

HB0469S01 compared with HB0469

~~{deleted text}~~ shows text that was in HB0469 but was deleted in HB0469S01.

inserted text shows text that was not in HB0469 but was inserted into HB0469S01.

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Representative David E. Lifferth proposes the following substitute bill:

DIVORCE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David E. Lifferth

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to alimony.

Highlighted Provisions:

This bill:

~~{ → requires the court to order a party to provide temporary alimony of at least one-half of the net income of the marriage pending a final alimony order;~~

- ‡ ▶ requires the court to consider the standard of living during the marriage rather than financial statements of the recipient spouse when determining alimony;
- ▶ requires the court to consider the recipient spouse's recent income and work history to determine alimony when the recipient spouse has not been shown to be at fault; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{ 30-3-3, as last amended by Laws of Utah 2008, Chapter 3~~

+ 30-3-5, as last amended by Laws of Utah 2013, Chapters 264 and 373

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

Section 1. Section ~~{30-3-3}~~30-3-5 is amended to read:

~~{ 30-3-3. Award of costs, attorney fees and witness fees -- Temporary alimony.~~

~~———— (1) In any action filed under Title 30, Chapter 3, Divorce, Chapter 4, Separate Maintenance, or Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and in any action to establish an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.~~

~~———— (2) In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.~~

~~———— [(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.]~~

~~———— (3) In any action filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance, the court shall immediately order a party to provide monthly payments of at least one-half of the net monthly income of the marriage, based on the most recent federal tax return or pay stub during the pendency of the action, for the separate support and maintenance of the other party and of any children in custody of the other party until a~~

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~~superceding order is entered by the court:~~

~~(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.~~

~~Section 2. 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

(iii) provisions for the enforcement of these orders;

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

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

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

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

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

(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' 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

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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 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 standard of living enjoyed during the marriage;

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

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

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

~~(iv)~~ (v) the length of the marriage;

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

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

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

(b) In considering the factors in Subsection (8)(a), the court may:

(i) not determine an alimony award based upon failure of the recipient spouse to provide documentation under Subsection (8)(a)(ii), but shall weigh evidence presented on all factors by both spouses in order to make an equitable determination in light of Subsection (8)(a)(i); and

(ii) not determine an alimony award based upon a property settlement unless the property settlement is equitable in consideration of Subsection (8)(a)(i).

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

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

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

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

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

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

~~[(d)]~~ (e) The court may, when fault is at issue, close the proceedings and seal the court records.

~~{ (c) If fault has not been shown on the part of the recipient spouse, the court shall consider the recipient spouse's recent income, based on the most recent federal tax return or pay stub, and work history as a factor to determine alimony.~~

‡ ~~[(e)]~~ ~~(f)~~ ~~(i)~~ 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.

~~{ (ii) In determining the financial condition and needs of the recipient spouse as described in Subsection (8)(a)(i), the standard of living at the time of separation shall be used to determine the maximum alimony award rather than any financial statements of the recipient spouse provided as part of the divorce proceedings.~~

‡ ~~[(f)]~~ (g) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

~~[(g)]~~ (h) 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.

~~[(h)]~~ (i) 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.

~~[(i)]~~ (j) (i) The court has continuing jurisdiction to make substantive changes and new

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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 the payor's improper conduct justifies that consideration.

[†] (k) 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 number of years of the marriage added to the date of the final order 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 the payor party's 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

~~Office of Legislative Research and General Counsel~~