

HB0086S01 compared with HB0086

~~deleted text~~ shows text that was in HB0086 but was deleted in HB0086S01.

inserted text shows text that was not in HB0086 but was inserted into HB0086S01.

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Representative Carol Spackman Moss proposes the following substitute bill:

PARENTING PLAN AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: ~~_____~~ Chris H. Wilson

Cosponsor: Dan N. Johnson

LONG TITLE

General Description:

This bill addresses modification of a parenting plan.

Highlighted Provisions:

This bill:

- ▶ prohibits a court from granting a petition to modify a parenting plan until the parties have attended an educational course;
- ▶ provides that a court may waive the educational course requirement for a petition to modify a parenting plan if course attendance and completion are not necessary, appropriate, feasible, or in the best interests of the parties;
- ▶ creates a mandatory educational course for parties when a petition to modify a

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parenting plan is filed; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

30-3-10.8, as last amended by Laws of Utah 2017, Chapter 224

30-3-11.3, as last amended by Laws of Utah 2018, Chapter 470

30-3-11.4, as last amended by Laws of Utah 2018, Chapter 470

ENACTS:

30-3-11.5, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

30-3-11.5, Utah Code Annotated 1953

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

Section 1. Section **30-3-10.8** is amended to read:

30-3-10.8. Parenting plan -- Filing -- Modifications.

(1) In any proceeding under this chapter, including actions for paternity, a party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of [~~their original petition or at the time of filing their answer or counterclaim~~]:

(a) the original petition by the party; or

(b) the answer or counterclaim by the party.

(2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with:

(a) the petition to modify[;]; or

(b) the answer or counterclaim to the petition to modify.

(3) (a) Except as provided in Subsection (3)(b) and except for a temporary restraining order under Rule 65A of the Utah Rules of Civil Procedure, if a party files a petition to modify

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under Subsection (2) that may result in modification of a parenting plan, the court may not grant the ~~{motion}~~ petition to modify until both parties have:

(i) attended the mandatory educational course described in Section 30-3-11.5; and

(ii) presented a certificate of completion for the mandatory educational course to the court.

(b) The court may waive the educational course requirement under Subsection (3)(a), on the court's own motion or on the motion of a party, if the court determines that course attendance and completion are not necessary, appropriate, feasible, or in the best interests of the parties.

(c) If the court waives the educational course requirement under Subsection (3)(b), the court may proceed with the modification action.

~~[(3)]~~ (4) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default to adopt the plan if the other party fails to file a proposed parenting plan as required by this section.

~~[(4)]~~ (5) Either party may file and serve ~~an~~ amended proposed parenting plan according to the rules for amending pleadings.

~~[(5)]~~ (6) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

~~[(6)]~~ (7) (a) Both parents may submit a parenting plan ~~[which]~~ that has been agreed upon.

(b) A verified statement, signed by both parents, shall be attached to the parenting plan.

~~[(7)]~~ (8) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.

~~[(8)]~~ (9) (a) When one or both parents are a servicemember, the parenting plan shall be consistent with Subsection 30-3-10.9(10).

(b) If after a parenting plan is adopted, one or both parents become servicemembers, as soon as practical, the parents shall amend the existing parenting plan to comply with Subsection 30-3-10.9(10).

Section 2. Section **30-3-11.3** is amended to read:

30-3-11.3. Mandatory educational course for divorcing parents -- Curriculum --

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Fee -- Reporting.

(1) (a) The Judicial Council shall approve and implement a mandatory course for divorcing parents in all judicial districts.

(b) The mandatory course is designed to educate and sensitize divorcing parties to ~~[their]~~ the parties' children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer ~~[this program]~~ the mandatory course described in Subsection (1).

(3) (a) (i) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on ~~[their]~~ the parties' children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4.

(ii) If ~~[that requirement]~~ the requirement under Subsection (3)(a)(i) is waived, the court may permit the divorce action to proceed.

(b) With the exception of a temporary restraining order ~~[pursuant to Rule 65;]~~ under Rule 65A of the Utah Rules of Civil Procedure, a party may file, but the court may not hear, a motion for an order related to the divorce until the moving party completes the mandatory educational course for divorcing parents required by this section.

(4) The court may require unmarried parents to attend this educational course when ~~[those]~~ the parents are involved in a visitation or custody proceeding before the court.

(5) The mandatory course shall instruct both parties:

(a) about divorce and ~~[its impacts]~~ the impact of divorce on:

(i) ~~[their]~~ the parties' child or children;

(ii) ~~[their]~~ the parties' family relationship; and

(iii) ~~[their]~~ the parties' financial responsibilities for ~~[their]~~ the parties' child or children;

and

(b) that domestic violence has a harmful effect on children and family relationships.

(6) (a) The course may be provided through live instruction, video instruction, or an online provider.

(b) The online and video options must be formatted as interactive presentations that ensure active participation and learning by the parent.

(7) (a) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts and

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organize the program in each of Utah's judicial districts.

(b) The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties~~[, pursuant to]~~ as described in Subsection (9).

(8) A certificate of completion constitutes evidence to the court of course completion by the parties.

(9) (a) (i) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course.

(ii) A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited ~~[in]~~ into the Children's Legal Defense Account, described in Section 51-9-408.

(b) (i) Each party, who is unable to pay the costs of the course, may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. ~~[In those situations]~~

(ii) If a party attends the course without payment as described in Subsection (9)(b)(i), the independent contractor shall be reimbursed for [its] the independent contractor's costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program."

(iii) Before a decree of divorce may be entered, the court:

(A) shall make a final review and determination of impecuniosity; and

(B) may order the payment of the costs if so determined.

(10) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (9)(b)(i).

(11) (a) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. ~~[Progress reports shall be provided if requested by the Judiciary Interim Committee.]~~

(b) The Administrative Office of the Courts shall provide a progress report on the mandatory educational course requirement to the Judiciary Interim Committee if requested by the Judiciary Interim Committee.

Section 3. Section **30-3-11.4** is amended to read:

30-3-11.4. Mandatory orientation course for divorcing parties -- Curriculum -- Fee -- Reporting.

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(1) (a) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce.

(b) A couple with no minor children is not required, but may choose to attend the course.

(c) The purpose of the course is to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) (a) With the exception of a temporary restraining order [~~pursuant to Rule 65;~~ under Rule 65A of the Utah Rules of Civil Procedure, a party may file, but the court may not hear, a motion for an order related to the divorce or petition for temporary separation, until the moving party completes the divorce orientation course.

(b) Notwithstanding Subsection (3)(a), both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court under Section 30-3-4.

(4) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(5) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(6) The divorce orientation course shall be neutral, unbiased, at least one hour in duration, and include:

(a) options available as alternatives to divorce;

(b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;

(c) resources available to improve or strengthen the marriage;

(d) a discussion of the positive and negative consequences of divorce;

(e) a discussion of the process of divorce;

(f) options available for proceeding with a divorce, including:

(i) mediation;

(ii) collaborative law; and

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(iii) litigation; and

(g) a discussion of post-divorce resources.

(7) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(8) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts.

(9) The course may be through live instruction, video instruction, or through an online provider.

(10) (a) A participant shall pay the costs of the course, which may not exceed \$30, to the independent contractor providing the course at the time and place of the course.

(b) A petitioner who attends a live instruction course within 30 days of filing may not be charged more than \$15 for the course.

(c) A respondent who attends a live instruction course within 30 days of being served with a petition for divorce may not be charged more than \$15 for the course.

(d) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and deposited [~~in~~] into the Children's Legal Defense Account described in Section 51-9-408.

(e) (i) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion.

(ii) The provider shall be reimbursed for its costs by the Administrative Office of the Courts.

(iii) A petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

(11) Appropriations from the General Fund to the Administrative Office of the Courts for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be impecunious as provided in Subsection (10)(e).

(12) The Online Court Assistance Program shall include instructions with the forms for divorce that inform the petitioner of the requirement of this section.

(13) A certificate of completion constitutes evidence to the court of course completion by the parties.

(14) It shall be an affirmative defense in all divorce actions that the divorce orientation

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requirement was not complied with, and the action may not continue until a party has complied.

(15) (a) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. [~~Progress reports shall be provided if requested by the Judiciary Interim Committee.~~]

(b) The Administrative Office of the Courts shall provide a progress report on the mandatory educational course requirement to the Judiciary Interim Committee if requested by the Judiciary Interim Committee.

Section 4. Section **30-3-11.5** is enacted to read:

30-3-11.5. Mandatory educational course for modification of a parenting plan -- Curriculum -- Fee -- Reporting.

(1) As used in this section, "mandatory educational course" means an educational course that fulfills the educational course requirement under Subsection 30-3-10.8(3) for parties in a modification of a parenting plan action.

(2) The Judicial Council shall:

(a) approve and implement a mandatory educational course; and

(b) adopt rules for the implementation and administration of the mandatory educational course in accordance with this section.

(3) A mandatory educational course shall be designed to educate and sensitize parties about a child's needs during and after the modification of a parenting plan, including educating and instructing the parties on:

(a) the definition of a parenting plan under Section 30-3-10.7;

(b) the process for modifying a parenting plan;

(c) the objectives of a parenting plan under Section 30-3-10.9;

(d) how to effectively co-parent after a separation or divorce;

(e) resources, other than litigation, that are available for resolving custody and child support issues, including alternative dispute resolution or mediation;

(f) how modification to a parenting plan may impact a child;

(g) how a parent may help the parent's child adjust to a modification of a parenting plan; and

(h) the signs and effects of high-conflict and domestic violence issues on children and

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family relationships.

(4) The Administrative Office of the Courts shall:

(a) administer a mandatory educational course in accordance with Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts; and

(b) organize a mandatory educational course in each of Utah's judicial districts.

(5) (a) A mandatory educational course may be provided through live instruction, video instruction, or an online provider.

(b) A mandatory educational course shall be approximately 60 minutes of instruction time.

(6) (a) (i) Except as provided in Subsection (6)(c), each party shall pay a fee that does not exceed \$35 for a mandatory educational course.

(ii) A fee of \$5 shall be collected, as part of the fee described in Subsection (6)(a)(i), and deposited into the Children's Legal Defense Account described in Section 51-9-408.

(b) A fee described in Subsection (6)(a)(i) shall be provided, at the time and place of the mandatory educational course, to the independent contractor providing the mandatory educational course.

(c) Each party who is unable to pay the fee for the mandatory educational course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court in accordance with Section 78A-2-302.

(d) If a court determines that a party, who attended the mandatory educational course without payment as described in Subsection (6)(c), did not meet the qualifications for impecuniosity, the court may order the party to pay the fee for the mandatory educational course.

(7) A certificate of completion for a mandatory educational course:

(a) constitutes evidence to the court of course completion by each party; and

(b) is valid for 180 days after the day on which the mandatory educational course is completed by the party.

(8) (a) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course requirement.

(b) The Administrative Office of the Courts shall provide a progress report on the

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mandatory educational course requirement to the Judiciary Interim Committee if requested by the Judiciary Interim Committee.

Section 5. Coordinating H.B. 86 with S.B. 87 -- Technical amendment.

If this H.B. 86 and S.B. 87, Court Fee Waiver Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by changing the terminology in Subsections 30-3-11.5(6)(c) and (d) from "impecuniosity" to "indigency."