

Senator Lyle W. Hillyard proposes the following substitute bill:

ALIMONY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill creates a new section regarding alimony.

Highlighted Provisions:

This bill:

- ▶ defines fault and cohabit;
- ▶ requires that a court ordering alimony in excess of \$1,000 per month for at least 60 months require a plan for self-sufficiency from the recipient;
- ▶ lists factors the court is to take into consideration when ordering alimony with a systematic decrease provision;
- ▶ creates a rebuttable presumption of cohabitation if two non-related persons reside in the same location; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 30-2-5, as last amended by Laws of Utah 2008, Chapter 3

27 30-3-5, as last amended by Laws of Utah 2010, Chapter 285

28 ENACTS:

29 30-3-5.3, Utah Code Annotated 1953



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

32 Section 1. Section 30-2-5 is amended to read:

33 **30-2-5. Separate debts.**

34 (1) Neither spouse is personally liable for the separate debts, obligations, or liabilities
35 of the other:

36 (a) contracted or incurred before marriage;

37 (b) contracted or incurred during marriage, except family expenses as provided in
38 Section 30-2-9;

39 (c) contracted or incurred after divorce or an order for separate maintenance under this
40 title, except the spouse is personally liable for that portion of the expenses incurred on behalf
41 of a minor child for reasonable and necessary medical and dental expenses, and other similar
42 necessities as provided in a court order under Section 30-3-5, 30-4-3, or 78B-12-212, or an
43 administrative order under Section 62A-11-326; or

44 (d) ordered by the court to be paid by the other spouse under Section 30-3-5, 30-3-5.3,
45 or 30-4-3 and not in conflict with Section 15-4-6.5 or 15-4-6.7.

46 (2) The wages, earnings, property, rents, or other income of one spouse may not be
47 reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other
48 spouse, as described under Subsection (1).

49 Section 2. Section 30-3-5 is amended to read:

50 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
51 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
52 **parent-time -- Nonmeritorious petition for modification.**

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

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

57 medical and dental expenses of the dependent children including responsibility for health
58 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

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

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

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

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

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

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

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

75 (2) The court may include, in an order determining child support, an order assigning
76 financial responsibility for all or a portion of child care expenses incurred on behalf of the
77 dependent children, necessitated by the employment or training of the custodial parent. If the
78 court determines that the circumstances are appropriate and that the dependent children would
79 be adequately cared for, it may include an order allowing the noncustodial parent to provide
80 child care for the dependent children, necessitated by the employment or training of the
81 custodial parent.

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

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

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

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

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

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

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

106 ~~[(i) the financial condition and needs of the recipient spouse;]~~

107 ~~[(ii) the recipient's earning capacity or ability to produce income;]~~

108 ~~[(iii) the ability of the payor spouse to provide support;]~~

109 ~~[(iv) the length of the marriage;]~~

110 ~~[(v) whether the recipient spouse has custody of minor children requiring support;]~~

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

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

116 ~~[(b) The court may consider the fault of the parties in determining alimony.]~~

117 ~~[(c) As a general rule, the court should look to the standard of living, existing at the
118 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the~~

119 court shall consider all relevant facts and equitable principles and may, in its discretion, base
120 alimony on the standard of living that existed at the time of trial. In marriages of short
121 duration, when no children have been conceived or born during the marriage, the court may
122 consider the standard of living that existed at the time of the marriage.]

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

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

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

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

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

140 [~~(iii) In determining alimony, the income of any subsequent spouse of the payor may~~
141 ~~not be considered, except as provided in this Subsection (8).]~~

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

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

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

149 [~~(9) Unless a decree of divorce specifically provides otherwise, any order of the court~~

150 ~~that a party pay alimony to a former spouse automatically terminates upon the remarriage or~~
151 ~~death of that former spouse. However, if the remarriage is annulled and found to be void ab~~
152 ~~initio, payment of alimony shall resume if the party paying alimony is made a party to the~~
153 ~~action of annulment and his rights are determined.]~~

154 ~~[(10) Any order of the court that a party pay alimony to a former spouse terminates~~
155 ~~upon establishment by the party paying alimony that the former spouse is cohabitating with~~
156 ~~another person.]~~

157 Section 3. Section **30-3-5.3** is enacted to read:

158 **30-3-5.3. Alimony.**

159 (1) As used in this section:

160 (a) "Cohabit" means two non-related persons living together in a romantic relationship.

161 (b) "Fault" means any action that affects the mental, physical, or emotional condition
162 of a party being awarded alimony or the person ordered to pay alimony that reduces that party's
163 ability to earn income at the party's full capability. Fault may include sexual intimacy with
164 another person, severe physical or mental abuse, addiction to pornography, or other action that
165 causes the marriage to end.

166 (c) "Self-sufficiency" means the ability to support oneself at the level that the parties
167 were living at the time of the separation taking into consideration the loss of available money
168 due to the costs incurred in supporting separate households.

169 (2) In any temporary orders or final decree of divorce, the court may order a party to
170 pay alimony to the other party, taking into consideration the following factors:

171 (a) the financial condition and needs of the recipient party;

172 (b) the recipient's earning capacity or ability to produce income;

173 (c) the ability of the payor party to provide support;

174 (d) the length of the marriage;

175 (e) whether the recipient has custody of minor children requiring support;

176 (f) whether the recipient worked in a business owned or operated by the payor;

177 (g) whether the recipient directly contributed to any increase in the payor's skill by
178 paying for education received by the payor or allowing the payor to attend school during the
179 marriage; and

180 (h) whether the recipient has stayed home to care for their minor children by joint

181 agreement of the parties.

182 (3) Any temporary order of alimony may be modified at the time of the trial when there
183 are gross misrepresentations of the income of either party or the temporary order reserves the
184 issue of alimony to be reviewed at the trial.

185 (4) The court may consider fault of the parties in determining alimony.

186 (5) The court may not order a spouse who has been the victim of domestic violence to
187 pay alimony to the other spouse if the other spouse is convicted of the crime of domestic
188 violence, unless otherwise ordered by the court.

189 (6) As a general rule, the court should look to the standard of living existing at the time
190 of separation in determining alimony.

191 (a) The court shall consider all relevant facts and equitable principles and may, in its
192 discretion, base alimony on the standard of living that existed at the time of trial.

193 (b) In marriages of short duration, when no children have been conceived or born
194 during the marriage, the court may consider the standard of living that existed at the time of the
195 marriage.

196 (c) The court may, under appropriate circumstances, attempt to equalize the parties'
197 respective standards of living.

198 (7) When a marriage of long duration dissolves on the threshold of a major change in
199 the income of one of the spouses due to the collective efforts of both, that change shall be
200 considered in dividing the marital property and in determining the amount of alimony. If one
201 party's earning capacity has been greatly enhanced through the efforts of both parties during the
202 marriage, the court may make a compensating adjustment in dividing the marital property and
203 awarding alimony.

204 (8) (a) The court has continuing jurisdiction to make substantive changes and new
205 orders regarding alimony based on a substantial material change in circumstances not
206 foreseeable at the time of the divorce.

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

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

212 (i) The court may consider the subsequent spouse's financial ability to share living
213 expenses.

214 (ii) The court may consider the income of a subsequent spouse if the court finds that
215 the payor's improper conduct justifies that consideration.

216 (9) Alimony may not be ordered for a duration longer than the number of years that the
217 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
218 circumstances that justify the payment of alimony for a longer period of time.

219 (10) A party seeking alimony in an amount in excess of \$1,000 per month for at least
220 60 months shall submit, along with the financial declaration and settlement proposal when the
221 case is certified as ready for trial, a plan detailing a course of action the recipient will undertake
222 in order to try to become more self-sufficient or specific facts that demonstrate why the
223 recipient is not able to become more self-sufficient, unless the parties have reached a
224 stipulation regarding alimony. The court may waive this requirement if it makes specific
225 findings that the recipient is not able to become more self-sufficient. Unless the court orders
226 otherwise, alimony in excess of \$1,000 per month for more than 60 months may not be
227 awarded if a plan is not submitted.

228 (11) If the court determines that the recipient party has the ability to become more
229 self-sufficient, it may order that the amount of alimony be increased by a certain amount over a
230 specified time period to allow the recipient time to pursue training or education necessary to
231 become more self-sufficient. The court shall take a number of factors into consideration when
232 determining how long it may take a recipient to become more self-sufficient. The factors shall
233 include:

234 (a) the age of the recipient;

235 (b) the educational background of the recipient;

236 (c) whether there are minor children still in the recipient's household; and

237 (d) any difficulty the recipient might face in obtaining training or education necessary
238 to become self-sufficient.

239 (12) Where the income generated by the recipient has increased at least \$1,000 from
240 the last determination of income a court may reduce the alimony paid by \$100 per month for
241 every \$200 per month of income generated or imputed to the recipient unless the court finds
242 otherwise.

243 (13) Unless a decree of divorce specifically provides otherwise, any order of the court
244 that a party pay alimony to the other party automatically terminates upon the remarriage of the
245 recipient or the death of either party. If the remarriage is annulled or found to be void ab initio,
246 payment of alimony shall resume if the payor is made a party to the action of annulment, the
247 payor's rights are presented, and the court finds that restoring the prior alimony order would not
248 be fair.

249 (14) (a) Any order of the court that a party pay alimony to a former spouse may be
250 reduced or terminated by the court if the party paying alimony establishes that the recipient is
251 cohabiting with another person.

252 (b) There is a rebuttable presumption that, if a person spends seven or more nights in a
253 14-day period at a common residence with a person with whom they have a romantic
254 relationship, the two persons are cohabiting.

255 (15) This section applies to all divorces filed on or after May 10, 2011, and all divorce
256 actions not final as of May 10, 2011.