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**SENATE BILL 5236**

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**State of Washington****68th Legislature****2023 Regular Session****By** Senators Robinson and Keiser

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 (c) ~~((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** ---