

B-Engrossed
Senate Bill 1549

Ordered by the Senate February 28
Including Senate Amendments dated February 14 and February 28

Sponsored by Senator LIEBER, Representative NOSSE (Presession filed.)

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.

Requires Health Licensing Office to issue temporary staffing agency [*license*] **authorization** to qualified applicant. Defines "temporary staffing agency." Prohibits [*unlicensed*] **unauthorized** operation of temporary staffing agency. [*Directs office to adopt rules regulating temporary staffing agencies. Directs office to annually evaluate specified factors and establish maximum rates that temporary staffing agency may charge for services.*] **Allows temporary staffing agency to charge to entity fees and amounts associated with entity's hiring of temporary staffing agency's personnel, or pay to entity those fees or amounts associated with temporary staffing agency's hiring of entity's staff members, under specified circumstances.** Exempts temporary staffing agency from regulation by Bureau of Labor and Industries. Imposes civil penalties for specified violations.

Becomes operative on July 1, 2023.

Directs Oregon Health Authority, in collaboration with specified stakeholders, to create report that includes at least policy proposal and certain priorities and submit report to interim committee of Legislative Assembly related to health care not later than December 31, 2022.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health care temporary staffing agencies; creating new provisions; amending ORS 658.015,
3 676.565, 676.579, 676.590, 676.613, 676.622 and 676.625; and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 7 of this 2022 Act:**

6 (1) **"Personnel"** means an individual, regardless of whether the individual is licensed or
7 otherwise authorized by the state to practice a health care occupation or profession, who
8 provides health care services or assistance with activities of daily living to clients, patients
9 or residents for or on behalf of an entity that engages the temporary staffing agency with
10 which the individual is associated.

11 (2)(a) **"Temporary staffing agency"** means an entity that operates in this state for the
12 purpose of providing temporary work to personnel providing health care services or assist-
13 ance with activities of daily living for or on behalf of entities that engage the temporary
14 staffing agency.

15 (b) **"Temporary staffing agency"** does not include:

16 (A) A staff arrangement established by an entity solely for use by the entity, or by any
17 entity associated with the entity, and in which the only costs are salaries paid to individuals
18 who perform work;

19 (B) An individual who provides the individual's services on a temporary basis;

20 (C) An employment agency as defined in ORS 658.005;

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 (D) Home health agencies licensed under ORS 443.015;
- 2 (E) In-home care agencies licensed under ORS 443.315; or
- 3 (F) Home care workers and personal support workers listed on the home care registry
- 4 as defined in ORS 410.600.

5 **SECTION 2.** (1) Subject to subsection (4) of this section, the Health Licensing Office shall

6 issue a temporary staffing agency authorization to an applicant that submits to the office:

7 (a) An application that includes the names and addresses of the applicant's officers and

8 directors and any other person that has ownership, partnership or a similar interest in the

9 applicant;

10 (b) For the purposes of conducting a state or nationwide criminal records check under

11 ORS 181A.195, the fingerprints of all individuals described in paragraph (a) of this subsection;

12 (c) Copies of the applicant's organizational documents, including but not limited to arti-

13 cles of incorporation and other relevant filings;

14 (d) Any other information requested by the office; and

15 (e) The applicable fee established under ORS 676.576.

16 (2) An authorization issued under this section is subject to ORS 676.572. In order to re-

17 new an authorization issued under this section, a temporary staffing agency shall submit to

18 the office a renewal application that includes:

19 (a) Any changes to the information described in subsection (1)(a) or (c) of this section;

20 (b) Any other information requested by the office; and

21 (c) The applicable fee established under ORS 676.576.

22 (3) Every two years after the issuance of an authorization under subsection (1) of this

23 section, as a condition of authorization renewal, the office shall require a temporary staffing

24 agency to provide to the office the fingerprints described in subsection (1)(b) of this section

25 for the purpose of conducting updated state and national criminal records checks under ORS

26 181A.195.

27 (4) The office may refuse to issue or renew an authorization under this section if the

28 office is not satisfied with the results of a state or nationwide criminal records check con-

29 ducted under ORS 181A.195 using the fingerprints described in subsection (1)(b) of this sec-

30 tion.

31 **SECTION 3.** The Health Licensing Office shall publish and maintain on a publicly avail-

32 able website operated by or on behalf of the office a list of temporary staffing agencies au-

33 thorized under section 2 of this 2022 Act.

34 **SECTION 4.** (1) A temporary staffing agency may not operate in this state without an

35 authorization issued or renewed under section 2 of this 2022 Act.

36 (2) Each separate physical location of a temporary staffing agency must obtain an au-

37 thorization under section 2 of this 2022 Act.

38 **SECTION 5.** (1) A temporary staffing agency authorized under section 2 of this 2022 Act

39 shall:

40 (a) Ensure all personnel for which the temporary staffing agency procures or provides

41 temporary employment meet any professional authorization requirements established for the

42 practice or performance of the services provided by the personnel.

43 (b) Assign personnel to settings for which the personnel have the appropriate work ex-

44 perience and background to provide the services required by the specific setting.

45 (c) Retain records for at least 10 years in a manner that makes the records immediately

1 available to the Health Licensing Office upon request of the office.

2 (d) Meet any other requirements established by the office by rule.

3 (2) A temporary staffing agency authorized under section 2 of this 2022 Act may charge
4 to an entity that engages the temporary staffing agency fees or other amounts related to
5 or associated with the subsequent hiring of personnel by the entity, or pay to the entity such
6 fees or amounts if the temporary staffing agency hires the entity's staff members, if:

7 (a) The entity or the temporary staffing agency directly solicits, or attempts to solicit,
8 employment of the personnel or the entity's staff members; and

9 (b) An agreement between the temporary staffing agency and the entity allows each
10 party to charge to or receive from the other party the fees or amounts described in this
11 subsection.

12 **SECTION 6.** In the manner prescribed in ORS chapter 183 for contested cases, the Health
13 Licensing Office may impose a form of discipline against a temporary staffing agency au-
14 thorized under section 2 of this 2022 Act for a violation of section 2, 4 or 5 of this 2022 Act
15 or a rule adopted under sections 1 to 7 of this 2022 Act.

16 **SECTION 7.** (1) The Health Licensing Office may impose on a temporary staffing agency
17 a civil penalty not to exceed \$500 per day per violation of section 2, 4 or 5 of this 2022 Act.
18 The office shall consider as a separate violation each assignment of an individual personnel
19 member in violation of section 5 (1) of this 2022 Act.

20 (2) Moneys from civil penalties imposed under this section shall be deposited in the
21 Health Licensing Office Account established under ORS 676.625 for the administration of
22 sections 1 to 7 of this 2022 Act.

23 **SECTION 8.** ORS 658.015 is amended to read:

24 658.015. (1) ORS 658.005 to 658.245 do not apply to:

25 (a) Labor contractors subject to ORS 658.405 to 658.511; or

26 (b) A temporary staffing agency as defined in section 1 of this 2022 Act.

27 (2) ORS 658.005 to 658.245 do not apply to any nonprofit organization or corporation organized
28 for the purpose of economic adjustment, civic betterment and the giving of professional guidance and
29 placement to its members, when all of the following requirements are met:

30 (a) None of its directors, officers or employees are deriving any profit beyond a nominal salary
31 for services performed on its behalf.

32 (b) Membership dues and fees are used solely for the maintenance of the organization or cor-
33 poration.

34 (c) No fee is charged for employment services.

35 (d) On request of the Commissioner of the Bureau of Labor and Industries, the organization or
36 corporation files with the commissioner, on or before the first day of April of each year, a copy of
37 its constitution or articles of incorporation and its bylaws, together with a sworn statement setting
38 forth its place of business; the names and addresses of its officers, directors and employees, the
39 salaries they receive and the services they actually perform; and the various benefits furnished to
40 its members.

41 (3) As used in subsection (2) of this section:

42 (a) "Civic betterment" means the promotion of the common good and general welfare of the
43 people of this state or any political subdivision therein.

44 (b) "Economic adjustment" means the promotion of a program by which individuals are helped
45 to acquire new professional skills, add to their existing professional skills or change their type of

1 profession.

2 (4) ORS 658.005 to 658.245 do not apply to a bona fide labor organization of workers or a
3 nonprofit organization or corporation that has been formed in good faith for the regulation, pro-
4 motion and advancement of the general professional interests of its members and that incidentally
5 maintains a placement service principally engaged in securing employment for such members.

6 **SECTION 9.** ORS 676.565 is amended to read:

7 676.565. Pursuant to ORS 676.568, the Health Licensing Office shall provide administrative and
8 regulatory oversight and centralized service for the following boards, councils and programs:

9 (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

10 (2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;

11 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

12 (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

13 (5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in
14 ORS 688.800 to 688.840;

15 (6) Environmental Health Registration Board, as provided in ORS chapter 700;

16 (7) Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;

17 (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;

18 (9) Sexual Offense Treatment Board, as provided in ORS 675.365 to 675.410;

19 (10) Long Term Care Administrators Board, as provided in ORS 678.710 to 678.820;

20 (11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;

21 (12) Behavior Analysis Regulatory Board, as provided in ORS 676.806;

22 (13) Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660;

23 (14) Art therapy, as provided in ORS 681.740 to 681.758;

24 (15) Lactation consultation, as provided in ORS 676.665 to 676.689;

25 (16) Music therapy, as provided in ORS 681.700 to 681.730; [and]

26 (17) Genetic counseling, as provided in ORS 676.730 to 676.748; **and**

27 **(18) Temporary staffing agencies, as provided in sections 1 to 7 of this 2022 Act.**

28 **SECTION 10.** ORS 676.579 is amended to read:

29 676.579. (1)(a) The Health Licensing Office is under the supervision and control of a director,
30 who is responsible for the performance of the duties, functions and powers and for the organization
31 of the office.

32 (b) The Director of the Oregon Health Authority shall establish the qualifications for and ap-
33 point the Director of the Health Licensing Office, who holds office at the pleasure of the Director
34 of the Oregon Health Authority.

35 (c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if
36 not so provided, as prescribed by the Director of the Oregon Health Authority.

37 (d) The Director of the Health Licensing Office is in the unclassified service.

38 (2) The Director of the Health Licensing Office shall provide the boards, councils and programs
39 administered by the office with any services and employees as the office requires to carry out the
40 office's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Di-
41 rector of the Health Licensing Office shall appoint all subordinate officers and employees of the of-
42 fice, prescribe their duties and fix their compensation.

43 (3) The Director of the Health Licensing Office is responsible for carrying out the duties, func-
44 tions and powers under ORS 675.365 to 675.410, 676.560 to 676.625, 676.630 to 676.660, 676.665 to
45 676.689, 676.730 to 676.748, 676.810, 676.815, 676.825, 676.992, 678.710 to 678.820, 680.500 to 680.565,

1 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to
2 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS
3 chapter 700 **and sections 1 to 7 of this 2022 Act.**

4 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-
5 tended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office
6 by other statutes.

7 **SECTION 11.** ORS 676.590 is amended to read:

8 676.590. (1) Information obtained by the Health Licensing Office as part of an investigation
9 conducted under the following laws and any reports issued by an investigator are exempt from
10 public disclosure:

11 (a) ORS 676.630 to 676.660, 676.665 to 676.689, 676.730 to 676.748, 681.700 to 681.730, 681.740 to
12 681.758, 690.005 to 690.225, 690.350 to 690.410 or 694.015 to 694.170 **and sections 1 to 7 of this 2022**
13 **Act.**

14 (b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:

15 (A) Advanced nonablative esthetics under ORS 676.630 to 676.660;

16 (B) Lactation consultation under ORS 676.665 to 676.689;

17 (C) Music therapy under ORS 681.700 to 681.730;

18 (D) Art therapy under ORS 681.740 to 681.758;

19 (E) Barbering, hair design, esthetics, nail technology or natural hair care under ORS 690.005 to
20 690.225;

21 (F) Electrologists and body art practitioners under ORS 690.350 to 690.410;

22 (G) Dealing in hearing aids under ORS 694.015 to 694.170; [or]

23 (H) Genetic counseling under ORS 676.730 to 676.748; **or**

24 **(I) Temporary staffing agencies under sections 1 to 7 of this 2022 Act.**

25 (2) The office shall disclose information obtained as part of an investigation described in sub-
26 section (1) of this section to a person who demonstrates by clear and convincing evidence that the
27 public interest in disclosure outweighs other interests in nondisclosure, including the public interest
28 in nondisclosure.

29 (3) A complaint that forms the basis for an investigation described in subsection (1) of this sec-
30 tion shall not be considered information obtained as part of an investigation and is not exempt from
31 public disclosure.

32 (4) Upon request, the office shall disclose to a person against whom disciplinary action is sought
33 any information obtained as part of an investigation described in section (1) of this section, if the
34 information is not otherwise privileged or confidential under state or federal law.

35 **SECTION 12.** ORS 676.613 is amended to read:

36 676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that
37 a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that
38 violates any provision of ORS 675.365 to 675.410, 676.630 to 676.660, 676.665 to 676.689, 676.730 to
39 676.748, 676.810, 676.815, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758,
40 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410,
41 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700 **or sections 1 to 7 of this 2022 Act,**
42 the office may, through the Attorney General or the district attorney of the county in which the act,
43 practice or transaction occurs or will occur, apply to the court for an injunction restraining the
44 person from the act, practice or transaction.

45 (2) A court may issue an injunction under this section without proof of actual damages. An in-

1 junction issued under this section does not relieve a person from any other prosecution or enforce-
2 ment action taken for violation of statutes listed in subsection (1) of this section.

3 **SECTION 13.** ORS 676.622 is amended to read:

4 676.622. (1) A transaction conducted through a state or local system or network that provides
5 electronic access to the Health Licensing Office information and services is exempt from any re-
6 quirement under ORS 675.365 to 675.410, 676.560 to 676.625, 676.630 to 676.660, 676.665 to 676.689,
7 676.730 to 676.748, 676.810, 676.815, 676.992, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758,
8 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410,
9 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 1 to 7 of this 2022**
10 **Act**, and rules adopted thereunder, requiring an original signature or the submission of handwritten
11 materials.

12 (2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable
13 and have the same force as original signatures.

14 **SECTION 14.** ORS 676.625 is amended to read:

15 676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges
16 to carry out the office's responsibilities under ORS 676.560 to 676.625, 676.850 and 676.992 and any
17 responsibility imposed on the office pertaining to the boards, councils and programs administered
18 and regulated by the office pursuant to ORS 676.565.

19 (2) The Health Licensing Office Account is established separate and distinct from the General
20 Fund. The account shall consist of the moneys credited to the account by the Legislative Assembly.
21 All moneys in the account are continuously appropriated to and shall be used by the office for
22 payment of expenses of the office in carrying out the duties, functions and obligations of the office,
23 and for payment of the expenses of the boards, councils and programs administered and regulated
24 by the office pursuant to ORS 676.565. The office shall keep a record of all moneys credited to the
25 account and report the source from which the moneys are derived and the activity of each board,
26 council or program that generated the moneys.

27 (3) Subject to prior approval of the Oregon Department of Administrative Services and a report
28 to the Emergency Board prior to establishing fees and charges credited to the account, the fees and
29 charges may not exceed the cost of administering the office and the boards, councils and programs
30 within the office, as authorized by the Legislative Assembly within the office's budget, as the budget
31 may be modified by the Emergency Board.

32 (4) All moneys credited to the account pursuant to ORS 676.576 and 676.806, and moneys cred-
33 ited to the account from other office and program fees established by the office by rule, are con-
34 tinuously appropriated to the office for carrying out the duties, functions and powers of the office
35 under ORS 676.560 to 676.625, 676.806, 676.850 and 676.992.

36 (5) The moneys received from civil penalties assessed under ORS 676.992 **and section 7 of this**
37 **2022 Act** shall be deposited and accounted for as are other moneys received by the office and shall
38 be for the administration and enforcement of the statutes governing the boards, councils and pro-
39 grams administered by the office.

40 **SECTION 15.** (1) **As used in this section:**

41 (a) **"Personnel" means an individual, regardless of whether the individual is licensed or**
42 **otherwise authorized by the state to practice a health care occupation or profession, who**
43 **provides health care services or assistance with activities of daily living to clients, patients**
44 **or residents for or on behalf of an entity that engages the temporary staffing agency with**
45 **which the individual is associated.**

1 (b) "Rate" means the total amount that a temporary staffing agency charges to or re-
2 ceives from an entity that engages the temporary staffing agency to assign personnel to the
3 entity on a temporary basis.

4 (c)(A) "Temporary staffing agency" means an entity that operates in this state for the
5 purpose of providing temporary work to personnel providing health care services or assist-
6 ance with activities of daily living for or on behalf of entities that engage the temporary
7 staffing agency.

8 (B) "Temporary staffing agency" does not include:

9 (i) A staff arrangement established by an entity solely for use by the entity, or by any
10 entity associated with the entity, and in which the only costs are salaries paid to individuals
11 who perform work;

12 (ii) An individual who provides the individual's services on a temporary basis;

13 (iii) An employment agency as defined in ORS 658.005;

14 (iv) Home health agencies licensed under ORS 443.015;

15 (v) In-home care agencies licensed under ORS 443.315; or

16 (vi) Home care workers and personal support workers listed on the home care registry
17 as defined in ORS 410.600.

18 (2) Not later than December 31, 2022, the Oregon Health Authority shall, in collaboration
19 with the stakeholders described in subsection (3) of this section, create and submit a report
20 in the manner provided in ORS 192.245 to an interim committee of the Legislative Assembly
21 related to health care. The report must include:

22 (a) A policy proposal and recommendations to establish a process to determine annual
23 rates that a temporary staffing agency may charge to or receive from an entity that engages
24 the temporary staffing agency; and

25 (b) Prioritization of the compensation of personnel, quality care outcomes for clients,
26 patients and residents of an entity that engages a temporary staffing agency and the fiscal
27 viability of care providers based in this state.

28 (3) The stakeholders must include, but are not limited to:

29 (a) Providers of long-term care, acute care services and primary care services, or rep-
30 resentatives of the providers;

31 (b) Personnel;

32 (c) A representative of the Department of Human Services; and

33 (d) A representative of the Office of the Governor.

34 SECTION 16. Section 15 of this 2022 Act is repealed on January 2, 2023.

35 SECTION 17. Notwithstanding any other provision of law, the General Fund appropriation
36 made to the Oregon Health Authority by section 1 (1), chapter 668, Oregon Laws 2021, for the
37 biennium ending June 30, 2023, for health systems, health policy and analytics, and public
38 health, is increased by \$690,947, for the purpose of implementing this 2022 Act.

39 SECTION 18. (1) Sections 1 to 7 of this 2022 Act and the amendments to ORS 658.015,
40 676.565, 676.579, 676.590, 676.613, 676.622 and 676.625 by sections 8 to 14 of this 2022 Act become
41 operative on July 1, 2023.

42 (2) The Health Licensing Office may take any action before the operative date specified
43 in subsection (1) of this section that is necessary to enable the office to exercise, on and
44 after the operative date specified in subsection (1) of this section, all of the duties, functions
45 and powers conferred on the office by sections 1 to 7 of this 2022 Act and the amendments

1 to ORS 658.015, 676.565, 676.579, 676.590, 676.613, 676.622 and 676.625 by sections 8 to 14 of this
2 2022 Act.

3 **SECTION 19.** This 2022 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect
5 on its passage.
6
