
SENATE BILL 5236

State of Washington

68th Legislature

2023 Regular Session

By Senators Robinson, Keiser, Conway, Frame, Hunt, Kauffman, Lovelett, Nguyen, Nobles, Pedersen, Shewmake, Stanford, Trudeau, Valdez, and C. Wilson

Read first time 01/10/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to improving nurse and health care worker safety
2 and patient care by establishing minimum staffing standards in
3 hospitals, requiring hospital staffing committees to develop staffing
4 plans, addressing mandatory overtime and meal and rest breaks, and
5 providing for enforcement; amending RCW 70.41.410, 70.41.420,
6 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a
7 new chapter to Title 49 RCW; creating a new section; recodifying RCW
8 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and
9 49.28.150; repealing 2017 c 249 s 4 (uncodified); prescribing
10 penalties; providing effective dates; and declaring an emergency.

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

12 NEW SECTION. **Sec. 1.** The legislature recognizes that the
13 COVID-19 public health emergency pushed our health care system to its
14 breaking point. Our nurses and health care workers who directly care
15 for and support patients have continued to provide high quality care
16 despite the incredible challenges; however, it has not been without
17 significant sacrifice. Nurses and health care workers are facing
18 unprecedented levels of stress and job turnover. These concerns
19 existed before the pandemic and have only worsened during this public
20 health emergency. The legislature finds that improving nurse and
21 health care worker safety and working conditions leads to better

1 patient care. Specifically, establishing minimum nurse-to-patient
2 staffing standards, expanding break and overtime laws for certain
3 health care workers, and requiring hospital staffing committees to
4 create staffing plans, all of which are subject to enforcement and
5 penalties for violations, will better serve patients and our
6 community.

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

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

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

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

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

17 ~~((+2))~~ (4) "Hospital staffing committee" means the committee
18 established by a hospital under RCW 70.41.420 (as recodified by this
19 act).

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

22 ~~((+3))~~ (6) "Nursing ~~((personnel))~~ and patient care staff" means
23 ~~((registered nurses, licensed practical nurses, and unlicensed~~
24 ~~assistive nursing personnel providing direct patient care))~~ a person
25 who is providing direct care or supportive services to patients but
26 is not a physician licensed under chapter 18.71 or 18.57 RCW, a
27 physician's assistant licensed under chapter 18.71A RCW, or an
28 advanced registered nurse practitioner licensed under RCW 18.79.250
29 unless working as a direct care registered nurse.

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

32 ~~((+5))~~ (7) "Patient care unit" means any unit or area of the
33 hospital that provides patient care by registered nurses.

34 ~~((+6))~~ (8) "Reasonable efforts" means that the employer exhausts
35 and documents all of the following but is unable to obtain staffing
36 coverage:

37 (a) Seeks individuals to consent to work extra time from all
38 available qualified staff who are working;

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

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

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

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

12 (10) "Unforeseeable emergent circumstance" means:

13 (a) Any unforeseen declared national, state, or municipal
14 emergency; or

15 (b) When a hospital disaster plan is activated.

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

18 (1) By September 1, ((2008)) 2024, each hospital shall establish
19 a ((nurse)) hospital staffing committee, either by creating a new
20 committee or assigning the functions of ((a)) the hospital staffing
21 committee to an existing nurse staffing committee ((to an existing
22 committee)).

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

37 (b) Up to 50 percent of the members of the hospital staffing
38 committee shall be determined by the hospital administration and
39 shall include but not be limited to the chief financial officer, the

1 chief nursing officers, and patient care unit directors or managers
2 or their designees.

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

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

12 (a) Development and oversight of an annual patient care unit and
13 shift-based ((~~nurse~~)) hospital staffing plan, based on the needs of
14 patients, to be used as the primary component of the staffing budget.
15 The hospital staffing committee shall use a uniform format or form,
16 created by the department in consultation with stakeholders from
17 hospitals and labor organizations, for complying with the requirement
18 to submit the annual staffing plan. The uniform format or form must
19 provide space to include the factors considered under this section
20 and allow patients and the public to clearly understand and compare
21 staffing plans. Hospitals may include a description of additional
22 resources available to support unit-level patient care and a
23 description of the hospital, including the size and type of facility.
24 Factors to be considered in the development of the plan should
25 include, but are not limited to:

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

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

32 (iii) Skill mix;

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

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

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

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

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

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

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

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

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

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

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

39 (b) The chief executive officer or their designee shall provide
40 ~~((a written explanation of the reasons why the plan was not adopted~~

1 ~~to the committee))~~ written feedback to the hospital staffing
2 committee on a semiannual basis, prior to the committee's semiannual
3 review and adoption of an annual staffing plan. The ~~((chief executive~~
4 ~~officer))~~ feedback must then either: ~~((a))~~ (i) Identify those
5 elements of the ~~((proposed plan being changed prior to adoption of~~
6 ~~the plan by the hospital or (b) prepare an alternate annual staffing~~
7 ~~plan that must be adopted by the hospital.))~~ staffing plan the chief
8 executive officer requests changes to; and (ii) provide a status
9 report on implementation of the staffing plan including nursing
10 sensitive quality indicators collected by the hospital, patient
11 surveys, and recruitment and retention efforts.

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

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

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

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

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

39 (d) In the event of an unforeseeable emergent circumstance, the
40 hospital incident command shall report within 30 days to the cochairs

1 of the hospital staffing committee an assessment of the staffing
2 needs arising from the unforeseeable emergent circumstance and the
3 hospital's plan to address those identified staffing needs. Upon
4 receipt of the report, the hospital staffing committee shall convene
5 to develop a contingency staffing plan to address the needs arising
6 from the unforeseeable emergent circumstance. The hospital's
7 deviation from its staffing plan may not be in effect for more than
8 90 days without the approval of the hospital staffing committee.

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

15 (9) A hospital may not retaliate against or engage in any form of
16 intimidation of:

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

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

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

28 (11) The hospital staffing committee shall file with the
29 department a charter that must include, but is not limited to:

30 (a) Roles, responsibilities, and processes by which the hospital
31 staffing committee functions, including processes to ensure adequate
32 quorum and ability of committee members to attend;

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

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

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

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

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

12 (g) Standards for hospital staffing committee approval of meeting
13 documentation including meeting minutes, attendance, and actions
14 taken;

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

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

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

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

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

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

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

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

36 ~~((B) The department may only investigate a complaint under this~~
37 ~~subsection (1) (a) (iv) after making an assessment that the submitted~~
38 ~~evidence indicates a continuing pattern of unresolved violations of~~
39 ~~RCW 70.41.420(7) (a) or (b), that were submitted to the nurse~~

1 ~~staffing committee excluding complaints determined by the nurse~~
2 ~~staffing committee to be resolved or dismissed. The submitted~~
3 ~~evidence must include the aggregate data contained in the complaints~~
4 ~~submitted to the hospital's nurse staffing committee that indicate a~~
5 ~~continuing pattern of unresolved violations for a minimum sixty-day~~
6 ~~continuous period leading up to receipt of the complaint by the~~
7 ~~department.~~

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

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

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

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

25 (ii) The hospital, after consultation with the hospital staffing
26 committee, documents that the hospital has made reasonable efforts to
27 obtain and retain staffing to meet required personnel assignments but
28 has been unable to do so. However, reasonable efforts cannot be used
29 if the employer has chronic staff shortages that persist longer than
30 three months or has frequently reoccurring staff shortages.

31 (d) No later than 30 days after a hospital deviates from its
32 staffing plan as adopted by the hospital staffing committee under RCW
33 70.41.420 (as recodified by this act), the hospital incident command
34 shall report to the cochairs of the hospital staffing committee an
35 assessment of the staffing needs arising from the unforeseeable
36 emergent circumstance and the hospital's plan to address those
37 identified staffing needs. Upon receipt of the report, the hospital
38 staffing committee shall convene to develop a contingency staffing
39 plan to address the needs arising from the unforeseeable emergent
40 circumstance. The hospital's deviation from its staffing plan may not

1 be in effect for more than 90 days without the approval of the
2 hospital staffing committee.

3 (2) In the event that a hospital fails to submit or submits but
4 fails to follow such a corrective plan of action in response to a
5 violation or violations found by the department based on a complaint
6 filed pursuant to subsection (1) of this section, the department may
7 impose, for all violations asserted against a hospital at any time, a
8 civil penalty of ~~((one hundred dollars))~~ \$5,000 per day for hospitals
9 licensed under chapter 70.41 RCW, or \$100 per day for: (a) Hospitals
10 certified as critical access hospitals; (b) hospitals with fewer than
11 25 acute care beds in operation; and (c) hospitals certified by the
12 centers for medicare and medicaid services as sole community
13 hospitals as of January 1, 2013, that: Have had less than 150 acute
14 care licensed beds in fiscal year 2011; have a level III adult trauma
15 service designation from the department of health as of January 1,
16 2014; and are owned and operated by the state or a political
17 subdivision. Civil penalties apply until the hospital submits ~~((or~~
18 begins to follow)) a corrective plan of action ~~((or takes other~~
19 action agreed to)) that has been approved by the department and
20 follows the corrective plan of action for 90 days. Once the approved
21 corrective action plan has been followed by the hospital for 90 days,
22 the department may reduce the accumulated fine. The fine shall
23 continue to accumulate until the 90 days have passed. Revenue from
24 these fines must be deposited into the supplemental pension fund
25 established under RCW 51.44.033.

26 (3) The department shall maintain for public inspection records
27 of any civil penalties~~((7))~~ and administrative actions~~((, or license~~
28 suspensions or revocations)) imposed on hospitals under this section.
29 In addition, the department must report violations of this section on
30 its website.

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

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

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

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

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

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

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

19 ~~(7) No fees shall be increased to implement chapter 249, Laws of
20 2017 prior to July 1, 2021.)~~

21 NEW SECTION. **Sec. 5.** (1) The definitions in this subsection
22 apply throughout this chapter unless the context clearly requires
23 otherwise.

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

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

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

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

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

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

36 (g) "Patient care unit" means any unit or area of the hospital
37 that provides patient care by registered nurses, including but not
38 limited to a critical care unit, burn unit, labor and delivery room,
39 postanesthesia service area, emergency department, operating room,

1 pediatric unit, step-down/intermediate care unit, specialty care
2 unit, telemetry unit, general medical care unit, subacute care unit,
3 and transitional inpatient care unit.

4 (h) "Unforeseeable emergent circumstances" means:

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

7 (ii) when a health care facility disaster plan is activated.

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

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

24 (b) The department shall enforce compliance with this section
25 under sections 11 through 13 of this act.

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

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

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

1 (5) The staffing standards established in this section do not
2 decrease any nurse-to-patient staffing levels:

3 (a) In effect pursuant to a collective bargaining agreement; or

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

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

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

22 NEW SECTION. **Sec. 6.** (1)(a) The department shall review each
23 hospital staffing plan submitted by a hospital to ensure it is
24 received by the appropriate deadline and is completed on the
25 department-issued staffing plan form.

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

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

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

39 (3) The department must post on its website:

- 1 (a) Hospital staffing plans;
- 2 (b) Hospital staffing committee charters; and
- 3 (c) Violations of this section.

4 **Sec. 7.** RCW 49.12.480 and 2019 c 296 s 1 are each amended to
5 read as follows:

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

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

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

13 (i) An unforeseeable emergent circumstance, as defined in RCW
14 49.28.130 (as recodified by this act); or

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

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

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

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

35 (c) For any work period for which an employee is entitled to one
36 or more meal periods and more than one rest period, the employee and
37 the employer may agree that a meal period may be combined with a rest
38 period. This agreement may be revoked at any time by the employee. If
39 the employee is required to remain on duty during the combined meal

1 and rest period, the time shall be paid. If the employee is released
2 from duty for an uninterrupted combined meal and rest period, the
3 time corresponding to the meal period shall be unpaid, but the time
4 corresponding to the rest period shall be paid.

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

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

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

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

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

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

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

21 (b) "Employer" means hospitals licensed under chapter 70.41
22 RCW (~~, except that the following hospitals are excluded until July 1,~~
23 ~~2021:~~

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

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

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

34 **Sec. 8.** RCW 49.28.130 and 2019 c 296 s 2 are each amended to
35 read as follows:

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

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

1 (i) Is employed by a health care facility;
2 (ii) Is involved in direct patient care activities or clinical
3 services; and
4 (iii) Receives an hourly wage or is covered by a collective
5 bargaining agreement (~~;~~ ~~and~~
6 ~~(iv) Is either:~~
7 ~~(A) A licensed practical nurse or registered nurse licensed under~~
8 ~~chapter 18.79 RCW; or~~
9 ~~(B) Beginning July 1, 2020, a surgical technologist registered~~
10 ~~under chapter 18.215 RCW, a diagnostic radiologic technologist or~~
11 ~~cardiovascular invasive specialist certified under chapter 18.84 RCW,~~
12 ~~a respiratory care practitioner licensed under chapter 18.89 RCW, or~~
13 ~~a nursing assistant certified as defined in RCW 18.88A.020)).~~
14 (b) "Employee" does not mean a person who is both:
15 (i) (~~Is employed~~) Employed by a health care facility as defined
16 in subsection (3) (a) (v) of this section; and
17 (ii) (~~Is a~~) A surgical technologist registered under chapter
18 18.215 RCW, a diagnostic radiologic technologist or cardiovascular
19 invasive specialist certified under chapter 18.84 RCW, a respiratory
20 care practitioner licensed under chapter 18.89 RCW, or a certified
21 nursing assistant as defined in RCW 18.88A.020.
22 (2) "Employer" means an individual, partnership, association,
23 corporation, the state, a political subdivision of the state, or
24 person or group of persons, acting directly or indirectly in the
25 interest of a health care facility.
26 (3) (a) "Health care facility" means the following facilities, or
27 any part of the facility, including such facilities if owned and
28 operated by a political subdivision or instrumentality of the state,
29 that operate on a twenty-four hours per day, seven days per week
30 basis:
31 (i) Hospices licensed under chapter 70.127 RCW;
32 (ii) Hospitals licensed under chapter 70.41 RCW (~~, except that~~
33 ~~until July 1, 2021, the provisions of section 3, chapter 296, Laws of~~
34 ~~2019 do not apply to:~~
35 ~~(A) Hospitals certified as critical access hospitals under 42~~
36 ~~U.S.C. Sec. 1395i-4;~~
37 ~~(B) Hospitals with fewer than twenty-five acute care beds in~~
38 ~~operation; and~~
39 ~~(C) Hospitals certified by the centers for medicare and medicaid~~
40 ~~services as sole community hospitals as of January 1, 2013, that:~~

1 ~~Have had less than one hundred fifty acute care licensed beds in~~
2 ~~fiscal year 2011; have a level III adult trauma service designation~~
3 ~~from the department of health as of January 1, 2014; and are owned~~
4 ~~and operated by the state or a political subdivision));~~

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

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

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

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

16 (4) "Overtime" means the hours worked in excess of an agreed
17 upon, predetermined, regularly scheduled shift within a twenty-four
18 hour period not to exceed twelve hours in a twenty-four hour period
19 or eighty hours in a consecutive fourteen-day period.

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

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

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

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

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

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

37 (7) "Unforeseeable emergent circumstance" means (a) any
38 unforeseen declared national, state, or municipal emergency; or (b)
39 when a health care facility disaster plan is activated(~~(; or (c) any~~

1 ~~unforeseen disaster or other catastrophic event which substantially~~
2 ~~affects or increases the need for health care services)).~~

3 **Sec. 9.** RCW 49.28.140 and 2019 c 296 s 3 are each amended to
4 read as follows:

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

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

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

15 (a) Because of any unforeseeable emergent circumstance;

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

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

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

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

28 (c) When the employer documents that the employer has used
29 reasonable efforts to obtain and retain staffing. An employer has not
30 used reasonable efforts if overtime work is used to fill vacancies
31 resulting from chronic staff shortages that persist longer than three
32 months or frequently reoccurring 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. 10.** 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 recodified by this act)
5 as provided under sections 11 through 13 of this act. (~~(A violation~~
6 ~~of RCW 49.28.140 is a class 1 civil infraction in accordance with~~
7 ~~chapter 7.80 RCW, except that the maximum penalty is one thousand~~
8 ~~dollars for each infraction up to three infractions. If there are~~
9 ~~four or more violations of RCW 49.28.140 for a health care facility,~~
10 ~~the employer is subject to a fine of two thousand five hundred~~
11 ~~dollars for the fourth violation, and five thousand dollars for each~~
12 ~~subsequent violation. The department of labor and industries is~~
13 ~~authorized to issue and enforce civil infractions according to~~
14 ~~chapter 7.80 RCW.))~~

15 NEW SECTION. **Sec. 11.** (1)(a) If a complainant files a complaint
16 with the department of labor and industries alleging a violation of
17 this chapter, the department shall investigate the complaint.

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

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

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

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

1 (3) (a) If the department of labor and industries finds a
2 violation of this chapter, the department shall order the employer to
3 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 there
6 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 (4) The department of labor and industries may, at any time,
10 waive or reduce a civil penalty assessed under this section if the
11 director of the department determines that the employer has taken
12 corrective action to resolve the violation.

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

16 NEW SECTION. **Sec. 12.** (1) A person, firm, or corporation
17 aggrieved by a citation and notice of assessment by the department of
18 labor and industries under this chapter may appeal the citation and
19 notice of assessment to the director of the department by filing a
20 notice of appeal with the director within 30 days of the department's
21 issuance of the citation and notice of assessment. A citation and
22 notice of assessment not appealed within 30 days is final and
23 binding, and not subject to further appeal.

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

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

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

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

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

13 NEW SECTION. **Sec. 13.** Collections of unpaid citations assessing
14 civil penalties will be pursuant to RCW 49.48.086.

15 NEW SECTION. **Sec. 14.** The department of labor and industries
16 may adopt and implement rules to carry out and enforce the provisions
17 of this chapter, including but not limited to protecting employees
18 from retaliation for filing complaints under this chapter.

19 NEW SECTION. **Sec. 15.** 2017 c 249 s 4 (uncodified) is repealed.

20 NEW SECTION. **Sec. 16.** Sections 5, 6, and 11 through 14 of this
21 act constitute a new chapter in Title 49 RCW.

22 NEW SECTION. **Sec. 17.** RCW 70.41.410, 70.41.420, and 70.41.425
23 are each recodified as sections in chapter 49.--- RCW (the new
24 chapter created in section 16 of this act).

25 NEW SECTION. **Sec. 18.** RCW 49.12.480, 49.28.130, 49.28.140, and
26 49.28.150 are each recodified as sections in chapter 49.--- RCW (the
27 new chapter created in section 16 of this act).

28 NEW SECTION. **Sec. 19.** Except for section 15 of this act, this
29 act takes effect January 1, 2024.

30 NEW SECTION. **Sec. 20.** Section 15 of this act is necessary for
31 the immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public institutions,
2 and takes effect June 1, 2023.

--- **END** ---