
SUBSTITUTE HOUSE BILL 2353

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Alexander, Lantz, Miloscia and Esser; by request of Governor Locke and Attorney General)

Read first time 01/31/2002. Referred to Committee on .

1 AN ACT Relating to state agency loss prevention; adding new
2 sections to chapter 43.41 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature intends that when deaths and
5 serious injuries to the public and other substantial losses are
6 attributed to the state government's failure to fulfill its lawful
7 duties, a loss prevention review shall be conducted. The legislature
8 recognizes the tension inherent in a loss prevention review and the
9 need to balance the prevention of harm to the public with state
10 agencies' accountability to the public. The legislature intends to
11 minimize this tension and to foster open and frank discussions by
12 granting members of the loss prevention review teams protection from
13 having to testify, and by declaring a general rule that the work
14 product of these teams is inadmissible in civil actions or
15 administrative proceedings.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.41 RCW
17 to read as follows:

1 (1) The director of financial management shall appoint a loss
2 prevention review team when the death of a person, serious injury to a
3 person, or other substantial loss is alleged or suspected to be caused
4 at least in part by the actions of a state agency, unless the director
5 in his or her discretion determines that the incident does not merit
6 review. When the director decides not to appoint a loss prevention
7 review team he or she shall issue a statement of the reasons for the
8 director's decision. The statement shall be made available on the web
9 site of the office of financial management. The director's decision
10 pursuant to this section to appoint or not appoint a loss prevention
11 review team shall not be admitted into evidence in a civil or
12 administrative proceeding.

13 (2) A loss prevention review team shall consist of at least three
14 but no more than five persons, and may include independent consultants,
15 contractors, or state employees, but it shall not include any person
16 employed by the agency involved in the loss or risk of loss giving rise
17 to the review, nor any person with testimonial knowledge of the
18 incident to be reviewed. At least one member of the review team shall
19 have expertise relevant to the matter under review.

20 (3) The loss prevention review team shall review the death, serious
21 injury, or other incident and the circumstances surrounding it,
22 evaluate its causes, and recommend steps to reduce the risk of such
23 incidents occurring in the future. The loss prevention review team
24 shall accomplish these tasks by reviewing relevant documents,
25 interviewing persons with relevant knowledge, and reporting its
26 recommendations in writing to the director of financial management and
27 the director of the agency involved in the loss or risk of loss within
28 the time requested by the director of financial management. The final
29 report shall not disclose the contents of any documents required by law
30 to be kept confidential.

31 (4) State agencies must notify the office of financial management
32 immediately upon becoming aware of a death, serious injury, or other
33 substantial loss that is alleged or suspected to be caused at least in
34 part by the actions of the state agency. State agencies shall provide
35 the loss prevention review team ready access to relevant documents in
36 their possession and ready access to their employees.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.41 RCW
38 to read as follows:

1 (1) The final report from a loss prevention review team to the
2 director of financial management shall be made public by the director
3 promptly upon receipt, and shall be subject to public disclosure. The
4 final report shall be subject to discovery in a civil or administrative
5 proceeding. However, the final report shall not be admitted into
6 evidence or otherwise used in a civil or administrative proceeding
7 except pursuant to subsection (2) of this section.

8 (2) The relevant excerpt or excerpts from the final report of a
9 loss prevention review team may be used to impeach a fact witness in a
10 civil or administrative proceeding only if the party wishing to use the
11 excerpt or excerpts from the report first shows the court by clear and
12 convincing evidence that the witness, in testimony provided in
13 deposition or at trial in the present proceeding, has contradicted his
14 or her previous statements to the loss prevention review team on an
15 issue of fact material to the present proceeding. In that case, the
16 party may use only the excerpt or excerpts necessary to demonstrate the
17 contradiction. This section shall not be interpreted as expanding the
18 scope of material that may be used to impeach a witness.

19 (3) No member of a loss prevention review team may be examined in
20 a civil or administrative proceeding as to (a) the work of the loss
21 prevention review team, (b) the incident under review, (c) his or her
22 statements, deliberations, thoughts, analyses, or impressions relating
23 to the work of the loss prevention review team or the incident under
24 review, or (d) the statements, deliberations, thoughts, analyses, or
25 impressions of any other member of the loss prevention review team, or
26 any person who provided information to it, relating to the work of the
27 loss prevention review team or the incident under review.

28 (4) Any document that exists prior to the appointment of a loss
29 prevention review team, or that is created independently of such a
30 team, does not become inadmissible merely because it is reviewed or
31 used by the loss prevention review team. Any person who provides
32 testimony or statements to a loss prevention review team does not
33 become unavailable as a witness in any proceeding merely because the
34 person has provided testimony or statements to the loss prevention
35 review team and that person shall, if called as a witness, provide all
36 relevant testimony pursuant to applicable law. However, any person who
37 has provided testimony or statements to, or has been interviewed by, a
38 loss prevention review team may not be examined in any civil or
39 administrative proceeding regarding that person's statements to or

1 discussions with the loss prevention review team, except by way of an
2 impeachment pursuant to subsection (2) of this section.

3 (5) Documents prepared by or for the loss prevention review team
4 are inadmissible and may not be used in a civil or administrative
5 proceeding, except that excerpts may be used to impeach the credibility
6 of a witness under the same circumstances that excerpts of the final
7 report may be used pursuant to subsection (2) of this section.

8 (6) The restrictions set forth in this section shall not apply in
9 a licensing or disciplinary proceeding arising from an agency's effort
10 to revoke or suspend the license of any licensed professional based in
11 whole or in part upon allegations of wrongdoing in connection with the
12 death, injury, or other incident reviewed by the loss prevention review
13 team.

14 (7) Within one hundred twenty days after completion of the final
15 report of a loss prevention review team, the agency under review shall
16 issue to the office of financial management a response to the report.
17 The response will indicate (a) which of the report's recommendations
18 the agency hopes to implement, (b) whether implementation of those
19 recommendations will require additional funding or legislation, and (c)
20 whatever other information the director may require. This response
21 shall be considered part of the final report and shall be subject to
22 all provisions of this section that apply to the final report,
23 including without limitation the restrictions on admissibility and use
24 in civil or administrative proceedings and the obligation of the
25 director to make the final report public.

26 (8) Nothing in section 2 of this act or this section is intended to
27 limit the scope of a legislative inquiry into or review of an incident
28 that is the subject of a loss prevention review.

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