
SENATE BILL 5751

State of Washington

67th Legislature

2022 Regular Session

By Senators Robinson and Keiser

Prefiled 01/07/22.

1 AN ACT Relating to improving worker safety and patient care in
2 health care facilities by addressing staffing needs, overtime, meal
3 and rest breaks, and enforcement; amending RCW 70.41.410, 70.41.420,
4 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a
5 new chapter to Title 49 RCW; recodifying RCW 70.41.410, 70.41.420,
6 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; repealing
7 2017 c 249 s 4 (uncodified); and prescribing penalties.

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

9 **Sec. 1.** RCW 70.41.410 and 2008 c 47 s 2 are each amended to read
10 as follows:

11 The definitions in this section apply throughout this section
12 ~~((and)),~~ RCW 70.41.420 and 70.41.425 (as recodified by this act), and
13 sections 2 and 5 of this act unless the context clearly requires
14 otherwise.

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

16 (2) "Direct care nursing assistant-certified" and "nursing
17 assistant-certified" means an individual certified under chapter
18 18.88A RCW who provides direct care to patients.

19 (3) "Direct care registered nurse" and "registered nurse" means
20 an individual licensed as a nurse under chapter 18.79 RCW who
21 provides direct care to patients.

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

3 ~~((2))~~ (5) "Hospital staffing committee" means the committee
4 established by a hospital under RCW 70.41.420 (as recodified by this
5 act).

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

8 ~~((3))~~ (7) "Nursing and ancillary health care personnel" means
9 ~~((registered nurses, licensed practical nurses, and unlicensed~~
10 ~~assistive nursing personnel providing direct patient care))~~ a person
11 who is providing direct care or supportive services to patients.

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

14 ~~(5))~~ (8) "Patient care unit" means any unit or area of the
15 hospital that provides patient care by registered nurses.

16 ~~((6))~~ (9) "Skill mix" means the experience of, and number and
17 relative percentages of ~~((registered nurses, licensed practical~~
18 ~~nurses, and unlicensed assistive personnel among the total number of~~
19 ~~nursing personnel)), nursing and ancillary health personnel.~~

20 NEW SECTION. **Sec. 2.** (1)(a) A hospital shall comply with
21 minimum staffing standards in accordance with this section.

22 (b) The department shall enforce compliance with this section
23 under sections 10 through 12 of this act.

24 (2) Direct care registered nurses shall not be assigned more
25 patients than the following for any shift:

26 (a) Emergency department: One registered nurse to three nontrauma
27 or noncritical care patients and one nurse to one trauma or critical
28 care patient;

29 (b) Intensive care unit, such as critical care unit, special care
30 unit, coronary care unit, pediatric intensive care, neonatal
31 intensive care, neurological critical care unit, or a burn unit: One
32 registered nurse to two patients or one registered nurse to one
33 patient depending on the stability of the patient as assessed by the
34 registered nurse on the unit;

35 (c) Labor and delivery: One registered nurse to two patients and
36 one registered nurse to one patient for active labor and in all
37 stages of labor for any patients with complications;

38 (d) Postpartum, antepartum, and well-baby nursery: One registered
39 nurse to six patients in postpartum. In this context, the mother and

1 the baby are each counted as separate patients. This would mean, for
2 example, one registered nurse to three mother-baby couplets;
3 (e) Operating room: One registered nurse to one patient;
4 (f) Oncology: One registered nurse to four patients;
5 (g) Postanesthesia care unit: One registered nurse to two
6 patients;
7 (h) Progressive care unit, intensive specialty care unit, or
8 stepdown unit: One registered nurse to three patients;
9 (i) Medical-surgical unit: One registered nurse to four patients;
10 (j) Telemetry unit: One registered nurse to three patients;
11 (k) Psychiatric unit: One registered nurse to six patients;
12 (l) Pediatrics: One registered nurse to three patients.
13 (3) Direct care nursing assistants-certified shall not be
14 assigned more patients than the following for any shift:
15 (a) Intensive care unit, such as critical care unit, special care
16 unit, coronary care unit, pediatric intensive care, neonatal
17 intensive care, neurological critical care unit, or a burn unit: One
18 nursing assistant-certified to eight patients;
19 (b) Cardiac unit: One nursing assistant-certified to four
20 patients;
21 (c) Labor and delivery: One nursing assistant-certified to eight
22 patients and one nursing assistant-certified to four patients for
23 active labor and in all stages of labor for any patients with
24 complications;
25 (d) Oncology: One nursing assistant-certified to seven patients;
26 (e) Postanesthesia care unit: One nursing assistant-certified to
27 eight patients;
28 (f) Progressive care unit, intensive specialty care unit, or
29 stepdown unit: One nursing assistant-certified to eight patients;
30 (g) Medical-surgical unit: One nursing assistant-certified to
31 eight patients;
32 (h) Telemetry unit: One nursing assistant-certified to eight
33 patients;
34 (i) Psychiatric unit: One nursing assistant-certified to seven
35 patients;
36 (j) Pediatrics: One nursing assistant-certified to 13 patients;
37 (k) Emergency department: One nursing assistant-certified to
38 seven patients;
39 (l) Telesitting unit: One nursing assistant-certified to eight
40 patients;

1 (m) Cardiac monitoring unit: One nursing assistant-certified to
2 50 patients.

3 (4) (a) The personnel assignment limits established in this
4 section are based on the type of care provided in these units,
5 regardless of the specific name or reference the hospital calls these
6 units.

7 (b) The personnel assignment limits established in this section
8 represent the maximum number of patients to which a direct care
9 registered nurse or direct care nursing assistant-certified may be
10 assigned at all points during a shift.

11 (c) A hospital may not average the number of patients and the
12 total number of direct care registered nurses and nursing assistants-
13 certified assigned to patients in a unit during any one shift or over
14 any period of time, in order to meet the personnel assignment limits
15 established in this section.

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

20 (6) The personnel assignment limits established in this section
21 do not decrease any nurse-to-patient staffing levels in effect
22 pursuant to a collective bargaining agreement or hospital's staffing
23 plan in effect on the effective date of this section.

24 (7) A direct care registered nurse or direct care nursing
25 assistant-certified may not be assigned to a nursing unit or clinical
26 area unless that nurse has first received orientation in that
27 clinical area sufficient to provide competent care to patients in
28 that area and has demonstrated current competence in providing care
29 in that area.

30 (8) (a) Except as provided in (b) of this subsection, a hospital
31 shall develop and implement minimum staffing standards into its
32 staffing plan required under section 3 of this act, no later than two
33 years after the effective date of this section.

34 (b) The following hospitals shall develop and implement minimum
35 staffing standards into their staffing plan required under section 3
36 of this act no later than four years after the effective date of this
37 section:

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

1 (ii) Hospitals with fewer than 25 acute care beds in operation;
2 and
3 (iii) Hospitals certified by the centers for medicare and
4 medicaid services as sole community hospitals as of January 1, 2013,
5 that: Have had less than 150 acute care licensed beds in fiscal year
6 2011; have a level III adult trauma service designation from the
7 department of health as of January 1, 2014; and are owned and
8 operated by the state or a political subdivision.

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 1, ~~((2008))~~ 2022, each hospital shall establish
12 a ~~((nurse))~~ hospital staffing committee, either by creating a new
13 committee or assigning the functions of ~~((a))~~ an existing nurse
14 staffing committee to ~~((an-existing))~~ a hospital staffing committee.

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

29 (b) Up to 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 (2) 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) Primary responsibilities of the ((nurse)) hospital staffing
4 committee shall include:

5 (a) Development and oversight of an annual patient care unit and
6 shift-based ((nurse)) staffing plan, in compliance with the standards
7 established in section 2 of this act and based on the needs of
8 patients, to be used as the primary component of the staffing budget.
9 The hospital staffing committee shall use a uniform format or form,
10 created by the department, for complying with the requirement to
11 submit the annual staffing plan. The uniform format or form must
12 allow patients and the public to clearly understand and compare
13 staffing patterns and actual levels of staffing across facilities.
14 Hospitals may include a description of additional resources available
15 to support unit-level patient care and a description of the hospital,
16 including the size and type of facility. Factors to be considered in
17 the development of the plan should include, but are not limited to:

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

21 (ii) Level of intensity of all patients and nature of the care to
22 be delivered on each shift;

23 (iii) Skill mix;

24 (iv) Level of experience and specialty certification or training
25 of nursing personnel providing care;

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

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

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

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

35 ~~((ix) Strategies to enable registered nurses to take meal and~~
36 ~~rest breaks as required by law or)) (viii) Ability to comply with the
37 terms of an applicable collective bargaining agreement, if any,
38 ~~((between the hospital and a representative of the nursing staff))~~
39 and relevant state and federal laws and rules, including those~~

1 regarding meal and rest breaks and use of overtime and on-call
2 shifts;

3 (b) Semiannual review of the staffing plan against the ability to
4 meet staffing standards established under section 2 of this act,
5 patient need, and known evidence-based staffing information,
6 including the nursing sensitive quality indicators collected by the
7 hospital;

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

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

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

17 (6) (a) The committee ((will)) shall produce the hospital's annual
18 ((nurse)) staffing plan. If this staffing plan is not adopted by
19 consensus of the hospital ((, the)) staffing committee, the prior
20 annual staffing plan remains in effect and the hospital is subject to
21 daily fines of \$10,000 for hospitals licensed under chapter 70.41 RCW
22 or daily fines of \$100 for: (i) Hospitals certified as critical
23 access hospitals; (ii) hospitals with fewer than 25 acute care beds
24 in operation; and (iii) hospitals certified by the centers for
25 medicare and medicaid services as sole community hospitals as of
26 January 1, 2013, that: Have had less than 150 acute care licensed
27 beds in fiscal year 2011; have a level III adult trauma service
28 designation from the department of health as of January 1, 2014; and
29 are owned and operated by the state or a political subdivision until
30 adoption of a new annual staffing plan by consensus of the committee.

31 (b) The chief executive officer shall provide ((a written
32 explanation of the reasons why the plan was not adopted to the
33 committee)) feedback to the hospital staffing committee on a
34 semiannual basis, prior to the committee's semiannual review and
35 adoption of an annual staffing plan. The ((chief executive officer))
36 feedback must ((then either)): ((a)) (i) Identify those elements of
37 the ((proposed plan being changed prior to adoption of the plan by
38 the hospital or (b) prepare an alternate annual staffing plan that
39 must be adopted by the hospital)) staffing plan the chief executive
40 officer requests changes to; or (ii) provide a status report on

1 implementation of the staffing plan including nursing sensitive
2 quality indicators collected by the hospital, patient surveys, and
3 recruitment and retention efforts.

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

7 (7) Beginning January 1, 2019, each hospital shall implement the
8 staffing plan and assign nursing personnel to each patient care unit
9 in accordance with the plan.

10 (a) A registered nurse, ancillary health care personnel,
11 collective bargaining representative, patient, or other individual
12 may report to the staffing committee any variations where the
13 ((nurse)) personnel assignment in a patient care unit is not in
14 accordance with the adopted staffing plan and may make a complaint to
15 the committee based on the variations.

16 (b) Shift-to-shift adjustments in staffing levels required by the
17 plan may be made by the appropriate hospital personnel overseeing
18 patient care operations. If a registered nurse or nursing assistant-
19 certified on a patient care unit objects to a shift-to-shift
20 adjustment, the registered nurse or nursing assistant-certified may
21 submit the complaint to the staffing committee.

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

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

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

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

1 (b) An employee, patient, or other individual who notifies the
2 ((nurse)) staffing committee or the hospital administration of his or
3 her concerns on nurse or ancillary health care personnel staffing.

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

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

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

15 (b) Schedule for monthly meetings with more frequent meetings as
16 needed that ensures committee members have 30-days notice of
17 meetings;

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

22 (d) Processes by which complaints will be resolved within 60 days
23 of receipt and processes to ensure the complainant receives a letter
24 stating the outcome of the complaint;

25 (e) Processes for attendance by any nurse, ancillary health care
26 personnel, collective bargaining representative, patient, or member
27 of the public who is involved in a complaint;

28 (f) Processes for the hospital staffing committee to conduct
29 quarterly reviews of staff turnover rates including new hire turnover
30 rates during first year of employment and hospital plans regarding
31 workforce development;

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

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

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

1 (1) (a) The department shall investigate a complaint submitted
2 under this section for violation of RCW 70.41.420 (as recodified by
3 this act) or section 2 of this act following receipt of a complaint
4 with documented evidence of failure to:

5 (i) Form or establish a hospital staffing committee;
6 (ii) Conduct a semiannual review of a ((nurse)) staffing plan;
7 (iii) Submit a ((nurse)) staffing plan on an annual basis and any
8 updates; or

9 (iv) ((A)) Follow the ((nursing)) personnel assignments in a
10 patient care unit in violation of section 2 of this act, RCW
11 70.41.420(7) (a) (as recodified by this act), or shift-to-shift
12 adjustments in staffing levels in violation of RCW 70.41.420(7) (b)
13 (as recodified by this act).

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

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

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

36 (c) Hospitals will not be found in violation of section 2 of this
37 act or RCW 70.41.420 (as recodified by this act) if it has been
38 determined, following an investigation, that:

39 (i) There were unforeseeable emergency circumstances; or

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

5 (d) No later than 30 days after a hospital deviates from its
6 staffing plan as adopted by the staffing committee under RCW
7 70.41.420 (as recodified by this act), the hospital incident command
8 shall report to the cochairs of the hospital staffing committee an
9 assessment of the staffing needs arising from the unforeseeable
10 emergency circumstance and the hospital's plan to address those
11 identified staffing needs. Upon receipt of the report, the hospital
12 staffing committee shall convene to develop a contingency staffing
13 plan to address the needs arising from the unforeseeable emergency
14 circumstance. The hospital's deviation from its staffing plan may not
15 be in effect for more than 90 days without the approval of the
16 hospital staffing committee.

17 (2) In the event that a hospital fails to submit or submits but
18 fails to follow such a corrective plan of action in response to a
19 violation or violations found by the department based on a complaint
20 filed pursuant to subsection (1) of this section, the department may
21 impose, for all violations asserted against a hospital at any time, a
22 civil penalty of ~~((one hundred dollars))~~ \$10,000 per day for
23 hospitals licensed under chapter 70.41 RCW, or \$100 per day for: (a)
24 Hospitals certified as critical access hospitals; (b) hospitals with
25 fewer than 25 acute care beds in operation; and (c) hospitals
26 certified by the centers for medicare and medicaid services as sole
27 community hospitals as of January 1, 2013, that: Have had less than
28 150 acute care licensed beds in fiscal year 2011; have a level III
29 adult trauma service designation from the department of health as of
30 January 1, 2014; and are owned and operated by the state or a
31 political subdivision. Civil penalties apply until the hospital
32 submits ~~((or begins to follow))~~ a corrective plan of action ~~((or~~
33 takes other action agreed to)) that has been approved by the
34 department and follows the corrective plan of action for 90 days.
35 Once the approved corrective action plan has been followed by the
36 hospital for 90 days, the department may reduce the accumulated fine.
37 The fine shall continue to accumulate until the 90 days has passed.
38 Revenue from these fines must be deposited into the supplemental
39 pension fund established under RCW 51.44.033.

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

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

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

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

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

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

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

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

14 (3) The department must post violations of this section on its
15 website.

16 **Sec. 6.** RCW 49.12.480 and 2019 c 296 s 1 are each amended to
17 read as follows:

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

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

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

25 ~~(i) An~~) an unforeseeable emergent circumstance, as defined in
26 RCW 49.28.130 (~~+~~~~or~~

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

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

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

35 ~~(c) For any rest break that is interrupted before ten complete~~
36 ~~minutes by an employer or employer's designee under the provisions of~~
37 ~~(b)(ii) of this subsection, the employee must be given an additional~~
38 ~~ten minute uninterrupted rest break at the earliest reasonable time~~
39 ~~during the work period during which the employee is required to~~

1 ~~receive a rest period. If the elements of this subsection are met, a~~
2 ~~rest break shall be considered taken for the purposes of the minimum~~
3 ~~wage act as defined by chapter 49.46 RCW) (as recodified by this~~
4 ~~act).~~

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. 7.** 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 all of the following but is unable to
27 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. 8.** 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 prescheduled on-call time not to exceed more than
17 20 hours per week, 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 acuity or expected
23 increases in the number of employees not reporting for predetermined
24 scheduled shifts;

25 (c) When the employer documents that the employer has used
26 reasonable efforts to obtain and retain staffing. An employer has not
27 used reasonable efforts if overtime work is used to fill vacancies
28 resulting from chronic staff shortages that persist longer than three
29 months; or

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

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

37 **Sec. 9.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to
38 read as follows:

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

12 NEW SECTION. Sec. 10. (1) (a) If a complainant files a complaint
13 with the department alleging a violation of this chapter, the
14 department shall investigate the complaint.

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

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

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

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

35 (3) (a) If the department finds a violation of this chapter, the
36 department shall order the employer to pay the department a civil
37 penalty.

38 (b) Except as provided otherwise in this chapter, the maximum
39 penalty is \$1,000 for each violation up to three violations. If there

1 are four or more violations of this chapter for a health care
2 facility, the employer is subject to a civil penalty of \$2,500 for
3 the fourth violation, and \$5,000 for each subsequent violation.

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

8 (5) The department shall deposit all civil penalties paid under
9 this chapter in the supplemental pension fund established under RCW
10 51.44.033.

11 NEW SECTION. **Sec. 11.** (1) A person, firm, or corporation
12 aggrieved by a citation and notice of assessment by the department
13 under this chapter may appeal the citation and notice of assessment
14 to the director of the department by filing a notice of appeal with
15 the director within 30 days of the department's issuance of the
16 citation and notice of assessment. A citation and notice of
17 assessment not appealed within 30 days is final and binding, and not
18 subject to further appeal.

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

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

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

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

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

6 NEW SECTION. **Sec. 12.** Collections of unpaid citations assessing
7 civil penalties will be pursuant to RCW 49.48.086.

8 NEW SECTION. **Sec. 13.** (1) Any employee employed by a health
9 care facility covered by RCW 49.12.480, 49.28.130, and 49.28.140 (as
10 recodified by this act), and any direct care nurse or direct care
11 nursing assistant-certified covered by section 2 of this act, or any
12 labor organization that is the exclusive bargaining representative of
13 any such persons, alleging a violation of this chapter may bring a
14 civil action against the health care facility or hospital.

15 (2) A health care facility's or hospital's violation of this
16 chapter or rules adopted under this chapter constitutes a concrete
17 and particularized injury in fact to employees employed by the health
18 care facility.

19 (3) The court may award to a prevailing plaintiff:

20 (a) An amount not less than \$100 and not greater than \$10,000 per
21 violation per day;

22 (b) Reasonable attorneys' fees and litigation costs;

23 (c) Any other relief, including equitable and declaratory relief,
24 that the court deems appropriate.

25 (4) The remedy under this section is in addition to any
26 administrative enforcement under this chapter.

27 NEW SECTION. **Sec. 14.** The department may adopt and implement
28 rules to carry out and enforce the provisions of this chapter,
29 including but not limited to protecting employees from retaliation
30 for filing complaints under this chapter.

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

32 NEW SECTION. **Sec. 16.** Sections 2, 5, and 10 through 14 of this
33 act constitute a new chapter in Title 49 RCW.

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

4 NEW SECTION. **Sec. 18.** RCW 49.12.480, 49.28.130, 49.28.140, and
5 49.28.150 are each recodified as sections in chapter 49.--- RCW (the
6 new chapter created in section 16 of this act).

--- **END** ---