

A-Engrossed
Senate Bill 1050

Ordered by the Senate June 13
Including Senate Amendments dated June 13

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies requirements for eligibility of child 18 years of age or older and under 21 years of age to receive child support while attending school. Modifies circumstances under which support is [*terminated*] **suspended** and reinstated. Requires that support continue during regularly scheduled breaks in school.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to child support for child attending school; creating new provisions; amending ORS 107.108;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 107.108 is amended to read:

6 107.108. (1) **As used in this section:**

7 (a) **"Child attending school" means a child of the parties who:**

8 (A) **Is unmarried;**

9 (B) **Is 18 years of age or older and under 21 years of age;**

10 (C) **Is making satisfactory academic progress as defined by the school that the child at-**
11 **tends; and**

12 (D) **Has a course load that is no less than one-half of the load that is determined by the**
13 **school to constitute full-time enrollment.**

14 (b) **"Regularly scheduled break" means:**

15 (A) **A summer semester or term;**

16 (B) **A period of time not exceeding four months between graduation from or completion**
17 **of school and the beginning of the next regularly scheduled term, semester or course of**
18 **study at school;**

19 (C) **A period of time between the end and beginning of regularly scheduled consecutive**
20 **school semesters, terms or courses of study; or**

21 (D) **Any other scheduled break between courses of study that is defined by the school as**
22 **a regularly scheduled break.**

23 (c) **"School" means:**

24 (A) **An educational facility such as a high school, community college, four-year college**
25 **or university;**

26 (B) **A course of professional, vocational or technical training, including the Job Corps,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **designed to fit the child for gainful employment; or**

2 **(C) A high school equivalency course, including but not limited to a General Educational**
3 **Development (GED) program, an educational program for grade 12 or below and home**
4 **schooling.**

5 *[(1)]* **(2)** *[In addition to any other authority of the court, the court may enter an order against]* **A**
6 **support order entered or modified under this chapter or under ORS chapter 25, 108, 109, 110,**
7 **125, 416, 419B or 419C may require** either parent, or both of them, to provide for the support or
8 maintenance of a child attending school[:].

9 *[(a) After the commencement of a suit for annulment or dissolution of a marriage or for separation*
10 *from bed and board and before the judgment therein;]*

11 *[(b) In a judgment of annulment or dissolution of a marriage or of separation from bed and board;*
12 *and]*

13 *[(c) During the pendency of an appeal taken from all or part of a judgment rendered in pursuance*
14 *of ORS 107.005 to 107.086, 107.093 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540, 107.610 or*
15 *this section.]*

16 *[(2) An order providing for temporary support under subsection (1)(c) of this section may be mod-*
17 *ified at any time by the court making the judgment appealed from, shall provide that the support money*
18 *be paid in monthly installments, and shall further provide that it is to be in effect only during the*
19 *pendency of the appeal. No appeal lies from any such temporary order.]*

20 *[(3) If the court provides for the support and maintenance of a child attending school under this*
21 *section, the child is a party for purposes of matters related to that provision.]*

22 **(3) Notwithstanding ORS 416.407, a child attending school is a party to any legal pro-**
23 **ceeding related to the support order. A child attending school may:**

24 **(a) Apply for services under ORS 25.080:**

25 **(A) If a support order provides for the support or maintenance of the child attending**
26 **school; or**

27 **(B) In accordance with rules adopted by the Department of Justice;**

28 **(b) Request a judicial or administrative modification of the child support amount or may**
29 **receive notice of and participate in any modification proceeding; and**

30 **(c) Agree, in the same manner as an obligee under ORS 25.020 (12), that payments not**
31 **made to the Department of Justice should be credited for amounts that would have been paid**
32 **to the child attending school if the payments had been made to the department.**

33 **(4) Regardless of whether the child is a child attending school, an unmarried child who**
34 **is 18 years of age or older and under 21 years of age:**

35 **(a) Is a necessary party to a judicial proceeding under ORS 107.085, 107.135, 107.431,**
36 **108.110, 109.103 or 109.165 in which the child's parents are parties and the court has authority**
37 **to order or modify support for a child attending school; and**

38 **(b) May request notice of any proceeding initiated by the administrator to modify a sup-**
39 **port order that may affect the child's rights as a child attending school. To receive notice,**
40 **the child shall provide an address to the administrator, and the administrator shall notify**
41 **the child of any modification proceeding by first class mail. To be a party to a proceeding,**
42 **the child must send a written request to the administrator within 30 days after the date of**
43 **the notice of the proceeding.**

44 *[(4)]* **(5)(a)** *[When the court orders support under this section or the administrator or an adminis-*
45 *trative law judge orders support for a child attending school under ORS 416.400 to 416.470, the court,*

1 administrator or administrative law judge shall order that the support be distributed to the child] **If**
 2 **a support order provides for the support or maintenance of a child attending school and the**
 3 **child qualifies as a child attending school**, unless good cause is found for the distribution of the
 4 payment to be made in some other manner, **support shall be distributed to the child if services**
 5 **are being provided under ORS 25.080 or shall be paid directly to the child if those services**
 6 **are not being provided.**

7 **(b) Unless otherwise ordered by the court, administrator or administrative law judge,**
 8 when there are multiple children for whom support is ordered, the amount **distributed or** paid di-
 9 rectly to a child **attending school** [*under this subsection*] is a prorated share based on the number
 10 of children for whom support is ordered [*unless otherwise ordered by the court, administrator or ad-*
 11 *ministrative law judge*]. **However, if, due to a parenting time or split custody arrangement,**
 12 **support was not paid to the parent having primary physical custody of the child before the**
 13 **child turned 18 years of age, support may not be distributed or paid directly to the child at-**
 14 **tending school unless the support order is modified.**

15 **(c)** The Department of Justice shall adopt rules to define good cause and circumstances under
 16 which the administrator or administrative law judge may allocate support by other than a prorated
 17 share and to determine how support is to be allocated in those circumstances.

18 [*(5) A child for whom support has been ordered under this section:*]

19 [*(a) Must maintain the equivalent of a C average or better.*]

20 [*(b) Shall notify a parent paying support when the child ceases to be a child attending school.*]

21 [*(c) Shall submit to the department and the parent paying support, on a form developed by the*
 22 *department, all information necessary to establish eligibility to receive support under this section, in-*
 23 *cluding grades earned and the courses in which the child is enrolled. The child shall submit the in-*
 24 *formation required by this paragraph within the first month of each term or semester.*]

25 [(6) *If the child fails to comply with any of the requirements imposed on the child by this section*
 26 *and upon written notice from the obligor, the distribution of the support directly to the child ceases and*
 27 *may not be reinstated unless the parent paying support elects to continue to pay the support, in spite*
 28 *of the child's failure to comply with the requirements of this section, and notifies the department of the*
 29 *election in writing. If the underlying support order is for the support of more than one child, the*
 30 *parent shall pay the amount previously paid directly to the child to the recipient of the rest of the*
 31 *support until such time as the support order is modified. A child's failure to comply with the require-*
 32 *ments imposed by this section is a substantial change of circumstances for purposes of modification of*
 33 *a support order.*]

34 [(7) *Orders entered into prior to October 4, 1997, may be modified to include the provisions of*
 35 *subsections (4) to (6) of this section. However, the fact that an order entered, or agreement entered into,*
 36 *prior to October 4, 1997, does not contain any of the provisions of subsections (4) to (6) of this section*
 37 *does not constitute a substantial change of circumstances for purposes of modifying a child support*
 38 *order.*]

39 [(8) *As used in this section, "child attending school" means a child of the parties who is unmarried,*
 40 *is 18 years of age or older and under 21 years of age and is a student regularly attending school,*
 41 *community college, college or university, or regularly attending a course of professional or technical*
 42 *training designed to fit the child for gainful employment. A child enrolled in an educational course load*
 43 *of less than one-half that determined by the educational facility to constitute "full-time" enrollment is*
 44 *not a "child attending school."*]

45 **(6)(a) For support payments to continue to be distributed or paid directly to the child**

1 attending school, the child shall provide to each parent ordered to pay support and, if ser-
2 vices are being provided under ORS 25.080, to the department:

3 (A) Written notice of the child's intent to attend or continue to attend school. The child
4 shall provide the notice before reaching 18 years of age. The notice must include the name
5 of the school and the expected graduation date or date when the child will stop attending
6 classes. If the child changes schools, the child shall provide the information required by this
7 subsection concerning the subsequent school before the expected graduation date or date
8 when the child will stop attending classes at the previous school.

9 (B) Written consent that:

10 (i) Is directed to the child's school and is in a form consistent with state and federal re-
11 quirements that restrict disclosure of student records;

12 (ii) Gives the school authority to disclose to each parent ordered to pay support the
13 child's enrollment status, whether the child is maintaining satisfactory academic progress,
14 a list of courses in which the child is enrolled and the child's grades; and

15 (iii) States that the disclosure is for the purpose of permitting each parent to verify the
16 child's compliance with the requirements of this section.

17 (b) The child shall provide the written consent form described in paragraph (a)(B) of this
18 subsection within 30 days after the beginning of the first term or semester after the child
19 reaches 18 years of age, at the beginning of each academic year thereafter and as otherwise
20 required by the school to disclose the information under this section.

21 (c) If an order of nondisclosure of information has been entered concerning the child
22 under ORS 25.020, the child may provide the information described in paragraph (a)(B) of this
23 subsection in the manner established by the department by rule.

24 (7) Each parent ordered to pay support shall continue to make support payments, to be
25 distributed or paid directly, to the child during regularly scheduled breaks as long as the
26 child intends to continue attending school the next scheduled term or semester.

27 (8) A parent's obligation to pay support to a child attending school is suspended when:

28 (a) The child has reached 18 years of age and has not provided written notice of the
29 child's intent to attend or continue to attend school, or the child has graduated or reached
30 the date to stop attending classes, as provided under subsection (6)(a)(A) of this section;

31 (b)(A) Services are not being provided under ORS 25.080;

32 (B) The parent has provided the child with a written notice of the parent's intent to stop
33 paying support directly to the child because the child is no longer a child attending school
34 or the child has not provided the written consent required by subsection (6)(a)(B) of this
35 section; and

36 (C) Thirty days have passed since the parent provided the notice to the child and the
37 parent has not received:

38 (i) Written confirmation from the school that the child is enrolled in the school and is a
39 child attending school; or

40 (ii) The written consent from the child as required by subsection (6)(a)(B) of this section;

41 (c)(A) Services are being provided under ORS 25.080;

42 (B) A parent ordered to pay support has provided the department with written notice
43 that the child is no longer a child attending school or that the child has not provided the
44 written consent required by subsection (6)(a)(B) of this section;

45 (C) The department has provided written notice to the child requiring:

1 (i) Written confirmation, on a form developed by the department, from the school that
2 the child is enrolled in the school and is a child attending school; and

3 (ii) Proof that the written consent required by subsection (6)(a)(B) of this section has
4 been provided to the parent ordered to pay support; and

5 (D) Thirty days have passed since the department provided the notice to the child and
6 the department has not received:

7 (i) Written confirmation from the school that the child is enrolled in the school and is a
8 child attending school; or

9 (ii) Proof that the written consent required by subsection (6)(a)(B) of this section has
10 been provided to the parent ordered to pay support.

11 (9) When a parent's support obligation has been suspended under subsection (8) of this
12 section, the obligation is reinstated:

13 (a) If services are not being provided under ORS 25.080, effective on the date the parent
14 receives written confirmation from the school that the child is enrolled in the school and is
15 a child attending school and receives the written consent from the child as required by sub-
16 section (6)(a)(B) of this section; or

17 (b) If services are being provided under ORS 25.080, effective on the date the department
18 receives written confirmation from the school that the child is enrolled in the school and is
19 a child attending school and receives proof that the written consent required by subsection
20 (6)(a)(B) of this section has been provided to the parent ordered to pay support.

21 (10) If a parent ordered to pay support is paying a prorated share under subsection (5)
22 of this section and that obligation is suspended under subsection (8) of this section, the
23 parent shall pay to the obligee the amount previously paid to the child attending school until
24 such time as the support order is modified. The suspension of a parent's obligation to pay
25 support to a child attending school is a substantial change of circumstances for purposes of
26 modifying a support order. In a proceeding to modify a support order, the court, adminis-
27 trator or administrative law judge may order a modified amount of support and may order
28 an amount of support to be paid in the event that a support obligation is reinstated under
29 subsection (9) of this section.

30 (11)(a) If services are being provided under ORS 25.080 and the department has suspended
31 a support obligation under subsection (8) of this section or reinstated a support obligation
32 under subsection (9) of this section, a party may request administrative review of the action
33 within 30 days after the date of the notice that the department has suspended or reinstated
34 the support obligation.

35 (b) The department may adopt rules specifying the issues that may be considered on re-
36 view.

37 (c) A party may appeal the department's decision on review under ORS 183.484.

38 (12)(a) Notwithstanding any other provision of this section, if a parent who is required
39 to provide for the support or maintenance of a child attending school has established a
40 higher education savings plan for the child's continued education, the court may order pay-
41 ment in accordance with the plan instead of ordering support that would otherwise be dis-
42 tributed or paid directly to the child under this section.

43 (b) If the court orders payment in accordance with the plan, the court may not order
44 compliance with or payment of that provision of the order through the department.

45 (c) As used in this subsection, "higher education savings plan" means a tax-advantaged

1 account established by a parent on behalf of a child for the purpose of paying qualified higher
2 education expenses of the child at eligible educational institutions.

3 (13) A support order that provides for the support or maintenance of a child attending
4 school is subject to this section regardless of when the support order was entered.

5 (14) A support order that provides for the support or maintenance of a child attending
6 school is intended to recognize the importance of continuing education for a child over 18
7 years of age who does not benefit from an intact family or who has been removed from the
8 household. While support may serve to supplement the resources available to the child at-
9 tending school, it is not intended to replace other resources or meet all of the financial needs
10 of a child attending school.

11 **SECTION 2.** (1) The amendments to ORS 107.108 by section 1 of this 2005 Act become
12 operative on September 1, 2005.

13 (2) The Department of Justice may take any action before the operative date specified in
14 subsection (1) of this section that is necessary to enable the department to exercise, on and
15 after the operative date specified in subsection (1) of this section, all the duties, functions
16 and powers conferred on the department by the amendments to ORS 107.108 by section 1 of
17 this 2005 Act.

18 **SECTION 3.** This 2005 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
20 on its passage.

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