

HB0220S05 compared with HB0220S03

~~{deleted text}~~ shows text that was in HB0220S03 but was deleted in HB0220S05.

inserted text shows text that was not in HB0220S03 but was inserted into HB0220S05.

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~~{Representative Jordan}~~Senator Todd D. {Teuscher}Weiler proposes the following substitute bill:

DIVORCE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: ~~{~~Michael K. McKell~~}~~

LONG TITLE

General Description:

This bill modifies provisions related to alimony determinations.

Highlighted Provisions:

This bill:

- ▶ adds factors to be considered when determining the standard of living that existed during a marriage;
- ▶ requires a look-back period for information provided to demonstrate the financial conditions and needs of a spouse seeking to be awarded alimony;
- ▶ places restrictions on when a court can reduce a showing of need related to alimony;
- ▶ provides means for demonstrating income and the standard of living during a marriage; ~~{and}~~

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- ▶ modifies provisions related to when a court may elect to equalize income between parties by means of an alimony award ~~(f.)~~; and
- ▶ provides potential limitations on imputation of income for alimony purposes in some circumstances where the recipient spouse has no recent full-time work history or has been diagnosed with a disability.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Laws of Utah 2023, Chapters 327, 418

ENACTS:

30-3-5.5, Utah Code Annotated 1953

Utah Code Sections Affected ~~(by)~~ By Coordination Clause:

30-3-5.5, Utah Code Annotated 1953

81-1-204, Utah Code Annotated 1953

81-4-502, Utah Code Annotated 1953

81-4-503, Utah Code Annotated 1953

81-4-504, Utah Code Annotated 1953

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 -- Alimony -- Nonmeritorious petition for modification.

(1) (a) (i) (A) (I) As used in this section:

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

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

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~~[(i)]~~ (Ii) engaging in sexual relations with an individual other than the party's spouse;

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

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

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

~~[(c)]~~ (Cc) "Length of the marriage" means, for purposes of alimony, 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.

(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 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 26B, Chapter 9,

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Recovery Services and Administration of Child Support; 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.

(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.

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

(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.

(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.

(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

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without merit and not asserted or defended against in good faith.

(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:

(a) may award to the prevailing party:

(i) actual attorney fees incurred;

(ii) 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:

(A) court costs;

(B) child care expenses;

(C) transportation expenses actually incurred;

(D) lost wages, if ascertainable; or

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

(iii) any other appropriate equitable remedy; and

(b) shall award reasonable make-up parent-time to the prevailing party, unless make-up parent-time is not in the best interest of the child.

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

(i) the standard of living existing during the marriage, which factors shall include the following:

(A) income;

(B) the approximate value of real and personal property;

(C) other benefits; and

(D) any other factor that the court determines to be appropriate to enable the court to make a determination of the standard of living existing during the marriage;

(ii) the financial condition and needs of the recipient spouse, ~~including a showing of any income for the three-year period immediately preceding the filing of the divorce petition and property owned, provided that:~~

~~—— (A) need may only be reduced by the court if the showing of need exceeds the standard of living shown to be present during the marriage; and~~

~~—— (B) provided that the court shall permit the recipient spouse ~~may~~to show need by itemizing expenses present during the marriage rather than by itemizing post petition expenses;~~

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~~[(ii)]~~ (iii) 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)]~~ (iv) the ability of the payor spouse to provide support ~~{, including showing all income for the three-year period immediately preceding the filing of the divorce petition and property owned}~~;

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

~~[(v)]~~ (vi) whether the recipient spouse has custody of a minor child 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) The court may consider the fault of the parties in determining whether to award alimony and the terms of the alimony.

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

(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 (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.

(e) (i) (A) The court may ~~{, under appropriate circumstances,}~~ attempt to equalize the parties' respective standards of living even if the payor spouse has the ability to meet the needs of the recipient spouse ~~{or if the amount of alimony award would exceed the needs of the recipient spouse}~~.

(B) In attempting to equalize the parties' respective standards of living, the court may equalize the incomes of the parties as well as divide property or order the sale of property.

(C) If a marriage has been in effect for 10 years or more, and if the recipient spouse has significantly diminished workplace experience resulting from ~~{primarily caring}~~ an agreement

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between the spouses that the recipient spouse reduce their workplace experience to care for a child of the payor spouse, it shall be the rebuttable presumption that the court ~~{shall}~~ equalize the parties' standard of living ~~{ for a term equaling the length of the marriage}~~. This presumption can be rebutted by a showing of ~~{extenuating circumstances or}~~ good cause, and the court shall enter specific findings of fact as to the evidentiary basis for its determination.

(ii) Subsection 10(e)(i) may not be applied to or used as the basis to modify an alimony award ~~{in a}~~ if the petition ~~{to modify a decree entered}~~ for divorce was filed before May 1, 2024.

(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.

(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.

(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 (10) or this Subsection (11).

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

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

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

(12) (a) Except as provided in Subsection (12)(b), 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.

(b) If the remarriage of the former spouse 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) If a party establishes that a current spouse cohabits with another individual during the pendency of the divorce action, the court:

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

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

(14) (a) Subject to Subsection (14)(b), the court shall terminate an order that a party pay alimony to a former spouse if the party establishes that, after the order for alimony is issued, the former spouse cohabits with another individual even if the former spouse is not cohabiting with the individual 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 (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 30-3-5.5 is enacted to read:

30-3-5.5. Imputed income for recipient spouse for alimony purposes -- No recent

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work history or disability.

(1) Notwithstanding the provisions of Section 30-3-5 or 78B-12-203, the court may, in determining imputation of income to a recipient spouse, apply the provisions of this section if the recipient spouse:

(a) has diminished workplace experience, that resulted from an agreement between the spouses that the recipient spouse reduce their workplace experience to care for a child of the payor spouse; or

(b) has been diagnosed with a disability that has caused a reduction in the recipient spouse's workplace experience.

(2) If a recipient spouse meets the requirements of Subsection (1)(a) or (b), the court:

(a) may consider reasonable efforts made by the recipient spouse to improve their employment situation and any reasonable barrier to obtaining or retaining employment;

(b) is not required to consider that the recipient spouse may be underemployed if the recipient spouse is employed and has shown reasonable barriers to improving the recipient spouse's employment;

(3) (a) In making an income imputation under this section, the court may use relevant provisions of Section 78B-12-203, provided that the provision is not contrary to the requirements of this section.

(b) When considering what constitutes a reasonable barrier to obtaining or retaining employment, the court:

(i) may include in its analysis a determination of the length of time that is considered by the court to be recent as relates to a recipient spouse's work history, training, or education under this section;

(ii) may consider whether the recipient spouse:

(A) is fully competitive against other employment applicants whose work history, training, or education is current; and

(B) in the case of a disability, is fully competitive against other employment applicants who do not have a disability; and

(iii) may impute any income as it relates to employment for which the spouse is fully competitive and has not shown any reasonable barriers to obtain.

(c) If the court imputes any income to a recipient spouse who qualifies for income

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determination under this section, the court shall enter specific findings of fact as to the evidentiary basis for imputing the income.

(4) (a) After a divorce decree has been entered, subject to the requirements of Subsection 30-3-5(11), the court may review an income imputation to a recipient spouse under this section.

(b) A recipient spouse's showing that barriers have prevented significant improvement of the recipient spouse's employment situation, despite reasonable efforts on the part of the recipient spouse to improve their employment situation, may, in the court's determination, constitute a substantial material change in circumstances and eligibility to review an income imputation under this section.

Section ~~{2}~~3. **Effective date.**

This bill takes effect on May 1, 2024.

Section ~~{3}~~4. ~~{}~~**Coordinating H.B. 220 with S.B. 95**~~{}~~

If S.B. 95, Domestic Relations Recodification, and H.B. 220, Divorce Amendments, both pass and become law, the Legislature intends that, on September 1, 2024~~{,}~~:

(1) Section 81-4-502 enacted in S.B. 95 be amended to read:

"~~{}~~81-4-502. **Determination of ~~{alimony}~~Alimony.**

(1) For a proceeding under Chapter 4, Dissolution of Marriage, or in a proceeding to modify alimony, the court shall consider at least the following factors in determining alimony:

(a) the standard of living existing during the marriage, which factors shall include the following:

(i) income;

(ii) the approximate value of real and personal property;

(iii) other benefits; and

(iv) any other factor that the court determines to be appropriate to enable the court to make a determination of the standard of living existing during the marriage;

(b) the financial condition and needs of the payee, ~~{including a showing of any income for the three-year period immediately preceding the filing of the divorce petition and property owned, provided that:~~

~~{~~(i) need may only be reduced by the court if the showing of need exceeds the standard of living shown to be present during the marriage; and

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~~(ii) provided that~~ the payee may show ~~need~~ financial needs by itemizing expenses present during the marriage rather than by itemizing post petition expenses;

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

~~(d) the ability of the payor to provide support, including showing all income for the three-year period immediately preceding the filing of the divorce petition and property owned;~~

(e) the length of the marriage;

(f) whether the payee has custody of a minor child requiring support;

(g) whether the payee worked in a business owned or operated by the payor; and

(h) whether the payee directly contributed to any increase in the payor's skill by paying for education received by the payor or enabling the payor to attend school during the marriage.

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

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

(3) (a) Except as otherwise provided by this section, the court shall consider the standard of living, existing at the time of separation, in determining alimony in accordance with this section.

(b) In considering all relevant facts and equitable principles, the court may, in the court's discretion, base alimony on the standard of living that existed at the time of trial.

(4) (a) The court may attempt to equalize the parties' respective standards of living even if the payor has the ability to meet the needs of the payee or if the amount of alimony award would exceed the needs of the payee.

(b) In attempting to equalize the parties' respective standards of living, the court may equalize the incomes of the parties as well as divide property or order the sale of property.

(c) (i) If a marriage has been in effect for 10 years or more, and if the payee has significancy diminished workplace experience resulting from ~~primarily caring~~ an agreement between the spouses that the payee reduce the payee's workplace experience to care for a minor child of the payor, ~~there is a~~ it shall be the rebuttable presumption that the court ~~shall~~ equalize the parties' standard of living for a term equaling the length of the marriage.

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(ii) The presumption under Subsection (4)(c)(i) can be rebutted by a showing of ~~extenuating circumstances or~~ good cause, and the court shall enter specific findings of fact as to the evidentiary basis for its determination.

(d) This Subsection (4) may not be applied to or used as the basis to modify an alimony award ~~in a~~ if the petition ~~to modify a decree entered~~ for divorce was filed before May 1, 2024.

(5) (a) If the marriage is short in duration and a minor child has not been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(b) In determining alimony when a marriage of short duration dissolves and a minor child has not 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.

(6) (a) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the parties due to the collective efforts of both parties, the court shall consider the change when dividing the marital property and in determining the amount of alimony.

(b) If a party's earning capacity has been greatly enhanced through the efforts of both parties during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(7) (a) Except as provided in Subsection (7)(c), the court may not order alimony for a period of time longer than the length of the marriage.

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

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

(2) Section 30-3-5.5 enacted in H.B. 220 be renumbered to Section 81-4-503 and be amended to read:

"81-4-503. Imputed income for payee for alimony purposes -- No recent work history or disability.

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(1) Notwithstanding the provisions of Section 81-4-502 or 81-6-203, the court may, in determining imputation of income to a payee, apply the provisions of this section if the payee:

(a) has diminished workplace experience, that resulted from an agreement between the spouses that the payee reduce the payee's workplace experience to care for a minor child of the payor; or

(b) has been diagnosed with a disability that has caused a reduction in the payee's workplace experience.

(2) If a payee meets the requirements of Subsection (1)(a) or (b), the court:

(a) may consider reasonable efforts made by the payee to improve the payee's employment situation and any reasonable barrier to obtaining or retaining employment;

(b) is not required to consider that the payee may be underemployed if the payee is employed and has shown reasonable barriers to improving the payee's employment.

(3)(a) In making an income imputation under this section, the court may use relevant provisions of Section 81-6-203, provided that the provision is not contrary to the requirements of this section.

(b) When considering what constitutes a reasonable barrier to obtaining or retaining employment, the court:

(i) may include in its analysis a determination of the length of time that is considered by the court to be recent as relates to a payee's work history, training, or education under this section;

(ii) may consider whether the payee:

(A) is fully competitive against other employment applicants whose work history, training, or education is current; and

(B) in the case of a disability, is fully competitive against other employment applicants who do not have a disability; and

(iii) may impute any income as it relates to employment for which the spouse is fully competitive and has not shown any reasonable barriers to obtain.

(c) If the court imputes any income to a payee who qualifies for income determination under this section, the court shall enter specific findings of fact as to the evidentiary basis for imputing the income.

(4)(a) After a divorce decree has been entered, subject to the requirements of Section

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81-4-504, the court may review an income imputation to a payee under this section.

(b) A payee's showing that barriers have prevented significant improvement of the payee's employment situation, despite reasonable efforts on the part of the payee to improve the payee's employment situation, may, in the court's determination, constitute a substantial material change in circumstances and eligibility to review an income imputation under this section."

(3) Section 81-4-503 enacted in S.B. 95 be renumbered to Section 81-4-504;

(4) Section 81-4-504 enacted in S.B. 95 be renumbered to Section 81-4-505; and

(5) the reference in Section 81-1-204 in S.B. 95 to "Section 81-4-503" be changed to "Section 81-4-504".