

ALIMONY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions relating to alimony.

Highlighted Provisions:

This bill:

- ▶ amends provisions relating to the continuing jurisdiction of the court to make changes and new orders regarding alimony; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Laws of Utah 2020, Chapter 337

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

(1) 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.

- 30 (2) The court shall include the following in every decree of divorce:
- 31 (a) an order assigning responsibility for the payment of reasonable and necessary
- 32 medical and dental expenses of a dependent child, including responsibility for health insurance
- 33 out-of-pocket expenses such as co-payments, co-insurance, and deductibles;
- 34 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
- 35 purchase and maintenance of appropriate health, hospital, and dental care insurance for a
- 36 dependent child; and
- 37 (ii) a designation of which health, hospital, or dental insurance plan is primary and
- 38 which health, hospital, or dental insurance plan is secondary in accordance with Section
- 39 30-3-5.4 that will take effect if at any time a dependent child is covered by both parents' health,
- 40 hospital, or dental insurance plans;
- 41 (c) in accordance with Section 15-4-6.5:
- 42 (i) an order specifying which party is responsible for the payment of joint debts,
- 43 obligations, or liabilities of the parties contracted or incurred during marriage;
- 44 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
- 45 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
- 46 current addresses; and
- 47 (iii) provisions for the enforcement of these orders;
- 48 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
- 49 Recovery Services; and
- 50 (e) if either party owns a life insurance policy or an annuity contract, an
- 51 acknowledgment by the court that the owner:
- 52 (i) has reviewed and updated, where appropriate, the list of beneficiaries;
- 53 (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries
- 54 after the divorce becomes final; and
- 55 (iii) understands that if no changes are made to the policy or contract, the beneficiaries
- 56 currently listed will receive any funds paid by the insurance company under the terms of the
- 57 policy or contract.

58 (3) (a) 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 a
60 dependent child, necessitated by the employment or training of the custodial parent.

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

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

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

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

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

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

81 (8) If a motion or petition alleges noncompliance with a parent-time order by a parent,
82 or a visitation order by a grandparent or other member of the immediate family where a
83 visitation or parent-time right has been previously granted by the court, the court may award to
84 the prevailing party:

85 (a) actual attorney fees incurred;

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

- 88 (i) court costs;
- 89 (ii) child care expenses;
- 90 (iii) transportation expenses actually incurred;
- 91 (iv) lost wages, if ascertainable; and
- 92 (v) counseling for a child or parent if ordered or approved by the court;
- 93 (c) make-up parent time consistent with the best interest of the child; and
- 94 (d) any other appropriate equitable remedy.

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

- 96 (i) the financial condition and needs of the recipient spouse;
- 97 (ii) the recipient's earning capacity or ability to produce income, including the impact
98 of diminished workplace experience resulting from primarily caring for a child of the payor
99 spouse;

- 100 (iii) the ability of the payor spouse to provide support;
- 101 (iv) the length of the marriage;
- 102 (v) whether the recipient spouse has custody of a minor child requiring support;
- 103 (vi) whether the recipient spouse worked in a business owned or operated by the payor
104 spouse; and

- 105 (vii) whether the recipient spouse directly contributed to any increase in the payor
106 spouse's skill by paying for education received by the payor spouse or enabling the payor
107 spouse to attend school during the marriage.

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

110 (c) "Fault" means any of the following wrongful conduct during the marriage that
111 substantially contributed to the breakup of the marriage relationship:

- 112 (i) engaging in sexual relations with an individual other than the party's spouse;
- 113 (ii) knowingly and intentionally causing or attempting to cause physical harm to the

114 other party or a minor child;

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

117 (iv) substantially undermining the financial stability of the other party or the minor
118 child.

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

121 (e) As a general rule, the court should look to the standard of living, existing at the
122 time of separation, in determining alimony in accordance with Subsection (9)(a). However, the
123 court shall consider all relevant facts and equitable principles and may, in the court's discretion,
124 base alimony on the standard of living that existed at the time of trial. In marriages of short
125 duration, when no child has been conceived or born during the marriage, the court may
126 consider the standard of living that existed at the time of the marriage.

127 (f) The court may, under appropriate circumstances, attempt to equalize the parties'
128 respective standards of living.

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

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

138 (10) (a) The court has continuing jurisdiction to make substantive changes and new
139 orders regarding alimony based on a substantial material change in circumstances not
140 [foreseeable at the time of the divorce] expressly stated in the divorce decree or in the findings
141 that the court entered at the time of the divorce decree.

142 (b) ~~[Regardless of whether a party's retirement is foreseeable, the]~~ A party's retirement
143 is a substantial material change in circumstances that is subject to a petition to modify alimony,
144 unless the divorce decree, or the findings that the court entered at the time of the divorce
145 decree, expressly states otherwise.

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

149 (d) (i) In determining alimony, the income of any subsequent spouse of the payor may
150 not be considered, except as provided in Subsection (9) or this Subsection (10).

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

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

155 (e) The court may not order alimony for a duration longer than the number of years that
156 the marriage existed unless, at any time before termination of alimony, the court finds
157 extenuating circumstances that justify the payment of alimony for a longer period of time.

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

163 (12) (a) Subject to Subsection (12)(b), an order of the court that a party pay alimony to
164 a former spouse terminates upon establishment by the party paying alimony that the former
165 spouse, after the order for alimony is issued, cohabits with another individual, even if the
166 former spouse is not cohabiting with another person when the party paying alimony files the
167 motion to terminate alimony.

168 (b) A party paying alimony to a former spouse may not seek termination of alimony
169 under Subsection (12)(a), later than one year from the day on which the party knew or should

170 have known that the former spouse has cohabited with another individual.