

B-Engrossed Senate Bill 572

Ordered by the House July 26
Including Senate Amendments dated June 17 and House Amendments
dated July 26

Sponsored by Senator METSGER, Representative OLSON; Senators FERRIOLI, MONNES ANDERSON,
MORRISETTE, B STARR, WALKER, Representatives BARKER, BERGER, BROWN, ESQUIVEL, GARRARD,
KITTS

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.

Establishes protections for **certain** nursing staff members who [*experience workplace violence*] **are assaulted by patient.**

A BILL FOR AN ACT

1
2 Relating to workplace violence against nursing staff members; creating new provisions; and amend-
3 ing ORS 659A.885.

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

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

6 (1) **"Ambulatory surgical center" has the meaning given that term in ORS 442.015.**

7 (2) **"Assault" means attempting to cause or intentionally, knowingly or recklessly causing**
8 **physical injury.**

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

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

14 (5) **"Hospital" has the meaning given that term in ORS 442.015.**

15 (6) **"Law enforcement agency" means:**

16 (a) **Any city or municipal police department.**

17 (b) **Any county sheriff's office.**

18 (c) **The Oregon State Police.**

19 (7) **"Nursing staff employer" means:**

20 (a) **An ambulatory surgical center; or**

21 (b) **A hospital.**

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

24 (9) **"Retaliatory action" has the meaning given that term in ORS 441.172.**

25 **SECTION 2. (1) A nursing staff member having reasonable cause to believe that a hos-**
26 **pital patient or home health care services patient with whom the nursing staff member**

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 comes into contact has assaulted a nursing staff member in a hospital or in the home of a
2 home health care services patient may report the assault, or cause a report of the assault
3 to be made, by telephone or otherwise, as described in subsection (2) of this section.

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

6 (a) A law enforcement agency within the county where the person making the report is
7 located at the time the report is made; and

8 (b) The nursing staff employer.

9 (3) The report shall include, if the information is known:

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

11 (b) The nature and extent of the alleged assault, and any evidence of previous assaults;
12 and

13 (c) The date of the incident.

14 (4) If a law enforcement agency responding to a report under subsection (2) of this sec-
15 tion files a crime report regarding the assault, the law enforcement agency shall ensure that
16 the report is entered into the Oregon Uniform Crime Reporting Program.

17 (5) A law enforcement agency that filed a crime report under subsection (4) of this sec-
18 tion must provide, upon request of a nursing staff employer, a copy of the crime report
19 arising out of the same report made under subsection (2) of this section to the nursing staff
20 employer.

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

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

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

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

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

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

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

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

42 **SECTION 4.** A nursing staff employer required to publish a report under section 3 of this
43 2005 Act shall publish its first report by April 1, 2007.

44 **SECTION 5.** A nursing staff employer shall develop and implement a written violence
45 prevention and self-defense program for nursing staff members. The program shall include

1 **but not be limited to:**

- 2 (1) **Annual training;**
- 3 (2) **Practice drills; and**
- 4 (3) **Post-incident counseling and a follow-up program.**

5 **SECTION 6. If a nursing staff employer directs a nursing staff member who is the victim**
6 **of an assault reported under section 2 (2) of this 2005 Act to provide further treatment to**
7 **the patient who assaulted the nursing staff member, the nursing staff member may request**
8 **to be accompanied by a second staff member. If the nursing staff employer declines the**
9 **nursing staff member's request, the nursing staff employer may not require the nursing staff**
10 **member to treat the patient.**

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

- 14 (a) **The nursing staff member was acting in self-defense in response to the use or immi-**
15 **nent use of physical force;**
- 16 (b) **The amount of force used was reasonably necessary to protect the nursing staff**
17 **member from violence or assault; and**
- 18 (c) **The nursing staff member used the least restrictive procedures necessary under the**
19 **circumstances in accordance with an approved behavior management plan or other method**
20 **of response approved by the nursing staff employer.**

21 **(2) As used in this section, "self-defense" means the use of physical force upon another**
22 **person in self-defense or to defend a third person.**

23 **SECTION 8. (1) A nursing staff member providing home health care services may refuse**
24 **to treat a patient unless accompanied by a second staff person if, based on the patient's past**
25 **behavior or physical or mental condition, the nursing staff member believes that the patient**
26 **might assault the nursing staff member.**

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

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

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

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

39 **659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in sub-**
40 **section (2) of this section may file a civil action in circuit court. In any action under this subsection,**
41 **the court may order injunctive relief and such other equitable relief as may be appropriate, includ-**
42 **ing but not limited to reinstatement or the hiring of employees with or without back pay. A court**
43 **may order back pay in an action under this subsection only for the two-year period immediately**
44 **preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of**
45 **Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year**

1 period immediately preceding the filing of the action. In any action under this subsection, the court
2 may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as
3 provided in subsection (3) of this section:

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

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

7 (2) An action may be brought under subsection (1) of this section for the following unlawful
8 practices: ORS 25.337, 25.424, 399.235, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,
9 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233,
10 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.318 and 659A.421 (1) or (3) **and**
11 **section 9 of this 2005 Act.**

12 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
13 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,
14 659A.318 or 659A.421 (1) or (3):

15 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
16 compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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

21 (4) In any action under subsection (1) of this section alleging a violation of ORS 659A.203 or
22 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this sec-
23 tion, compensatory damages or \$250, whichever is greater.

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

31 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
32 compensatory and punitive damages;

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

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

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

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

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