

B-Engrossed
House Bill 2665

Ordered by the House June 5
Including House Amendments dated April 7 and June 5

Sponsored by Representative NOSSE, Senator LIEBER; Representative SMITH G, Senators CAMPOS, GELSER BLOUIN (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 establish process to receive and investigate complaints regarding temporary staffing agency. Requires temporary staffing agency to ensure personnel meets certain requirements.

Directs Oregon Health Authority to adopt rules to establish maximum rates that temporary staffing agency may charge to or receive from entity that engages temporary staffing agency. Directs authority to establish process to grant nonemergency waiver of maximum rates. Directs authority to establish process for emergency waiver of maximum rates and provides that request for emergency waiver is automatically approved and issued upon submission to authority. Becomes operative January 1, 2025.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to temporary staffing agencies; creating new provisions; amending ORS 676.625 and
3 sections 1, 5 and 7, chapter 92, Oregon Laws 2022; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of sections 1 to 7,**
6 **chapter 92, Oregon Laws 2022.**

7 **SECTION 2. (1) The Health Licensing Office shall establish a process to receive and in-**
8 **vestigate complaints regarding a temporary staffing agency authorized under section 2,**
9 **chapter 92, Oregon Laws 2022, or current or former personnel of a temporary staffing**
10 **agency, including any current or former personnel employed by a temporary staffing agency**
11 **or for whom a temporary staffing agency procured temporary employment or that the tem-**
12 **porary staffing agency referred or assigned to temporary employment. The process estab-**
13 **lished under this section must allow any person to submit a complaint. The office shall**
14 **investigate a complaint received through the process established under this section and shall**
15 **report its findings to the complainant and the temporary staffing agency to which the com-**
16 **plaint relates.**

17 **(2) The office may impose civil penalties on a temporary staffing agency in addition to**
18 **the civil penalties described in section 7, chapter 92, Oregon Laws 2022, or revoke, suspend**
19 **or impose conditions on the authorization of a temporary staffing agency pursuant to crite-**
20 **ria adopted by the Oregon Health Authority by rule, in circumstances including but not**
21 **limited to the following:**

22 **(a) If personnel currently or formerly employed by a temporary staffing agency, or for**
23 **whom a temporary staffing agency procures temporary employment or that the temporary**

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 **staffing agency refers or assigns to temporary employment:**

2 (A) Engages in abuse, neglect or exploitation of a patient, resident, client or consumer
3 of the entity that engaged the temporary staffing agency;

4 (B) Engages in conduct that presents a threat to the health, safety or welfare of others,
5 including but not limited to a patient, resident, client, consumer or employee of the entity
6 that engaged the temporary staffing agency; or

7 (C) Does not meet the qualifications or requirements for the position in which the per-
8 sonnel is working, including but not limited to qualifications or requirements for knowledge,
9 skills or experience or professional authorization; or

10 (b) If the temporary staffing agency is not in compliance with section 2, 4 or 5, chapter
11 92, Oregon Laws 2022, or rules adopted under section 2, 4 or 5, chapter 92, Oregon Laws 2022.

12 **SECTION 3.** Section 1, chapter 92, Oregon Laws 2022, is amended to read:

13 **Sec. 1.** As used in [sections 1 to 7 of this 2022 Act] sections 1 to 7, chapter 92, Oregon Laws
14 2022:

15 (1) **“Hospital” has the meaning given that term in ORS 442.015.**

16 (2) **“Personnel” means:**

17 *[(a) An individual, regardless of whether the individual is licensed or otherwise authorized by the*
18 *state to practice a health care occupation or profession, who provides health care services or assistance*
19 *with activities of daily living to clients, patients or residents for or on behalf of an entity that engages*
20 *the temporary staffing agency with which the individual is associated.]*

21 (a) **A registered nurse, licensed practical nurse, certified medical assistant, certified**
22 **nursing assistant or direct caregiver who provides health care services or assistance with**
23 **activities of daily living to clients, patients or residents for or on behalf of an in-home care**
24 **agency as defined in ORS 443.305, a facility with a memory care endorsement as described**
25 **in ORS 443.886, a residential care facility as defined in ORS 443.400 or a skilled nursing fa-**
26 **ility as defined in ORS 442.015 that engages the temporary staffing agency with which the**
27 **registered nurse, licensed practical nurse, certified medical assistant, certified nursing as-**
28 **istant or direct caregiver is associated; or**

29 (b) **A registered nurse or certified nursing assistant who provides health care services**
30 **to patients for or on behalf of a hospital that engages the temporary staffing agency with**
31 **which the registered nurse or certified nursing assistant is associated.**

32 *[(2)(a)]* (3)(a) **“Temporary staffing agency” means an entity that operates in this state for the**
33 **purpose of providing temporary work to personnel providing health care services or assistance with**
34 **activities of daily living for or on behalf of entities that engage the temporary staffing agency.**

35 (b) **“Temporary staffing agency” does not include:**

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

39 (B) **An individual who provides the individual’s services on a temporary basis;**

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

41 (D) **Home health agencies licensed under ORS 443.015;**

42 (E) **In-home care agencies licensed under ORS 443.315; or**

43 (F) **Home care workers and personal support workers listed on the home care registry as defined**
44 **in ORS 410.600.**

45 **SECTION 4.** Section 5, chapter 92, Oregon Laws 2022, is amended to read:

1 **Sec. 5.** (1) A temporary staffing agency authorized under [*section 2 of this 2022 Act*] **section 2,**
2 **chapter 92, Oregon Laws 2022,** shall:

3 (a) Ensure all personnel [*for which*] the temporary staffing agency **employs or for whom the**
4 **temporary staffing agency** procures [*or provides*] temporary employment **or that the temporary**
5 **staffing agency refers or assigns to temporary employment, for the practice or performance**
6 **of the services provided by the personnel:**

7 **(A)** [*Meet*] **Meets** any professional authorization **or qualification** requirements established [*for*
8 *the practice or performance of the services provided by the personnel.*];

9 **(B)** **Has completed any state or nationwide criminal records check required for the posi-**
10 **tion in which the personnel is employed or to which the personnel is assigned or referred;**

11 **(C)** **Has completed any required training and continuing education for the position in**
12 **which the personnel is employed or to which the personnel is assigned or referred;**

13 **(D)** **Possesses the necessary skills, knowledge and experience and meet any other rele-**
14 **vant requirements for the position in which the personnel is employed or to which the per-**
15 **sonnel is assigned or referred; and**

16 **(E)** **Complies with any relevant requirements related to the health of staff employed by**
17 **the entity at which the personnel is employed or to which the personnel is assigned or re-**
18 **ferred.**

19 (b) Assign personnel to settings for which the personnel [*have*] **has** the appropriate work expe-
20 rience and background to provide the services required by the specific setting.

21 (c) Retain records for at least 10 years in a manner that makes the records immediately avail-
22 able to the Health Licensing Office upon request of the office.

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

24 (2) A temporary staffing agency authorized under [*section 2 of this 2022 Act*] **section 2, chapter**
25 **92, Oregon Laws 2022,** may charge to an entity that engages the temporary staffing agency fees
26 or other amounts related to or associated with the subsequent hiring of personnel by the entity, or
27 pay to the entity such fees or amounts if the temporary staffing agency hires the entity's staff
28 members, if:

29 (a) The entity or the temporary staffing agency directly solicits, or attempts to solicit, employ-
30 ment of the personnel or the entity's staff members; and

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

33 **SECTION 5.** Section 7, chapter 92, Oregon Laws 2022, is amended to read:

34 **Sec. 7.** (1) The Health Licensing Office may impose on a temporary staffing agency a civil pen-
35 alty not to exceed \$500 per day per violation of [*section 2, 4 or 5 of this 2022 Act*] **section 2 of this**
36 **2023 Act or section 2, 4 or 5, chapter 92, Oregon Laws 2022.** The office shall consider as a sep-
37 arate violation each assignment of an individual personnel member in violation of [*section 5 (1) of*
38 *this 2022 Act*] **section 5 (1), chapter 92, Oregon Laws 2022.**

39 (2) Moneys from civil penalties imposed under this section shall be deposited in the Health Li-
40 censing Office Account established under ORS 676.625 for the administration of [*sections 1 to 7 of*
41 *this 2022 Act*] **sections 1 to 7, chapter 92, Oregon Laws 2022.**

42 **SECTION 6.** ORS 676.625 is amended to read:

43 676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges
44 to carry out the office's responsibilities under ORS 676.560 to 676.625, 676.850 and 676.992 and any
45 responsibility imposed on the office pertaining to the boards, councils and programs administered

1 and regulated by the office pursuant to ORS 676.565.

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

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

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

19 (5) The moneys received from civil penalties assessed under ORS 676.992 **and section 2 of this**
20 **2023 Act** shall be deposited and accounted for as are other moneys received by the office and shall
21 be for the administration and enforcement of the statutes governing the boards, councils and pro-
22 grams administered by the office.

23 **SECTION 7.** ORS 676.625, as amended by section 14, chapter 92, Oregon Laws 2022, is amended
24 to read:

25 676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges
26 to carry out the office's responsibilities under ORS 676.560 to 676.625, 676.850 and 676.992 and any
27 responsibility imposed on the office pertaining to the boards, councils and programs administered
28 and regulated by the office pursuant to ORS 676.565.

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

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

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

1 (5) The moneys received from civil penalties assessed under ORS 676.992 and section 7, chapter
2 92, Oregon Laws 2022, **and section 2 of this 2023 Act** shall be deposited and accounted for as are
3 other moneys received by the office and shall be for the administration and enforcement of the
4 statutes governing the boards, councils and programs administered by the office.

5 **SECTION 8.** Sections 9 to 11 of this 2023 Act are added to and made a part of sections 1
6 to 7, chapter 92, Oregon Laws 2022.

7 **SECTION 9.** (1) The Oregon Health Authority shall adopt rules to establish the maximum
8 rates that, except as provided in section 10 of this 2023 Act, a temporary staffing agency
9 authorized under section 2, chapter 92, Oregon Laws 2022, may charge to or receive from an
10 entity that engages the temporary staffing agency. The authority shall establish more than
11 one maximum rate under this section. The maximum rates established under this section
12 must, for the category of personnel for which the maximum rates are established:

13 (a) Be based on the most recently available wage data from the Employment Department
14 and include any applicable fringe benefits, charges for administrative and contract fees and
15 other special charges; and

16 (b) Bear a reasonable relationship to the wage data described in paragraph (a) of this
17 subsection.

18 (2) The differences in the maximum rates established under this section must be based
19 on factors including but not limited to the minimum wages in geographic regions of this
20 state, shift differentials, holiday pay, type of licensed care setting, relevant state and federal
21 regulatory requirements, personnel with specialty training and information obtained through
22 the consultation described in subsection (3) of this section.

23 (3) The authority shall consult with at least the following in establishing the maximum
24 rates under this section:

25 (a) Temporary staffing agencies authorized under section 2, chapter 92, Oregon Laws
26 2022, or representatives of temporary staffing agencies authorized under section 2, chapter
27 92, Oregon Laws 2022; and

28 (b) Providers of long term care services, acute care services and primary care services,
29 or representatives of the providers described in this paragraph.

30 (4) The authority shall annually evaluate the maximum rates established under this sec-
31 tion and may, based on changes in the labor market, the wage data described in subsection
32 (1) of this section and other factors the authority considers relevant, adjust the maximum
33 rates established under this section. In evaluating and adjusting the maximum rates estab-
34 lished under this section, the authority shall consult with the individuals and entities de-
35 scribed in subsection (3) of this section.

36 (5) The authority may adopt rules to carry out this section.

37 **SECTION 10.** A temporary staffing agency that is engaged by a hospital may charge to
38 and receive from the hospital rates that exceed the maximum rates established under section
39 9 of this 2023 Act if the rates apply to 25 or fewer personnel in a single licensed care setting.

40 **SECTION 11.** (1) The Oregon Health Authority shall establish a process through which a
41 temporary staffing agency or an entity that engages a temporary staffing agency may apply
42 to the authority for a waiver of the maximum rates described in section 9 of this 2023 Act
43 in circumstances other than those described in subsection (2) of this section. The authority
44 shall establish a period of time for which a waiver granted under this section is valid and a
45 process through which a waiver may be renewed.

1 **(2)(a) The authority shall establish a process through which an entity that intends to**
2 **engage a temporary staffing agency authorized under section 2, chapter 92, Oregon Laws**
3 **2022, at a rate higher than a maximum rate established under section 9 of this 2023 Act, may**
4 **request an emergency waiver of the maximum rates. The process must allow the entity to**
5 **submit a written request for an emergency waiver if:**

6 **(A) There is an emergency, as defined in ORS 401.025, a state of emergency is declared**
7 **pursuant to ORS 401.165 or a public health emergency is declared pursuant to ORS 433.441;**
8 **and**

9 **(B) The entity intends to engage the temporary staffing agency in order to respond to**
10 **the emergency or state of emergency.**

11 **(b) A request for an emergency waiver made pursuant to this subsection shall be auto-**
12 **matically approved and issued upon submission to the authority.**

13 **(c) An emergency waiver issued under this subsection is valid for 90 days and may be**
14 **renewed. The authority shall approve or deny a request to renew an emergency waiver within**
15 **three business days after receiving the request.**

16 **(d) A temporary staffing agency engaged by an entity for which an emergency waiver is**
17 **issued under this subsection may charge to or receive from the entity rates consistent with**
18 **the emergency waiver.**

19 **(3) The authority may adopt rules to carry out this section.**

20 **SECTION 12.** Section 2 of this 2023 Act is amended to read:

21 **Sec. 2.** (1) The Health Licensing Office shall establish a process to receive and investigate
22 complaints regarding a temporary staffing agency authorized under section 2, chapter 92, Oregon
23 Laws 2022, or current or former personnel of a temporary staffing agency, including any current or
24 former personnel employed by a temporary staffing agency or for whom a temporary staffing agency
25 procured temporary employment or that the temporary staffing agency referred or assigned to tem-
26 porary employment. The process established under this section must allow any person to submit a
27 complaint. The office shall investigate a complaint received through the process established under
28 this section and shall report its findings to the complainant and the temporary staffing agency to
29 which the complaint relates.

30 (2) The office may impose civil penalties on a temporary staffing agency in addition to the civil
31 penalties described in section 7, chapter 92, Oregon Laws 2022, or revoke, suspend or impose con-
32 ditions on the authorization of a temporary staffing agency pursuant to criteria adopted by the
33 Oregon Health Authority by rule, and in circumstances including but not limited to the following:

34 (a) If personnel currently or formerly employed by a temporary staffing agency, or for whom a
35 temporary staffing agency procures temporary employment or that the temporary staffing agency
36 refers or assigns to temporary employment:

37 (A) Engages in abuse, neglect or exploitation of a patient, resident, client or consumer of the
38 entity that engaged the temporary staffing agency;

39 (B) Engages in conduct that presents a threat to the health, safety or welfare of others, includ-
40 ing but not limited to a patient, resident, client, consumer or employee of the entity that engaged
41 the temporary staffing agency; or

42 (C) Does not meet the qualifications or requirements for the position in which the personnel is
43 working, including but not limited to qualifications or requirements for knowledge, skills or experi-
44 ence or professional authorization; or

45 (b) If the temporary staffing agency is not in compliance with section 2, 4 or 5, chapter 92,

1 Oregon Laws 2022, or **section 9, 10 or 11 of this 2023 Act**, or rules adopted under section 2, 4 or
2 5, chapter 92, Oregon Laws 2022, or **section 9, 10 or 11 of this 2023 Act**.

3 **SECTION 13.** Section 1, chapter 92, Oregon Laws 2022, as amended by section 3 of this 2023
4 Act, is amended to read:

5 **Sec. 1.** As used in sections 1 to 7, chapter 92, Oregon Laws 2022:

6 (1) "Hospital" has the meaning given that term in ORS 442.015.

7 (2) "Personnel" means:

8 (a) A registered nurse, licensed practical nurse, certified medical assistant, certified nursing
9 assistant or direct caregiver who provides health care services or assistance with activities of daily
10 living to clients, patients or residents for or on behalf of an in-home care agency as defined in ORS
11 443.305, a facility with a memory care endorsement as described in ORS 443.886, a residential care
12 facility as defined in ORS 443.400 or a skilled nursing facility as defined in ORS 442.015 that engages
13 the temporary staffing agency with which the registered nurse, licensed practical nurse, certified
14 medical assistant, certified nursing assistant or direct caregiver is associated; or

15 (b) A registered nurse or certified nursing assistant who provides health care services to pa-
16 tients for or on behalf of a hospital that engages the temporary staffing agency with which the
17 registered nurse or certified nursing assistant is associated.

18 (3) "**Rate**" means the total amount that a temporary staffing agency may charge to or
19 receive from an entity that engages the temporary staffing agency to assign personnel to the
20 entity on a temporary basis.

21 [(3)(a)] (4)(a) "Temporary staffing agency" means an entity that operates in this state for the
22 purpose of providing temporary work to personnel providing health care services or assistance with
23 activities of daily living for or on behalf of entities that engage the temporary staffing agency.

24 (b) "Temporary staffing agency" does not include:

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

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

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

30 (D) Home health agencies licensed under ORS 443.015;

31 (E) In-home care agencies licensed under ORS 443.315; or

32 (F) Home care workers and personal support workers listed on the home care registry as defined
33 in ORS 410.600.

34 **SECTION 14.** Section 7, chapter 92, Oregon Laws 2022, as amended by section 5 of this 2023
35 Act, is amended to read:

36 **Sec. 7.** (1) The Health Licensing Office may impose on a temporary staffing agency a civil pen-
37 alty not to exceed \$500 per day per violation of section 2, **9, 10 or 11** of this 2023 Act or section
38 2, 4 or 5, chapter 92, Oregon Laws 2022. The office shall consider as a separate violation each as-
39 signment of an individual personnel member in violation of section 5 (1), chapter 92, Oregon Laws
40 2022.

41 (2) Moneys from civil penalties imposed under this section shall be deposited in the Health Li-
42 censing Office Account established under ORS 676.625 for the administration of sections 1 to 7,
43 chapter 92, Oregon Laws 2022.

44 **SECTION 15.** (1) **Sections 9 to 11 of this 2023 Act, the amendments to sections 1 and 7,**
45 **chapter 92, Oregon Laws 2022, by sections 13 and 14 of this 2023 Act and the amendments to**

1 section 2 of this 2023 Act by section 12 of this 2023 Act become operative on January 1, 2025.

2 (2) The Health Licensing Office and the Oregon Health Authority may take any action
3 before the operative date specified in subsection (1) of this section that is necessary to enable
4 the authority and the office to exercise, on and after the operative date specified in sub-
5 section (1) of this section, all of the duties, functions and powers conferred on the authority
6 and the office by sections 9 to 11 of this 2023 Act, the amendments to sections 1 and 7,
7 chapter 92, Oregon Laws 2022, by sections 13 and 14 of this 2023 Act and the amendments to
8 section 2 of this 2023 Act by section 12 of this 2023 Act.

9 SECTION 16. In addition to and not in lieu of any other appropriation, there is appro-
10 priated to the Oregon Health Authority, for the biennium beginning July 1, 2023, out of the
11 General Fund, the amount of \$2,000,717 for the purposes of carrying out the provisions of
12 sections 9 to 11 of this 2023 Act, the amendments to sections 1 and 7, chapter 92, Oregon
13 Laws 2022, by sections 13 and 14 of this 2023 Act and the amendments to section 2 of this
14 2023 Act by section 12 of this 2023 Act.

15 SECTION 17. This 2023 Act takes effect on the 91st day after the date on which the 2023
16 regular session of the Eighty-second Legislative Assembly adjourns sine die.

17