

**CUSTODY AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Luz Robles**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill requires that an evidentiary hearing be held on temporary orders and allows a parenting plan to be filed up until the date of the final pre-trial conference.

**Highlighted Provisions:**

This bill:

- requires that an evidentiary hearing be held on temporary orders at the point a separation is consolidated with a divorce; and
- allows a parenting plan to be filed up until the date of the final pre-trial conference.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-3-4.5**, as last amended by Laws of Utah 2010, Chapter 34

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

**30-3-10.8**, as enacted by Laws of Utah 2001, Chapter 126

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

Section 1. Section **30-3-4.5** is amended to read:



28           **30-3-4.5. Motion for temporary separation order.**

29           (1) A petitioner may file an action for a temporary separation order without filing a  
30 petition for divorce by filing a petition for temporary separation and motion for temporary  
31 orders if:

- 32           (a) the petitioner is lawfully married to the respondent; and
- 33           (b) both parties are residents of the state for at least 90 days prior to the date of filing.

34           (2) The temporary orders are valid for one year from the date of the hearing, or until  
35 one of the following occurs:

36           (a) a petition for divorce is filed and consolidated with the petition for temporary  
37 separation; or

38           (b) the case is dismissed.

39           (3) If a petition for divorce is filed and consolidated with the petition for temporary  
40 separation, the court shall hold an evidentiary hearing on temporary orders [entered in the  
41 temporary separation shall continue in the consolidated case] at the request of either party.

42           (4) Both parties shall attend the divorce orientation course described in Section  
43 30-3-11.4 within 60 days of the filing of the petition, for petitioner, and within 45 days of being  
44 served, for respondent.

45           (5) Service shall be made upon respondent, together with a 20-day summons, in  
46 accordance with the rules of civil procedure.

47           (6) The fee for filing the petition for temporary separation orders is \$35. If either party  
48 files a petition for divorce within one year from the date of filing the petition for temporary  
49 separation, the separation filing fee shall be credited towards the filing fee for the divorce.

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

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

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

- 57           (a) an order assigning responsibility for the payment of reasonable and necessary  
58 medical and dental expenses of the dependent children including responsibility for health

59 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;  
60 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the  
61 purchase and maintenance of appropriate health, hospital, and dental care insurance for the  
62 dependent children; and  
63 (ii) a designation of which health, hospital, or dental insurance plan is primary and  
64 which health, hospital, or dental insurance plan is secondary in accordance with the provisions  
65 of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both  
66 parents' health, hospital, or dental insurance plans;  
67 (c) pursuant to Section 15-4-6.5:  
68 (i) an order specifying which party is responsible for the payment of joint debts,  
69 obligations, or liabilities of the parties contracted or incurred during marriage;  
70 (ii) an order requiring the parties to notify respective creditors or obligees, regarding  
71 the court's division of debts, obligations, or liabilities and regarding the parties' separate,  
72 current addresses; and  
73 (iii) provisions for the enforcement of these orders; and  
74 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,  
75 Recovery Services.  
76 (2) The court may include, in an order determining child support, an order assigning  
77 financial responsibility for all or a portion of child care expenses incurred on behalf of the  
78 dependent children, necessitated by the employment or training of the custodial parent. If the  
79 court determines that the circumstances are appropriate and that the dependent children would  
80 be adequately cared for, it may include an order allowing the noncustodial parent to provide  
81 child care for the dependent children, necessitated by the employment or training of the  
82 custodial parent.  
83 (3) The court has continuing jurisdiction to make subsequent changes or new orders for  
84 the custody of the children and their support, maintenance, health, and dental care, and for  
85 distribution of the property and obligations for debts as is reasonable and necessary.  
86 (4) Child support, custody, visitation, and other matters related to children born to the  
87 mother and father after entry of the decree of divorce may be added to the decree by  
88 modification.  
89 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents

90 and other members of the immediate family, the court shall consider the best interest of the  
91 child.

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

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

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

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

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

108 (ii) the recipient's earning capacity or ability to produce income;

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

110 (iv) the length of the marriage;

111 (v) whether the recipient spouse has custody of minor children requiring support;

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

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

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

118 (c) As a general rule, the court should look to the standard of living, existing at the  
119 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the  
120 court shall consider all relevant facts and equitable principles and may, in its discretion, base

121 alimony on the standard of living that existed at the time of trial. In marriages of short  
122 duration, when no children have been conceived or born during the marriage, the court may  
123 consider the standard of living that existed at the time of the marriage.

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

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

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

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

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

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

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

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

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

150 (9) Unless a decree of divorce specifically provides otherwise, any order of the court  
151 that a party pay alimony to a former spouse automatically terminates upon the remarriage or

152 death of that former spouse. However, if the remarriage is annulled and found to be void ab  
153 initio, payment of alimony shall resume if the party paying alimony is made a party to the  
154 action of annulment and his rights are determined.

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

158 (11) At the request of any party to an action instituted under this chapter, a court shall  
159 hold an evidentiary hearing prior to entering temporary orders. In judicial districts which have  
160 appointed domestic relations commissioners, the evidentiary hearing shall take place before a  
161 district court judge, but may occur after a domestic relations commissioner has issued  
162 recommendations for temporary orders.

163 Section 3. Section **30-3-10.8** is amended to read:

164 **30-3-10.8. Parenting plan -- Filing -- Modifications.**

165 (1) In any proceeding under this chapter, including actions for paternity, any party  
166 requesting joint custody, joint legal or physical custody, or any other type of shared parenting  
167 arrangement, shall file and serve a proposed parenting plan [~~at the time of the filing of their~~  
168 ~~original petition or at the time of filing their answer or counterclaim~~]. The parenting plan may  
169 be filed at any time up until the date of the final pre-trial conference.

170 (2) In proceedings for a modification of custody provisions or modification of a  
171 parenting plan, a proposed parenting plan shall be filed and served with the petition to modify,  
172 or the answer or counterclaim to the petition to modify.

173 (3) A party who files a proposed parenting plan in compliance with this section may  
174 move the court for an order of default to adopt the plan if the other party fails to file a proposed  
175 parenting plan as required by this section.

176 (4) Either party may file and serve an amended proposed parenting plan according to  
177 the rules for amending pleadings.

178 (5) The parent submitting a proposed parenting plan shall attach a verified statement  
179 that the plan is proposed by that parent in good faith.

180 (6) Both parents may submit a parenting plan which has been agreed upon. A verified  
181 statement, signed by both parents, shall be attached.

182 (7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad

183 litem to represent the best interests of the child, who may, if necessary, file a separate parenting  
184 plan reflecting the best interests of the child.

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**Legislative Review Note**

as of **2-9-11 11:12 AM**

**Office of Legislative Research and General Counsel**