

SENATE BILL REPORT

ESSB 6428

As Passed Senate, February 14, 2002

Title: An act relating to state agency loss prevention.

Brief Description: Providing for loss prevention review teams.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators B. Sheldon, Johnson, Kline, Costa, McCaslin, Gardner, Long and Kohl-Welles; by request of Governor Locke and Attorney General).

Brief History:

Committee Activity: Judiciary: 1/31/02, 2/7/02 [DPS].

Passed Senate: 2/14/02, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6428 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, Poulsen, Roach, Thibaudeau and Zarelli.

Staff: Dick Armstrong (786-7460)

Background: During the 2001 interim, the Governor and Attorney General sponsored a Risk Management Task Force in response to increasing attention to incidents of severe harm to citizens and the increasing liability of the state for injuries and losses. The purpose of the task force was to identify how the state can deliver its difficult and risky programs and services in a way that better protects citizens of the state from harm or injury and that provides for the most effective risk management possible. The task force was comprised of a number of groups, including the Attorney General, legislators, agency directors and budget officials, risk managers, attorneys, and advisors from the University of Washington.

The Risk Management Task Force issued a number of recommendations in its final report. One of the recommendations of the task force was to require agencies to conduct post-incident reviews that would provide recommendations on how to avoid or reduce losses in the future.

Summary of Bill: Whenever the death or serious injury of a person, or other substantial loss, is alleged or suspected to be caused in part by the actions of a state agency, the director of the Office of Financial Management (OFM) must appoint a loss prevention review team, unless the director determines the incident does not merit review. A loss prevention review team may also be appointed by the director of OFM if agency policies, management practices, or litigation practices result in a substantial loss. State agencies must immediately report to OFM a death, serious injury, or other substantial loss that may have been caused by the agency. If the director does not appoint a loss prevention review team, the director

must issue a statement of reasons for not appointing the review team and this statement must be made available on the OFM's web site.

A loss prevention review team must consist of between three and five members and may include independent consultants, contractors, or state employees. At least one member of the review team must have expertise relevant to the matter under review.

The loss prevention review team must review the incident, evaluate its causes, and recommend steps to reduce the risks of such incidents recurring by reviewing relevant documents and interviewing people with relevant knowledge.

The final report of a loss prevention review team must be made public by the director and is subject to public disclosure. The final report is subject to discovery in a civil or administrative proceeding. However, the final report, and any documents prepared by or for the loss prevention review team, are not admissible in a civil or administrative proceeding except for the purpose of impeaching a witness.

Excerpts from the final report or any documents prepared by or for the team may only be used to impeach a witness if the party wishing to use the excerpts for impeachment purposes shows by clear and convincing evidence that the witness has contradicted a previous statement to the team on an issue of fact that is material to the present proceeding.

A member of a loss prevention review team may not be examined in a civil or administrative proceeding as to the work of the team, the incident reviewed by the team, or the thoughts, deliberations, statements or analysis of the member, any other member of the team or any person who provided information to the team, that relates to the work of the team or the incident under review.

A document that is available prior to the creation of a loss prevention review team or that is created independently of a team does not become inadmissible as a result of the team's consideration of the document. A person may testify in a separate civil proceeding even if the person has testified before a review team. However, the person may not be examined as to his or her interactions with the review team.

An agency must respond to a final report of the loss prevention review team, within 120 days, indicating which of the report's recommendations the agency hopes to implement, whether implementation requires additional funding or legislation, and other information the director may require. The agency response is considered part of the final report and subject to the restrictions on admissibility and use in civil or administrative proceedings and the obligation of the director to make the final report public.

The restrictions of the act do not apply to a licensing or disciplinary proceeding in which an agency is attempting to revoke or suspend the license of a person for alleged wrongdoing in connection with an incident reviewed by a loss prevention review team.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: In recent years, the state has paid out a significant amount of money for liability in tort cases. The state needs to take action to prevent these cases in the future and make our state safer for its citizens.

Currently, there is no statute that provides for an independent review of situations of liability. And if an agency does undertake a review on its own initiative, such findings can be used against the agency in a tort case. This bill creates an independent process and also provides that the findings in the report cannot be used against the state in tort litigation. These are common sense recommendations and meet the expectations of the public.

The bill also involves the risk management process more directly with the budget process to create an atmosphere of greater accountability.

The Task Force on Risk Management spent many long hours working on this issue and the bill will prevent many accidents from happening in the future. It is time that the state learns from its mistakes.

Testimony Against: None.

Testified: PRO: Senator Betti Sheldon, prime sponsor; Larry Shannon, WSTLA; Lonnie Johns-Brown, Coalition of Sexual Assault Programs; Chris Gregoire, Attorney General; Marty Brown, OFM Director.

House Amendment(s): The amendment specifies that nothing in the bill affects the application of Chapter 70.41 RCW which contains hospital licensing, registration, and quality control requirements, to state-owned or managed hospitals (i.e., UW Hospital and Harborview).