

HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 572

By COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 26

1 On page 1 of the printed A-engrossed bill, line 2, after “members” insert “; creating new pro-
2 visions; and amending ORS 659A.885”.

3 Delete lines 4 through 28 and delete pages 2 and 3 and insert:

4 **“SECTION 1. As used in sections 1 to 9 of this 2005 Act:**

5 **“(1) ‘Ambulatory surgical center’ has the meaning given that term in ORS 442.015.**

6 **“(2) ‘Assault’ means attempting to cause or intentionally, knowingly or recklessly caus-
7 ing physical injury.**

8 **“(3) ‘Direct patient care’ means any care provided directly to or for a patient that is re-
9 lated to the physical, mental or medical well-being of the patient.**

10 **“(4) ‘Home health care services’ means items or services furnished to a patient by a
11 nursing staff member in a place of temporary or permanent residence used as the patient’s
12 home.**

13 **“(5) ‘Hospital’ has the meaning given that term in ORS 442.015.**

14 **“(6) ‘Law enforcement agency’ means:**

15 **“(a) Any city or municipal police department.**

16 **“(b) Any county sheriff’s office.**

17 **“(c) The Oregon State Police.**

18 **“(7) ‘Nursing staff employer’ means:**

19 **“(a) An ambulatory surgical center; or**

20 **“(b) A hospital.**

21 **“(8) ‘Nursing staff member’ means a registered nurse, a licensed practical nurse, a
22 nursing assistant or any other assistive nursing personnel providing direct patient care.**

23 **“(9) ‘Retaliatory action’ has the meaning given that term in ORS 441.172.**

24 **“SECTION 2. (1) A nursing staff member having reasonable cause to believe that a hos-
25 pital patient or home health care services patient with whom the nursing staff member
26 comes into contact has assaulted a nursing staff member in a hospital or in the home of a
27 home health care services patient may report the assault, or cause a report of the assault
28 to be made, by telephone or otherwise, as described in subsection (2) of this section.**

29 **“(2) A nursing staff member who reports an assault or causes a report of an assault to
30 be made under subsection (1) of this section shall report the assault to:**

31 **“(a) A law enforcement agency within the county where the person making the report
32 is located at the time the report is made; and**

33 **“(b) The nursing staff employer.**

34 **“(3) The report shall include, if the information is known:**

35 **“(a) The name, age and present location of the alleged assaulted nursing staff member;**

1 “(b) The nature and extent of the alleged assault, and any evidence of previous assaults;
2 and

3 “(c) The date of the incident.

4 “(4) If a law enforcement agency responding to a report under subsection (2) of this
5 section files a crime report regarding the assault, the law enforcement agency shall ensure
6 that the report is entered into the Oregon Uniform Crime Reporting Program.

7 “(5) A law enforcement agency that filed a crime report under subsection (4) of this
8 section must provide, upon request of a nursing staff employer, a copy of the crime report
9 arising out of the same report made under subsection (2) of this section to the nursing staff
10 employer.

11 “(6) A person participating in good faith in making a report under subsection (2) of this
12 section who has reasonable grounds for making the report is immune from any civil liability
13 that may otherwise be incurred or imposed with respect to the making or the content of the
14 report. The person has the same immunity with respect to participating in any judicial pro-
15 ceeding resulting from the report.

16 “(7) The identity of the person making the report is confidential and may be disclosed
17 only with the consent of that person or by judicial order.

18 “SECTION 3. (1) By April 1 of each year, a nursing staff employer shall publish and make
19 available to the public a report containing information regarding assaults on nursing staff
20 members by patients reported under section 2 (2) of this 2005 Act for the previous calendar
21 year. The report shall contain the following information:

22 “(a) The number of reports made under section 2 (2) of this 2005 Act;

23 “(b) A general description of each reported incident, including but not limited to the na-
24 ture and extent of each reported incident and whether a crime report was filed and entered
25 into the Oregon Uniform Crime Reporting Program;

26 “(c) The actions taken by the nursing staff employer in response to a report; and

27 “(d) Any information known to the employer regarding assaults that were not reported
28 under section 2 (2) of this 2005 Act.

29 “(2) The reports published under subsection (1) of this section may not disclose any in-
30 formation that may lead to the identification of an individual patient or a nursing staff
31 member.

32 “SECTION 4. A nursing staff employer required to publish a report under section 3 of
33 this 2005 Act shall publish its first report by April 1, 2007.

34 “SECTION 5. A nursing staff employer shall develop and implement a written violence
35 prevention and self-defense program for nursing staff members. The program shall include
36 but not be limited to:

37 “(1) Annual training;

38 “(2) Practice drills; and

39 “(3) Post-incident counseling and a follow-up program.

40 “SECTION 6. If a nursing staff employer directs a nursing staff member who is the vic-
41 tim of an assault reported under section 2 (2) of this 2005 Act to provide further treatment
42 to the patient who assaulted the nursing staff member, the nursing staff member may re-
43 quest to be accompanied by a second staff member. If the nursing staff employer declines
44 the nursing staff member’s request, the nursing staff employer may not require the nursing
45 staff member to treat the patient.

1 **“SECTION 7. (1) A nursing staff employer may not sanction a nursing staff member who**
2 **was the victim of an assault reported under section 2 (2) of this 2005 Act and who used**
3 **physical force in self-defense against the patient if the nursing staff employer finds that:**

4 **“(a) The nursing staff member was acting in self-defense in response to the use or im-**
5 **minent use of physical force;**

6 **“(b) The amount of force used was reasonably necessary to protect the nursing staff**
7 **member from violence or assault; and**

8 **“(c) The nursing staff member used the least restrictive procedures necessary under the**
9 **circumstances in accordance with an approved behavior management plan or other method**
10 **of response approved by the nursing staff employer.**

11 **“(2) As used in this section, ‘self-defense’ means the use of physical force upon another**
12 **person in self-defense or to defend a third person.**

13 **“SECTION 8. (1) A nursing staff member providing home health care services may refuse**
14 **to treat a patient unless accompanied by a second staff person if, based on the patient’s past**
15 **behavior or physical or mental condition, the nursing staff member believes that the patient**
16 **might assault the nursing staff member.**

17 **“(2) A nursing staff member providing home health care services may refuse to treat a**
18 **patient unless the nursing staff member is equipped with a communication device that allows**
19 **the nursing staff member to transmit one-way or two-way messages indicating that the**
20 **nursing staff member is being assaulted.**

21 **“SECTION 9. It is an unlawful employment practice for a nursing staff employer to take**
22 **any retaliatory action against a nursing staff member who in good faith reports suspected**
23 **assaults under section 2 (1) of this 2005 Act or who refuses to treat a patient under the cir-**
24 **cumstances described in section 8 of this 2005 Act.**

25 **“SECTION 10. The Oregon State Police shall include the information entered into the**
26 **Oregon Uniform Crime Reporting Program under section 2 (4) of this 2005 Act in the State**
27 **of Oregon Report of Criminal Offenses and Arrests beginning with the annual report for 2007.**

28 **“SECTION 11. ORS 659A.885 is amended to read:**

29 **“659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in**
30 **subsection (2) of this section may file a civil action in circuit court. In any action under this sub-**
31 **section, the court may order injunctive relief and such other equitable relief as may be appropriate,**
32 **including but not limited to reinstatement or the hiring of employees with or without back pay. A**
33 **court may order back pay in an action under this subsection only for the two-year period imme-**
34 **diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau**
35 **of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-**
36 **year period immediately preceding the filing of the action. In any action under this subsection, the**
37 **court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-**
38 **cept as provided in subsection (3) of this section:**

39 **“(a) The judge shall determine the facts in an action under this subsection; and**

40 **“(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall**
41 **review the judgment pursuant to the standard established by ORS 19.415 (3).**

42 **“(2) An action may be brought under subsection (1) of this section for the following unlawful**
43 **practices: ORS 25.337, 25.424, 399.235, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,**
44 **659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233,**
45 **659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.318 and 659A.421 (1) or (3) and**

1 **section 9 of this 2005 Act.**

2 “(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
3 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,
4 659A.318 or 659A.421 (1) or (3):

5 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
6 tion, compensatory damages or \$200, whichever is greater, and punitive damages;

7 “(b) At the request of any party, the action shall be tried to a jury;

8 “(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
9 ment pursuant to the standard established by ORS 19.415 (1); and

10 “(d) Any attorney fee agreement shall be subject to approval by the court.

11 “(4) In any action under subsection (1) of this section alleging a violation of ORS 659A.203 or
12 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this sec-
13 tion, compensatory damages or \$250, whichever is greater.

14 “(5) Any individual against whom any distinction, discrimination or restriction on account of
15 race, religion, sex, marital status, color, national origin or age, if the individual is 18 years of age
16 or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any
17 person acting on behalf of such place or by any person aiding or abetting such place or person in
18 violation of ORS 659A.406 may bring an action against the operator or manager of such place, the
19 employee or person acting on behalf of such place or the aider or abettor of such place or person.
20 Notwithstanding subsection (1) of this section, in an action under this subsection:

21 “(a) The court may award, in addition to the relief authorized under subsection (1) of this sec-
22 tion, compensatory and punitive damages;

23 “(b) The operator or manager of the place of public accommodation, the employee or person
24 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
25 damages awarded in the action;

26 “(c) At the request of any party, the action shall be tried to a jury;

27 “(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

28 “(e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
29 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
30 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
31 and

32 “(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
33 judgment pursuant to the standard established by ORS 19.415 (1).”.

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