

DIVORCE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends the circumstances under which a district court may modify an alimony order.

Highlighted Provisions:

This bill:

- ▶ amends the circumstances under which a district court may modify an alimony order; 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 2018, Chapters 89 and 297

30-3-5.4, as last amended by Laws of Utah 2018, Chapter 96

78B-12-212, as last amended by Laws of Utah 2018, Chapter 96

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

30 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

31 (1) When a decree of divorce is rendered, the court may include in [it] the decree of
32 divorce equitable orders relating to the children, property, debts or obligations, and parties.

33 (2) The court shall include the following in every decree of divorce:

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

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

40 (ii) a designation of which health, hospital, or dental insurance plan is primary and
41 which health, hospital, or dental insurance plan is secondary in accordance with Section
42 30-3-5.4 [which] that will take effect if at any time a dependent child is covered by both
43 parents' health, hospital, or dental insurance plans;

44 (c) [~~pursuant to~~] in accordance with Section 15-4-6.5:

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

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

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

51 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
52 Recovery Services; and

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

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

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

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

61 ~~[(2)]~~ (3) (a) The court may include, in an order determining child support, an order
62 assigning financial responsibility for all or a portion of child care expenses incurred on behalf
63 of a dependent child, necessitated by the employment or training of the custodial parent.

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

68 ~~[(3)]~~ (4) The court has continuing jurisdiction to make subsequent changes or new
69 orders for the custody of a child and the child's support, maintenance, health, and dental care,
70 and for distribution of the property and obligations for debts as is reasonable and necessary.

71 ~~[(4)]~~ (5) Child support, custody, visitation, and other matters related to a child born to
72 the parents after entry of the decree of divorce may be added to the decree by modification.

73 ~~[(5)]~~ (6) (a) In determining parent-time rights of parents and visitation rights of
74 grandparents and other members of the immediate family, the court shall consider the best
75 interest of the child.

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

80 ~~[(6)]~~ (7) If a petition for modification of child custody or parent-time provisions of a
81 court order is made and denied, the court shall order the petitioner to pay the reasonable
82 attorney fees expended by the prevailing party in that action, if the court determines that the
83 petition was without merit and not asserted or defended against in good faith.

84 ~~[(7)]~~ (8) If a motion or petition alleges noncompliance with a parent-time order by a
85 parent, or a visitation order by a grandparent or other member of the immediate family where a

86 visitation or parent-time right has been previously granted by the court, the court may award to
87 the prevailing party:

- 88 (a) actual attorney fees incurred;
- 89 (b) the costs incurred by the prevailing party because of the other party's failure to
90 provide or exercise court-ordered visitation or parent-time, which may include:

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

98 ~~[(8)]~~ (9) (a) The court shall consider at least the following factors in determining
99 alimony:

- 100 (i) the financial condition and needs of the recipient spouse;
- 101 (ii) the recipient's earning capacity or ability to produce income, including the impact
102 of diminished workplace experience resulting from primarily caring for a child of the payor
103 spouse;
- 104 (iii) the ability of the payor spouse to provide support;
- 105 (iv) the length of the marriage;
- 106 (v) whether the recipient spouse has custody of a minor child requiring support;
- 107 (vi) whether the recipient spouse worked in a business owned or operated by the payor
108 spouse; and
- 109 (vii) whether the recipient spouse directly contributed to any increase in the payor
110 spouse's skill by paying for education received by the payor spouse or enabling the payor
111 spouse to attend school during the marriage.

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

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

116 (i) engaging in sexual relations with [~~a person~~] an individual other than the party's
117 spouse;

118 (ii) knowingly and intentionally causing or attempting to cause physical harm to the
119 other party or a minor child;

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

122 (iv) substantially undermining the financial stability of the other party or the minor
123 child.

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

126 (e) As a general rule, the court should look to the standard of living, existing at the
127 time of separation, in determining alimony in accordance with Subsection [~~(8)~~] (9)(a).

128 However, the court shall consider all relevant facts and equitable principles and may, in the
129 court's discretion, base alimony on the standard of living that existed at the time of trial. In
130 marriages of short duration, when no child has been conceived or born during the marriage, the
131 court may consider the standard of living that existed at the time of the marriage.

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

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

140 (h) In determining alimony when a marriage of short duration dissolves, and no child
141 has been conceived or born during the marriage, the court may consider restoring each party to

142 the condition which existed at the time of the marriage.

143 ~~[(i)-(j)]~~ (10) (a) The court has continuing jurisdiction to make substantive changes and
144 new orders regarding alimony based on a substantial material change in circumstances not
145 foreseeable at the time of the divorce.

146 (b) Regardless of whether a party's retirement is foreseeable, the party's retirement is a
147 substantial material change in circumstances that is subject to a petition to modify alimony,
148 unless the divorce decree expressly states otherwise.

149 ~~[(ii)]~~ (c) The court may not modify alimony or issue a new order for alimony to address
150 needs of the recipient that did not exist at the time the decree was entered, unless the court
151 finds extenuating circumstances that justify that action.

152 ~~[(iii)]~~ (d) (i) In determining alimony, the income of any subsequent spouse of the payor
153 may not be considered, except as provided in Subsection (9) or this Subsection ~~[(8)]~~ (10).

154 ~~[(A)]~~ (ii) The court may consider the subsequent spouse's financial ability to share
155 living expenses.

156 ~~[(B)]~~ (iii) The court may consider the income of a subsequent spouse if the court finds
157 that the payor's improper conduct justifies that consideration.

158 ~~[(j)]~~ (e) ~~[Alimony may not be ordered]~~ The court may not order alimony for a duration
159 longer than the number of years that the marriage existed unless, at any time before termination
160 of alimony, the court finds extenuating circumstances that justify the payment of alimony for a
161 longer period of time.

162 ~~[(9)]~~ (11) Unless a decree of divorce specifically provides otherwise, any order of the
163 court that a party pay alimony to a former spouse automatically terminates upon the remarriage
164 or death of that former spouse. However, if the remarriage is annulled and found to be void ab
165 initio, payment of alimony shall resume if the party paying alimony is made a party to the
166 action of annulment and the payor party's rights are determined.

167 ~~[(10)]~~ (12) (a) Subject to Subsection ~~[(10)]~~ (12)(b), an order of the court that a party
168 pay alimony to a former spouse terminates upon establishment by the party paying alimony that
169 the former spouse, after the order for alimony is issued, cohabits with another ~~[person]~~

170 individual, even if the former spouse is not cohabiting with another person when the party
 171 paying alimony files the motion to terminate alimony.

172 (b) A party paying alimony to a former spouse may not seek termination of alimony
 173 under Subsection [(10)] (12)(a), later than one year from the day on which the party knew or
 174 should have known that the former spouse has cohabited with another [~~person~~] individual.

175 Section 2. Section **30-3-5.4** is amended to read:

176 **30-3-5.4. Designation of primary and secondary health, dental, or hospital**
 177 **insurance coverage.**

178 (1) [~~For purposes of~~] As used in this section, "health, hospital, or dental insurance
 179 plan" has the same meaning as "health care insurance" as defined in Section 31A-1-301.

180 (2) (a) A decree of divorce rendered in accordance with Section 30-3-5, an order for
 181 medical expenses rendered in accordance with Section 78B-12-212, and an administrative
 182 order under Section 62A-11-326 shall, in accordance with Subsection (2)(b)(ii), designate
 183 which parent's health, hospital, or dental insurance plan is primary coverage and which parent's
 184 health, hospital, or dental insurance plan is secondary coverage for a dependent child.

185 (b) The provisions of the court order required by Subsection (2)(a) shall:

186 (i) take effect if at any time a dependent child is covered by both parents' health,
 187 hospital, or dental insurance plans; and

188 (ii) include the following language:

189 "If, at any point in time, a dependent child is covered by the health, hospital, or dental
 190 insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's
 191 Name) shall be primary coverage for the dependent child and the health, hospital, or dental
 192 insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child.

193 If a parent remarries and his or her dependent child is not covered by that parent's health,
 194 hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or
 195 dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried
 196 parent and shall retain the same designation as the primary or secondary plan of the dependent
 197 child."

198 (c) A decree of divorce or related court order may not modify the language required by
199 Subsection (2)(b)(ii).

200 (d) Notwithstanding Subsection (2)(c), a court may allocate the payment of medical
201 expenses including co-payments, deductibles, and co-insurance not covered by health insurance
202 between the parents in accordance with Subsections [~~30-3-5(1)(a)~~] 30-3-5(2)(a) and
203 78B-12-212(7).

204 (3) In designating primary coverage pursuant to Subsection (2), a court may take into
205 account:

- 206 (a) the birth dates of the parents;
- 207 (b) a requirement in a court order, if any, for one of the parents to maintain health
208 insurance coverage for a dependent child;
- 209 (c) the parent with physical custody of the dependent child; or
- 210 (d) any other factor the court considers relevant.

211 Section 3. Section **78B-12-212** is amended to read:

212 **78B-12-212. Medical expenses.**

213 (1) A child support order issued or modified in this state on or after July 1, 2018, shall
214 require compliance with this section as of the effective date of the child support order unless
215 the court makes specific findings as to good cause to deviate from the requirements of this
216 section.

217 (2) (a) The court shall order that health care coverage for the medical expenses of a
218 minor child be provided by a parent.

219 (b) The court shall order that a parent provide insurance for the medical expenses of a
220 minor child if insurance is available to that parent at a reasonable cost.

221 (c) The court shall, in accordance with Section 30-3-5, designate which health,
222 hospital, or dental insurance plan is primary and which health, hospital, or dental insurance
223 plan is secondary if at any time a dependent child is covered by both parents' health, hospital,
224 or dental insurance plans.

225 (3) In determining which parent shall be ordered to maintain insurance for medical

226 expenses, the court or administrative agency may consider the:

- 227 (a) reasonableness of the cost;
- 228 (b) availability of a group insurance policy;
- 229 (c) coverage of the policy; and
- 230 (d) preference of the custodial parent.

231 (4) The order shall require each parent to share equally the out-of-pocket costs of the
232 premium actually paid by a parent for the child's portion of insurance unless the court finds
233 good cause to order otherwise.

234 (5) The parent who provides the insurance coverage may receive credit against the base
235 child support award or recover the other parent's share of the child's portion of the premium. If
236 the parent does not have insurance but another member of the parent's household provides
237 insurance coverage for the child, the parent may receive credit against the base child support
238 award or recover the other parent's share of the child's portion of the premium.

239 (6) The child's portion of the premium is a per capita share of the premium actually
240 paid. The premium expense for a child shall be calculated by dividing the premium amount by
241 the number of persons covered under the policy and multiplying the result by the number of
242 children in the instant case.

243 (7) The order shall, in accordance with Subsection [~~30-3-5(1)(b)~~] 30-3-5(2)(a), include
244 a cash medical support provision that requires each parent to equally share all reasonable and
245 necessary uninsured and unreimbursed medical and dental expenses incurred for a dependent
246 child, including deductibles and copayments unless the court finds good cause to order
247 otherwise.

248 (8) The parent ordered to maintain insurance shall provide verification of coverage to
249 the other parent, or to the Office of Recovery Services under Title IV of the Social Security
250 Act, 42 U.S.C. Sec. 601 et seq., upon initial enrollment of the dependent child, and after initial
251 enrollment on or before January 2 of each calendar year. The parent shall notify the other
252 parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C.
253 Sec. 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar

254 days of the date the parent first knew or should have known of the change.

255 (9) A parent who incurs medical expenses shall provide written verification of the cost
256 and payment of medical expenses to the other parent within 30 days of payment.

257 (10) In addition to any other sanctions provided by the court, a parent incurring
258 medical expenses may be denied the right to receive credit for the expenses or to recover the
259 other parent's share of the expenses if that parent fails to comply with Subsections (8) and (9).