

Representative Jordan D. Teuscher 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
- ▶ modifies provisions related to when a court may elect to equalize income between parties by means of an alimony award.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:



26 AMENDS:

27 **30-3-5**, as last amended by Laws of Utah 2023, Chapters 327, 418

28 **Utah Code Sections Affected by Coordination Clause:**

29 **81-4-502**, Utah Code Annotated 1953

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

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

33 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
34 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
35 **parent-time -- Alimony -- Nonmeritorious petition for modification.**

36 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

56 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the

57 purchase and maintenance of appropriate health, hospital, and dental care insurance for a
58 dependent child; and

59 (ii) a designation of which health, hospital, or dental insurance plan is primary and
60 which health, hospital, or dental insurance plan is secondary in accordance with Section
61 30-3-5.4 that will take effect if at any time a dependent child is covered by both parents' health,
62 hospital, or dental insurance plans;

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

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

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

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

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

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

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

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

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

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

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

87 (5) The court has continuing jurisdiction to make subsequent changes or new orders for

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

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

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

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

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

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

106 (a) may award to the prevailing party:

107 (i) actual attorney fees incurred;

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

110 (A) court costs;

111 (B) child care expenses;

112 (C) transportation expenses actually incurred;

113 (D) lost wages, if ascertainable; or

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

115 (iii) any other appropriate equitable remedy; and

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

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

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

121 (A) income;

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

123 (C) other benefits; and

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

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

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

131 (B) the recipient spouse may show need by itemizing expenses present during the
132 marriage rather than by itemizing post petition expenses;

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

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

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

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

141 [~~(vi)~~] (vii) whether the recipient spouse worked in a business owned or operated by the
142 payor spouse; and

143 [~~(vii)~~] (viii) whether the recipient spouse directly contributed to any increase in the
144 payor spouse's skill by paying for education received by the payor spouse or enabling the payor
145 spouse to attend school during the marriage.

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

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

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

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

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

162 (C) If the recipient spouse has diminished workplace experience resulting from
163 primarily caring for a child of the payor spouse, it shall be the rebuttable presumption that the
164 court shall equalize the parties' standard of living for a term equaling the length of the
165 marriage. This presumption can be rebutted by a showing of extenuating circumstances or good
166 cause.

167 (ii) Subsection 10(e)(i) may not be applied to or used as the basis to modify an alimony
168 award in a petition to modify a decree entered before May 1, 2024.

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

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

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

181 decree.

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

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

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

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

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

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

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

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

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

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

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

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

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

212 spouse.

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

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

221 Section 2. **Effective date.**

222 This bill takes effect on May 1, 2024.

223 Section 3. **Coordinating H.B. 220 with S.B. 95.**

224 If S.B. 95, Domestic Relations Recodification, and H.B. 220, Divorce Amendments,
225 both pass and become law, the Legislature intends that, on September 1, 2024, Section
226 81-4-502 enacted in S.B. 95 be amended to read:

227 **"81-4-502. Determination of alimony.**

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

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

232 (i) income;

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

234 (iii) other benefits; and

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

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

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

242 (ii) the payee may show need by itemizing expenses present during the marriage rather

243 than by itemizing post petition expenses;

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

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

249 (e) the length of the marriage;

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

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

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

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

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

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

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

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

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

268 (c) (i) If the payee has diminished workplace experience resulting from primarily
269 caring for a minor child of the payor, there is a rebuttable presumption that the court shall
270 equalize the parties' standard of living for a term equaling the length of the marriage.

271 (ii) The presumption under Subsection (4)(c)(i) can be rebutted by a showing of
272 extenuating circumstances or good cause.

273 (d) This Subsection (4) may not be applied to or used as the basis to modify an alimony

274 award in a petition to modify a decree entered before May 1, 2024.

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

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

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

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

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

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

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