obligor, as defined in
186 Section 78-45-2, has refused to pay child support as ordered by a court in accordance with Title
187 78, Chapter 45, Uniform Civil Liability for Support Act, the court shall order the obligor to:

188 (a) perform a minimum of ten hours of compensatory service; and

189 (b) participate in workshops, classes, or individual counseling to educate the obligor
190 about the importance of complying with the court order and providing the children with a
191 regular and stable source of support.

192 (6) The obligor is responsible for the expenses of workshops, classes, and individual
193 counseling ordered by the court.

194 (7) If a court orders an obligor to perform compensatory service or undergo
195 court-ordered education, the court shall attempt to schedule the compensatory service or
196 education at times that will not interfere with the obligor's parent-time with the child.

197 (8) The sanctions that the court shall impose under this section do not prevent the court
198 from imposing other sanctions [~~as provided in Section 78-32-12.2 or other provisions in this~~
199 ~~chapter,~~] or prevent any person from bringing a cause of action allowed under state or federal
200 law.

201 (9) The Legislature shall allocate the money from the Children's Legal Defense
202 Account to the judiciary to defray the cost of enforcing and administering this section.

203 **Section 4. Repealer.**

204 This bill repeals:

205 **Section 78-32-12.2, Definitions -- Sanctions.**

Legislative Review Note
as of 1-18-05 4:58 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0222

Pilot Program Repeal Clean-Up

24-Jan-05

7:14 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst