

Senate Bill 237

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Extends whistleblower protection for hospital nursing staff to additional hospital staff.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to hospital staff members; amending ORS 441.172, 441.174, 441.176, 441.178 and 441.182; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 441.172 is amended to read:

6 441.172. As used in ORS 441.172 to 441.182:

7 (1) "Affiliated hospital" means a hospital that has a business relationship with another hospital.

8 (2) "Hospital" means:

9 (a) An acute inpatient care facility, as defined in ORS 442.470; or

10 (b) A hospital as described in ORS 442.015.

11 (3) "Manager" means a person who:

12 (a) Has authority to direct and control the work performance of [*nursing*] a staff **member**;

13 (b) Has authority to take corrective action regarding a violation of law or a rule or a violation
14 of professional standards of practice, about which a [*nursing*] staff **member** has complained; or

15 (c) Has been designated by a hospital to receive the notice described in ORS 441.174 (2).

16 (4) "Nursing staff" means a registered nurse, a licensed practical nurse, a nursing assistant or
17 any other assistive nursing personnel.

18 (5) "Public body" has the meaning given that term in ORS 30.260.

19 (6) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of em-
20 ployment or promotion, or layoff of a [*nursing*] staff **member**, or other adverse action taken against
21 a [*nursing*] staff **member** in the terms or conditions of employment of the [*nursing*] staff **member**,
22 as a result of filing a complaint.

23 (7) "**Staff member**" includes:

24 (a) **Nursing staff.**

25 (b) **An individual employed by or contracting with a hospital to provide health services.**

26 (c) **A licensed or certified health professional employed by or affiliated with a hospital.**

27 **SECTION 2.** ORS 441.174 is amended to read:

28 441.174. (1) A hospital may not take retaliatory action against a [*nursing*] staff **member** because
29 the [*nursing*] staff **member**:

30 (a) Discloses or intends to disclose to a manager, a private accreditation organization or a

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 public body an activity, policy or practice of the hospital or of a hospital that the [*nursing*] staff
 2 **member** reasonably believes is in violation of law or a rule or is a violation of professional stan-
 3 dards of practice that the [*nursing*] staff **member** reasonably believes poses a risk to the health,
 4 safety or welfare of a patient or the public;

5 (b) Provides information to or testifies before a private accreditation organization or a public
 6 body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into
 7 an activity, policy or practice that may be in violation of professional standards of practice by a
 8 hospital that the [*nursing*] staff **member** reasonably believes poses a risk to the health, safety or
 9 welfare of a patient or the public;

10 (c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the
 11 [*nursing*] staff **member** reasonably believes is in violation of law or rule or is a violation of pro-
 12 fessional standards of practice that the [*nursing*] staff **member** reasonably believes poses a risk to
 13 the health, safety or welfare of a patient or the public; or

14 (d) Participates in a committee or peer review process or files a report or a complaint that
 15 discusses allegations of unsafe, dangerous or potentially dangerous care.

16 (2) Except as provided in subsection (3) of this section, the protection against retaliatory action
 17 in subsection (1) of this section does not apply to a [*nursing*] staff **member**, unless the [*nursing*] staff
 18 **member**, before making a disclosure to a private accreditation organization or a public body as
 19 described in subsection (1)(a) of this section:

20 (a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation
 21 of professional standards of practice that the [*nursing*] staff **member** reasonably believes poses a
 22 risk to public health; and

23 (b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or
 24 violation.

25 (3) A [*nursing*] staff **member** is not required to comply with the provisions of subsection (2) of
 26 this section if the [*nursing*] staff **member**:

27 (a) Is reasonably certain that the activity, policy, practice or violation is known to one or more
 28 managers of the hospital or an affiliated hospital and an emergency situation exists;

29 (b) Reasonably fears physical harm as a result of the disclosure; or

30 (c) Makes the disclosure to a private accreditation organization or a public body for the purpose
 31 of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hos-
 32 pital that the [*nursing*] staff **member** reasonably believes is a crime.

33 **SECTION 3.** ORS 441.176 is amended to read:

34 441.176. (1) A [*nursing*] staff **member** aggrieved by an act prohibited by ORS 441.174 may bring
 35 an action in circuit court of the county in which the hospital is located. All remedies available in
 36 a common law tort action are available to a [*nursing*] staff **member** if the [*nursing*] staff **member**
 37 prevails in an action brought under this subsection and are in addition to any remedies provided in
 38 subsection (2) of this section.

39 (2) In an action brought under subsection (1) of this section, a circuit court may do any of the
 40 following:

41 (a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a
 42 continued violation of ORS 441.174.

43 (b) Reinstate the [*nursing*] staff **member** to the same or equivalent position that the [*nursing*]
 44 staff **member** held before the retaliatory action.

45 (c) Reinstate full benefits and seniority rights to the [*nursing*] staff **member** as if the [*nursing*]

1 staff **member** had continued in employment.

2 (d) Compensate the [*nursing*] staff **member** for lost wages, benefits and other remuneration, in-
3 cluding interest, as if the [*nursing*] staff **member** had continued in employment.

4 (e) Order the hospital to pay reasonable litigation costs of the [*nursing*] staff **member**, including
5 reasonable expert witness fees and reasonable attorney fees.

6 (f) Award punitive damages as provided in ORS 31.730.

7 (3) Except as provided in subsection (4) of this section, in any action brought by a [*nursing*] staff
8 **member** under subsection (1) of this section, if the court finds that the [*nursing*] staff **member** had
9 no objectively reasonable basis for asserting the claim, the court may award costs, expert witness
10 fees and reasonable attorney fees to the hospital.

11 (4) A [*nursing*] staff **member** may not be assessed costs or fees under subsection (3) of this
12 section if, upon exercising reasonable and diligent efforts after filing the action, the [*nursing*] staff
13 **member** moves to dismiss the action against the hospital after determining that no issue of law or
14 fact exists that supports the action against the hospital.

15 **SECTION 4.** ORS 441.178 is amended to read:

16 441.178. (1) A hospital that takes any retaliatory action described in ORS 441.174 against a
17 [*nursing*] staff **member** commits an unlawful employment practice.

18 (2) A [*nursing*] staff **member** claiming to be aggrieved by an alleged violation of ORS 441.174
19 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner
20 provided by ORS 659A.820. Except for the provisions of ORS 659A.870, 659A.875, 659A.880 and
21 659A.885, violation of ORS 441.174 is subject to enforcement under ORS chapter 659A.

22 (3) Except as provided in subsection (4) of this section, a civil action under ORS 441.176 must
23 be commenced within one year after the occurrence of the unlawful employment practice unless a
24 complaint has been timely filed under ORS 659A.820.

25 (4) The [*nursing*] staff **member** who has filed a complaint under ORS 659A.820 must commence
26 a civil action under ORS 441.176 within 90 days after a 90-day notice is mailed to the [*nursing*] staff
27 **member** under this section.

28 (5) The commissioner shall issue a 90-day notice to the [*nursing*] staff **member**:

29 (a) If the commissioner dismisses the complaint within one year after the filing of the complaint
30 and the dismissal is for any reason other than the fact that a civil action has been filed.

31 (b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice
32 has previously been issued under paragraph (a) of this subsection or the matter has been resolved
33 by the execution of a settlement agreement.

34 (6) A 90-day notice under this section must be in writing and must notify the [*nursing*] staff
35 **member** that a civil action against the hospital under ORS 441.176 may be filed within 90 days after
36 the date of mailing of the 90-day notice and that any right to bring a civil action against the hospital
37 under ORS 441.176 will be lost if the action is not commenced within 90 days after the date of
38 mailing of the 90-day notice.

39 (7) The remedies under this section and ORS 441.176 are supplemental and not mutually exclu-
40 sive.

41 **SECTION 5.** ORS 441.182 is amended to read:

42 441.182. (1) Except as provided in subsection (2) of this section, nothing in ORS 441.176 and
43 441.178 shall be deemed to diminish any rights, privileges or remedies of a [*nursing*] staff **member**
44 under federal or state law or regulation or under any collective bargaining agreement or employ-
45 ment contract.

1 (2) ORS 441.176 and 441.178 provide the only remedies under state law for a [nursing] staff
2 **member** for an alleged violation of ORS 441.174 committed by a hospital.

3 **SECTION 6. This 2011 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
5 **on its passage.**

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