

**Senator Michael K. McKell** 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;
- ▶ modifies provisions related to when a court may elect to equalize income between parties by means of an alimony award; 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

**6th Sub. H.B. 220**



26 **Other Special Clauses:**

27 This bill provides a coordination clause.

28 **Utah Code Sections Affected:**

29 AMENDS:

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

31 ENACTS:

32 **30-3-5.5**, Utah Code Annotated 1953

33 **Utah Code Sections Affected By Coordination Clause:**

34 **30-3-5.5**, Utah Code Annotated 1953

35 **81-1-204**, Utah Code Annotated 1953

36 **81-4-502**, Utah Code Annotated 1953

37 **81-4-503**, Utah Code Annotated 1953

38 **81-4-504**, Utah Code Annotated 1953



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

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

42 **30-3-5. Disposition of property -- Maintenance and health care of parties and**  
43 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**  
44 **parent-time -- Alimony -- Nonmeritorious petition for modification.**

45 (1) As used in this section:

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

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

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

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

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

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

56 (c) "Length of the marriage" means, for purposes of alimony, the number of years from

57 the day on which the parties are legally married to the day on which the petition for divorce is  
58 filed with the court.

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

61 (3) The court shall include the following in every decree of divorce:

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

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

68 (ii) a designation of which health, hospital, or dental insurance plan is primary and  
69 which health, hospital, or dental insurance plan is secondary in accordance with Section  
70 30-3-5.4 that will take effect if at any time a dependent child is covered by both parents' health,  
71 hospital, or dental insurance plans;

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

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

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

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

79 (d) provisions for income withholding in accordance with Title 26B, Chapter 9,  
80 Recovery Services and Administration of Child Support; and

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

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

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

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

88 policy or contract.

89 (4) (a) The court may include, in an order determining child support, an order assigning  
90 financial responsibility for all or a portion of child care expenses incurred on behalf of a  
91 dependent child, necessitated by the employment or training of the custodial parent.

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

96 (5) The court has continuing jurisdiction to make subsequent changes or new orders for  
97 the custody of a child and the child's support, maintenance, health, and dental care, and for  
98 distribution of the property and obligations for debts as is reasonable and necessary.

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

101 (7) (a) In determining parent-time rights of parents and visitation rights of grandparents  
102 and other members of the immediate family, the court shall consider the best interest of the  
103 child.

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

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

112 (9) If a motion or petition alleges noncompliance with a parent-time order by a parent,  
113 or a visitation order by a grandparent or other member of the immediate family where a  
114 visitation or parent-time right has been previously granted by the court, the court:

115 (a) may award to the prevailing party:

116 (i) actual attorney fees incurred;

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

- 119 (A) court costs;
- 120 (B) child care expenses;
- 121 (C) transportation expenses actually incurred;
- 122 (D) lost wages, if ascertainable; or
- 123 (E) counseling for a child or parent if ordered or approved by the court; or
- 124 (iii) any other appropriate equitable remedy; and
- 125 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up
- 126 parent-time is not in the best interest of the child.

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

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

129 following:

130 (A) income;

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

132 (C) any other factor that the court determines to be appropriate to enable the court to

133 make a determination of the standard of living existing during the marriage;

134 (ii) the financial condition and needs of the recipient spouse, provided that the court

135 shall permit the recipient spouse to show need by itemizing expenses present during the

136 marriage rather than by itemizing post petition expenses;

137 [~~(ii)~~] (iii) the recipient's earning capacity or ability to produce income, including the

138 impact of diminished workplace experience resulting from primarily caring for a child of the

139 payor spouse;

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

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

142 [~~(v)~~] (vi) whether the recipient spouse has custody of a minor child requiring support;

143 [~~(vi)~~] (vii) whether the recipient spouse worked in a business owned or operated by the

144 payor spouse; and

145 [~~(vii)~~] (viii) whether the recipient spouse directly contributed to any increase in the

146 payor spouse's skill by paying for education received by the payor spouse or enabling the payor

147 spouse to attend school during the marriage.

148 (b) The court may consider the fault of the parties in determining whether to award

149 alimony and the terms of the alimony.

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

152 (d) As a general rule, the court should look to the standard of living, existing at the  
153 time of separation, in determining alimony in accordance with Subsection (10)(a). However,  
154 the court shall consider all relevant facts and equitable principles and may, in the court's  
155 discretion, base alimony on the standard of living that existed at the time of trial. In marriages  
156 of short duration, when no child has been conceived or born during the marriage, the court may  
157 consider the standard of living that existed at the time of the marriage.

158 (e) (i) (A) The court may~~[, under appropriate circumstances,]~~ attempt to equalize the  
159 parties' respective standards of living.

160 (B) If a marriage has been in effect for 10 years or more, and if the recipient spouse has  
161 significantly diminished workplace experience resulting from an agreement between the  
162 spouses that the recipient spouse reduce their workplace experience to care for a child of the  
163 payor spouse, it shall be the rebuttable presumption that the court equalize the parties' standard  
164 of living. This presumption can be rebutted by a showing of good cause, and the court shall  
165 enter specific findings of fact as to the evidentiary basis for its determination.

166 (ii) Subsection (10)(e)(i) may not be applied to or used as the basis to modify an  
167 alimony award if the petition for divorce was filed before May 1, 2024.

168 (f) When a marriage of long duration dissolves on the threshold of a major change in  
169 the income of one of the spouses due to the collective efforts of both, that change shall be  
170 considered in dividing the marital property and in determining the amount of alimony. If one  
171 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during  
172 the marriage, the court may make a compensating adjustment in dividing the marital property  
173 and awarding alimony.

174 (g) In determining alimony when a marriage of short duration dissolves, and no child  
175 has been conceived or born during the marriage, the court may consider restoring each party to  
176 the condition which existed at the time of the marriage.

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

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

184 (c) The court may not modify alimony or issue a new order for alimony to address  
185 needs of the recipient that did not exist at the time the decree was entered, unless the court  
186 finds extenuating circumstances that justify that action.

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

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

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

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

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

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

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

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

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

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

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

212 (14) (a) Subject to Subsection (14)(b), the court shall terminate an order that a party  
213 pay alimony to a former spouse if the party establishes that, after the order for alimony is  
214 issued, the former spouse cohabits with another individual even if the former spouse is not  
215 cohabiting with the individual when the party paying alimony files the motion to terminate  
216 alimony.

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

220 *The following section is affected by a coordination clause at the end of this bill.*

221 Section 2. Section **30-3-5.5** is enacted to read:

222 **30-3-5.5. Imputed income for recipient spouse for alimony purposes -- No recent**  
223 **work history or disability.**

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

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

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

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

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

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

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

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



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

246 (ii) may consider whether the recipient spouse:

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

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

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

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

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

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

264 **Section 3. Effective date.**

265 This bill takes effect on May 1, 2024.

266 **Section 4. Coordinating H.B. 220 with S.B. 95**

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

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

270 **"81-4-502. Determination of Alimony.**

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

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

274 following:

275 (i) income;

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

277 (iii) any other factor that the court determines to be appropriate to enable the court to

278 make a determination of the standard of living existing during the marriage;

279 (b) the financial condition and needs of the payee, provided that the payee may show  
280 financial needs by itemizing expenses present during the marriage rather than by itemizing post  
281 petition expenses;

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

285 (d) the ability of the payor to provide support;

286 (e) the length of the marriage;

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

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

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

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

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

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

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

300 (4) (a) The court may attempt to equalize the parties' respective standards of living.

301 (b) (i) If a marriage has been in effect for 10 years or more, and if the payee has  
302 significancy diminished workplace experience resulting from an agreement between the  
303 spouses that the payee reduce the payee's workplace experience to care for a minor child of the  
304 payor, it shall be the rebuttable presumption that the court equalize the parties' standard of

305 living.

306 (ii) The presumption under Subsection (4)(b)(i) can be rebutted by a showing of good  
307 cause, and the court shall enter specific findings of fact as to the evidentiary basis for its  
308 determination.

309 (c) This Subsection (4) may not be applied to or used as the basis to modify an alimony  
310 award if the petition for divorce was filed before May 1, 2024.

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

314 (b) In determining alimony when a marriage of short duration dissolves and a minor  
315 child has not been conceived or born during the marriage, the court may consider restoring  
316 each party to the condition which existed at the time of the marriage.

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

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

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

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

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

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

334 **"81-4-503. Imputed income for payee for alimony purposes -- No recent work**  
335 **history or disability.**

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

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

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

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

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

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

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

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

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

356 (ii) may consider whether the payee:

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

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

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

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

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

367 81-4-504, the court may review an income imputation to a payee under this section.

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

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

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

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