

**Representative Fred C. Cox** proposes the following substitute bill:

**ALIMONY MODIFICATIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: Aaron Osmond

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**LONG TITLE**

**General Description:**

This bill expands the circumstances under which a court may order alimony, and it increases the length of time alimony may be awarded.

**Highlighted Provisions:**

This bill:

- ▶ allows a court to consider fault when awarding alimony; and
- ▶ defines fault to include acts that substantially and unilaterally compromise a marriage, harm a spouse, or harm the children of the marriage.

**Money Appropriated in this Bill:**

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:



26           **30-3-5. Disposition of property -- Maintenance and health care of parties and**  
27 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**  
28 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

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

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

35           (b) (i) 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; and

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

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

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

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

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

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

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

57 custodial parent.

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

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

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

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

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

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

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

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

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

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

85 (iv) the length of the marriage;

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

87 (vi) whether the recipient spouse worked in a business owned or operated by the payor

88 spouse; and

89 (vii) whether the recipient spouse directly contributed to any increase in the payor  
90 spouse's skill by paying for education received by the payor spouse or ~~allowing~~ enabling the  
91 payor spouse to attend school during the marriage.

92 (b) The court may consider the fault of the parties in determining ~~alimony.~~ whether or  
93 not to award alimony. An alimony award is not considered punitive if it complies with this  
94 subsection.

95 (c) "Fault" means that one party committed substantiated acts or engaged in  
96 substantiated behavior during the marriage that unilaterally and substantially compromised the  
97 marriage, or unilaterally and substantially harmed the ~~H→~~ **physical** ~~←H~~ safety, or financial  
97a stability of the other  
98 party or their minor children, including:

99 (i) sexual relations with a person who is not the party's spouse; ~~H→~~ **[or]** ~~←H~~

100 (ii) physical abuse of the spouse or minor children

100a ~~H→~~ **(iii) substantiated long term addictions to alcohol, drugs, pornography, or gambling; or**

100b **(iv) conviction of a violent felony** ~~←H~~ .

101 (d) A party may stipulate to an allegation of fault.

102 (e) ~~H→~~ **The participation by a party in professional counseling, therapy, or other**  
102a **programs for the purpose of seeking to overcome addictions may not be used to establish fault.**

102b **(f)** ~~←H~~ The court may, when fault is at issue, close the proceedings and seal the court  
103 records.

104 ~~(e)~~ ~~H→~~ **(f)** **(g)** ~~←H~~ As a general rule, the court should look to the standard of living,  
104a existing at the  
105 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the  
106 court shall consider all relevant facts and equitable principles and may, in its discretion, base  
107 alimony on the standard of living that existed at the time of trial. In marriages of short  
108 duration, when no children have been conceived or born during the marriage, the court may  
109 consider the standard of living that existed at the time of the marriage.

110 ~~(d)~~ ~~H→~~ **(g)** **(h)** ~~←H~~ The court may, under appropriate circumstances, attempt to  
110a equalize the  
111 parties' respective standards of living.

112 ~~(e)~~ ~~H→~~ **(h)** **(i)** ~~←H~~ When a marriage of long duration dissolves on the threshold  
112a of a major  
113 change in the income of one of the spouses due to the collective efforts of both, that change  
114 shall be considered in dividing the marital property and in determining the amount of alimony.  
115 If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses  
116 during the marriage, the court may make a compensating adjustment in dividing the marital  
117 property and awarding alimony.

118 **(f)** ~~H→~~ **(i)** **(j)** ~~←H~~ In determining alimony when a marriage of short duration  
118a dissolves, and no

119 children have been conceived or born during the marriage, the court may consider restoring  
120 each party to the condition which existed at the time of the marriage.

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

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

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

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

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

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

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

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