

Senator Lyle W. Hillyard proposes the following substitute bill:

**ALIMONY AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates a new section regarding alimony.

**Highlighted Provisions:**

This bill:

- ▶ defines fault and cohabit;
- ▶ requires that a court ordering alimony in excess of \$1,000 per month for at least 60 months require a plan for self-sufficiency from the recipient;
- ▶ provides for a systematic decrease in alimony after a specific period of time;
- ▶ lists factors the court is to take into consideration when ordering alimony with a systematic decrease provision;
- ▶ creates a rebuttable presumption of cohabitation if two non-related persons reside in the same location; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **30-2-5**, as last amended by Laws of Utah 2008, Chapter 3

28 **30-3-5**, as last amended by Laws of Utah 2010, Chapter 285

29 ENACTS:

30 **30-3-5.3**, Utah Code Annotated 1953



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

33 Section 1. Section **30-2-5** is amended to read:

34 **30-2-5. Separate debts.**

35 (1) Neither spouse is personally liable for the separate debts, obligations, or liabilities  
36 of the other:

37 (a) contracted or incurred before marriage;

38 (b) contracted or incurred during marriage, except family expenses as provided in  
39 Section 30-2-9;

40 (c) contracted or incurred after divorce or an order for separate maintenance under this  
41 title, except the spouse is personally liable for that portion of the expenses incurred on behalf  
42 of a minor child for reasonable and necessary medical and dental expenses, and other similar  
43 necessities as provided in a court order under Section 30-3-5, 30-4-3, or 78B-12-212, or an  
44 administrative order under Section 62A-11-326; or

45 (d) ordered by the court to be paid by the other spouse under Section 30-3-5, 30-3-5.3,  
46 or 30-4-3 and not in conflict with Section 15-4-6.5 or 15-4-6.7.

47 (2) The wages, earnings, property, rents, or other income of one spouse may not be  
48 reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other  
49 spouse, as described under Subsection (1).

50 Section 2. Section **30-3-5** is amended to read:

51 **30-3-5. Disposition of property -- Maintenance and health care of parties and**  
52 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**  
53 **parent-time -- Nonmeritorious petition for modification.**

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

57 (a) an order assigning responsibility for the payment of reasonable and necessary  
58 medical and dental expenses of the dependent children including responsibility for health  
59 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

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

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

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

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

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

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

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

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

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

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

88 modification.

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

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

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

100 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a  
101 visitation order by a grandparent or other member of the immediate family where a visitation or  
102 parent-time right has been previously granted by the court, the court may award to the  
103 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing  
104 party because of the other party's failure to provide or exercise court-ordered visitation or  
105 parent-time.

106 [~~(8) (a) The court shall consider at least the following factors in determining alimony:]~~

107 [~~(i) the financial condition and needs of the recipient spouse;~~]

108 [~~(ii) the recipient's earning capacity or ability to produce income;~~]

109 [~~(iii) the ability of the payor spouse to provide support;~~]

110 [~~(iv) the length of the marriage;~~]

111 [~~(v) whether the recipient spouse has custody of minor children requiring support;~~]

112 [~~(vi) whether the recipient spouse worked in a business owned or operated by the payor  
113 spouse; and]~~

114 [~~(vii) whether the recipient spouse directly contributed to any increase in the payor  
115 spouse's skill by paying for education received by the payor spouse or allowing the payor  
116 spouse to attend school during the marriage.]~~

117 [~~(b) The court may consider the fault of the parties in determining alimony.]~~

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

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

124 ~~[(d) The court may, under appropriate circumstances, attempt to equalize the parties'~~  
125 ~~respective standards of living.]~~

126 ~~[(e) When a marriage of long duration dissolves on the threshold of a major change in~~  
127 ~~the income of one of the spouses due to the collective efforts of both, that change shall be~~  
128 ~~considered in dividing the marital property and in determining the amount of alimony. If one~~  
129 ~~spouse's earning capacity has been greatly enhanced through the efforts of both spouses during~~  
130 ~~the marriage, the court may make a compensating adjustment in dividing the marital property~~  
131 ~~and awarding alimony.]~~

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

135 ~~[(g) (i) The court has continuing jurisdiction to make substantive changes and new~~  
136 ~~orders regarding alimony based on a substantial material change in circumstances not~~  
137 ~~foreseeable at the time of the divorce.]~~

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

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

143 ~~[(A) The court may consider the subsequent spouse's financial ability to share living~~  
144 ~~expenses.]~~

145 ~~[(B) The court may consider the income of a subsequent spouse if the court finds that~~  
146 ~~the payor's improper conduct justifies that consideration.]~~

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

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

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

158 Section 3. Section **30-3-5.3** is enacted to read:

159 **30-3-5.3. Alimony.**

160 (1) As used in this section:

161 (a) "Cohabit" means two non-related persons living together in a romantic relationship.

162 (b) "Fault" means any action that affects the mental, physical, or emotional condition  
163 of a party being awarded alimony or the person ordered to pay that reduces that party's ability  
164 to earn income at the party's full capability. Fault may include sexual intimacy with another  
165 person, severe physical or mental abuse, addiction to pornography, or other action that causes  
166 the marriage to end.

167 (c) "Self-sufficiency" means the ability to support oneself at the level that the parties  
168 were living at the time of the divorce taking into consideration the loss of available money due  
169 to the costs incurred in supporting separate households.

170 (2) In any temporary orders or final decree of divorce, the court may order a party to  
171 pay alimony to the other party, taking into consideration the following factors:

172 (a) the financial condition and needs of the recipient party;

173 (b) the recipient's earning capacity or ability to produce income;

174 (c) the ability of the payor party to provide support;

175 (d) the length of the marriage;

176 (e) whether the recipient has custody of minor children requiring support;

177 (f) whether the recipient worked in a business owned or operated by the payor; and

178 (g) whether the recipient directly contributed to any increase in the payor's skill by  
179 paying for education received by the payor or allowing the payor to attend school during the  
180 marriage.

181 (3) Any temporary order of alimony may be modified at the time of the trial and, under  
182 proper circumstances, retroactive back to the original temporary orders.

183 (4) The court may consider fault of the parties in determining alimony.

184 (5) The court may not order a spouse who has been the victim of domestic violence to  
185 pay alimony to the other spouse if the other spouse is convicted of domestic violence.

186 (6) As a general rule, the court should look to the standard of living existing at the time  
187 of separation in determining alimony.

188 (a) The court shall consider all relevant facts and equitable principles and may, in its  
189 discretion, base alimony on the standard of living that existed at the time of trial.

190 (b) In marriages of short duration, when no children have been conceived or born  
191 during the marriage, the court may consider the standard of living that existed at the time of the  
192 marriage.

193 (c) The court may, under appropriate circumstances, attempt to equalize the parties'  
194 respective standards of living.

195 (7) When a marriage of long duration dissolves on the threshold of a major change in  
196 the income of one of the spouses due to the collective efforts of both, that change shall be  
197 considered in dividing the marital property and in determining the amount of alimony. If one  
198 party's earning capacity has been greatly enhanced through the efforts of both parties during the  
199 marriage, the court may make a compensating adjustment in dividing the marital property and  
200 awarding alimony.

201 (8) (a) The court has continuing jurisdiction to make substantive changes and new  
202 orders regarding alimony based on a substantial material change in circumstances not  
203 foreseeable at the time of the divorce.

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

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

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

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

212 the payor's improper conduct justifies that consideration.

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

216 (10) A party seeking alimony in an amount in excess of \$1,000 per month for at least  
217 60 months shall submit, along with the financial declaration and settlement proposal when the  
218 case is certified as ready for trial, a plan detailing a course of action the recipient will undertake  
219 in order to become self-sufficient or specific facts that demonstrate why the recipient is not  
220 able to become self-sufficient, unless the parties have reached a stipulation regarding alimony.  
221 The court may waive this requirement if it makes specific findings that the recipient is not able  
222 to become self-sufficient. Unless the court orders otherwise, alimony in excess of \$1,000 per  
223 month for more than 60 months may not be awarded if a plan is not submitted.

224 (11) If the court determines that the recipient party has the ability to become more  
225 self-sufficient, it may order that the amount of alimony be increased by a certain amount over a  
226 specified time period to allow the recipient time to pursue training or education necessary to  
227 become more self-sufficient. The court shall take a number of factors into consideration when  
228 determining how long it may take a recipient to become more self-sufficient. The factors shall  
229 include:

230 (a) the age of the recipient;

231 (b) the educational background of the recipient;

232 (c) whether there are minor children still in the recipient's household; and

233 (d) any difficulty the recipient might face in obtaining training or education necessary  
234 to become self-sufficient.

235 (12) Any income generated in fact or by imputation by the recipient may be used to  
236 reduce the alimony received by \$100 per month for every \$200 per month generated or imputed  
237 unless the court finds otherwise.

238 (13) Unless a decree of divorce specifically provides otherwise, any order of the court  
239 that a party pay alimony to the other party automatically terminates upon the remarriage of the  
240 recipient or the death of either party. If the remarriage is annulled or found to be void ab initio,  
241 payment of alimony shall resume if the payor is made a party to the action of annulment, the  
242 payor's rights are presented, and the court finds that restoring the prior alimony order would not



243 be fair.

244 (14) (a) Any order of the court that a party pay alimony to a former spouse may be  
245 modified or terminated by the court if the party paying alimony establishes that the recipient is  
246 cohabiting with another person.

247 (b) There is a rebuttable presumption that, if a person spends seven or more nights in a  
248 14-day period at a common residence with a person with whom they have a romantic  
249 relationship, the two persons are cohabiting.

# FISCAL NOTE

S.B. 96 2nd Sub. (Salmon)

SHORT TITLE: Alimony Amendments

SPONSOR: Hillyard, L.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will increase certain costs in some alimony cases for the Courts. Beginning in FY 2012, ongoing Courts costs for these cases will be \$51,700 of General Fund.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$51,700	\$51,700
Total Expenditure	\$0	\$51,700	\$51,700
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$51,700)	(\$51,700)
Net Impact, General/Education Funds	\$0	(\$51,700)	(\$51,700)

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.