

DIVORCE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

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

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

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

- (a) an order assigning responsibility for the payment of reasonable and necessary

33 medical and dental expenses of a dependent child, including responsibility for health insurance
34 out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

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

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

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

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

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

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

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

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

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

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

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

59 [~~(2)~~] (3) (a) The court may include, in an order determining child support, an order
60 assigning financial responsibility for all or a portion of child care expenses incurred on behalf
61 of a dependent child, necessitated by the employment or training of the custodial parent.

62 (b) If the court determines that the circumstances are appropriate and that the
63 dependent child would be adequately cared for, the court may include an order allowing the

64 noncustodial parent to provide child care for the dependent child, necessitated by the
65 employment or training of the custodial parent.

66 ~~[(3)]~~ (4) The court has continuing jurisdiction to make subsequent changes or new
67 orders for the custody of a child and the child's support, maintenance, health, and dental care,
68 and for distribution of the property and obligations for debts as is reasonable and necessary.

69 ~~[(4)]~~ (5) Child support, custody, visitation, and other matters related to a child born to
70 the parents after entry of the decree of divorce may be added to the decree by modification.

71 ~~[(5)]~~ (6) (a) In determining parent-time rights of parents and visitation rights of
72 grandparents and other members of the immediate family, the court shall consider the best
73 interest of the 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)]~~ (7) If a petition for modification of child custody or parent-time provisions of a
79 court order is made and denied, the court shall order the petitioner to pay the reasonable
80 attorney fees expended by the prevailing party in that action, if the court determines that the
81 petition was without merit and not asserted or defended against in good faith.

82 ~~[(7)]~~ (8) If a motion or petition alleges noncompliance with a parent-time order by a
83 parent, or a visitation order by a grandparent or other member of the immediate family where a
84 visitation or parent-time right has been previously granted by the court, the court may award to
85 the prevailing party:

86 (a) actual attorney fees incurred;

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

89 (i) court costs;

90 (ii) child care expenses;

91 (iii) transportation expenses actually incurred;

92 (iv) lost wages, if ascertainable; and

93 (v) counseling for a child or parent if ordered or approved by the court;

94 (c) make-up parent time consistent with the best interest of the child; and

95 (d) any other appropriate equitable remedy.

96 [(8)] (9) (a) The court shall consider at least the following factors in determining
97 alimony:

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

99 (ii) the recipient's earning capacity or ability to produce income, including the impact
100 of diminished workplace experience resulting from primarily caring for a child of the payor
101 spouse;

102 (iii) the ability of the payor spouse to provide support;

103 (iv) the length of the marriage;

104 (v) whether the recipient spouse has custody of a minor child requiring support;

105 (vi) whether the recipient spouse worked in a business owned or operated by the payor
106 spouse; and

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

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

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

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

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

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

120 (iv) substantially undermining the financial stability of the other party or the minor
121 child.

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

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

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

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

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

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

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

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

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

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

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

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

156 ~~[(f)]~~ (e) ~~[Alimony may not be ordered]~~ The court may not order alimony for a duration

157 longer than the number of years that the marriage existed unless, at any time before termination
158 of alimony, the court finds extenuating circumstances that justify the payment of alimony for a
159 longer period of time.

160 ~~[(9)]~~ (11) Unless a decree of divorce specifically provides otherwise, any order of the
161 court that a party pay alimony to a former spouse automatically terminates upon the remarriage
162 or death of that former spouse. However, if the remarriage is annulled and found to be void ab
163 initio, payment of alimony shall resume if the party paying alimony is made a party to the
164 action of annulment and the payor party's rights are determined.

165 ~~[(10)]~~ (12) (a) Subject to Subsection ~~[(10)]~~ (12)(b), an order of the court that a party
166 pay alimony to a former spouse terminates upon establishment by the party paying alimony that
167 the former spouse, after the order for alimony is issued, cohabits with another ~~[person]~~
168 individual, even if the former spouse is not cohabiting with another person when the party
169 paying alimony files the motion to terminate alimony.

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

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

174 **30-3-5.4. Designation of primary and secondary health, dental, or hospital**
175 **insurance coverage.**

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

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

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

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

186 (ii) include the following language:

187 "If, at any point in time, a dependent child is covered by the health, hospital, or dental

188 insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's
189 Name) shall be primary coverage for the dependent child and the health, hospital, or dental
190 insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child.
191 If a parent remarries and his or her dependent child is not covered by that parent's health,
192 hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or
193 dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried
194 parent and shall retain the same designation as the primary or secondary plan of the dependent
195 child."

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

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

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

204 (a) the birth dates of the parents;

205 (b) a requirement in a court order, if any, for one of the parents to maintain health
206 insurance coverage for a dependent child;

207 (c) the parent with physical custody of the dependent child; or

208 (d) any other factor the court considers relevant.

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

210 **78B-12-212. Medical expenses.**

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

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

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

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

223 (3) In determining which parent shall be ordered to maintain insurance for medical
224 expenses, the court or administrative agency may consider the:

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

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

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

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

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

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

250 parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C.
251 Sec. 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar
252 days of the date the parent first knew or should have known of the change.

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

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