S-1234.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5236**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Robinson, Keiser, Conway, Frame, Hunt, Kauffman, Lovelett, Nguyen, Nobles, Pedersen, Shewmake, Stanford, Trudeau, Valdez, and C. Wilson)

AN ACT Relating to improving nurse and health care worker safety and patient care by establishing minimum staffing standards in hospitals, requiring hospital staffing committees to develop staffing plans, addressing mandatory overtime and meal and rest breaks, and providing for enforcement; amending RCW 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a new chapter to Title 49 RCW; creating a new section; recodifying RCW 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; repealing 2017 c 249 s 4 (uncodified); prescribing penalties; providing effective dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature recognizes that the COVID-19 public health emergency pushed our health care system to its breaking point. Our nurses and health care workers who directly care for and support patients have continued to provide high quality care despite the incredible challenges; however, it has not been without significant sacrifice. Nurses and health care workers are facing unprecedented levels of stress and job turnover. These concerns existed before the pandemic and have only worsened during this public health emergency. The legislature finds that improving nurse and health care worker safety and working conditions leads to better patient care. Specifically, establishing minimum nurse-to-patient staffing standards, expanding break and overtime laws for certain health care workers, and requiring hospital staffing committees to create staffing plans, all of which are subject to enforcement and penalties for violations, will better serve patients and our community.

**Sec.**  RCW 70.41.410 and 2008 c 47 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section ((~~and~~)), RCW 70.41.420, and 70.41.425 (as recodified by this act) unless the context clearly requires otherwise.

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries or the director's authorized representative or designee.

(3) "Hospital" has the same meaning as defined in RCW 70.41.020, and also includes state hospitals as defined in RCW 72.23.010.

((~~(2)~~)) (4) "Hospital staffing committee" means the committee established by a hospital under RCW 70.41.420 (as recodified by this act).

(5) "Intensity" means the level of patient need for nursing care, as determined by the nursing assessment.

((~~(3)~~)) (6) "Nursing ((~~personnel~~)) and patient care staff" means ((~~registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care~~)) a person who is providing direct care or supportive services to patients but is not a physician licensed under chapter 18.71 or 18.57 RCW, a physician's assistant licensed under chapter 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.250 unless working as a direct care registered nurse.

((~~(4) "Nurse staffing committee" means the committee established by a hospital under RCW 70.41.420.~~

~~(5)~~)) (7) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.

((~~(6)~~)) (8)(a) "Reasonable efforts" means that the employer exhausts and documents all of the following but is unable to obtain staffing coverage:

(i) Seeks individuals to consent to work additional time from all available qualified staff who are working;

(ii) Contacts qualified employees who have made themselves available to work additional time;

(iii) Seeks the use of per diem staff; and

(iv) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(b) "Reasonable efforts" does not mean circumstances when an employer is chronically short staffed with vacancies that persist longer than 90 days or have frequently recurring absences.

(9) "Skill mix" means the experience of, and number and relative percentages of ((~~registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel~~)), nursing and patient care staff.

(10)(a) "Unforeseeable emergent circumstance" means:

(i) Any unforeseen declared national, state, or municipal emergency; or

(ii) When a hospital disaster plan is activated.

(b) "Unforeseeable emergent circumstance" does not mean a declared national, state, or municipal emergency or when a health care facility disaster plan is activated, if the events persist longer than 90 days.

**Sec.**  RCW 70.41.420 and 2017 c 249 s 2 are each amended to read as follows:

(1) By September 1, ((~~2008~~)) 2024, each hospital shall establish a ((~~nurse~~)) hospital staffing committee, either by creating a new committee or assigning the functions of ((~~a~~)) the hospital staffing committee to an existing nurse staffing committee ((~~to an existing committee~~)). Hospital staffing committees must be comprised of:

(a) At least ((~~one-half~~)) 50 percent of the members of the ((~~nurse~~)) hospital staffing committee shall be ((~~registered nurses~~)) nursing and patient care staff, who are nonsupervisory and nonmanagerial, currently providing direct patient care ((~~and up to one-half of the members shall be determined by the hospital administration~~)). The selection of the ((~~registered nurses providing direct patient care~~)) nursing and patient care staff shall be according to the collective bargaining ((~~agreement~~)) representative or representatives if there is one ((~~in effect~~)) or more at the hospital. If there is no ((~~applicable~~)) collective bargaining ((~~agreement~~)) representative, the members of the ((~~nurse~~)) hospital staffing committee who are ((~~registered nurses~~)) nursing and patient care staff providing direct patient care shall be selected by their peers.

(b) Up to 50 percent of the members of the hospital staffing committee shall be determined by the hospital administration and shall include but not be limited to the chief financial officer, the chief nursing officers, and patient care unit directors or managers or their designees.

(2) Participation in the ((~~nurse~~)) hospital staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. ((~~Nurse~~)) Hospital staffing committee members shall be relieved of all other work duties during meetings of the committee. Additional staffing relief must be provided if necessary to ensure committee members are able to attend hospital staffing committee meetings.

(3) Primary responsibilities of the ((~~nurse~~)) hospital staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift‑based ((~~nurse~~)) hospital staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. The hospital staffing committee shall use a uniform format or form, created by the department in consultation with the advisory committee established in section 6 of this act, for complying with the requirement to submit the annual staffing plan. The uniform format or form must allow for variations in service offerings, facility design, and other differences between hospitals, but must allow patients and the public to clearly understand and compare staffing plans. Hospitals may include a description of additional resources available to support unit-level patient care and a description of the hospital, including the size and type of facility. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) ((~~Level of intensity of all patients and nature of the~~)) Patient acuity level, intensity of care needs, and the type of care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing ((~~personnel~~)) and patient care staff providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;

(vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(viii) Availability of other personnel supporting nursing services on the unit; and

(ix) ((~~Strategies to enable registered nurses to take meal and rest breaks as required by law or~~)) Compliance with the terms of an applicable collective bargaining agreement, if any, ((~~between the hospital and a representative of the nursing staff~~)) and relevant state and federal laws and rules, including those regarding meal and rest breaks and use of overtime and on-call shifts;

(b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital; and

(c) Review, assessment, and response to staffing variations or ((~~concerns~~)) complaints presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources must be taken into account in the development of the ((~~nurse~~)) staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement((~~, if any, between the hospital and a representative of the nursing staff~~)).

(6)(a) The committee ((~~will~~)) shall produce the hospital's annual ((~~nurse~~)) staffing plan. If this staffing plan is not adopted by 50 percent plus one vote of the hospital((~~, the~~)) staffing committee, the prior annual staffing plan remains in effect and the hospital is subject to daily fines of $5,000 for hospitals licensed under chapter 70.41 RCW or daily fines of $100 for: (i) Hospitals certified as critical access hospitals; (ii) hospitals with fewer than 25 acute care beds in operation; and (iii) hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than 150 acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision. The daily fines must be assessed until adoption of a new annual staffing plan by consensus of the committee.

(b) The chief executive officer or their designee shall provide ((~~a written explanation of the reasons why the plan was not adopted to the committee~~)) written feedback to the hospital staffing committee on a semiannual basis, prior to the committee's semiannual review and adoption of an annual staffing plan. The ((~~chief executive officer~~)) feedback must then either: ((~~(a)~~)) (i) Identify those elements of the ((~~proposed plan being changed prior to adoption of the plan by the hospital or (b) prepare an alternate annual staffing plan that must be adopted by the hospital.~~)) staffing plan the chief executive officer requests changes to; and (ii) provide a status report on implementation of the staffing plan including nursing sensitive quality indicators collected by the hospital, patient surveys, and recruitment and retention efforts.

(c) Beginning ((~~January 1, 2019~~)) July 1, 2025, each hospital shall submit its staffing plan to the department and thereafter on an annual basis and at any time in between that the plan is updated.

(7) Beginning ((~~January 1, 2019~~)) July 1, 2025, each hospital shall implement the staffing plan and assign nursing ((~~personnel~~)) and patient care staff to each patient care unit in accordance with the plan except in instances of unforeseeable emergent circumstances.

(a) A registered nurse, patient care staff, collective bargaining representative, patient, or other individual may report to the hospital staffing committee any variations where the ((~~nurse~~)) personnel assignment in a patient care unit is not in accordance with the adopted staffing plan and may make a complaint to the committee based on the variations.

(b) Shift-to-shift adjustments in staffing levels required by the plan may be made by the appropriate hospital personnel overseeing patient care operations. If a registered nurse or patient care staff on a patient care unit objects to a shift-to-shift adjustment, the registered nurse may submit the complaint to the hospital staffing committee.

(c) ((~~Staffing~~)) Hospital staffing committees shall develop a process to examine and respond to data submitted under (a) and (b) of this subsection, including the ability to determine if a specific complaint is resolved or dismissing a complaint based on unsubstantiated data. All complaints submitted to the hospital staffing committee must be reviewed by the staffing committee, regardless of what format the complainant uses to submit the complaint.

(d) In the event of an unforeseeable emergent circumstance, the hospital incident command shall report within 30 days to the cochairs of the hospital staffing committee an assessment of the staffing needs arising from the unforeseeable emergent circumstance and the hospital's plan to address those identified staffing needs. Upon receipt of the report, the hospital staffing committee shall convene to develop a contingency staffing plan to address the needs arising from the unforeseeable emergent circumstance. The hospital's deviation from its staffing plan may not be in effect for more than 90 days without the approval of the hospital staffing committee.

(8) Each hospital shall post, in a public area on each patient care unit, the ((~~nurse~~)) staffing plan and the ((~~nurse~~)) staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(9) A hospital may not retaliate against or engage in any form of intimidation ((~~of~~)) or otherwise take any adverse action against:

(a) An employee for performing any duties or responsibilities in connection with the ((~~nurse~~)) hospital staffing committee; or

(b) An employee, patient, or other individual who notifies the ((~~nurse~~)) hospital staffing committee or the hospital administration of his or her concerns on nurse or patient care staffing.

(10) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having ((~~nurse~~)) hospital staffing committees work by video conference, telephone, or email.

(11) By January 1, 2025, the hospital staffing committee shall file with the department a charter that must include, but is not limited to:

(a) A process for electing cochairs and their terms;

(b) Roles, responsibilities, and processes by which the hospital staffing committee functions, including which job classes will be represented on the committee, how many members will serve on the committee, processes to ensure adequate quorum and ability of committee members to attend, and processes for replacing members who do not regularly attend;

(c) Schedule for monthly meetings with more frequent meetings as needed that ensures committee members have 30 days' notice of meetings;

(d) Processes by which all staffing complaints will be reviewed, investigated, and resolved, noting the date received as well as initial, contingent, and final disposition of complaints and corrective action plan where applicable;

(e) Processes by which complaints will be resolved within 90 days of receipt, or longer with majority approval of the committee, and processes to ensure the complainant receives a letter stating the outcome of the complaint;

(f) Processes for attendance by any employee, and a labor representative if requested by the employee, who is involved in a complaint;

(g) Processes for the hospital staffing committee to conduct quarterly reviews of: Staff turnover rates including new hire turnover rates during first year of employment; exit interviews; and hospital plans regarding workforce development;

(h) Standards for hospital staffing committee approval of meeting documentation including meeting minutes, attendance, and actions taken;

(i) Policies for retention of meeting documentation for a minimum of three years and consistent with each hospital's document retention policies; and

(j) Processes for the hospital to provide the hospital staffing committee with information regarding patient complaints involving staffing made to the hospital through the patient grievance process required under 42 C.F.R. 482.13(a)(2).

(12) The department must provide technical assistance to hospital staffing committees to assist with compliance with this section.

**Sec.**  RCW 70.41.425 and 2017 c 249 s 3 are each amended to read as follows:

(1)(a) The department shall investigate a complaint submitted under this section for violation of RCW 70.41.420 (as recodified by this act) following receipt of a complaint with documented evidence of failure to:

(i) Form or establish a hospital staffing committee;

(ii) Conduct a semiannual review of a ((~~nurse~~)) staffing plan;

(iii) Submit a ((~~nurse~~)) staffing plan on an annual basis and any updates; or

(iv)((~~(A)~~)) Follow the ((~~nursing~~)) personnel assignments in a patient care unit in violation of RCW 70.41.420(7)(a) (as recodified by this act) or shift-to-shift adjustments in staffing levels in violation of RCW 70.41.420(7)(b) (as recodified by this act).

((~~(B) The department may only investigate a complaint under this subsection (1)(a)(iv) after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations of RCW 70.41.420(7) (a) or (b), that were submitted to the nurse staffing committee excluding complaints determined by the nurse staffing committee to be resolved or dismissed. The submitted evidence must include the aggregate data contained in the complaints submitted to the hospital's nurse staffing committee that indicate a continuing pattern of unresolved violations for a minimum sixty-day continuous period leading up to receipt of the complaint by the department.~~

~~(C) The department may not investigate a complaint under this subsection (1)(a)(iv) in the event of unforeseeable emergency circumstances or if the hospital, after consultation with the nurse staffing committee, documents it has made reasonable efforts to obtain staffing to meet required assignments but has been unable to do so.~~))

(b) The department may investigate and take appropriate enforcement action without any complaint if the department discovers information suggesting any violation of RCW 70.41.420 (as recodified by this act).

(c) After an investigation conducted under (a) of this subsection, if the department determines that there has been a violation, the department shall require the hospital to submit a corrective plan of action within ((~~forty-five~~)) 45 days of the presentation of findings from the department to the hospital.

(d) Hospitals will not be found in violation of RCW 70.41.420 (as recodified by this act) if it has been determined, following an investigation, that:

(i) There were unforeseeable emergent circumstances and the process under (e) of this subsection has been followed, if applicable; or

(ii) The hospital, after consultation with the hospital staffing committee, documents that the hospital has made reasonable efforts to obtain and retain staffing to meet required personnel assignments but has been unable to do so.

(e) No later than 30 days after a hospital deviates from its staffing plan as adopted by the hospital staffing committee under RCW 70.41.420 (as recodified by this act), the hospital incident command shall report to the cochairs of the hospital staffing committee an assessment of the staffing needs arising from the unforeseeable emergent circumstance and the hospital's plan to address those identified staffing needs. Upon receipt of the report, the hospital staffing committee shall convene to develop a contingency staffing plan to address the needs arising from the unforeseeable emergent circumstance. The hospital's deviation from its staffing plan may not be in effect for more than 90 days without the approval of the hospital staffing committee.

(2) In the event that a hospital fails to submit or submits but fails to follow such a corrective plan of action in response to a violation or violations found by the department based on a complaint filed pursuant to subsection (1) of this section, the department may impose, for all violations asserted against a hospital at any time, a civil penalty of ((~~one hundred dollars~~)) $5,000 per day for hospitals licensed under chapter 70.41 RCW, or $100 per day for: (a) Hospitals certified as critical access hospitals; (b) hospitals with fewer than 25 acute care beds in operation; and (c) hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than 150 acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision. Civil penalties apply until the hospital submits ((~~or begins to follow~~)) a corrective plan of action ((~~or takes other action agreed to~~)) that has been approved by the department and follows the corrective plan of action for 90 days. Once the approved corrective action plan has been followed by the hospital for 90 days, the department may reduce the accumulated fine. The fine shall continue to accumulate until the 90 days have passed. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

(3) The department shall maintain for public inspection records of any civil penalties((~~,~~)) and administrative actions((~~, or license suspensions or revocations~~)) imposed on hospitals under this section. In addition, the department must post violations of this section on its website.

(4) ((~~For purposes of this section, "unforeseeable emergency circumstance" means:~~

~~(a) Any unforeseen national, state, or municipal emergency;~~

~~(b) When a hospital disaster plan is activated;~~

~~(c) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or~~

~~(d) When a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.~~

~~(5)~~)) Nothing in this section shall be construed to preclude the ability to otherwise submit a complaint to the department for failure to follow RCW 70.41.420 (as recodified by this act).

((~~(6) The department shall submit a report to the legislature on December 31, 2020. This report shall include the number of complaints submitted to the department under this section, the disposition of these complaints, the number of investigations conducted, the associated costs for complaint investigations, and recommendations for any needed statutory changes. The department shall also project, based on experience, the impact, if any, on hospital licensing fees over the next four years. Prior to the submission of the report, the secretary shall convene a stakeholder group consisting of the Washington state hospital association, the Washington state nurses association, service employees international union healthcare 1199NW, and united food and commercial workers 21. The stakeholder group shall review the report prior to its submission to review findings and jointly develop any legislative recommendations to be included in the report.~~

~~(7) No fees shall be increased to implement chapter 249, Laws of 2017 prior to July 1, 2021.~~))

NEW SECTION. **Sec.**  (1) The definitions in this subsection apply throughout this chapter unless the context clearly requires otherwise.

(a) "Department" means the department of labor and industries.

(b) "Direct care nursing assistant-certified" means an individual certified under chapter 18.88A RCW who provides direct care to patients.

(c) "Direct care registered nurse" means an individual licensed as a nurse under chapter 18.79 RCW who provides direct care to patients.

(d) "Director" means the director of the department of labor and industries or the director's authorized representative or designee.

(e) "Hospital" has the same meaning as defined in RCW 70.41.020.

(f) "Hospital staffing committee" means the committee established by a hospital under RCW 70.41.420 (as recodified by this act).

(g) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses, including but not limited to a critical care unit, burn unit, labor and delivery room, postanesthesia service area, emergency department, operating room, pediatric unit, step-down/intermediate care unit, specialty care unit, telemetry unit, general medical care unit, subacute care unit, and transitional inpatient care unit.

(h)(i) "Unforeseeable emergent circumstances" means:

(A) Any unforeseen declared national, state, or municipal emergency; or

(B) When a health care facility disaster plan is activated.

(ii) "Unforeseeable emergent circumstance" does not mean a declared national, state, or municipal emergency or when a health care facility disaster plan is activated, if the events persist longer than 90 days.

(2) The department shall adopt and implement rules establishing minimum staffing standards for direct care registered nurses and direct care nursing assistants-certified in patient care units no later than January 1, 2027. These minimum staffing standards shall be numerical and represent the maximum number of patients to which a direct care registered nurse or direct care nursing assistant-certified may be assigned at all times during a shift except in the event of unforeseeable emergent circumstances. The department may consider sources that include but are not limited to existing and historical staffing plans, standards in other jurisdictions, academic research, stakeholder input, and staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations when establishing its rules.

(3)(a) A hospital shall comply with minimum staffing standards in accordance with this section no later than July 1, 2027.

(b) The department shall enforce compliance with this section under sections 12 through 14 of this act.

(4) These staffing standards shall constitute the minimum number of direct care registered nurses and direct care nursing assistants-certified that shall be allocated.

(a) Additional staff shall be assigned in accordance with a hospital's documented patient classification system for determining nursing care requirements, including the severity of the illness, the need for specialized equipment and technology, the complexity of clinical judgment needed to design, implement, and evaluate the patient care plan and the ability for self-care, and the licensure of the personnel required for care.

(b) Nothing in this section precludes a hospital from assigning fewer patients to a direct care registered nurse or direct care nursing assistant-certified than the limits established in this section.

(5) The minimum staffing standards established in this section may not replace any more favorable nurse-to-patient staffing levels:

(a) Established pursuant to a collective bargaining agreement; or

(b) Established under a hospital's staffing plan in effect as of January 1, 2022, unless a hospital staffing committee in full compliance with the standards under RCW 70.41.420 (as recodified by this act) takes a 50 percent plus one vote after January 1, 2027.

(6) A direct care registered nurse or direct care nursing assistant-certified may not be assigned by hospitals to a nursing unit or clinical area unless that nurse has first received orientation in that clinical area sufficient to provide competent care to patients in that area and has demonstrated current competence in providing care in that area. Hospital staffing committees shall adopt written policies and procedures under this section no later than July 1, 2027.

(7) The department must adopt and implement rules to define variance and innovative hospital staffing and care delivery criteria. Requests for variances and innovative staffing and care delivery models to this section that do not jeopardize the health, safety, and well-being of patients affected and that are needed for increased operational efficiency may be granted by the department to hospitals in accordance with rules adopted by the department.

(8) The director shall engage in negotiated rule making under RCW 34.05.310(2)(a) to adopt the rules required by this section. The negotiated rule-making topics must include the nurse staffing ratios and the requirements for variances and innovative hospital staffing and care delivery models as required by this section.

(a) The department must convene a group of affected stakeholders to ensure balanced representation of individuals who have direct expertise in hospital staffing and working conditions and should reflect a diversity of hospital settings.

(b) The negotiated rule-making committee shall hold its first meeting by January 1, 2025.

(c) Membership of the negotiated rule-making committee must include:

(i) Six members representing hospitals and hospital systems and their alternates, selected from a list of nominees submitted by the Washington state hospital association;

(ii) Six members representing frontline hospital patient care staff and their alternates, selected from a list of nominees submitted by collective bargaining representatives of frontline hospital nursing staff;

(iii) A representative from the department, serving as a voting member;

(iv) A representative from the department of health, serving as a nonvoting ex officio member; and

(v) A representative from the Washington state institute for public policy, serving as a nonvoting ex officio member.

(d) Any list submitted to the department for the initial appointment of members pursuant to this subsection (8) must be provided by November 1, 2024.

(e) If any member of the negotiated rule-making committee is unable to continue to serve on the committee, the director must select a new member based on the recommendations of either the hospital association for members appointed under (c)(i) of this subsection (8) or the collective bargaining representative for members appointed under (c)(ii) of this subsection (8).

(f)(i) The negotiated rule-making committee shall discuss and propose rules on the topics required by this section and shall attempt to reach unanimous consensus on these matters.

(ii) If unanimous consensus cannot be reached, then a vote from the department and a two-thirds majority of the rest of the committee, with at least four votes from the members appointed pursuant to (c)(i) of this subsection (8) and at least four votes from members appointed pursuant to (c)(ii) of this subsection (8) is required to reach a consensus.

(iii) If a consensus is reached, the committee must provide the department with a report containing the proposed rule and the department must file proposed rules based on the consensus draft.

(iv) In the event the committee is unable to reach a consensus, the committee must provide a report on any topics in which there is agreement as well as details on the areas of disagreement to inform the department in their rule making. The department must draft rules considering the information provided by the committee, the advisory committee established in section 6 of this act, the Washington institute for public policy, and any additional relevant information.

(g)(i) The department must provide administrative support for the negotiated rule making.

(ii) The department may hire a facilitator to chair the negotiated rule-making meetings, impartially assist the members of the committee in conducting discussions and negotiations, and manage the keeping of minutes and records.

(h) If changes or updates are needed to the rules adopted under this section, the department may conduct additional rule making as needed.

NEW SECTION. **Sec.**  (1) The department must establish an advisory committee on hospital staffing by September 1, 2023.

(2) Appointments to the advisory committee on hospital staffing shall be made by the director. Members of the committee must have expertise in hospital staffing and working conditions and should reflect a diversity of hospital settings. The committee must include the following membership:

(a) Six members representing hospitals and hospital systems and their alternates, selected from a list of nominees submitted by the Washington state hospital association;

(b) Six members representing frontline hospital patient care staff and their alternates, selected from a list of nominees submitted by collective bargaining representatives of frontline hospital nursing staff; and

(c) A representative from the department of health, serving as a nonvoting ex officio member.

(3) Any list submitted to the department for the initial appointment under this section must be provided by July 1, 2023.

(4) If any member of the negotiated rule-making committee is unable to continue to serve on the committee the director shall select a new member based on the recommendations of either the hospital association for members appointed under subsection (2)(a) of this section or the collective bargaining representative for members appointed under subsection (2)(b) of this section.

(5) The advisory committee on hospital staffing shall meet at least once per month until the hospital staffing plan uniform form is developed.

(6) The advisory committee on hospital staffing shall advise the department on its development of the uniform hospital staffing plan form.

(7) At the discretion of the department, the advisory committee on hospital staffing may advise on any rule making undertaken by the department that is not covered by the negotiated rule-making committee established under section 5 of this act.

(8) The department shall provide any necessary documentation to the advisory committee on hospital staffing in advance of the meetings to discuss technical assistance so that the advisory committee may consider areas of needed information.

(9) After January 1, 2027, when the forms and rules are developed and effective, the advisory committee on hospital staffing may meet on a quarterly basis as needed, if it is determined by the department and committee members that such meetings are necessary.

(10) The advisory committee on hospital staffing may review and make recommendations on variances or innovative hospital staffing and care delivery models. These recommendations are not final, the final determination of the variance or innovative hospital staffing and care delivery model approval lies solely with the department.

(11) The department must provide the advisory committee on hospital staffing with data on a quarterly basis related to compliance with this chapter, complaint filing and disposition trends, and reporting metrics on any approved variances and innovative hospital staffing and care delivery models.

(12) By December 1, 2023, the Washington state hospital association shall survey hospitals in Washington state and report to the advisory committee on hospital staffing on Washington hospitals' existing use of innovative hospital staffing and care delivery models including, but not limited to, integration of patient monitoring equipment, remote patient monitoring, team-based care models, apprenticeship and career ladder programs, and virtual or remote care delivery models, and any challenges with implementing the models.

(13) By December 1, 2024, the advisory committee on hospital staffing must review the report prepared by the Washington state institute for public policy as required by section 17 of this act.

NEW SECTION. **Sec.**  (1)(a) The department shall review each hospital staffing plan submitted by a hospital to ensure it is received by the appropriate deadline and is completed on the department-issued staffing plan form.

(b) The hospital must complete all portions of the staffing plan form. The department may determine that a hospital has failed to timely submit its staffing plan if the staffing plan form is incomplete.

(c) Failure to submit the staffing plan by the appropriate deadline will result in a violation and civil penalty of $25,000 issued by the department. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

(2) Failure to submit a hospital staffing committee charter to the department by the appropriate deadline will result in a violation and a civil penalty of $25,000 issued by the department. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

(3) The department must post on its website:

(a) Hospital staffing plans;

(b) Hospital staffing committee charters; and

(c) Violations of this section.

(4) The department must apply the civil penalties described in this section and enforce any violation of this section using the procedures in sections 12 through 14 of this act and any applicable rules. The department may also investigate and take appropriate enforcement action under sections 12 through 14 of this act without any complaint if the department discovers information suggesting any violation of this section.

**Sec.**  RCW 49.12.480 and 2019 c 296 s 1 are each amended to read as follows:

(1) An employer shall provide employees with meal and rest periods as required by law, subject to the following:

(a) Rest periods must be scheduled at any point during each work period during which the employee is required to receive a rest period;

(b) Employers must provide employees with uninterrupted meal and rest breaks. This subsection (1)(b) does not apply in the case of:

(i) An unforeseeable emergent circumstance, as defined in RCW 49.28.130 (as recodified by this act); or

(ii) ((~~A clinical circumstance, as determined by the employee, employer, or employer's designee, that may lead to a significant adverse effect on the patient's condition:~~

~~(A) Without the knowledge, specific skill, or ability of the employee on break; or~~

~~(B) Due to an unforeseen or unavoidable event relating to patient care delivery requiring immediate action that could not be planned for by an employer;~~

~~(c) For any rest break that is interrupted before ten complete minutes by an employer or employer's designee under the provisions of (b)(ii) of this subsection, the employee must be given an additional ten minute uninterrupted rest break at the earliest reasonable time during the work period during which the employee is required to receive a rest period. If the elements of this subsection are met, a rest break shall be considered taken for the purposes of the minimum wage act as defined by chapter 49.46 RCW.~~)) An unforeseeable clinical circumstance, as determined by the employee that may lead to a significant adverse effect on the patient's condition, unless the employer or employer's designee determines that the patient may suffer life-threatening adverse effects;

(c) For any work period for which an employee is entitled to one or more meal periods and more than one rest period, the employee and the employer may agree that a meal period may be combined with a rest period. This agreement may be revoked at any time by the employee. If the employee is required to remain on duty during the combined meal and rest period, the time shall be paid. If the employee is released from duty for an uninterrupted combined meal and rest period, the time corresponding to the meal period shall be unpaid, but the time corresponding to the rest period shall be paid.

(2) The employer shall provide a mechanism to record when an employee misses a meal or rest period and maintain these records.

(3) For purposes of this section, the following terms have the following meanings:

(a) "Employee" means a person who:

(i) Is employed by ((~~a health care facility~~)) an employer;

(ii) Is involved in direct patient care activities or clinical services; and

(iii) Receives an hourly wage or is covered by a collective bargaining agreement((~~; and~~

~~(iv) Is a licensed practical nurse or registered nurse licensed under chapter 18.79 RCW, a surgical technologist registered under chapter 18.215 RCW, a diagnostic radiologic technologist or cardiovascular invasive specialist certified under chapter 18.84 RCW, a respiratory care practitioner licensed under chapter 18.89 RCW, or a nursing assistant-certified as defined in RCW 18.88A.020~~)).

(b) "Employer" means hospitals licensed under chapter 70.41 RCW((~~, except that the following hospitals are excluded until July 1, 2021:~~

~~(i) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;~~

~~(ii) Hospitals with fewer than twenty-five acute care beds in operation; and~~

~~(iii) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision~~)).

**Sec.**  RCW 49.28.130 and 2019 c 296 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 49.28.140 and 49.28.150 (as recodified by this act) unless the context clearly requires otherwise.

(1)(a) "Employee" means a person who:

(i) Is employed by a health care facility;

(ii) Is involved in direct patient care activities or clinical services; and

(iii) Receives an hourly wage or is covered by a collective bargaining agreement((~~; and~~

~~(iv) Is either:~~

~~(A) A licensed practical nurse or registered nurse licensed under chapter 18.79 RCW; or~~

~~(B) Beginning July 1, 2020, a surgical technologist registered under chapter 18.215 RCW, a diagnostic radiologic technologist or cardiovascular invasive specialist certified under chapter 18.84 RCW, a respiratory care practitioner licensed under chapter 18.89 RCW, or a nursing assistant-certified as defined in RCW 18.88A.020~~)).

(b) "Employee" does not mean a person who is both:

(i) ((~~Is employed~~)) Employed by a health care facility as defined in subsection (3)(a)(v) of this section; and

(ii) ((~~Is a~~)) A surgical technologist registered under chapter 18.215 RCW, a diagnostic radiologic technologist or cardiovascular invasive specialist certified under chapter 18.84 RCW, a respiratory care practitioner licensed under chapter 18.89 RCW, or a certified nursing assistant as defined in RCW 18.88A.020.

(2) "Employer" means an individual, partnership, association, corporation, the state, a political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3)(a) "Health care facility" means the following facilities, or any part of the facility, including such facilities if owned and operated by a political subdivision or instrumentality of the state, that operate on a twenty-four hours per day, seven days per week basis:

(i) Hospices licensed under chapter 70.127 RCW;

(ii) Hospitals licensed under chapter 70.41 RCW((~~, except that until July 1, 2021, the provisions of section 3, chapter 296, Laws of 2019 do not apply to:~~

~~(A) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;~~

~~(B) Hospitals with fewer than twenty-five acute care beds in operation; and~~

~~(C) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision~~));

(iii) Rural health care facilities as defined in RCW 70.175.020;

(iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

(v) Facilities owned and operated by the department of corrections or by a governing unit as defined in RCW 70.48.020 in a correctional institution as defined in RCW 9.94.049 that provide health care services.

(b) If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means ((~~the hours~~)) any of the following:

(a) Hours worked in excess of an agreed upon, predetermined, regularly scheduled shift ((~~within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period~~));

(b) Hours worked in excess of 12 hours in a 24-hour period; or

(c) Hours worked in excess of 80 hours in a consecutive 14-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer((~~, to the extent reasonably possible, does~~)) exhausts and documents all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work ((~~extra~~)) additional time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work ((~~extra~~)) additional time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7)(a) "Unforeseeable emergent circumstance" means ((~~(a)~~)) (i) any unforeseen declared national, state, or municipal emergency; ((~~(b)~~)) or (ii) when a health care facility disaster plan is activated((~~; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services~~)).

(b) "Unforeseeable emergent circumstance" does not mean a declared national, state, or municipal emergency or when a health care facility disaster plan is activated, if the events persist longer than 90 days.

**Sec.**  RCW 49.28.140 and 2019 c 296 s 3 are each amended to read as follows:

(1) No employee of a health care facility may be required to work overtime. Attempts to compel or force employees to work overtime are contrary to public policy, and any such requirement contained in a contract, agreement, or understanding is void.

(2) The acceptance by any employee of overtime is strictly voluntary, and the refusal of an employee to accept such overtime work is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

(3) This section does not apply to overtime work that occurs:

(a) Because of any unforeseeable emergent circumstance;

(b) Because of mandatory prescheduled on-call time not to exceed more than 60 hours per month, subject to the following:

(i) Mandatory prescheduled on-call time may not be used in lieu of scheduling employees to work regularly scheduled shifts when a staffing plan indicates the need for a scheduled shift unless the classification of the worker is not subject to an annual staffing plan; ((~~and~~))

(ii) Mandatory prescheduled on-call time may not be used to address regular changes in patient census or patient acuity or expected increases in the number of employees not reporting for predetermined scheduled shifts; and

(iii) Mandatory prescheduled on-call time may not be used when an employer schedules a nonemergent patient procedure that is expected to exceed the employee's regular scheduled hours of work;

(c) When the employer documents that the employer has used reasonable efforts to obtain and retain staffing. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages; or

(d) When an employee is required to work overtime to complete a patient care procedure already in progress where the absence of the employee could have an adverse effect on the patient.

(4) An employee accepting overtime who works more than twelve consecutive hours shall be provided the option to have at least eight consecutive hours of uninterrupted time off from work following the time worked.

**Sec.**  RCW 49.28.150 and 2002 c 112 s 4 are each amended to read as follows:

The department of labor and industries shall investigate complaints of violations of RCW 49.28.140 (as recodified by this act) as provided under sections 12 through 14 of this act. ((~~A violation of RCW 49.28.140 is a class 1 civil infraction in accordance with chapter 7.80 RCW, except that the maximum penalty is one thousand dollars for each infraction up to three infractions. If there are four or more violations of RCW 49.28.140 for a health care facility, the employer is subject to a fine of two thousand five hundred dollars for the fourth violation, and five thousand dollars for each subsequent violation. The department of labor and industries is authorized to issue and enforce civil infractions according to chapter 7.80 RCW.~~))

NEW SECTION. **Sec.**  (1)(a) If a complainant files a complaint with the department of labor and industries alleging a violation of this chapter, the department shall investigate the complaint.

(b) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the complainant filed the complaint.

(c) Upon the investigation of a complaint, the department shall issue either a citation and notice of assessment or a closure letter, within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(d) The department shall send a citation and notice of assessment or the closure letter to both the employer and the complainant by service of process or using a method by which the mailing can be tracked, or the delivery can be confirmed to their last known addresses.

(2) If the department of labor and industry's investigation finds that the complainant's allegation cannot be substantiated, the department shall issue a closure letter to the complainant and the employer detailing such finding.

(3)(a) If the department of labor and industries finds a violation of this chapter, the department shall order the employer to pay the department a civil penalty.

(b) Except as provided otherwise in this chapter, the maximum penalty is $1,000 for each violation up to three violations. If there are four or more violations of this chapter for a health care facility, the employer is subject to a civil penalty of $2,500 for the fourth violation, and $5,000 for each subsequent violation.

(4) The department of labor and industries may, at any time, waive or reduce a civil penalty assessed under this section if the director of the department determines that the employer has taken corrective action to resolve the violation.

(5) The department of labor and industries shall deposit all civil penalties paid under this chapter in the supplemental pension fund established under RCW 51.44.033.

NEW SECTION. **Sec.**  (1) A person, firm, or corporation aggrieved by a citation and notice of assessment by the department of labor and industries under this chapter may appeal the citation and notice of assessment to the director of the department by filing a notice of appeal with the director within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director of the department of labor and industries under this section shall stay the effectiveness of the citation and notice of assessment pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director of the department of labor and industries shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director of the department of labor and industries shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION. **Sec.**  Collections of unpaid citations assessing civil penalties will be pursuant to RCW 49.48.086.

NEW SECTION. **Sec.**  The department of labor and industries may adopt and implement rules to carry out and enforce the provisions of this chapter, including but not limited to protecting employees from retaliation for filing complaints under this chapter.

NEW SECTION. **Sec.**  The department may contract with consultants to support administration of its responsibilities under this chapter. The department may not contract with any entity that has financial interests that may create a potential conflict of interest.

NEW SECTION. **Sec.**  The Washington state institute for public policy shall conduct a study on hospital staffing standards for direct care registered nurses and direct care nursing assistants.

(1) The institute must review current and historical staffing plans filed with the department of health under chapter 70.41 RCW and describe:

(a) Timeliness and completeness of filed forms;

(b) Format of filed forms;

(c) Staffing ratios related to the maximum number of patients to which a direct care nursing or nursing assistant may be assigned;

(d) Descriptive statistics on submissions by hospital unit type;

(e) Trends over time, if any;

(f) Legal minimum staffing standards for registered nurses and nursing assistants in other jurisdictions; and

(g) Relevant professional association guidance, recommendations, or best practices.

(2) The institute must provide a report on its findings to the department and relevant committees of the legislature by June 30, 2024.

(3) In addition to the report, the institute must participate on the negotiated rule-making committee established under section 5 of this act and provide consultation to help inform the negotiated rule-making committee's work.

NEW SECTION. **Sec.**  2017 c 249 s 4 (uncodified) is repealed.

NEW SECTION. **Sec.**  Sections 5 through 7 and 12 through 17 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. **Sec.**  RCW 70.41.410, 70.41.420, and 70.41.425 are each recodified as sections in chapter 49.--- RCW (the new chapter created in section 19 of this act).

NEW SECTION. **Sec.**  RCW 49.12.480, 49.28.130, 49.28.140, and 49.28.150 are each recodified as sections in chapter 49.--- RCW (the new chapter created in section 19 of this act).

NEW SECTION. **Sec.**  Except for section 18 of this act, this act takes effect July 1, 2024.

NEW SECTION. **Sec.**  Section 18 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2023.

**--- END ---**