
SUBSTITUTE SENATE BILL 5173

State of Washington

65th Legislature

2017 Regular Session

By Senate State Government (originally sponsored by Senators Chase, Miloscia, Hunt, and Hobbs; by request of Department of Enterprise Services)

READ FIRST TIME 02/09/17.

1 AN ACT Relating to loss prevention reviews by state agencies; and
2 amending RCW 43.19.003, 43.19.782, and 43.19.783.

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

4 **Sec. 1.** RCW 43.19.003 and 2011 1st sp.s. c 43 s 102 are each
5 amended to read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Department" means the department of enterprise services.

9 (2) "Director" means the director of enterprise services.

10 (3) "State agency" means every state agency, office, officer,
11 board, commission, institution, and institution of higher education,
12 including all state universities, regional universities, The
13 Evergreen State College, and community and technical colleges.

14 **Sec. 2.** RCW 43.19.782 and 2011 1st sp.s. c 43 s 508 are each
15 amended to read as follows:

16 (1) ~~((The director))~~ In consultation with the department and upon
17 delegation, a state agency shall appoint a loss prevention review
18 team when the death of a person, serious injury to a person, or other
19 substantial loss is alleged or suspected to be caused at least in
20 part by the actions of a state agency(~~(, unless the director in his~~

1 ~~or her discretion determines that the incident does not merit~~
2 ~~review))~~ except when the death, injury, or substantial loss is
3 already being investigated by another federal or state agency or by
4 the affected state agency pursuant to the federal or state agency
5 requirements. The department may also direct a state agency to
6 conduct a loss prevention review (~~team may also be appointed when~~
7 ~~any other substantial loss occurs as a result of agency policies,~~
8 ~~litigation or defense practices, or other management practices. When~~
9 ~~the director decides not to appoint a loss prevention review team he~~
10 ~~or she shall issue a statement of the reasons for the director's~~
11 ~~decision. The statement shall be made available on the department's~~
12 ~~web site. The director's decision pursuant to this section to appoint~~
13 ~~or not appoint a loss prevention review team shall not be admitted~~
14 ~~into evidence in a civil or administrative proceeding.)) after
15 consultation with the affected agency as to the purpose, scope,
16 necessary resources, and intended outcomes of the loss prevention
17 review. The department may provide guidance to the state agency
18 conducting the loss prevention review as requested by the state
19 agency.~~

20 (2) A loss prevention review team shall consist of at least three
21 (~~but no more than five~~) persons, and may include independent
22 consultants, contractors, or state employees, but it shall not
23 include any person (~~employed by the agency~~) directly involved in
24 the loss or risk of loss giving rise to the review, nor any person
25 with testimonial knowledge of the incident to be reviewed. At least
26 one member of the review team shall have expertise relevant to the
27 matter under review.

28 (3) The loss prevention review team shall review the death,
29 serious injury, or other incident and the circumstances surrounding
30 it, evaluate its causes, and recommend steps to reduce the risk of
31 such incidents occurring in the future. The loss prevention review
32 team shall accomplish these tasks by reviewing relevant
33 documents(~~(7)~~) and interviewing persons with relevant knowledge(~~(7~~
34 ~~and reporting its recommendations)~~). The loss prevention review team
35 must submit a report in writing to the director and the (~~director~~)
36 head of the state agency involved in the loss or risk of loss
37 (~~within the time requested by the director~~). The report must
38 include the teams' findings, analyze the causes and contributing
39 factors, analyze future risk, include methods that the agency will
40 use to address and mitigate the risks identified, which may include

1 changes to policies or procedures, and any legislative recommendation
2 necessary to address and carry out the risk treatment strategies
3 identified in the subject report and include the manner in which the
4 agency will measure the effectiveness of its changes. The final
5 report shall not disclose the contents of any documents required by
6 law or regulation to be kept private or confidential, or that are
7 subject to legal privilege or exemption.

8 (4) (~~Pursuant to guidelines established by the director,~~) The
9 director may develop and enact rules to implement the provisions of
10 this chapter that apply to all state agency loss prevention review
11 teams. State agencies must notify the department immediately upon
12 becoming aware of a death, serious injury, or other substantial loss
13 that is alleged or suspected to be caused at least in part by the
14 actions of the state agency.

15 (5) All state agencies shall provide the loss prevention review
16 team ready access to relevant documents in their possession and ready
17 access to their employees.

18 (6) The director shall submit an annual report to the legislature
19 identifying the reviews conducted in the past year, providing
20 appropriate metrics on effectiveness and efficiency of the loss
21 prevention review team and programs, and summarizing any
22 determinations of trends in incidents such as reductions or increases
23 in the frequency or magnitude of losses and innovative approaches to
24 mitigating risks identified.

25 **Sec. 3.** RCW 43.19.783 and 2011 1st sp.s. c 43 s 509 are each
26 amended to read as follows:

27 (1) The final report from ((a)) the state agency's loss
28 prevention review team to the director shall be made public by the
29 director promptly (~~upon receipt~~) after review, and shall be subject
30 to public disclosure. The final report shall be subject to discovery
31 in a civil or administrative proceeding. However, the final report
32 shall not be admitted into evidence or otherwise used in a civil or
33 administrative proceeding except pursuant to subsection (2) of this
34 section.

35 (2) The relevant excerpt or excerpts from the final report of a
36 loss prevention review team may be used to impeach a fact witness in
37 a civil or administrative proceeding only if the party wishing to use
38 the excerpt or excerpts from the report first shows the court by
39 clear and convincing evidence that the witness, in testimony provided

1 in deposition or at trial in the present proceeding, has contradicted
2 his or her previous statements to the loss prevention review team on
3 an issue of fact material to the present proceeding. In that case,
4 the party may use only the excerpt or excerpts necessary to
5 demonstrate the contradiction. This section shall not be interpreted
6 as expanding the scope of material that may be used to impeach a
7 witness.

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

18 (4) Any document that exists prior to the appointment of a loss
19 prevention review team, or that is created independently of such a
20 team, does not become inadmissible merely because it is reviewed or
21 used by the loss prevention review team. A person does not become
22 unavailable as a witness merely because the person has been
23 interviewed by or has provided a statement to a loss prevention
24 review team. However, if called as a witness, the person may not be
25 examined regarding the person's interactions with the loss prevention
26 review team, including without limitation whether the loss prevention
27 review team interviewed the person, what questions the loss
28 prevention review team asked, and what answers the person provided to
29 the loss prevention review team. This section shall not be construed
30 as restricting the person from testifying fully in any proceeding
31 regarding his or her knowledge of the incident under review.

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

38 (6) The restrictions set forth in this section shall not apply in
39 a licensing or disciplinary proceeding arising from an agency's
40 effort to revoke or suspend the license of any licensed professional

1 based in whole or in part upon allegations of wrongdoing in
2 connection with the death, injury, or other incident reviewed by the
3 loss prevention review team.

4 ~~(7) ((Within one hundred twenty days after completion of the~~
5 ~~final report of a loss prevention review team, the agency under~~
6 ~~review shall issue to the department a response to the report. The~~
7 ~~response will indicate (a) which of the report's recommendations the~~
8 ~~agency hopes to implement, (b) whether implementation of those~~
9 ~~recommendations will require additional funding or legislation, and~~
10 ~~(c) whatever other information the director may require. This~~
11 ~~response shall be considered part of the final report and shall be~~
12 ~~subject to all provisions of this section that apply to the final~~
13 ~~report, including without limitation the restrictions on~~
14 ~~admissibility and use in civil or administrative proceedings and the~~
15 ~~obligation of the director to make the final report public.~~

16 ~~(8))~~ Nothing in RCW ~~((43.41.370))~~ 43.19.782 or this section is
17 intended to limit the scope of a legislative inquiry into or review
18 of an incident that is the subject of a loss prevention review.

19 ~~((9))~~ (8) Nothing in RCW ~~((43.41.370))~~ 43.19.782 or in this
20 section affects chapter 70.41 RCW and application of that chapter to
21 state-owned or managed hospitals licensed under chapter 70.41 RCW.

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