

SB0074S01 compared with SB0074

~~deleted text~~ shows text that was in SB0074 but was deleted in SB0074S01.

inserted text shows text that was not in SB0074 but was inserted into SB0074S01.

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Senator Todd D. Weiler proposes the following substitute bill:

ALIMONY MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to alimony.

Highlighted Provisions:

This bill:

- ▶ defines the term, "length of the marriage";
- ▶ amends provisions related to alimony;
- ▶ enacts provisions regarding cohabitation by a spouse during the pendency of a divorce action; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

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

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

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

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) As used in this section:

(a) "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 an individual other than the party's spouse;

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

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

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

(b) "Length of the marriage" means the number of years from the day on which the parties are legally married to the day on which the petition for divorce is filed with the court.

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

~~[(2)]~~ (3) 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 a dependent child, 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 a

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

(c) in accordance with 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:

(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.

~~[(3)]~~ (4) (a) 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 a dependent child, necessitated by the employment or training of the custodial parent.

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

~~[(4)]~~ (5) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of a child and the child's support, maintenance, health, and dental care,

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and for distribution of the property and obligations for debts as is reasonable and necessary.

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

~~[(6)]~~ (7) (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.

~~[(7)]~~ (8) 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 attorney 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.

~~[(8)]~~ (9) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a 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:

(a) actual attorney fees incurred;

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

(i) court costs;

(ii) child care expenses;

(iii) transportation expenses actually incurred;

(iv) lost wages, if ascertainable; and

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

(c) make-up parent time consistent with the best interest of the child; and

(d) any other appropriate equitable remedy.

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

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

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(ii) the recipient's earning capacity or ability to produce income, including the impact of diminished workplace experience resulting from primarily caring for a child of the payor spouse;

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

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of a minor child requiring support;

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

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

~~[(c) "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 an individual other than the party's spouse;]~~

~~[(ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or a minor child;]~~

~~[(iii) knowingly and intentionally causing the other party or a minor child to reasonably fear life-threatening harm; or]~~

~~[(iv) substantially undermining the financial stability of the other party or the minor child.]~~

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

~~[(e)]~~ (d) 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 ~~[(9)]~~ (10)(a). However, the court shall consider all relevant facts and equitable principles and may, in the court's discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no child has been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

~~[(f)]~~ (e) The court may, under appropriate circumstances, attempt to equalize the

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parties' respective standards of living.

~~[(g)]~~ (f) 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)]~~ (g) In determining alimony when a marriage of short duration dissolves, and no child has 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.

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

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

(c) 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.

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

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

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

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

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

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

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

~~(11)~~ (12) 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.

(13) (a) Subject to Subsection (13)(b), if a party establishes that a current spouse is cohabiting with another individual during the pendency of a divorce action, the court may not order the party to pay alimony, including temporary alimony, to the current spouse.

(b) A party may only seek to establish cohabitation under Subsection (13)(a) during the pendency of the divorce action.

~~(12)~~ (~~13~~14) (a) Subject to Subsection ~~(12)~~ (~~13~~14)(b), an 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, after the order for alimony is issued, cohabits with another individual, even if the former spouse is not cohabiting with another person when the party paying alimony files the motion to terminate alimony.

(b) A party paying alimony to a former spouse may not seek termination of alimony under Subsection ~~(12)~~ (~~13~~14)(a), later than one year from the day on which the party knew or should have known that the former spouse has cohabited with another individual.

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

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

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

(2) (a) A decree of divorce rendered in accordance with Section 30-3-5, an order for medical expenses rendered in accordance with Section 78B-12-212, and an administrative

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order under Section 62A-11-326 shall, in accordance with Subsection (2)(b)(ii), designate which parent's health, hospital, or dental insurance plan is primary coverage and which parent's health, hospital, or dental insurance plan is secondary coverage for a dependent child.

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

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

(ii) include the following language:

"If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's Name) shall be primary coverage for the dependent child and the health, hospital, or dental insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child. If a parent remarries and his or her dependent child is not covered by that parent's health, hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried parent and shall retain the same designation as the primary or secondary plan of the dependent child."

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

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

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

(a) the birth dates of the parents;

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

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

(d) any other factor the court considers relevant.

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

78B-12-212. Medical expenses.

(1) A child support order issued or modified in this state on or after July 1, 2018, shall

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require compliance with this section as of the effective date of the child support order unless the court makes specific findings as to good cause to deviate from the requirements of this section.

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

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

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

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

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

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

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

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

(7) The order shall, in accordance with Subsection 30-3-5[~~(2)~~](3)(a), include a cash medical support provision that requires each parent to equally share all reasonable and

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necessary uninsured and unreimbursed medical and dental expenses incurred for a dependent child, including deductibles and copayments unless the court finds good cause to order otherwise.

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

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

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