

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;”.

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

4 **“SECTION 4. As used in ORS sections 4 to 9 of this 2020 third spe-
5 cial session Act:**

6 **“(1) ‘Affiliated hospital’ means a hospital that has a business re-
7 lationship with another hospital.**

8 **“(2) ‘COVID-19 emergency period’ has the meaning given that term
9 in section 1 of this 2020 third special session Act.**

10 **“(3) ‘COVID-19 emergency rule’ has the meaning given that term
11 in section 1 of this 2020 third special session Act.**

12 **“(4) ‘Hospital’ means:**

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

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

15 **“(5) ‘Manager’ means a person who:**

16 **“(a) Has authority to direct and control the work performance of
17 an employee;**

18 **“(b) Has authority to take corrective action regarding a violation
19 of law or a rule or a violation of professional standards of practice,
20 about which an employee has complained; or**

21 **“(c) Has been designated by a hospital to receive the notice de-**

1 scribed in section 5 (2) of this 2020 third special session Act.

2 “(6) ‘Public body’ has the meaning given that term in ORS 30.260.

3 “(7) ‘Retaliatory action’ means the discharge, suspension, demotion,
4 harassment, denial of employment or promotion, or layoff of an em-
5 ployee, or other adverse action taken against an employee in the terms
6 or conditions of employment of the employee, as a result of filing a
7 complaint.

8 **“SECTION 5. (1) A hospital may not take retaliatory action against
9 an employee of the hospital because the employee:**

10 **“(a) Discloses or intends to disclose to a manager, a private ac-
11 creditation organization or a public body an activity, policy or practice
12 of the hospital or of a hospital that occurs during the COVID-19
13 emergency period and that the employee reasonably believes is in vio-
14 lation of a COVID-19 emergency rule;**

15 **“(b) Provides information to or testifies before a private accredi-
16 tation organization or a public body conducting an investigation,
17 hearing or inquiry into an alleged violation of a COVID-19 emergency
18 rule occurring during the COVID-19 emergency period;**

19 **“(c) Objects to or refuses to participate in any activity, policy or
20 practice of a hospital that the employee reasonably believes is in vio-
21 lation of a COVID-19 emergency rule during the COVID-19 emergency
22 period; or**

23 **“(d) Participates in a committee or peer review process or files a
24 report or a complaint that discusses allegations of a violation of a
25 COVID-19 emergency rule during the COVID-19 emergency period.**

26 **“(2) Except as provided in subsection (3) of this section, the pro-
27 tection against retaliatory action in subsection (1) of this section does
28 not apply to an employee, unless the employee, before making a dis-
29 closure to a private accreditation organization or a public body as de-
30 scribed in subsection (1)(a) of this section:**

1 “(a) Gives written notice to a manager of the hospital of the activ-
2 ity, policy, practice or violation of professional standards of practice
3 that the employee reasonably believes is in violation of a COVID-19
4 emergency rule; and

5 “(b) Provides the manager a reasonable opportunity to correct the
6 activity, policy, practice or violation.

7 “(3) An employee is not required to comply with the provisions of
8 subsection (2) of this section if the employee:

9 “(a) Is reasonably certain that the activity, policy, practice or vio-
10 lation is known to one or more managers of the hospital or an affil-
11 iated hospital and an emergency situation exists;

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

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

18 “SECTION 6. (1) An employee aggrieved by an act prohibited by
19 section 5 of this 2020 third special session Act may bring an action in
20 circuit court of the county in which the hospital is located. All reme-
21 dies available in a common law tort action are available to an em-
22 ployee if the employee prevails in an action brought under this
23 subsection and are in addition to any remedies provided in subsection
24 (2) of this section.

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

27 “(a) Issue a temporary restraining order or a preliminary or per-
28 manent injunction to restrain a continued violation of section 5 of this
29 2020 third special session Act.

30 “(b) Reinstate the employee to the same or equivalent position that

1 the employee held before the retaliatory action.

2 “(c) Reinstate full benefits and seniority rights to the employee as
3 if the employee had continued in employment.

4 “(d) Compensate the employee for lost wages, benefits and other
5 remuneration, including interest, as if the employee had continued in
6 employment.

7 “(e) Order the hospital to pay reasonable litigation costs of the
8 employee, including reasonable expert witness fees and reasonable at-
9 torney fees.

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

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

16 “(4) An employee may not be assessed costs or fees under sub-
17 section (3) of this section if, upon exercising reasonable and diligent
18 efforts after filing the action, the employee moves to dismiss the
19 action against the hospital after determining that no issue of law or
20 fact exists that supports the action against the hospital.

21 “SECTION 7. (1) A hospital that takes any retaliatory action de-
22 scribed in section 5 of this 2020 third special session Act against an
23 employee commits an unlawful employment practice.

24 “(2) An employee claiming to be aggrieved by an alleged violation
25 of section 5 of this 2020 third special session Act may file a complaint
26 with the Commissioner of the Bureau of Labor and Industries in the
27 manner provided by ORS 659A.820. Except for the provisions of ORS
28 659A.870, 659A.875, 659A.880 and 659A.885, violation of section 5 of this
29 2020 third special session Act is subject to enforcement under ORS
30 chapter 659A.

1 “(3) Except as provided in subsection (4) of this section, a civil
2 action under section 6 of this 2020 third special session Act must be
3 commenced within one year after the occurrence of the unlawful em-
4 ployment practice unless a complaint has been timely filed under ORS
5 659A.820.

6 “(4) The employee who has filed a complaint under ORS 659A.820
7 must commence a civil action under section 6 of this 2020 third special
8 session Act within 90 days after a 90-day notice is mailed to the em-
9 ployee under this section.

10 “(5) The commissioner shall issue a 90-day notice to the employee:

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

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

18 “(6) A 90-day notice under this section must be in writing and must
19 notify the employee that a civil action against the hospital under sec-
20 tion 6 of this 2020 third special session Act may be filed within 90 days
21 after the date of mailing of the 90-day notice and that any right to
22 bring a civil action against the hospital under section 6 of this 2020
23 third special session Act will be lost if the action is not commenced
24 within 90 days after the date of mailing of the 90-day notice.

25 “(7) The remedies under this section and section 6 of this 2020 third
26 special session Act are supplemental and not mutually exclusive.

27 “SECTION 8. (1) A hospital shall post a notice summarizing the
28 provisions of sections 4 to 9 of this 2020 third special session Act in a
29 conspicuous place on the premises of the hospital. The notice must be
30 posted where notices to employees and applicants for employment are

1 customarily displayed.

2 “(2) Any hospital that willfully violates this section is subject to a
3 civil penalty not to exceed \$500. Civil penalties under this section shall
4 be imposed by the Oregon Health Authority in the manner provided
5 by ORS 183.745.

6 “SECTION 9. (1) Except as provided in subsection (2) of this section,
7 nothing in section 6 or 7 of this 2020 third special session Act shall be
8 deemed to diminish any rights, privileges or remedies of an employee
9 under federal or state law or regulation or under any collective bar-
10 gaining agreement or employment contract.

11 “(2) Sections 6 and 7 of this 2020 third special session Act provide
12 the only remedies under state law for an employee for an alleged vio-
13 lation of section 5 of this 2020 third special session Act committed by
14 a hospital.

15 “SECTION 10. ORS 441.044 is amended to read:

16 “441.044. (1) Rules adopted pursuant to ORS 441.025 shall include proce-
17 dures for the filing of complaints as to the standard of care in any health
18 care facility and provide for the confidentiality of the identity of any
19 complainant.

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

25 “(3) Any employee who has knowledge of inappropriate care or any other
26 violation of law or rules shall utilize established reporting procedures of the
27 health care facility administration before notifying the Department of Hu-
28 man Services, Oregon Health Authority or other state agency of the alleged
29 violation, unless the employee believes that patient health or safety is in
30 immediate jeopardy or the employee makes the report to the department or

1 the authority under the confidentiality provisions of subsection (1) of this
2 section.

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

8 “(5) Any person suffering loss or damage due to any violation of sub-
9 section (2) of this section has a right of action for damages in addition to
10 other appropriate remedy.

11 “(6) The provisions of this section do not apply to [*a nursing staff, as*
12 *defined in ORS 441.179,*] **a person** who claims to be aggrieved by a violation
13 of ORS 441.181 **or section 5 of this 2020 third special session Act** com-
14 mitted by a hospital.

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

29 **“SECTION 11. Sections 1 to 3 of this 2020 third special session Act**
30 **apply to claims arising from acts or omissions that occur during the**

1 **COVID-19 emergency period, as defined in section 1 of this 2020 third**
2 **special session Act.**

3 **“SECTION 12. Sections 4 to 9 of this 2020 third special session Act**
4 **and the amendments to ORS 441.044 by section 10 of this 2020 third**
5 **special session Act apply to retaliatory action taken by a hospital at**
6 **any time, whether before, on or after the effective date of this 2020**
7 **third special session Act.**

8 **“SECTION 13. This 2020 third special session Act being necessary**
9 **for the immediate preservation of the public peace, health and safety,**
10 **an emergency is declared to exist, and this 2020 third special session**
11 **Act takes effect on its passage.”.**

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