
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5236

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/24/23.

1 AN ACT Relating to improving workplace standards for certain
2 hospital staff by expanding staffing committees to include additional
3 nursing staff, modifying staffing committee requirements, and
4 clarifying standards and enforcement regarding mandatory overtime and
5 uninterrupted meal and rest breaks; amending RCW 70.41.410,
6 70.41.420, 70.41.425, 70.41.130, 49.12.480, 49.28.140, and 49.28.150;
7 adding a new section to chapter 43.70 RCW; adding a new section to
8 chapter 70.41 RCW; adding new sections to chapter 49.12 RCW; creating
9 a new section; repealing 2017 c 249 s 4 (uncodified); prescribing
10 penalties; providing effective dates; providing an expiration date;
11 and declaring an emergency.

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

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.70
14 RCW to read as follows:

15 (1) The department, in consultation with the department of labor
16 and industries, must establish an advisory committee on hospital
17 staffing by September 1, 2023.

18 (2) Appointments to the advisory committee on hospital staffing
19 shall be jointly made by the secretary and the director of labor and
20 industries. Members of the committee must have expertise in hospital

1 staffing and working conditions and should reflect a diversity of
2 hospital settings.

3 (3) The advisory committee membership includes:

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

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

11 (4) Any list submitted to the departments for the initial
12 appointment under this section must be provided by August 4, 2023.

13 (5) If any member of the advisory committee is unable to continue
14 to serve on the committee the secretary and the director of labor and
15 industries shall select a new member based on the recommendations of
16 either the hospital association for members appointed under
17 subsection (3)(a) of this section or the collective bargaining
18 representative for members appointed under subsection (3)(b) of this
19 section.

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

23 (7) The advisory committee on hospital staffing shall advise the
24 department on its development of the uniform hospital staffing plan
25 form.

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

31 (9) The advisory committee on hospital staffing must consider
32 innovative hospital staffing and care delivery models, such as those
33 that integrate on-site team-based care delivery, use of patient
34 monitoring equipment and technology, and virtual or remote care
35 delivery. This includes identifying and analyzing innovative hospital
36 staffing and care delivery models including those explored by
37 national organizations and evaluating feasibility of broad-based
38 implementation of identified models. The advisory committee may
39 consider disseminating this information and analysis.

1 (10) The department and the department of labor and industries
2 must provide the advisory committee on hospital staffing with data on
3 a quarterly basis related to compliance with this chapter, complaint
4 filing and disposition trends, and notification of corrective plans
5 of action plans and adherence to those plans.

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

14 (12) By December 1, 2024, the advisory committee on hospital
15 staffing must review the report prepared by the Washington state
16 institute for public policy as required by section 15 of this act.

17 (13) After January 1, 2027, when the forms are developed and
18 effective, the advisory committee on hospital staffing may meet if it
19 is determined by the department of health and committee members that
20 such meetings are necessary.

21 (14) No earlier than July 1, 2029, the advisory committee on
22 hospital staffing must discuss the issues related to applicability of
23 RCW 70.41.420(7)(b) (i) and (ii) for hospitals listed under RCW
24 70.41.420(7)(b)(iv). This must include possible data collection
25 options, potential costs, sources of funding, and implementation
26 timeline.

27 (15) The advisory committee on hospital staffing must advise the
28 department of labor and industries on the department's development by
29 March 1, 2024, of a uniform form for reporting under RCW
30 49.12.480(2).

31 (16) This section expires July 1, 2030.

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

34 The definitions in this section apply throughout this section
35 (~~and~~), RCW 70.41.420, and 70.41.425 unless the context clearly
36 requires otherwise.

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

1 (2) "Hospital staffing committee" means the committee established
2 by a hospital under RCW 70.41.420.

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

5 ~~((3))~~ (4) "Nursing assistant-certified" means an individual
6 certified under chapter 18.88A RCW who provides direct care to
7 patients.

8 (5) "Nursing ~~(personnel)~~ staff" means registered nurses,
9 licensed practical nurses, nursing assistants-certified, and
10 unlicensed assistive nursing personnel providing direct patient care.

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

13 ~~(5))~~ (6) "Patient care staff" means a person who is providing
14 direct care or supportive services to patients but who is not:

15 (a) Nursing staff as defined in this section;

16 (b) A physician licensed under chapter 18.71 or 18.57 RCW;

17 (c) A physician's assistant licensed under chapter 18.71A RCW; or

18 (d) An advanced registered nurse practitioner licensed under RCW
19 18.79.250, unless working as a direct care registered nurse.

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

22 ~~((6))~~ (8) "Reasonable efforts" means that the employer exhausts
23 and documents all of the following but is unable to obtain staffing
24 coverage:

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

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

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

30 (d) When practical, seeks personnel from a contracted temporary
31 agency when such staffing is permitted by law or an applicable
32 collective bargaining agreement, and when the employer regularly uses
33 a contracted temporary agency.

34 (9) "Registered nurse" means an individual licensed as a nurse
35 under chapter 18.79 RCW who provides direct care to patients.

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

40 (11) "Unforeseeable emergent circumstance" means:

1 (a) Any unforeseen declared national, state, or municipal
2 emergency;

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

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

7 (d) When a hospital is diverting patients to another hospital or
8 hospitals for treatment.

9 **Sec. 3.** RCW 70.41.420 and 2017 c 249 s 2 are each amended to
10 read as follows:

11 (1) By ~~((September))~~ January 1, ((2008)) 2024, each hospital
12 shall establish a ~~((nurse))~~ hospital staffing committee, either by
13 creating a new committee or assigning the functions of ~~((a))~~ the
14 hospital staffing committee to an existing nurse staffing committee
15 ~~((to an existing committee)).~~

16 (2) Hospital staffing committees must be comprised of:

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

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

34 (3) Participation in the ~~((nurse))~~ hospital staffing committee by
35 a hospital employee shall be on scheduled work time and compensated
36 at the appropriate rate of pay. ~~((Nurse))~~ Hospital staffing committee
37 members shall be relieved of all other work duties during meetings of
38 the committee. Additional staffing relief must be provided if

1 necessary to ensure committee members are able to attend hospital
2 staffing committee meetings.

3 ~~((3))~~ (4) Primary responsibilities of the ~~((nurse))~~ hospital
4 staffing committee shall include:

5 (a) Development and oversight of an annual patient care unit and
6 shift-based ~~((nurse))~~ hospital staffing plan, based on the needs of
7 patients, to be used as the primary component of the staffing budget.
8 The hospital staffing committee shall use a uniform format or form,
9 created by the department in consultation with the advisory committee
10 established in section 1 of this act and the department of labor and
11 industries, for complying with the requirement to submit the annual
12 staffing plan. The uniform format or form must allow for variations
13 in service offerings, facility design, and other differences between
14 hospitals, but must allow patients and the public to clearly
15 understand and compare staffing plans. Hospitals may include a
16 description of additional resources available to support unit-level
17 patient care and a description of the hospital, including the size
18 and type of facility. Factors to be considered in the development of
19 the plan should include, but are not limited to:

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

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

26 (iii) Skill mix;

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

29 (v) The need for specialized or intensive equipment;

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

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

36 (viii) Availability of other personnel and patient care staff
37 supporting nursing services on the unit; and

38 ~~((Strategies to enable registered nurses to take meal and~~
39 ~~rest breaks as required by law or))~~ Compliance with the terms of an
40 applicable collective bargaining agreement, if any, ~~((between the~~

1 ~~hospital and a representative of the nursing staff)) and relevant~~
2 state and federal laws and rules, including those regarding meal and
3 rest breaks and use of overtime and on-call shifts;

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

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

9 ~~((4))~~ (5) In addition to the factors listed in subsection
10 ~~((3))~~ (4)(a) of this section, hospital finances and resources must
11 be taken into account in the development of the ~~((nurse))~~ hospital
12 staffing plan.

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

17 (6) (a) The committee ~~((will))~~ shall produce the hospital's annual
18 ~~((nurse))~~ hospital staffing plan.

19 ~~((If this staffing plan is not adopted by the hospital, the chief~~
20 ~~executive officer shall provide a written explanation of the reasons~~
21 ~~why the plan was not adopted to the committee. The chief executive~~
22 ~~officer must then either: (a) Identify those elements of the proposed~~
23 ~~plan being changed prior to adoption of the plan by the hospital or~~
24 ~~(b) prepare an alternate annual staffing plan that must be adopted by~~
25 ~~the hospital.))~~

26 (b) The committee shall propose by a 50 percent plus one vote a
27 draft of the hospital's annual staffing plan which must be delivered
28 to the hospital's chief executive officer or their designee by July
29 1, 2024, and annually thereafter.

30 (c) The chief executive officer or their designee must provide
31 written feedback to the hospital staffing committee on the proposed
32 annual staffing plan. The feedback must:

33 (i) Identify those elements of the proposed staffing plan the
34 chief executive officer requests to be changed to address elements
35 identified by the chief executive officer, including subsection
36 (4)(a) of this section, that could cause the chief executive officer
37 concern regarding financial feasibility, concern regarding temporary
38 or permanent closure of units, or patient care risk; and

39 (ii) Provide a status report on implementation of the staffing
40 plan including nursing sensitive quality indicators collected by the

1 hospital, patient surveys, and recruitment and retention efforts,
2 including the hospital's success over the previous six months in
3 filling approved open positions for employees covered by the staffing
4 plan.

5 (d) The committee must review and consider any feedback required
6 under (c)(i) of this subsection prior to approving by a 50 percent
7 plus one vote a revised hospital staffing plan to provide to the
8 chief executive officer.

9 (e) If this revised proposed staffing plan is not adopted by the
10 hospital, the most recent of the following remains in effect:

11 (i) The staffing plan that was in effect January 1, 2023; or
12 (ii) The staffing plan last approved by a 50 percent plus one
13 vote of a duly constituted hospital staffing committee and adopted by
14 the hospital, in accordance with all standards under this section.

15 (f) Beginning ((January 1, 2019)) January 1, 2025, each hospital
16 shall submit its final staffing plan to the department and thereafter
17 on an annual basis and at any time in between that the plan is
18 updated.

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

23 ((~~a~~)) (b) Each hospital shall document when a patient care unit
24 nursing staff assignment is out of compliance with the adopted
25 hospital staffing plan. For purposes of this subsection, out of
26 compliance means the number of patients assigned to the nursing staff
27 exceeds the patient care unit assignment as directed by the nurse
28 staffing plan. The hospital must adopt written policies and
29 procedures under this subsection no later than October 1, 2024.

30 (i) Each hospital must report to the department on a semiannual
31 basis the accurate percentage of nurse staffing assignments where the
32 assignment in a patient care unit is out of compliance with the
33 adopted nurse staffing plan. Beginning in 2026, semiannual reports
34 are due on July 31st and January 31st each year. The first report is
35 due January 31, 2026, and must cover the last six months of 2025.

36 (ii) Beginning July 1, 2025, if a hospital is in compliance for
37 less than 80 percent of the nurse staffing assignment in a month, the
38 hospital must, within seven calendar days following the end of the
39 month in which the hospital was out of compliance, report to the

1 department regarding lack of compliance with the nurse staffing
2 patient care unit assignments in the hospital staffing plan.

3 (iii) The department must develop a form or forms for the report
4 to be made under this subsection by October 1, 2024. The form must
5 include a checkbox for either cochair of the hospital staffing
6 committee to indicate their belief that the validity of the report
7 should be investigated by the department. If the checkbox on the form
8 has been checked, the department may initiate an investigation as to
9 the validity of the semiannual report under (b)(i) of this
10 subsection.

11 (iv) This subsection (7)(b) does not apply to:

12 (A) Hospitals certified as critical access hospitals;

13 (B) Hospitals with fewer than 25 acute care licensed beds;

14 (C) Hospitals certified by the centers for medicare and medicaid
15 services as sole community hospitals that are not owned or operated
16 by a health system that owns or operates more than one acute hospital
17 licensed under chapter 70.41 RCW; and

18 (D) Hospitals located on an island operating within a public
19 hospital district in Skagit county.

20 (c) A (~~registered nurse~~) nursing staff may report to the
21 hospital staffing committee any variations where the (~~nurse~~
22 personnel) nursing staff assignment in a patient care unit is not in
23 accordance with the adopted staffing plan and may make a complaint to
24 the committee based on the variations.

25 (~~(b)~~) (d) Shift-to-shift adjustments in staffing levels
26 required by the plan may be made by the appropriate hospital
27 personnel overseeing patient care operations. If (~~a registered~~
28 nurse) nursing staff on a patient care unit objects to a shift-to-
29 shift adjustment, (~~the registered nurse~~) the nursing staff may
30 submit the complaint to the hospital staffing committee.

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

39 (f) In the event of an unforeseeable emergent circumstance
40 lasting for 15 days or more, the hospital incident command shall

1 report within 30 days to the cochairs of the hospital staffing
2 committee an assessment of the staffing needs arising from the
3 unforeseeable emergent circumstance and the hospital's plan to
4 address those identified staffing needs. Upon receipt of the report,
5 the hospital staffing committee shall convene to develop a
6 contingency staffing plan to address the needs arising from the
7 unforeseeable emergent circumstance. The hospital's deviation from
8 its staffing plan may not be in effect for more than 90 days without
9 the review of the hospital staffing committee. Within 90 days of an
10 initial deviation under this section the hospital must report to the
11 department the basis for the deviation and must report to the
12 department again once the deviation under this section is no longer
13 in effect.

14 (g) A direct care registered nurse or direct care nursing
15 assistant-certified may not be assigned by hospitals to a nursing
16 unit or clinical area unless that nurse has first received
17 orientation in that clinical area sufficient to provide competent
18 care to patients in that area and has demonstrated current competence
19 in providing care in that area. The hospital must adopt written
20 policies and procedures under this subsection no later than July 1,
21 2025.

22 (8) Each hospital shall post, in a public area on each patient
23 care unit, the ((nurse)) staffing plan and the ((nurse)) staffing
24 schedule for that shift on that unit, as well as the relevant
25 clinical staffing for that shift. The staffing plan and current
26 staffing levels must also be made available to patients and visitors
27 upon request. The hospital must also post in a public area on each
28 patient care unit any corrective action plan relevant to that patient
29 care unit as required under RCW 70.41.425(4).

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

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

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

37 (10) This section is not intended to create unreasonable burdens
38 on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical
39 access hospitals may develop flexible approaches to accomplish the
40 requirements of this section that may include but are not limited to

1 having (~~nurse~~) hospital staffing committees work by video
2 conference, telephone, or email.

3 (11) By July 1, 2024, the hospital staffing committee shall file
4 with the department a charter that must include, but is not limited
5 to:

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

7 (b) Roles, responsibilities, and processes by which the hospital
8 staffing committee functions, including which patient care staff job
9 classes will be represented on the committee as nonvoting members,
10 how many members will serve on the committee, processes to ensure
11 adequate quorum and ability of committee members to attend, and
12 processes for replacing members who do not regularly attend;

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

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

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

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

27 (g) Processes for the hospital staffing committee to conduct
28 quarterly reviews of: Staff turnover rates including new hire
29 turnover rates during first year of employment; anonymized aggregate
30 exit interview data on an annual basis; and hospital plans regarding
31 workforce development;

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

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

38 (j) Processes for the hospital to provide the hospital staffing
39 committee with information regarding patient complaints involving

1 staffing made to the hospital through the patient grievance process
2 required under 42 C.F.R. 482.13(a)(2); and

3 (k) Processes for how the information from the reports required
4 under subsection (7) of this section will be used to inform the
5 development and semiannual review of the staffing plan.

6 (12) The department and the department of labor and industries
7 must provide technical assistance to hospital staffing committees to
8 assist with compliance with this section. Technical assistance may
9 not be provided during an inspection, or during the time between when
10 an investigation of a hospital has been initiated and when such
11 investigation is resolved.

12 **Sec. 4.** RCW 70.41.425 and 2017 c 249 s 3 are each amended to
13 read as follows:

14 (1)(a) The department shall investigate a complaint submitted
15 under this section for violation of RCW 70.41.420 following receipt
16 of a complaint with documented evidence of failure to:

17 (i) Form or establish a hospital staffing committee;

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

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

21 (iv)(A) Follow the nursing ~~((personnel))~~ staff assignments in a
22 patient care unit in violation of RCW 70.41.420(7) ~~((a) or shift to-~~
23 ~~shift adjustments in staffing levels in violation of RCW~~
24 ~~70.41.420(7)(b))~~ (c) or (d).

25 (B) Based on their formal agreement required under sections 5 and
26 6 of this act, the department and the department of labor and
27 industries shall investigate complaints under this subsection
28 (1)(a)(iv). The departments may only investigate a complaint under
29 this subsection (1)(a)(iv) ~~((after making an assessment that the~~
30 ~~submitted evidence indicates a continuing pattern of unresolved))~~ for
31 violations of RCW 70.41.420(7) ~~((a) or (b))~~ (c) or (d), that were
32 submitted to the ~~((nurse))~~ hospital staffing committee and remain
33 unresolved for 60 days after receipt by the hospital staffing
34 committee, excluding complaints determined by the ~~((nurse))~~ hospital
35 staffing committee to be resolved or dismissed. ~~((The submitted~~
36 ~~evidence must include the aggregate data contained in the complaints~~
37 ~~submitted to the hospital's nurse staffing committee that indicate a~~
38 ~~continuing pattern of unresolved violations for a minimum sixty-day~~

1 continuous period leading up to receipt of the complaint by the
2 department.

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

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

14 (b) The department and the department of labor and industries may
15 investigate and take appropriate enforcement action without any
16 complaint if either department discovers data in the course of an
17 investigation or inspection suggesting any violation of RCW
18 70.41.420.

19 (c) After an investigation conducted under (a) of this
20 subsection, if the department and the department of labor and
21 industries, pursuant to their formal agreement under sections 5 and 6
22 of this act, determine that there has been multiple unresolved
23 violations of RCW 70.41.420(7) (c) and (d) of a similar nature within
24 30 days prior to the receipt of the complaint by the department, the
25 department shall require the hospital to submit for their approval a
26 corrective plan of action within 45 days of the presentation of
27 findings from the department to the hospital.

28 (d) Hospitals will not be found in violation of RCW 70.41.420 if
29 it has been determined, following an investigation, that:

30 (i) There were unforeseeable emergent circumstances and the
31 process under RCW 70.41.420(7)(f) has been followed, if applicable;

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

36 (iii) Per documentation provided by the hospital, an individual
37 admission of a patient in need of critical care to sustain their life
38 or prevent disability received from another hospital caused the
39 staffing plan violation alleged in the complaint.

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

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

9 (3) Beginning January 1, 2027, the department shall review all
10 reports submitted under RCW 70.41.420(7)(b)(i) to ensure:

11 (a) The forms are received by the appropriate deadline;

12 (b) The forms are completed on the department-issued form; and

13 (c) The checkbox under RCW 70.41.420(7)(b)(iii) has not been
14 checked.

15 (4) Beginning January 1, 2027, the department, in consultation
16 with the department of labor and industries, must require a hospital
17 to submit for their approval a corrective plan of action within 45
18 calendar days of a report to the department under RCW
19 70.41.420(7)(b)(ii) of this section or after an investigation under
20 RCW 70.41.420(7)(b)(iii) of this section finds that the hospital is
21 not in compliance.

22 (5) (a) Pursuant to their formal agreement under sections 5 and 6
23 of this act the department and the department of labor and industries
24 must review and approve a hospital's proposed corrective plan of
25 action under subsection (1)(c) or (4) of this section. As necessary,
26 the department will require the hospital to revise the plan for it to
27 adequately address issues identified by the department and the
28 department of labor and industries prior to approving the plan.

29 (b) The department may review any corrective plan of action under
30 subsection (1)(c) or (4) of this section that adversely impact
31 provision of health care services or patient safety, and may require
32 revisions to the corrective plan of action to ensure patient safety
33 is maintained.

34 (c) A corrective plan of action may include, but is not limited
35 to, the following elements:

36 (i) Exercising efforts to obtain additional staff;

37 (ii) Implementing actions to improve staffing plan variation or
38 shift-to-shift adjustment planning;

39 (iii) Delaying the addition of new services or procedure areas;

40 (iv) Requiring minimum staffing standards;

1 (v) Reducing hospital beds or services; or

2 (vi) Closing the hospital emergency department to ambulance
3 transport, except for patients in need of critical care to sustain
4 their life or prevent disability.

5 (d) A corrective plan of action must be of a duration long enough
6 to demonstrate the hospital's ability to sustain compliance with the
7 requirements of this section.

8 (e) In the event that the hospital follows a corrective plan of
9 action under this subsection but remains in compliance for less than
10 80 percent of the nurse staffing assignments in the month following
11 completion of the corrective plan of action, the hospital is required
12 to submit a revised corrective plan of action with new elements that
13 are likely to produce a minimum of 80 percent compliance with the
14 nurse staffing assignments in a month.

15 (6) (a) In the event that a hospital fails to submit a staffing
16 plan, staffing committee charter, or a corrective plan of action by
17 the relevant deadline, the department may take administrative action
18 with penalties up to \$10,000 per 30 days of failure to comply.

19 (b) (i) In the event that a hospital (~~(fails to submit or)~~)
20 submits but fails to follow (~~(such)~~) a corrective plan of action (~~(in~~
21 response to a violation or violations found by the department based
22 on a complaint filed pursuant to subsection (1) of this section))
23 required under subsection (1) (c) or (4) of this section, the
24 department of labor and industries may impose (~~(, for all violations~~
25 asserted against a hospital at any time,)) a civil penalty of (~~(one~~
26 hundred dollars)) \$50,000 per (~~(day)~~) 30 days. Civil penalties apply
27 until the hospital (~~(submits or begins to follow)~~) begins to follow a
28 corrective plan of action (~~(or takes other action agreed to)~~) that
29 has been approved by the department. Revenue from these fines must be
30 deposited into the supplemental pension fund established under RCW
31 51.44.033.

32 (~~(3) The~~) (ii) If the department of labor and industries finds
33 a violation after an investigation pursuant to subsection
34 (1) (a) (iv) (B) of this section or assesses or imposes any penalty
35 pursuant to this section, the employer may appeal the department's
36 finding or assessment of penalties according to the procedures under
37 sections 12 through 14 of this act.

38 (7) (a) As resources allow, the department (~~(shall maintain for~~
39 public inspection)) must make records of any civil penalties (~~(,)~~) and
40 administrative actions (~~(,)~~) or license suspensions or revocations

1 imposed on hospitals, or any notices of resolution under this section
2 available to the public.

3 (b) The department must post hospital staffing plans, hospital
4 staffing committee charters, and the semi-annual compliance reports
5 required under RCW 70.41.420 on its website.

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

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

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

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

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

16 ~~(5))~~ (8) Nothing in this section shall be construed to preclude
17 the ability to otherwise submit a complaint to the department for
18 failure to follow RCW 70.41.420.

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

34 ~~(7) No fees shall be increased to implement chapter 249, Laws of~~
35 ~~2017 prior to July 1, 2021.))~~

36 NEW SECTION. Sec. 5. A new section is added to chapter 70.41
37 RCW to read as follows:

38 By July 1, 2024, the department and the department of labor and
39 industries must jointly establish a formal agreement that identifies

1 the roles of each of the two agencies with respect to the oversight
2 and enforcement of RCW 70.41.420 (4)(a) and (12) and 70.41.425 (1),
3 (4), (5), (6)(b), and (7), as follows:

4 (1) To the extent feasible, provide for oversight and enforcement
5 actions by a single agency, and must include measures to avoid
6 multiple citations for the same violation; and

7 (2) Include provisions that allow for data sharing, including
8 hospital staffing plans, reports submitted under RCW 70.41.420(7),
9 and hospital staffing committee complaints submitted to the
10 department.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.12
12 RCW to read as follows:

13 By July 1, 2024, the department and the department of health must
14 jointly establish a formal agreement that identifies the roles of
15 each of the two agencies with respect to the oversight and
16 enforcement of RCW 70.41.420(7) and 70.41.425 (1) and (5)(b), as
17 follows:

18 (1) To the extent feasible, provide for oversight and enforcement
19 actions by a single agency, and must include measures to avoid
20 multiple citations for the same violation; and

21 (2) Include provisions that allow for data sharing, including
22 hospital staffing plans, reports submitted under RCW 70.41.420(7),
23 and hospital staffing committee complaints submitted to the
24 department of health.

25 **Sec. 7.** RCW 70.41.130 and 2021 c 61 s 2 are each amended to read
26 as follows:

27 (1) The department is authorized to take any of the actions
28 identified in this section against a hospital's license or
29 provisional license in any case in which it finds that there has been
30 a failure or refusal to comply with the requirements of this chapter
31 or the standards or rules adopted under this chapter or the
32 requirements of RCW 71.34.375 on the basis of findings by the
33 department of labor and industries under RCW 70.41.425(6)(b).

34 (a) When the department determines the hospital has previously
35 been subject to an enforcement action for the same or similar type of
36 violation of the same statute or rule, or has been given any previous
37 statement of deficiency that included the same or similar type of
38 violation of the same or similar statute or rule, or when the

1 hospital failed to correct noncompliance with a statute or rule by a
2 date established or agreed to by the department, the department may
3 impose reasonable conditions on a license. Conditions may include
4 correction within a specified amount of time, training, or hiring a
5 department-approved consultant if the hospital cannot demonstrate to
6 the department that it has access to sufficient internal expertise.
7 If the department determines that the violations constitute immediate
8 jeopardy, the conditions may be imposed immediately in accordance
9 with subsection (3) of this section.

10 (b) (i) In accordance with the authority the department has under
11 RCW 43.70.095, the department may assess a civil fine of up to
12 \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a
13 hospital licensed under this chapter when the department determines
14 the hospital has previously been subject to an enforcement action for
15 the same or similar type of violation of the same statute or rule, or
16 has been given any previous statement of deficiency that included the
17 same or similar type of violation of the same or similar statute or
18 rule, or when the hospital failed to correct noncompliance with a
19 statute or rule by a date established or agreed to by the department.

20 (ii) Proceeds from these fines may only be used by the department
21 to offset costs associated with licensing hospitals.

22 (iii) The department shall adopt in rules under this chapter
23 specific fine amounts in relation to:

24 (A) The severity of the noncompliance and at an adequate level to
25 be a deterrent to future noncompliance; and

26 (B) The number of licensed beds and the operation size of the
27 hospital. The licensed hospital beds will be categorized as:

28 (I) Up to 25 beds;

29 (II) 26 to 99 beds;

30 (III) 100 to 299 beds; and

31 (IV) 300 beds or greater.

32 (iv) If a licensee is aggrieved by the department's action of
33 assessing civil fines, the licensee has the right to appeal under RCW
34 43.70.095.

35 (c) The department may suspend a specific category or categories
36 of services or care or recovery units within the hospital as related
37 to the violation by imposing a limited stop service. This may only be
38 done if the department finds that noncompliance results in immediate
39 jeopardy.

1 (i) Prior to imposing a limited stop service, the department
2 shall provide a hospital written notification upon identifying
3 deficient practices or conditions that constitute an immediate
4 jeopardy, and upon the review and approval of the notification by the
5 secretary or the secretary's designee. The hospital shall have 24
6 hours from notification to develop and implement a department-
7 approved plan to correct the deficient practices or conditions that
8 constitute an immediate jeopardy. If the deficient practice or
9 conditions that constitute immediate jeopardy are not verified by the
10 department as having been corrected within the same 24 hour period,
11 the department may issue the limited stop service.

12 (ii) When the department imposes a limited stop service, the
13 hospital may not admit any new patients to the units in the category
14 or categories subject to the limited stop service until the limited
15 stop service order is terminated.

16 (iii) The department shall conduct a follow-up inspection within
17 five business days or within the time period requested by the
18 hospital if more than five business days is needed to verify the
19 violation necessitating the limited stop service has been corrected.

20 (iv) The limited stop service shall be terminated when:

21 (A) The department verifies the violation necessitating the
22 limited stop service has been corrected or the department determines
23 that the hospital has taken intermediate action to address the
24 immediate jeopardy; and

25 (B) The hospital establishes the ability to maintain correction
26 of the violation previously found deficient.

27 (d) The department may suspend new admissions to the hospital by
28 imposing a stop placement. This may only be done if the department
29 finds that noncompliance results in immediate jeopardy and is not
30 confined to a specific category or categories of patients or a
31 specific area of the hospital.

32 (i) Prior to imposing a stop placement, the department shall
33 provide a hospital written notification upon identifying deficient
34 practices or conditions that constitute an immediate jeopardy, and
35 upon the review and approval of the notification by the secretary or
36 the secretary's designee. The hospital shall have 24 hours from
37 notification to develop and implement a department-approved plan to
38 correct the deficient practices or conditions that constitute an
39 immediate jeopardy. If the deficient practice or conditions that
40 constitute immediate jeopardy are not verified by the department as

1 having been corrected within the same 24 hour period, the department
2 may issue the stop placement.

3 (ii) When the department imposes a stop placement, the hospital
4 may not admit any new patients until the stop placement order is
5 terminated.

6 (iii) The department shall conduct a follow-up inspection within
7 five business days or within the time period requested by the
8 hospital if more than five business days is needed to verify the
9 violation necessitating the stop placement has been corrected.

10 (iv) The stop placement order shall be terminated when:

11 (A) The department verifies the violation necessitating the stop
12 placement has been corrected or the department determines that the
13 hospital has taken intermediate action to address the immediate
14 jeopardy; and

15 (B) The hospital establishes the ability to maintain correction
16 of the violation previously found deficient.

17 (e) The department may deny an application for a license or
18 suspend, revoke, or refuse to renew a license.

19 (2) The department shall adopt in rules under this chapter a fee
20 methodology that includes funding expenditures to implement
21 subsection (1) of this section. The fee methodology must consider:

22 (a) The operational size of the hospital; and

23 (b) The number of licensed beds of the hospital.

24 (3) (a) Except as otherwise provided, RCW 43.70.115 governs notice
25 of actions taken by the department under subsection (1) of this
26 section and provides the right to an adjudicative proceeding.
27 Adjudicative proceedings and hearings under this section are governed
28 by the administrative procedure act, chapter 34.05 RCW. The
29 application for an adjudicative proceeding must be in writing, state
30 the basis for contesting the adverse action, including a copy of the
31 department's notice, be served on and received by the department
32 within 28 days of the licensee's receipt of the adverse notice, and
33 be served in a manner that shows proof of receipt.

34 (b) When the department determines a licensee's noncompliance
35 results in immediate jeopardy, the department may make the imposition
36 of conditions on a licensee, a limited stop placement, stop
37 placement, or the suspension of a license effective immediately upon
38 receipt of the notice by the licensee, pending any adjudicative
39 proceeding.

1 (i) When the department makes the suspension of a license or
2 imposition of conditions on a license effective immediately, a
3 licensee is entitled to a show cause hearing before a presiding
4 officer within 14 days of making the request. The licensee must
5 request the show cause hearing within 28 days of receipt of the
6 notice of immediate suspension or immediate imposition of conditions.
7 At the show cause hearing the department has the burden of
8 demonstrating that more probably than not there is an immediate
9 jeopardy.

10 (ii) At the show cause hearing, the presiding officer may
11 consider the notice and documents supporting the immediate suspension
12 or immediate imposition of conditions and the licensee's response and
13 must provide the parties with an opportunity to provide documentary
14 evidence and written testimony, and to be represented by counsel.
15 Prior to the show cause hearing, the department must provide the
16 licensee with all documentation that supports the department's
17 immediate suspension or imposition of conditions.

18 (iii) If the presiding officer determines there is no immediate
19 jeopardy, the presiding officer may overturn the immediate suspension
20 or immediate imposition of conditions.

21 (iv) If the presiding officer determines there is immediate
22 jeopardy, the immediate suspension or immediate imposition of
23 conditions shall remain in effect pending a full hearing.

24 (v) If the presiding officer sustains the immediate suspension or
25 immediate imposition of conditions, the licensee may request an
26 expedited full hearing on the merits of the department's action. A
27 full hearing must be provided within 90 days of the licensee's
28 request.

29 **Sec. 8.** RCW 49.12.480 and 2019 c 296 s 1 are each amended to
30 read as follows:

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

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

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

38 (i) An unforeseeable emergent circumstance, as defined in RCW
39 49.28.130; or

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

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

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

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

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

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

32 (b) The employer must provide a quarterly report to the
33 department of the total meals and rest periods missed in violation of
34 this section during the quarter covered by the report, and the total
35 number of meals and rest periods required during the quarter. The
36 reports are due to the department 30 calendar days after the
37 conclusion of the calendar quarter.

38 (c) The provisions of (b) in this subsection (2) do not apply to
39 hospitals defined in RCW 70.41.420(7)(b)(iv) until July 1, 2026.

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

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

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

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

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

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

15 (b) "Employer" means hospitals licensed under chapter 70.41
16 RCW (~~, except that the following hospitals are excluded until July 1,
17 2021:~~

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

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

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

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.12
29 RCW to read as follows:

30 (1) The department must enforce the provisions of RCW 49.12.480,
31 including reviewing reports submitted under RCW 49.12.480(2) to
32 ensure they are timely, complete, and on the department-issued form.

33 (2) (a) Upon the department's review of the employer's report due
34 under RCW 49.12.480(2), if the department determines that an employer
35 is not 80 percent compliant with the meal and rest break requirements
36 under RCW 49.12.480, and more than 20 percent of the required meals
37 and rest periods were missed, or if an employer fails to properly
38 submit a report, the department may offer to provide technical

1 assistance to the employer, although until June 30, 2026, the
2 department must offer technical assistance to the employer.

3 (b) Beginning July 1, 2026, if the department finds that an
4 employer has exceeded the quarterly threshold in (a) of this
5 subsection for missed meals and rest periods, the department must
6 impose a penalty. The provisions of this subsection do not apply to
7 employers who are hospitals defined in RCW 70.41.420(7)(b)(iv) until
8 July 1, 2028.

9 (c)(i) The penalties assessed by the department each time the
10 department imposes a penalty under (b) of this subsection are as
11 follows:

12 (A) For hospitals certified as critical access hospitals under 42
13 U.S.C. Sec. 1395i-4, or with up to 25 licensed beds: \$5,000;

14 (B) For hospitals with 26 to 99 licensed beds: \$10,000;

15 (C) For hospitals with 100 to 299 beds: \$15,000; and

16 (D) For hospitals with 300 or more beds: \$20,000.

17 (ii) If the department imposes a penalty in a third consecutive
18 quarter, the department must double the penalty amounts in (c)(i) of
19 this subsection for subsequent consecutive quarters. An employer in
20 compliance for a single quarter is no longer subject to the penalties
21 for subsequent violations under this subsection (c)(ii).

22 (3)(a) An employer may not take any adverse action against
23 employees for exercising any right under RCW 49.12.480. An adverse
24 action means any action taken or threatened by an employer against an
25 employee for exercising the employee's rights under RCW 49.12.480 or
26 this section, but does not include noncoercive counseling, coaching,
27 training, or other resources offered to an employee.

28 (b) The department must investigate complaints related to
29 compliance with (a) of this subsection. The director may require the
30 testimony of witnesses and the production of documents as part of the
31 director's investigation.

32 (c) If the director determines that an employer has violated (a)
33 of this subsection, the director may:

34 (i) Order payment to the department of a civil penalty of not
35 more than \$1,000 for an employer's first violation and not more than
36 \$5,000 for any subsequent related violation;

37 (ii) Order appropriate relief under this subsection (3) that
38 includes any earnings the employee did not receive due to the
39 employer's adverse action, including interest of one percent per

1 month on all earnings owed. The earnings and interest owed will be
2 calculated from the first date earnings were owed to the employee; or

3 (iii) Order the employer to restore the employee to the position
4 of employment held by the employee when the retaliation occurred, or
5 restore the employee to an equivalent position with equivalent
6 employment hours, work schedule, benefits, pay, and other terms and
7 conditions of employment.

8 (4) (a) (i) An employer must provide valid data in reports required
9 under RCW 49.12.480(2). Valid data means that the data included in
10 the reports is attested to by an employer's designee and has not been
11 inappropriately manipulated or modified; and

12 (ii) Employees must be free from coercion into inaccurate
13 recording of their meal and rest periods under RCW 49.12.480.

14 (b) The department must investigate complaints related to
15 compliance with (a) of this subsection that are facially based on the
16 actual knowledge of the complaining party. The director may require
17 the testimony of witnesses and the production of documents as part of
18 the director's investigation.

19 (c) If the director determines that an employer has violated (a)
20 of this subsection, the director may:

21 (i) Order the employer to pay the department a civil penalty of
22 not more than \$1,000 for an employer's first violation and not more
23 than \$5,000 for any subsequent related violation; and

24 (ii) Order appropriate relief that includes any earnings the
25 employee did not receive due to the employer's adverse action,
26 including interest of one percent per month on all earnings owed. The
27 earnings and interest owed will be calculated from the first date
28 earnings were owed to the employee.

29 (5) The department may investigate and take appropriate
30 enforcement action under this section without any complaint if the
31 department discovers data in the course of an investigation or
32 inspection.

33 (6) Any appeals of the department's decisions, including assessed
34 penalties, and collection or deposit of civil penalties under this
35 section must be pursuant to sections 12 through 14 of this act.

36 (7) For the purposes of this section, "coercion" means compelling
37 or inducing an employee to engage in conduct which the employee has a
38 legal right to abstain from or to abstain from the conduct which the
39 employee has a legal right to engage in.

1 **Sec. 10.** RCW 49.28.140 and 2019 c 296 s 3 are each amended to
2 read as follows:

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

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

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

13 (a) Because of any unforeseeable emergent circumstance;

14 (b) Because of prescheduled on-call time, subject to the
15 following:

16 (i) Mandatory prescheduled on-call time may not be used in lieu
17 of scheduling employees to work regularly scheduled shifts when a
18 staffing plan indicates the need for a scheduled shift; ~~((and))~~

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

23 (iii) Mandatory, prescheduled on-call time may not be used to
24 begin at a time when the duration of the procedure is expected to
25 exceed the employee's regular scheduled hours of work, except for the
26 case of a nonemergent patient procedure for which, in the judgment of
27 the provider responsible for the procedure, a delay would cause a
28 worse clinical outcome;

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

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

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

1 **Sec. 11.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to
2 read as follows:

3 The department of labor and industries shall investigate
4 complaints of violations of RCW 49.28.140 as provided under sections
5 12 through 14 of this act. (~~(A violation of RCW 49.28.140 is a class~~
6 ~~1 civil infraction in accordance with chapter 7.80 RCW, except that~~
7 ~~the maximum penalty is one thousand dollars for each infraction up to~~
8 ~~three infractions. If there are four or more violations of RCW~~
9 ~~49.28.140 for a health care facility, the employer is subject to a~~
10 ~~fine of two thousand five hundred dollars for the fourth violation,~~
11 ~~and five thousand dollars for each subsequent violation. The~~
12 ~~department of labor and industries is authorized to issue and enforce~~
13 ~~civil infractions according to chapter 7.80 RCW.))~~

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.12
15 RCW to read as follows:

16 (1) (a) If a complainant files a complaint with the department of
17 labor and industries alleging a violation of RCW 49.28.140, the
18 department shall investigate the complaint.

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

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

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

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

1 (3) (a) If the department of labor and industries finds a
2 violation of RCW 49.28.140, the department shall order the employer
3 to pay the department a civil penalty.

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

9 (c) The department may not assess a civil penalty if the employer
10 reasonably relied on: (i) A rule related to any of the requirements
11 of RCW 49.28.140; (ii) a written order, ruling, approval, opinion,
12 advice, determination, or interpretation of the director; or (iii) an
13 interpretive or administrative policy issued by the department and
14 filed with the office of the code reviser. In accordance with the
15 department's retention schedule obligations under chapter 40.14 RCW,
16 the department shall maintain a complete and accurate record of all
17 written orders, rulings, approvals, opinions, advice, determinations,
18 and interpretations for purposes of determining whether an employer
19 is immune from civil penalties under (b) of this subsection.

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

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

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.12
28 RCW to read as follows:

29 (1) A person, firm, or corporation aggrieved by a citation and
30 notice of assessment or a determination of compliance by the
31 department of labor and industries under section 12 of this act may
32 appeal the citation and notice of assessment to the director of the
33 department by filing a notice of appeal with the director within 30
34 days of the department's issuance of the citation and notice of
35 assessment. A citation and notice of assessment or a determination of
36 compliance not appealed within 30 days is final and binding, and not
37 subject to further appeal.

38 (2) A notice of appeal filed with the director of the department
39 of labor and industries under this section shall stay the

1 effectiveness of the citation and notice of assessment or the
2 determination of compliance pending final review of the appeal by the
3 director as provided for in chapter 34.05 RCW.

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

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

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

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

28 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.12
29 RCW to read as follows:

30 Collections of unpaid citations assessing civil penalties under
31 sections 11 through 13 of this act will be pursuant to RCW 49.48.086.

32 NEW SECTION. **Sec. 15.** The Washington state institute for public
33 policy shall conduct a study on hospital staffing standards for
34 direct care registered nurses and direct care nursing assistants.

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

38 (a) Timeliness and completeness of filed forms;

- 1 (b) Format of filed forms;
- 2 (c) Patient care unit nursing staff assignments related to the
3 maximum number of patients to which a direct care nursing or nursing
4 assistant may be assigned;
- 5 (d) Descriptive statistics on submissions by hospital unit type;
- 6 (e) Trends over time, if any;
- 7 (f) Legal minimum staffing standards for registered nurses and
8 nursing assistants in other jurisdictions; and
- 9 (g) Relevant professional association guidance, recommendations,
10 or best practices.
- 11 (2) The department of health shall cooperate with the institute
12 to facilitate access to data or other resources necessary to complete
13 the analysis required under this section.
- 14 (3) The institute must provide a report on its findings to the
15 department and relevant committees of the legislature by June 30,
16 2024.

17 NEW SECTION. **Sec. 16.** 2017 c 249 s 4 (uncodified) is repealed.

18 NEW SECTION. **Sec. 17.** Except for sections 1, 3, 15, and 16 of
19 this act, this act takes effect July 1, 2024.

20 NEW SECTION. **Sec. 18.** Section 16 of this act is necessary for
21 the immediate preservation of the public peace, health, or safety, or
22 support of the state government and its existing public institutions,
23 and takes effect June 1, 2023.

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