

Representative Stephen E. Sandstrom proposes the following substitute bill:

ALIMONY MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill expands the factors a court shall consider when determining alimony.

Highlighted Provisions:

This bill:

- ▶ defines fault;
- ▶ requires the court to consider certain types of fault when determining alimony;
- ▶ allows a court to order additional alimony to allow a recipient spouse to care and supervise minor children; and
- ▶ allows the court to close proceedings related to the issue of fault and seal the records of the closed proceedings.

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 2010, Chapter 285



26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **30-3-5** is amended to read:

28 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
29 **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 equitable orders
32 relating to the children, property, debts or obligations, and parties. The court shall include the
33 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 the dependent children including responsibility for health
36 insurance 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 the
39 dependent children; 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 the provisions
42 of Section 30-3-5.4 which 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 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; and

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

53 (2) The court may include, in an order determining child support, an order assigning
54 financial responsibility for all or a portion of child care expenses incurred on behalf of the
55 dependent children, necessitated by the employment or training of the custodial parent. If the
56 court determines that the circumstances are appropriate and that the dependent children would

57 be adequately cared for, it may include an order allowing the noncustodial parent to provide
58 child care for the dependent children, necessitated by the employment or training of the
59 custodial parent.

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

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

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

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

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

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

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

- 84 (i) the financial condition and needs of the recipient spouse;
85 (ii) the recipient's earning capacity or ability to produce income;
86 (iii) the ability of the payor spouse to provide support;
87 (iv) the length of the marriage;

88 (v) whether the recipient spouse has custody of minor children requiring support, and if
89 so, whether the payor has the ability to provide sufficient support to allow the recipient spouse
90 to be in the home to supervise and care for the minor children when they are not in school;

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

93 (vii) whether the recipient spouse directly contributed to any increase in the payor
94 spouse's skill by working in support or paying for education received by the payor spouse or
95 [~~allowing~~] enabling the payor spouse to attend school during the marriage[-]; and

96 (viii) whether the recipient spouse refrained from significant employment in order to
97 provide full-time care of minor children and the parties' household during the marriage.

98 (b) The court may consider the fault of the parties in determining alimony.

99 (c) "Fault" means the comparative degree to which either party committed acts or
100 engaged in substantiated behavior during the marriage which substantially compromised the
101 marriage or jeopardized the health, safety, or financial stability of the other party or their
102 children, including:

103 (i) sexual relations outside of the marriage;

104 (ii) physical abuse of the spouse or children;

105 (iii) addictions to alcohol, drugs, gambling, or pornography; or

106 (iv) conviction of a felony.

107 (d) Proceedings related to fault may be closed by the court and the records sealed by
108 order of the court. Either party may stipulate to an allegation of fault.

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

115 [~~(f)~~] (f) The court may, under appropriate circumstances, attempt to equalize the
116 parties' respective standards of living.

117 [~~(g)~~] (g) When a marriage of long duration dissolves on the threshold of a major
118 change in the income of one of the spouses due to the collective efforts of both, that change

119 shall be considered in dividing the marital property and in determining the amount of alimony.
120 If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses
121 during the marriage, the court may make a compensating adjustment in dividing the marital
122 property and awarding alimony.

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

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

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

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

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

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

138 ~~[(h)]~~ (j) Alimony may not be ordered for a duration longer than the number of years
139 that the marriage existed unless, at any time prior to termination of alimony, the court finds
140 extenuating circumstances that justify the payment of alimony for a longer period of time.

141 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
142 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
143 death of that former spouse. However, if the remarriage is annulled and found to be void ab
144 initio, payment of alimony shall resume if the party paying alimony is made a party to the
145 action of annulment and his rights are determined.

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