

1 **ALIMONY MODIFICATIONS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd D. Weiler**

5 House Sponsor: V. Lowry Snow

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to alimony.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms related to alimony;
- 13 ▶ amends provisions related to alimony;
- 14 ▶ enacts provisions regarding cohabitation by a current or former spouse; and
- 15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **30-3-5**, as last amended by Laws of Utah 2021, Chapter 269

23 **30-3-5.4**, as last amended by Laws of Utah 2020, Chapter 337

24 **78B-12-212**, as last amended by Laws of Utah 2020, Chapter 337

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

27 Section 1. Section **30-3-5** is amended to read:

28 **30-3-5. Disposition of property -- Maintenance and health care of parties and**

29 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**  
30 **parent-time -- Alimony -- Nonmeritorious petition for modification.**

31 (1) As used in this section:

32 (a) "Cohabit" means to live together, or to reside together on a regular basis, in the  
33 same residence and in a relationship of a romantic or sexual nature.

34 (b) "Fault" means any of the following wrongful conduct during the marriage that  
35 substantially contributed to the breakup of the marriage:

36 (i) engaging in sexual relations with an individual other than the party's spouse;

37 (ii) knowingly and intentionally causing or attempting to cause physical harm to the  
38 other party or a child;

39 (iii) knowingly and intentionally causing the other party or a child to reasonably fear  
40 life-threatening harm; or

41 (iv) substantially undermining the financial stability of the other party or the child.

42 (c) "Length of the marriage" means, for purposes of alimony, the number of years from  
43 the day on which the parties are legally married to the day on which the petition for divorce is  
44 filed with the court.

45 (2) When a decree of divorce is rendered, the court may include in the decree of  
46 divorce equitable orders relating to the children, property, debts or obligations, and parties.

47 [(2)] (3) The court shall include the following in every decree of divorce:

48 (a) an order assigning responsibility for the payment of reasonable and necessary  
49 medical and dental expenses of a dependent child, including responsibility for health insurance  
50 out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

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

54 (ii) a designation of which health, hospital, or dental insurance plan is primary and  
55 which health, hospital, or dental insurance plan is secondary in accordance with Section

56 30-3-5.4 that will take effect if at any time a dependent child is covered by both parents' health,  
57 hospital, or dental insurance plans;

58 (c) in accordance with Section 15-4-6.5:

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

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

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

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

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

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

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

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

75 [~~3~~] (4) (a) The court may include, in an order determining child support, an order  
76 assigning financial responsibility for all or a portion of child care expenses incurred on behalf  
77 of a dependent child, necessitated by the employment or training of the custodial parent.

78 (b) If the court determines that the circumstances are appropriate and that the  
79 dependent child would be adequately cared for, the court may include an order allowing the  
80 noncustodial parent to provide child care for the dependent child, necessitated by the  
81 employment or training of the custodial parent.

82 [~~4~~] (5) The court has continuing jurisdiction to make subsequent changes or new

83 orders for the custody of a child and the child's support, maintenance, health, and dental care,  
84 and for distribution of the property and obligations for debts as is reasonable and necessary.

85 ~~[(5)]~~ (6) Child support, custody, visitation, and other matters related to a child born to  
86 the parents after entry of the decree of divorce may be added to the decree by modification.

87 ~~[(6)]~~ (7) (a) In determining parent-time rights of parents and visitation rights of  
88 grandparents and other members of the immediate family, the court shall consider the best  
89 interest of the child.

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

94 ~~[(7)]~~ (8) If a petition for modification of child custody or parent-time provisions of a  
95 court order is made and denied, the court shall order the petitioner to pay the reasonable  
96 attorney fees expended by the prevailing party in that action, if the court determines that the  
97 petition was without merit and not asserted or defended against in good faith.

98 ~~[(8)]~~ (9) If a motion or petition alleges noncompliance with a parent-time order by a  
99 parent, or a visitation order by a grandparent or other member of the immediate family where a  
100 visitation or parent-time right has been previously granted by the court, the court may award to  
101 the prevailing party:

102 (a) actual attorney fees incurred;

103 (b) the costs incurred by the prevailing party because of the other party's failure to  
104 provide or exercise court-ordered visitation or parent-time, which may include:

105 (i) court costs;

106 (ii) child care expenses;

107 (iii) transportation expenses actually incurred;

108 (iv) lost wages, if ascertainable; and

109 (v) counseling for a child or parent if ordered or approved by the court;

110 (c) make-up parent time consistent with the best interest of the child; and  
111 (d) any other appropriate equitable remedy.

112 ~~[(9)]~~ (10) (a) The court shall consider at least the following factors in determining  
113 alimony:

- 114 (i) the financial condition and needs of the recipient spouse;
- 115 (ii) the recipient's earning capacity or ability to produce income, including the impact  
116 of diminished workplace experience resulting from primarily caring for a child of the payor  
117 spouse;
- 118 (iii) the ability of the payor spouse to provide support;
- 119 (iv) the length of the marriage;
- 120 (v) whether the recipient spouse has custody of a minor child requiring support;
- 121 (vi) whether the recipient spouse worked in a business owned or operated by the payor  
122 spouse; and
- 123 (vii) whether the recipient spouse directly contributed to any increase in the payor  
124 spouse's skill by paying for education received by the payor spouse or enabling the payor  
125 spouse to attend school during the marriage.

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

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

- 130 ~~[(i) engaging in sexual relations with an individual other than the party's spouse;]~~
- 131 ~~[(ii) knowingly and intentionally causing or attempting to cause physical harm to the  
132 other party or a minor child;]~~
- 133 ~~[(iii) knowingly and intentionally causing the other party or a minor child to reasonably  
134 fear life-threatening harm; or]~~
- 135 ~~[(iv) substantially undermining the financial stability of the other party or the minor  
136 child.]~~

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

139           ~~[(e)]~~ (d) As a general rule, the court should look to the standard of living, existing at  
140 the time of separation, in determining alimony in accordance with Subsection ~~[(9)]~~ (10)(a).  
141 However, the court shall consider all relevant facts and equitable principles and may, in the  
142 court's discretion, base alimony on the standard of living that existed at the time of trial. In  
143 marriages of short duration, when no child has been conceived or born during the marriage, the  
144 court may consider the standard of living that existed at the time of the marriage.

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

147           ~~[(g)]~~ (f) When a marriage of long duration dissolves on the threshold of a major change  
148 in the income of one of the spouses due to the collective efforts of both, that change shall be  
149 considered in dividing the marital property and in determining the amount of alimony. If one  
150 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during  
151 the marriage, the court may make a compensating adjustment in dividing the marital property  
152 and awarding alimony.

153           ~~[(h)]~~ (g) In determining alimony when a marriage of short duration dissolves, and no  
154 child has been conceived or born during the marriage, the court may consider restoring each  
155 party to the condition which existed at the time of the marriage.

156           ~~[(10)]~~ (11) (a) The court has continuing jurisdiction to make substantive changes and  
157 new orders regarding alimony based on a substantial material change in circumstances not  
158 expressly stated in the divorce decree or in the findings that the court entered at the time of the  
159 divorce decree.

160           (b) A party's retirement is a substantial material change in circumstances that is subject  
161 to a petition to modify alimony, unless the divorce decree, or the findings that the court entered  
162 at the time of the divorce decree, expressly states otherwise.

163           (c) The court may not modify alimony or issue a new order for alimony to address

164 needs of the recipient that did not exist at the time the decree was entered, unless the court  
165 finds extenuating circumstances that justify that action.

166 (d) (i) In determining alimony, the income of any subsequent spouse of the payor may  
167 not be considered, except as provided in Subsection ~~[(9)]~~ (10) or this Subsection ~~[(10)]~~ (11).

168 (ii) The court may consider the subsequent spouse's financial ability to share living  
169 expenses.

170 (iii) The court may consider the income of a subsequent spouse if the court finds that  
171 the payor's improper conduct justifies that consideration.

172 ~~[(e) The court may not order alimony for a duration longer than the number of years  
173 that the marriage existed unless, at any time before termination of alimony, the court finds  
174 extenuating circumstances that justify the payment of alimony for a longer period of time.]~~

175 (e) (i) Except as provided in Subsection (11)(e)(iii), the court may not order alimony  
176 for a period of time longer than the length of the marriage.

177 (ii) If a party is ordered to pay temporary alimony during the pendency of the divorce  
178 action, the period of time that the party pays temporary alimony shall be counted towards the  
179 period of time for which the party is ordered to pay alimony.

180 (iii) At any time before the termination of alimony, the court may find extenuating  
181 circumstances or good cause that justify the payment of alimony for a longer period of time  
182 than the length of the marriage.

183 ~~[(11) Unless]~~

184 (12) (a) Except as provided in Subsection (12)(b), unless a decree of divorce  
185 specifically provides otherwise, any order of the court that a party pay alimony to a former  
186 spouse automatically terminates upon the remarriage or death of that former spouse.

187 ~~[However, if]~~

188 (b) If the remarriage of the former spouse is annulled and found to be void ab initio,  
189 payment of alimony shall resume if the party paying alimony is made a party to the action of  
190 annulment and the payor party's rights are determined.

191 ~~[(12) (a) Subject to Subsection (12) (b), an order of the court that a party pay alimony~~  
192 ~~to a former spouse terminates upon establishment by the party paying alimony that the former~~  
193 ~~spouse, after the order for alimony is issued, cohabits with another individual, even if the~~  
194 ~~former spouse is not cohabiting with another person when the party paying alimony files the~~  
195 ~~motion to terminate alimony.]~~

196 (13) If a party establishes that a current spouse cohabits with another individual during  
197 the pendency of the divorce action, the court:

198 (a) may not order the party to pay temporary alimony to the current spouse; and

199 (b) shall terminate any order that the party pay temporary alimony to the current  
200 spouse.

201 (14) (a) Subject to Subsection (14)(b), the court shall terminate an order that a party  
202 pay alimony to a former spouse if the party establishes that, after the order for alimony is  
203 issued, the former spouse cohabits with another individual even if the former spouse is not  
204 cohabiting with the individual when the party paying alimony files the motion to terminate  
205 alimony.

206 (b) A party paying alimony to a former spouse may not seek termination of alimony  
207 under Subsection ~~[(12)]~~ (14)(a), later than one year from the day on which the party knew or  
208 should have known that the former spouse has cohabited with another individual.

209 Section 2. Section 30-3-5.4 is amended to read:

210 **30-3-5.4. Designation of primary and secondary health, dental, or hospital**  
211 **insurance coverage.**

212 (1) As used in this section, "health, hospital, or dental insurance plan" has the same  
213 meaning as "health care insurance" as defined in Section 31A-1-301.

214 (2) (a) A decree of divorce rendered in accordance with Section 30-3-5, an order for  
215 medical expenses rendered in accordance with Section 78B-12-212, and an administrative  
216 order under Section 62A-11-326 shall, in accordance with Subsection (2)(b)(ii), designate  
217 which parent's health, hospital, or dental insurance plan is primary coverage and which parent's



218 health, hospital, or dental insurance plan is secondary coverage for a dependent child.

219 (b) The provisions of the court order required by Subsection (2)(a) shall:

220 (i) take effect if at any time a dependent child is covered by both parents' health,  
221 hospital, or dental insurance plans; and

222 (ii) include the following language:

223 "If, at any point in time, a dependent child is covered by the health, hospital, or dental  
224 insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's  
225 Name) shall be primary coverage for the dependent child and the health, hospital, or dental  
226 insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child.

227 If a parent remarries and his or her dependent child is not covered by that parent's health,  
228 hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or  
229 dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried  
230 parent and shall retain the same designation as the primary or secondary plan of the dependent  
231 child."

232 (c) A decree of divorce or related court order may not modify the language required by  
233 Subsection (2)(b)(ii).

234 (d) Notwithstanding Subsection (2)(c), a court may allocate the payment of medical  
235 expenses including co-payments, deductibles, and co-insurance not covered by health insurance  
236 between the parents in accordance with Subsections ~~30-3-5[(2)](3)~~(a) and 78B-12-212(7).

237 (3) In designating primary coverage pursuant to Subsection (2), a court may take into  
238 account:

239 (a) the birth dates of the parents;

240 (b) a requirement in a court order, if any, for one of the parents to maintain health  
241 insurance coverage for a dependent child;

242 (c) the parent with physical custody of the dependent child; or

243 (d) any other factor the court considers relevant.

244 Section 3. Section **78B-12-212** is amended to read:

245           **78B-12-212. Medical expenses.**

246           (1) A child support order issued or modified in this state on or after July 1, 2018, shall  
247 require compliance with this section as of the effective date of the child support order unless  
248 the court makes specific findings as to good cause to deviate from the requirements of this  
249 section.

250           (2) (a) The court shall order that health care coverage for the medical expenses of a  
251 minor child be provided by a parent.

252           (b) The court shall order that a parent provide insurance for the medical expenses of a  
253 minor child if insurance is available to that parent at a reasonable cost.

254           (c) The court shall, in accordance with Section 30-3-5, designate which health,  
255 hospital, or dental insurance plan is primary and which health, hospital, or dental insurance  
256 plan is secondary if at any time a dependent child is covered by both parents' health, hospital,  
257 or dental insurance plans.

258           (3) In determining which parent shall be ordered to maintain insurance for medical  
259 expenses, the court or administrative agency may consider the:

- 260           (a) reasonableness of the cost;
- 261           (b) availability of a group insurance policy;
- 262           (c) coverage of the policy; and
- 263           (d) preference of the custodial parent.

264           (4) The order shall require each parent to share equally the out-of-pocket costs of the  
265 premium actually paid by a parent for the child's portion of insurance unless the court finds  
266 good cause to order otherwise.

267           (5) The parent who provides the insurance coverage may receive credit against the base  
268 child support award or recover the other parent's share of the child's portion of the premium. If  
269 the parent does not have insurance but another member of the parent's household provides  
270 insurance coverage for the child, the parent may receive credit against the base child support  
271 award or recover the other parent's share of the child's portion of the premium.

272           (6) The child's portion of the premium is a per capita share of the premium actually  
273 paid. The premium expense for a child shall be calculated by dividing the premium amount by  
274 the number of persons covered under the policy and multiplying the result by the number of  
275 children in the instant case.

276           (7) The order shall, in accordance with Subsection 30-3-5[(2)](3)(a), include a cash  
277 medical support provision that requires each parent to equally share all reasonable and  
278 necessary uninsured and unreimbursed medical and dental expenses incurred for a dependent  
279 child, including deductibles and copayments unless the court finds good cause to order  
280 otherwise.

281           (8) The parent ordered to maintain insurance shall provide verification of coverage to  
282 the other parent, or to the Office of Recovery Services under Title IV of the Social Security  
283 Act, 42 U.S.C. Sec. 601 et seq., upon initial enrollment of the dependent child, and after initial  
284 enrollment on or before January 2 of each calendar year. The parent shall notify the other  
285 parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C.  
286 Sec. 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar  
287 days of the date the parent first knew or should have known of the change.

288           (9) A parent who incurs medical expenses shall provide written verification of the cost  
289 and payment of medical expenses to the other parent within 30 days of payment.

290           (10) In addition to any other sanctions provided by the court, a parent incurring  
291 medical expenses may be denied the right to receive credit for the expenses or to recover the  
292 other parent's share of the expenses if that parent fails to comply with Subsections (8) and (9).