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SENATE BILL 6428

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State of Washington 57th Legislature

2002 Regular Session

By Senators B. Sheldon, Johnson, Kline, Costa, McCaslin, Gardner, Long and Kohl-Welles; by request of Governor Locke and Attorney General

Read first time 01/17/2002. Referred to Committee on Judiciary.

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. The director's decision pursuant to this section to appoint or  
7 not appoint a loss prevention review team shall not be admitted into  
8 evidence in a civil or administrative proceeding.

9 (2) A loss prevention review team shall consist of at least three  
10 but no more than five persons, and may include independent consultants,  
11 contractors, or state employees, but it shall not include any person  
12 employed by the agency involved in the loss or risk of loss giving rise  
13 to the review, nor any person with testimonial knowledge of the  
14 incident to be reviewed.

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

26 (4) State agencies shall provide the loss prevention review team  
27 ready access to relevant documents in their possession and ready access  
28 to their employees.

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

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

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

12       (3) No member of a loss prevention review team may be examined in  
13 a civil or administrative proceeding as to (a) the work of the loss  
14 prevention review team, (b) the incident under review, (c) his or her  
15 statements, deliberations, thoughts, analyses, or impressions relating  
16 to the work of the loss prevention review team or the incident under  
17 review, or (d) the statements, deliberations, thoughts, analyses, or  
18 impressions of any other member of the loss prevention review team, or  
19 any person who provided information to it, relating to the work of the  
20 loss prevention review team or the incident under review.

21       (4) Any document that exists prior to the appointment of a loss  
22 prevention review team, or that is created independently of such a  
23 team, does not become inadmissible merely because it is reviewed or  
24 used by the loss prevention review team. Any person who provides  
25 testimony or statements to a loss prevention review team does not  
26 become unavailable as a witness in any proceeding merely because the  
27 person has provided testimony or statements to the loss prevention  
28 review team. However, any person who has provided testimony or  
29 statements to, or has been interviewed by, a loss prevention review  
30 team may not be examined in any civil or administrative proceeding  
31 regarding that person's statements to or discussions with the loss  
32 prevention review team, except by way of an impeachment pursuant to  
33 subsection (2) of this section.

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

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

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

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