

## HB0491S02 compared with HB0491

~~{deleted text}~~ shows text that was in HB0491 but was deleted in HB0491S02.

inserted text shows text that was not in HB0491 but was inserted into HB0491S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Stephen E. Sandstrom proposes the following substitute bill:

### ALIMONY MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill expands the factors a court shall consider when determining alimony.

##### Highlighted Provisions:

This bill:

- ▶ defines fault;
- ▶ requires the court to consider certain types of fault when determining alimony;~~{~~  
and~~}~~
- ▶ allows a court to order additional alimony to allow a recipient spouse to care and supervise minor children~~{~~; and
- ▶ allows the court to close proceedings related to the issue of fault and seal the records of the closed proceedings.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**30-3-5**, as last amended by Laws of Utah 2010, Chapter 285

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*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. 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 including responsibility for health insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

(b) (i) 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; and

(ii) a designation of which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both parents' health, hospital, or dental insurance plans;

(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

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

(5) (a) In determining parent-time rights of parents and visitation rights of 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 parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable ~~attorneys'~~ attorney 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.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time 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

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party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8) (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;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support, and if so, whether the payor has the ability to provide sufficient support to allow the recipient spouse to be in the home to supervise and care for the minor children when they are not in school;

(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 working in support or paying for education received by the payor spouse or ~~allowing~~ enabling the payor spouse to attend school during the marriage~~[-];~~ and

(viii) whether the recipient spouse refrained from ~~{full-time}~~ significant employment in order to provide full-time care of minor children and the parties' household during the marriage.

(b) The court ~~{}~~ may ~~{}~~ shall consider the fault of the parties in determining alimony~~{[-], including whether either party:~~

~~(i) engaged in};~~

(c) "Fault" means the comparative degree to which either party committed acts or engaged in substantiated behavior during the marriage ~~{that unilaterally}~~ which substantially compromised the ~~{marital contract};~~

~~(ii) marriage or jeopardized the health, safety, or financial stability of the ~~{family};~~~~

~~(iii) committed an act of substantiated; other party or their children, including:~~

(i) sexual relations outside of the marriage;

(ii) physical abuse ~~{on}~~of the spouse or children;

~~(~~{iv}~~ ~~{iii}~~) ~~{ has had a substantiated long-term addiction}~~ addictions to alcohol, drugs, gambling, or pornography; or~~

~~(~~{v}~~) engaged in criminal behavior.~~

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~~(c)~~ iv) conviction of a felony.

(d) Proceedings related to fault may be closed by the court and the records sealed by order of the court. Either party may stipulate to an allegation of fault.

~~(c)~~ (e) 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 (8)(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)~~ (f) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

~~(e)~~ (g) 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)~~ (h) 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)~~ (i) (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 extenuating circumstances that justify that action.

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

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

(B) The court may consider the income of a subsequent spouse if the court finds that

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the payor's improper conduct justifies that consideration.

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

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

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

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### **Legislative Review Note**

~~as of 2-18-11 2:48 PM~~

~~Office of Legislative Research and General Counsel~~