

Requested by Representative KOTEK

**PROPOSED AMENDMENTS TO
SENATE BILL 1803**

1 On page 1 of the printed bill, line 2, after “period;” insert “creating new
2 provisions; amending ORS 441.044, 441.179, 441.181, 441.183, 441.184 and
3 441.186;”.

4 On page 3, delete lines 19 through 24 and insert:

5 **“SECTION 4.** ORS 441.179 is amended to read:

6 “441.179. As used in ORS 441.179 to 441.186:

7 “(1) ‘Affiliated hospital’ means a hospital that has a business relationship
8 with another hospital.

9 “(2) ‘Hospital’ means:

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

11 “(b) A hospital as described in ORS 442.015.

12 “(3) ‘Manager’ means a person who:

13 “(a) Has authority to direct and control the work performance of [*nursing*
14 *staff*] **an employee**;

15 “(b) Has authority to take corrective action regarding a violation of law
16 or a rule or a violation of professional standards of practice, about which
17 [*a nursing staff*] **an employee** has complained; or

18 “(c) Has been designated by a hospital to receive the notice described in
19 ORS 441.181 (2).

20 “(4) ‘Nursing staff’ means a registered nurse, a licensed practical nurse,
21 a nursing assistant or any other assistive nursing personnel.

1 “(5) ‘Protected act’ means:

2 “(a) The disclosure or intended disclosure to a manager, a private
3 accreditation organization or a public body of an activity, policy or
4 practice of the hospital or of a hospital that an employee reasonably
5 believes is in violation of law or a rule or is a violation of professional
6 standards of practice that an employee reasonably believes poses a risk
7 to the health, safety or welfare of a patient or the public;

8 “(b) The provision of information to or testimony before a private
9 accreditation organization or a public body conducting an investi-
10 gation, hearing or inquiry into an alleged violation of law or rule or
11 into an activity, policy or practice that may be in violation of profes-
12 sional standards of practice by a hospital that an employee reasonably
13 believes poses a risk to the health, safety or welfare of a patient or the
14 public;

15 “(c) The objection to or refusal to participate in any activity, policy
16 or practice of a hospital that an employee reasonably believes is in
17 violation of law or rule or is a violation of professional standards of
18 practice that an employee reasonably believes poses a risk to the
19 health, safety or welfare of a patient or the public; or

20 “(d) Participation in a committee or peer review process or the fil-
21 ing of a report or a complaint that discusses allegations of unsafe,
22 dangerous or potentially dangerous care.

23 “[(5)] (6) ‘Public body’ has the meaning given that term in ORS 30.260.

24 “[(6)] (7) ‘Retaliatory action’ means the discharge, suspension, demotion,
25 harassment, denial of employment or promotion, or layoff of [*a nursing*
26 *staff*] **an employee**, or other adverse action taken against [*a nursing staff*]
27 **an employee** in the terms or conditions of employment of the [*nursing*
28 *staff*] **employee**, as a result of filing a complaint.

29 “**SECTION 5.** ORS 441.181 is amended to read:

30 “441.181. (1)(a) A hospital may not take retaliatory action against a

1 nursing staff because the nursing staff **engages in a protected act.**[:]

2 “[(a) Discloses or intends to disclose to a manager, a private accreditation
3 organization or a public body an activity, policy or practice of the hospital or
4 of a hospital that the nursing staff reasonably believes is in violation of law
5 or a rule or is a violation of professional standards of practice that the nursing
6 staff reasonably believes poses a risk to the health, safety or welfare of a pa-
7 tient or the public;]

8 “[(b) Provides information to or testifies before a private accreditation or-
9 ganization or a public body conducting an investigation, hearing or inquiry
10 into an alleged violation of law or rule or into an activity, policy or practice
11 that may be in violation of professional standards of practice by a hospital that
12 the nursing staff reasonably believes poses a risk to the health, safety or wel-
13 fare of a patient or the public;]

14 “[(c) Objects to or refuses to participate in any activity, policy or practice
15 of a hospital that the nursing staff reasonably believes is in violation of law
16 or rule or is a violation of professional standards of practice that the nursing
17 staff reasonably believes poses a risk to the health, safety or welfare of a pa-
18 tient or the public; or]

19 “[(d) Participates in a committee or peer review process or files a report or
20 a complaint that discusses allegations of unsafe, dangerous or potentially
21 dangerous care.]

22 “(b) **A hospital may not take retaliatory action against any em-**
23 **ployee of the hospital because the employee engages in a protected act**
24 **related to violation of a COVID-19 emergency rule, as defined in sec-**
25 **tion 1 of this 2020 third special session Act, during the COVID-19**
26 **emergency period, as defined in section 1 of this 2020 third special**
27 **session Act.**

28 “(2) Except as provided in subsection (3) of this section, the protection
29 against retaliatory action in subsection (1) of this section does not apply to
30 [a nursing staff,] **an employee** unless the [nursing staff] **employee**, before

1 making a disclosure to a private accreditation organization or a public body
2 as described in [*subsection (1)(a) of this section*] **ORS 441.179 (5)(a)**:

3 “(a) Gives written notice to a manager of the hospital of the activity,
4 policy, practice or violation of professional standards of practice that the
5 [*nursing staff*] **employee** reasonably believes poses a risk to public health;
6 and

7 “(b) Provides the manager a reasonable opportunity to correct the activ-
8 ity, policy, practice or violation.

9 “(3) [*A nursing staff*] **An employee** is not required to comply with the
10 provisions of subsection (2) of this section if the [*nursing staff*] **employee**:

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

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

15 “(c) Makes the disclosure to a private accreditation organization or a
16 public body for the purpose of providing evidence of an activity, policy,
17 practice or violation of a hospital or an affiliated hospital that the [*nursing*
18 *staff*] **employee** reasonably believes is a crime.

19 “**SECTION 6.** ORS 441.183 is amended to read:

20 “441.183. (1) [*A nursing staff*] **An employee** aggrieved by an act prohib-
21 ited by ORS 441.181 may bring an action in circuit court of the county in
22 which the hospital is located. All remedies available in a common law tort
23 action are available to [*a nursing staff if the nursing staff*] **an employee if**
24 **the employee** prevails in an action brought under this subsection and are
25 in addition to any remedies provided in subsection (2) of this section.

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

28 “(a) Issue a temporary restraining order or a preliminary or permanent
29 injunction to restrain a continued violation of ORS 441.181.

30 “(b) Reinstate the [*nursing staff*] **employee** to the same or equivalent

1 position that the [*nursing staff*] **employee** held before the retaliatory action.

2 “(c) Reinstate full benefits and seniority rights to the [*nursing staff as if*
3 *the nursing staff*] **employee as if the employee** had continued in employ-
4 ment.

5 “(d) Compensate the [*nursing staff*] **employee** for lost wages, benefits and
6 other remuneration, including interest, as if the [*nursing staff*] **employee**
7 had continued in employment.

8 “(e) Order the hospital to pay reasonable litigation costs of the [*nursing*
9 *staff*] **employee**, including reasonable expert witness fees and reasonable
10 attorney fees.

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

12 “(3) Except as provided in subsection (4) of this section, in any action
13 brought by [*a nursing staff*] **an employee** under subsection (1) of this sec-
14 tion, if the court finds that the [*nursing staff*] **employee** had no objectively
15 reasonable basis for asserting the claim, the court may award costs, expert
16 witness fees and reasonable attorney fees to the hospital.

17 “(4) [*A nursing staff*] **An employee** may not be assessed costs or fees
18 under subsection (3) of this section if, upon exercising reasonable and dili-
19 gent efforts after filing the action, the [*nursing staff*] **employee** moves to
20 dismiss the action against the hospital after determining that no issue of law
21 or fact exists that supports the action against the hospital.

22 “**SECTION 7.** ORS 441.184 is amended to read:

23 “441.184. (1) A hospital that takes any retaliatory action described in ORS
24 441.181 against [*a nursing staff*] **an employee** commits an unlawful employ-
25 ment practice.

26 “(2) [*A nursing staff*] **An employee** claiming to be aggrieved by an al-
27 leged violation of ORS 441.181 may file a complaint with the Commissioner
28 of the Bureau of Labor and Industries in the manner provided by ORS
29 659A.820. Except for the provisions of ORS 659A.870, 659A.875, 659A.880 and
30 659A.885, violation of ORS 441.181 is subject to enforcement under ORS

1 chapter 659A.

2 “(3) Except as provided in subsection (4) of this section, a civil action
3 under ORS 441.183 must be commenced within one year after the occurrence
4 of the unlawful employment practice unless a complaint has been timely filed
5 under ORS 659A.820.

6 “(4) The [*nursing staff*] **employee** who has filed a complaint under ORS
7 659A.820 must commence a civil action under ORS 441.183 within 90 days
8 after a 90-day notice is mailed to the [*nursing staff*] **employee** under this
9 section.

10 “(5) The commissioner shall issue a 90-day notice to the [*nursing staff*]
11 **employee**:

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

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

19 “(6) A 90-day notice under this section must be in writing and must notify
20 the [*nursing staff*] **employee** that a civil action against the hospital under
21 ORS 441.183 may be filed within 90 days after the date of mailing of the
22 90-day notice and that any right to bring a civil action against the hospital
23 under ORS 441.183 will be lost if the action is not commenced within 90 days
24 after the date of mailing of the 90-day notice.

25 “(7) The remedies under this section and ORS 441.183 are supplemental
26 and not mutually exclusive.

27 **“SECTION 8.** ORS 441.186 is amended to read:

28 “441.186. (1) Except as provided in subsection (2) of this section, nothing
29 in ORS 441.183 and 441.184 shall be deemed to diminish any rights, privileges
30 or remedies of [*a nursing staff*] **an employee** under federal or state law or

1 regulation or under any collective bargaining agreement or employment
2 contract.

3 “(2) ORS 441.183 and 441.184 provide the only remedies under state law
4 for a nursing staff **or an employee** for an alleged violation of ORS 441.181
5 committed by a hospital.

6 **“SECTION 9.** ORS 441.044 is amended to read:

7 “441.044. (1) Rules adopted pursuant to ORS 441.025 shall include proce-
8 dures for the filing of complaints as to the standard of care in any health
9 care facility and provide for the confidentiality of the identity of any
10 complainant.

11 “(2) A health care facility, or person acting in the interest of the facility,
12 may not take any disciplinary or other adverse action against any employee
13 who in good faith brings evidence of inappropriate care or any other vio-
14 lation of law or rules to the attention of the proper authority solely because
15 of the employee’s action as described in this subsection.

16 “(3) Any employee who has knowledge of inappropriate care or any other
17 violation of law or rules shall utilize established reporting procedures of the
18 health care facility administration before notifying the Department of Hu-
19 man Services, Oregon Health Authority or other state agency of the alleged
20 violation, unless the employee believes that patient health or safety is in
21 immediate jeopardy or the employee makes the report to the department or
22 the authority under the confidentiality provisions of subsection (1) of this
23 section.

24 “(4) The protection of health care facility employees under subsection (2)
25 of this section shall commence with the reporting of the alleged violation
26 by the employee to the administration of the health care facility or to the
27 department, authority or other state agency pursuant to subsection (3) of this
28 section.

29 “(5) Any person suffering loss or damage due to any violation of sub-
30 section (2) of this section has a right of action for damages in addition to

1 other appropriate remedy.

2 “(6) The provisions of this section do not apply to [*a nursing staff, as*
3 *defined in ORS 441.179,*] **a person** who claims to be aggrieved by a violation
4 of ORS 441.181 committed by a hospital.

5 “(7) Information obtained by the department or the authority during an
6 investigation of a complaint or reported violation under this section is con-
7 fidential and not subject to public disclosure under ORS 192.311 to 192.478.
8 Upon the conclusion of the investigation, the department or the authority
9 may publicly release a report of the department’s or the authority’s findings
10 but may not include information in the report that could be used to identify
11 the complainant or any patient at the health care facility. The department
12 or the authority may use any information obtained during an investigation
13 in an administrative or judicial proceeding concerning the licensing of a
14 health care facility, and may report information obtained during an investi-
15 gation to a health professional regulatory board as defined in ORS 676.160,
16 the Long Term Care Administrators Board, the Board of Licensed Dietitians
17 or the Behavior Analysis Regulatory Board as that information pertains to
18 a licensee of the board.

19 **“SECTION 10. Sections 1 to 3 of this 2020 third special session Act**
20 **apply to claims arising from acts or omissions that occur during the**
21 **COVID-19 emergency period, as defined in section 1 of this 2020 third**
22 **special session Act.**

23 **“SECTION 11. The amendments to ORS 441.044, 441.179, 441.181,**
24 **441.183, 441.184 and 441.186 by sections 4 to 9 of this 2020 third special**
25 **session Act apply to retaliatory action taken by a hospital at any time,**
26 **whether before, on or after the effective date of this 2020 third special**
27 **session Act.**

28 **“SECTION 12. This 2020 third special session Act being necessary**
29 **for the immediate preservation of the public peace, health and safety,**
30 **an emergency is declared to exist, and this 2020 third special session**

1 **Act takes effect on its passage.”.**

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