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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

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

28 **Utah Code Sections affected by Coordination Clause:**29 **30-3-5.5**, Utah Code Annotated 195330 **81-1-204**, Utah Code Annotated 195331 **81-4-502**, Utah Code Annotated 195332 **81-4-503**, Utah Code Annotated 195333 **81-4-504**, Utah Code Annotated 1953

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35 *Be it enacted by the Legislature of the state of Utah:*36 Section 1. Section **30-3-5** is amended to read:

37 **30-3-5 . Disposition of property -- Maintenance and health care of parties and**
 38 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
 39 **parent-time -- Alimony -- Nonmeritorious petition for modification.**

40 (1) As used in this section:

41 (a) "Cohabit" means to live together, or to reside together on a regular basis, in the same
42 residence and in a relationship of a romantic or sexual nature.43 (b) "Fault" means any of the following wrongful conduct during the marriage that
44 substantially contributed to the breakup of the marriage:

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

46 (ii) knowingly and intentionally causing or attempting to cause physical harm to the
47 other party or a child;48 (iii) knowingly and intentionally causing the other party or a child to reasonably fear
49 life-threatening harm; or

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

51 (c) "Length of the marriage" means, for purposes of alimony, the number of years from
52 the day on which the parties are legally married to the day on which the petition for
53 divorce is filed with the court.54 (2) When a decree of divorce is rendered, the court may include in the decree of divorce
55 equitable orders relating to the children, property, debts or obligations, and parties.

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

57 (a) an order assigning responsibility for the payment of reasonable and necessary
58 medical and dental expenses of a dependent child, including responsibility for health
59 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;60 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
61 purchase and maintenance of appropriate health, hospital, and dental care

- 62 insurance for a dependent child; and
- 63 (ii) a designation of which health, hospital, or dental insurance plan is primary and
- 64 which health, hospital, or dental insurance plan is secondary in accordance with
- 65 Section 30-3-5.4 that will take effect if at any time a dependent child is covered by
- 66 both parents' health, hospital, or dental insurance plans;
- 67 (c) in accordance with Section 15-4-6.5:
- 68 (i) an order specifying which party is responsible for the payment of joint debts,
- 69 obligations, or liabilities of the parties contracted or incurred during marriage;
- 70 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
- 71 the court's division of debts, obligations, or liabilities and regarding the parties'
- 72 separate, current addresses; and
- 73 (iii) provisions for the enforcement of these orders;
- 74 (d) provisions for income withholding in accordance with Title 26B, Chapter 9,
- 75 Recovery Services and Administration of Child Support; and
- 76 (e) if either party owns a life insurance policy or an annuity contract, an
- 77 acknowledgment by the court that the owner:
- 78 (i) has reviewed and updated, where appropriate, the list of beneficiaries;
- 79 (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries
- 80 after the divorce becomes final; and
- 81 (iii) understands that if no changes are made to the policy or contract, the
- 82 beneficiaries currently listed will receive any funds paid by the insurance
- 83 company under the terms of the policy or contract.
- 84 (4) (a) The court may include, in an order determining child support, an order assigning
- 85 financial responsibility for all or a portion of child care expenses incurred on behalf
- 86 of a dependent child, necessitated by the employment or training of the custodial
- 87 parent.
- 88 (b) If the court determines that the circumstances are appropriate and that the dependent
- 89 child would be adequately cared for, the court may include an order allowing the
- 90 noncustodial parent to provide child care for the dependent child, necessitated by the
- 91 employment or training of the custodial parent.
- 92 (5) The court has continuing jurisdiction to make subsequent changes or new orders for the
- 93 custody of a child and the child's support, maintenance, health, and dental care, and for
- 94 distribution of the property and obligations for debts as is reasonable and necessary.
- 95 (6) Child support, custody, visitation, and other matters related to a child born to the parents

96 after entry of the decree of divorce may be added to the decree by modification.

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

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

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

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

111 (a) may award to the prevailing party:

112 (i) actual attorney fees incurred;

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

115 (A) court costs;

116 (B) child care expenses;

117 (C) transportation expenses actually incurred;

118 (D) lost wages, if ascertainable; or

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

120 (iii) any other appropriate equitable remedy; and

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

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

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

126 (A) income;

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

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

- 130 (ii) the financial condition and needs of the recipient spouse, provided that the court
131 shall permit the recipient spouse to show need by itemizing expenses present
132 during the 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
135 child of the payor spouse;
- 136 [~~(iii)~~] (iv) the ability of the payor spouse to provide support;
- 137 [~~(iv)~~] (v) the length of the marriage;
- 138 [~~(v)~~] (vi) whether the recipient spouse has custody of a minor child requiring support;
- 139 [~~(vi)~~] (vii) whether the recipient spouse worked in a business owned or operated by
140 the payor spouse; and
- 141 [~~(vii)~~] (viii) whether the recipient spouse directly contributed to any increase in the
142 payor spouse's skill by paying for education received by the payor spouse or
143 enabling the payor spouse to attend school during the marriage.
- 144 (b) The court may consider the fault of the parties in determining whether to award
145 alimony and the terms of the alimony.
- 146 (c) The court may, when fault is at issue, close the proceedings and seal the court
147 records.
- 148 (d) As a general rule, the court should look to the standard of living, existing at the time
149 of separation, in determining alimony in accordance with Subsection (10)(a).
150 However, the court shall consider all relevant facts and equitable principles and may,
151 in the court's discretion, base alimony on the standard of living that existed at the
152 time of trial. In marriages of short duration, when no child has been conceived or
153 born during the marriage, the court may consider the standard of living that existed at
154 the time of the marriage.
- 155 (e) (i) (A) The court may [~~under appropriate circumstances,~~] attempt to equalize
156 the parties' respective standards of living.
- 157 (B) If a marriage has been in effect for 10 years or more, and if the recipient
158 spouse has significantly diminished workplace experience resulting from an
159 agreement between the spouses that the recipient spouse reduce their
160 workplace experience to care for a child of the payor spouse, it shall be the
161 rebuttable presumption that the court equalize the parties' standard of living.
162 This presumption can be rebutted by a showing of good cause, and the court
163 shall enter specific findings of fact as to the evidentiary basis for its

- 164 determination.
- 165 (ii) Subsection (10)(e)(i) may not be applied to or used as the basis to modify an
- 166 alimony award if the petition for divorce was filed before May 1, 2024.
- 167 (f) When a marriage of long duration dissolves on the threshold of a major change in the
- 168 income of one of the spouses due to the collective efforts of both, that change shall be
- 169 considered in dividing the marital property and in determining the amount of
- 170 alimony. If one spouse's earning capacity has been greatly enhanced through the
- 171 efforts of both spouses during the marriage, the court may make a compensating
- 172 adjustment in dividing the marital property and awarding alimony.
- 173 (g) In determining alimony when a marriage of short duration dissolves, and no child
- 174 has been conceived or born during the marriage, the court may consider restoring
- 175 each party to the condition which existed at the time of the marriage.
- 176 (11) (a) The court has continuing jurisdiction to make substantive changes and new
- 177 orders regarding alimony based on a substantial material change in circumstances not
- 178 expressly stated in the divorce decree or in the findings that the court entered at the
- 179 time of the divorce decree.
- 180 (b) A party's retirement is a substantial material change in circumstances that is subject
- 181 to a petition to modify alimony, unless the divorce decree, or the findings that the
- 182 court entered at the time of the divorce decree, expressly states otherwise.
- 183 (c) The court may not modify alimony or issue a new order for alimony to address needs
- 184 of the recipient that did not exist at the time the decree was entered, unless the court
- 185 finds extenuating circumstances that justify that action.
- 186 (d) (i) In determining alimony, the income of any subsequent spouse of the payor
- 187 may not be considered, except as provided in Subsection (10) or this Subsection
- 188 (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
- 197 towards the 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
200 period of time than the length of the marriage.

201 (12) (a) Except as provided in Subsection (12)(b), unless a decree of divorce specifically
202 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
206 action of annulment and the payor party's rights are determined.

207 (13) If a party establishes that a current spouse cohabits with another individual during the
208 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 spouse.

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

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

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

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

221 **30-3-5.5 . Imputed income for recipient spouse for alimony purposes -- No recent**
222 **work history or disability.**

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

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

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

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

- 232 (a) may consider reasonable efforts made by the recipient spouse to improve their
233 employment situation and any reasonable barrier to obtaining or retaining
234 employment; and
- 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
237 recipient 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
245 education 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
250 applicants 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
255 the evidentiary basis for imputing the income.
- 256 (4) (a) After a divorce decree has been entered, subject to the requirements of Subsection
257 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 of
260 the recipient spouse's employment situation, despite reasonable efforts on the part of
261 the recipient spouse to improve their employment situation, may, in the court's
262 determination, constitute a substantial material change in circumstances and
263 eligibility to review an income imputation under this section.

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
272 to modify alimony, the court shall consider at least the following factors in
273 determining alimony:
274 (a) the standard of living existing during the marriage, which factors shall include
275 the following:
276 (i) income;
277 (ii) the approximate value of real and personal property; and
278 (iii) any other factor that the court determines to be appropriate to enable the court
279 to make a determination of the standard of living existing during the marriage;
280 (b) the financial condition and needs of the payee, provided that the payee may
281 show financial needs by itemizing expenses present during the marriage rather than
282 by itemizing post petition expenses;
283 (c) the payee's earning capacity or ability to produce income, including the impact
284 of diminished workplace experience resulting from primarily caring for a minor child
285 of the payor;
286 (d) the ability of the payor to provide support;
287 (e) the length of the marriage;
288 (f) whether the payee has custody of a minor child requiring support;
289 (g) whether the payee worked in a business owned or operated by the payor; and
290 (h) whether the payee directly contributed to any increase in the payor's skill by
291 paying for education received by the payor or enabling the payor to attend school
292 during the marriage.
293 (2) (a) The court may consider the fault of the parties in determining whether to
294 award alimony and the terms of the alimony.
295 (b) The court may, when fault is at issue, close the proceedings and seal the court
296 records.
297 (3) (a) Except as otherwise provided by this section, the court shall consider the
298 standard of living, existing at the time of separation, in determining alimony in
299 accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

332 (c) At any time before the termination of alimony, the court may find extenuating
333 circumstances or good cause that justify the payment of alimony for a longer period

334 of time than the length of the marriage."

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

337 "81-4-503. Imputed income for payee for alimony purposes -- No recent work
338 history or disability.

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

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

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

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

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

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

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

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

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

361 (ii) may consider whether the payee:

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

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

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

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

371 (4) (a) After a divorce decree has been entered, subject to the requirements of
372 Section 81-4-504, the court may review an income imputation to a payee under this
373 section.

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

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

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

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