

**CRITERIA FOR DETERMINATION OF ALIMONY**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad M. Daw**

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

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**LONG TITLE**

**General Description:**

This bill authorizes the inclusion of certain expenses in the alimony award.

**Highlighted Provisions:**

This bill:

specifies that expenses that benefit both the child and recipient spouse may be included in the alimony award.

**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 2013, Chapters 264 and 373

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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



28 relating to the children, property, debts or obligations, and parties. The court shall include the  
29 following in every decree of divorce:

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

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

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

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

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

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

46 (iii) provisions for the enforcement of these orders;

47 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,  
48 Recovery Services; and

49 (e) if either party owns a life insurance policy or an annuity contract, an  
50 acknowledgment by the court that the owner:

51 (i) has reviewed and updated, where appropriate, the list of beneficiaries;

52 (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries  
53 after the divorce becomes final; and

54 (iii) understands that if no changes are made to the policy or contract, the beneficiaries  
55 currently listed will receive any funds paid by the insurance company under the terms of the  
56 policy or contract.

57 (2) The court may include, in an order determining child support, an order assigning  
58 financial responsibility for all or a portion of child care expenses incurred on behalf of the

59 dependent children, necessitated by the employment or training of the custodial parent. If the  
60 court determines that the circumstances are appropriate and that the dependent children would  
61 be adequately cared for, it may include an order allowing the noncustodial parent to provide  
62 child care for the dependent children, necessitated by the employment or training of the  
63 custodial parent.

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

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

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

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

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

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

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

88 (i) the financial condition and needs of the recipient spouse[;], including the need for  
89 expenses that benefit both the child and the recipient spouse or are related to the benefit of a

90 child, but not specifically included in the deviated child support award;

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

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

93 (iv) the length of the marriage;

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

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

97 (vii) whether the recipient spouse directly contributed to any increase in the payor  
98 spouse's skill by paying for education received by the payor spouse or enabling the payor  
99 spouse to attend school during the marriage.

100 (b) The court may consider the fault of the parties in determining whether to award  
101 alimony and the terms thereof.

102 (c) "Fault" means any of the following wrongful conduct during the marriage that  
103 substantially contributed to the breakup of the marriage relationship:

104 (i) engaging in sexual relations with a person other than the party's spouse;

105 (ii) knowingly and intentionally causing or attempting to cause physical harm to the  
106 other party or minor children;

107 (iii) knowingly and intentionally causing the other party or minor children to  
108 reasonably fear life-threatening harm; or

109 (iv) substantially undermining the financial stability of the other party or the minor  
110 children.

111 (d) The court may, when fault is at issue, close the proceedings and seal the court  
112 records.

113 (e) As a general rule, the court should look to the standard of living, existing at the  
114 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the  
115 court shall consider all relevant facts and equitable principles and may, in its discretion, base  
116 alimony on the standard of living that existed at the time of trial. In marriages of short  
117 duration, when no children have been conceived or born during the marriage, the court may  
118 consider the standard of living that existed at the time of the marriage.

119 (f) The court may, under appropriate circumstances, attempt to equalize the parties'  
120 respective standards of living.

121 (g) When a marriage of long duration dissolves on the threshold of a major change in  
 122 the income of one of the spouses due to the collective efforts of both, that change shall be  
 123 considered in dividing the marital property and in determining the amount of alimony. If one  
 124 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during  
 125 the marriage, the court may make a compensating adjustment in dividing the marital property  
 126 and awarding alimony.

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

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

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

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

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

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

142 (j) Alimony may not be ordered for a duration longer than the number of years that the  
 143 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating  
 144 circumstances that justify the payment of alimony for a longer period of time[-], except that ~~H→~~ [:

145 ~~—— (i) expenses included in the alimony award for the benefit of both the child and~~  
 146 ~~recipient spouse may continue until the last child reaches the age of 18; and~~

147 ~~—— (ii) the court shall order that~~ ~~←H~~ expenses awarded for the benefit of a specific child  
 147a shall end on the day that child

148 ~~H→~~ [turns 18] becomes emancipated ~~←H~~ .

149 (9) Unless a decree of divorce specifically provides otherwise, any order of the court  
 150 that a party pay alimony to a former spouse automatically terminates upon the remarriage or  
 151 death of that former spouse ~~H→~~ [f] . [f] ~~H→~~ [except that expenses awarded for the benefit  
 151a of a specific child

152 ~~may not end upon the remarriage of the former spouse.] ←H~~ However, if the remarriage is annulled  
153 and found to be void ab initio, payment of alimony shall resume if the party paying alimony is  
154 made a party to the action of annulment and the payor party's 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 H→ [f] . [f] [~~except that expenses awarded for the benefit of a specific child may not~~  
158 ~~terminate.] ←H~~

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Legislative Review Note  
Office of Legislative Research and General Counsel