

**ALIMONY MODIFICATIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill expands the circumstances under which a court may order alimony, and it increases the length of time alimony may be awarded.

**Highlighted Provisions:**

This bill:

- ▶ allows a court to consider fault when awarding alimony;
- ▶ defines fault to include acts that substantially and unilaterally compromise a marriage, harm a spouse, or harm the children of the marriage;
- ▶ allows a court to award additional alimony to a recipient spouse who refrained from significant employment during the marriage in order to care for minor children so that the recipient spouse may continue to provide the care for the minor children after the divorce even if the recipient spouse decides to pursue an education, job training, or acquires and maintains a professional license; and
- ▶ allows a court to order alimony for a time longer than the duration of the marriage if the payor spouse was at fault.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **30-3-5**, as last amended by Laws of Utah 2010, Chapter 285



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 -- Determination of alimony -- Nonmeritorious petition for modification.**

36 (1) When a decree of divorce is rendered, the court may include in it equitable orders  
37 relating to the children, property, debts or obligations, and parties. The court shall include the  
38 following in every decree of divorce:

39 (a) an order assigning responsibility for the payment of reasonable and necessary  
40 medical and dental expenses of the dependent children including responsibility for health  
41 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

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

45 (ii) a designation of which health, hospital, or dental insurance plan is primary and  
46 which health, hospital, or dental insurance plan is secondary in accordance with the provisions  
47 of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both  
48 parents' health, hospital, or dental insurance plans;

49 (c) pursuant to Section 15-4-6.5:

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

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

55 (iii) provisions for the enforcement of these orders; and

56 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,  
57 Recovery Services.

58 (2) The court may include, in an order determining child support, an order assigning

59 financial responsibility for all or a portion of child care expenses incurred on behalf of the  
60 dependent children, necessitated by the employment or training of the custodial parent. If the  
61 court determines that the circumstances are appropriate and that the dependent children would  
62 be adequately cared for, it may include an order allowing the noncustodial parent to provide  
63 child care for the dependent children, necessitated by the employment or training of the  
64 custodial parent.

65 (3) The court has continuing jurisdiction to make subsequent changes or new orders for  
66 the custody of the children and their support, maintenance, health, and dental care, and for  
67 distribution of the property and obligations for debts as is reasonable and necessary.

68 (4) Child support, custody, visitation, and other matters related to children born to the  
69 mother and father after entry of the decree of divorce may be added to the decree by  
70 modification.

71 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents  
72 and other members of the immediate family, the court shall consider the best interest of the  
73 child.

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

78 (6) If a petition for modification of child custody or parent-time provisions of a court  
79 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'  
80 fees expended by the prevailing party in that action, if the court determines that the petition  
81 was without merit and not asserted or defended against in good faith.

82 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a  
83 visitation order by a grandparent or other member of the immediate family where a visitation or  
84 parent-time right has been previously granted by the court, the court may award to the  
85 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing  
86 party because of the other party's failure to provide or exercise court-ordered visitation or  
87 parent-time.

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

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

90 (ii) the recipient's earning capacity or ability to produce income;  
91 (iii) the ability of the payor spouse to provide support;  
92 (iv) the length of the marriage;  
93 (v) whether the recipient spouse has custody of minor children requiring support;  
94 (vi) whether a recipient spouse with custody of minor children refrained from  
95 significant employment in order to provide care of the parties' minor children and household  
96 during the marriage, and if so, whether the payor spouse has the ability to provide sufficient  
97 support to allow the recipient spouse to continue to be in the home to supervise and care for the  
98 minor children;

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

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

104 (b) An alimony award sufficient to enable a recipient spouse to continue to be in the  
105 home to provide care and supervision to the parties' minor children under Subsection (8)(a)(vi)  
106 does not preclude the recipient spouse from reasonably pursuing education, job training,  
107 acquiring or maintaining professional licenses, or otherwise preparing to be self-supporting.

108 [~~(b)~~] (c) The court may consider the fault of the parties in determining [~~alimony:~~]  
109 whether or not to award alimony. An alimony award is not considered punitive if it complies  
110 with this subsection.

111 (d) "Fault" means that one party committed substantiated acts or engaged in  
112 substantiated behavior during the marriage that unilaterally and substantially compromised the  
113 marriage, or unilaterally and substantially harmed the health, safety, or financial stability of the  
114 other party or their minor children, including:

115 (i) sexual relations with a person who is not the party's spouse;

116 (ii) physical abuse of the spouse or minor children;

117 (iii) long-term addiction to alcohol, drugs, gambling, or pornography; or

118 (iv) conviction of a felony.

119 (e) A party may stipulate to an allegation of fault.

120 (f) The court may, when fault is at issue, close the proceedings and seal the court

121 records.

122 [~~(e)~~] (g) As a general rule, the court should look to the standard of living, existing at  
123 the time of separation, in determining alimony in accordance with Subsection (8)(a). However,  
124 the court shall consider all relevant facts and equitable principles and may, in its discretion,  
125 base alimony on the standard of living that existed at the time of trial. In marriages of short  
126 duration, when no children have been conceived or born during the marriage, the court may  
127 consider the standard of living that existed at the time of the marriage.

128 [~~(d)~~] (h) The court may, under appropriate circumstances, attempt to equalize the  
129 parties' respective standards of living.

130 [~~(e)~~] (i) When a marriage of long duration dissolves on the threshold of a major change  
131 in the income of one of the spouses due to the collective efforts of both, that change shall be  
132 considered in dividing the marital property and in determining the amount of alimony. If one  
133 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during  
134 the marriage, the court may make a compensating adjustment in dividing the marital property  
135 and awarding alimony.

136 [~~(f)~~] (j) In determining alimony when a marriage of short duration dissolves, and no  
137 children have been conceived or born during the marriage, the court may consider restoring  
138 each party to the condition which existed at the time of the marriage.

139 [~~(g)~~] (k) (i) The court has continuing jurisdiction to make substantive changes and new  
140 orders regarding alimony based on a substantial material change in circumstances not  
141 foreseeable at the time of the divorce.

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

145 (iii) In determining alimony, the income of any subsequent spouse of the payor may not  
146 be considered, except as provided in this Subsection (8).

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

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

151 [~~(h)~~] (l) Alimony may not be ordered for a duration longer than the number of years

152 that the marriage existed unless~~[, at any time prior to termination of alimony,]~~ the court finds;

153 (i) the payor spouse was at fault in the divorce; or

154 (ii) at any time prior to termination of alimony, extenuating circumstances that justify  
155 the payment of alimony for a longer period of time.

156 (9) Unless a decree of divorce specifically provides otherwise, any order of the court  
157 that a party pay alimony to a former spouse automatically terminates upon the remarriage or  
158 death of that former spouse. However, if the remarriage is annulled and found to be void ab  
159 initio, payment of alimony shall resume if the party paying alimony is made a party to the  
160 action of annulment and ~~[his]~~ the payor party's rights are determined.

161 (10) Any order of the court that a party pay alimony to a former spouse terminates  
162 upon establishment by the party paying alimony that the former spouse is cohabitating with  
163 another person.

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**Legislative Review Note**  
**as of 1-30-12 8:21 AM**

**Office of Legislative Research and General Counsel**