

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5173**

65th Legislature  
2017 Regular Session

Passed by the Senate April 17, 2017  
Yeas 49 Nays 0

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**President of the Senate**

Passed by the House April 5, 2017  
Yeas 97 Nays 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5173** as passed by Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE SENATE BILL 5173

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AS AMENDED BY THE HOUSE

Passed Legislature - 2017 Regular Session

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. Any review conducted by another agency or under other  
6 requirements must contain elements of subsection (3) of this section  
7 and must comply with section 3 of this act to the extent section 3 of  
8 this act does not conflict with statutes or rules governing those  
9 reviews. The department may also direct a state agency to conduct a  
10 loss prevention review (~~team may also be appointed when any other~~  
11 ~~substantial loss occurs as a result of agency policies, litigation or~~  
12 ~~defense practices, or other management practices. When the director~~  
13 ~~decides not to appoint a loss prevention review team he or she shall~~  
14 ~~issue a statement of the reasons for the director's decision. The~~  
15 ~~statement shall be made available on the department's web site. The~~  
16 ~~director's decision pursuant to this section to appoint or not~~  
17 ~~appoint a loss prevention review team shall not be admitted into~~  
18 ~~evidence in a civil or administrative proceeding.)) after~~  
19 consultation with the affected agency as to the purpose, scope,  
20 necessary resources, and intended outcomes of the loss prevention  
21 review. The department may provide guidance to the state agency  
22 conducting the loss prevention review as requested by the state  
23 agency.

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

33 (3) The loss prevention review team shall review the death,  
34 serious injury, or other incident and the circumstances surrounding  
35 it, evaluate its causes, and recommend steps to reduce the risk of  
36 such incidents occurring in the future. The loss prevention review  
37 team shall accomplish these tasks by reviewing relevant  
38 documents(~~(7)~~) and interviewing persons with relevant knowledge(~~(7~~  
39 ~~and reporting its recommendations))~~. The loss prevention review team  
40 must submit a report in writing to the director and the (~~director~~)

1 head of the state agency involved in the loss or risk of loss  
2 ((within the time requested by the director)). The report must  
3 include the teams' findings, analyze the causes and contributing  
4 factors, analyze future risk, include methods that the agency will  
5 use to address and mitigate the risks identified, which may include  
6 changes to policies or procedures, and any legislative recommendation  
7 necessary to address and carry out the risk treatment strategies  
8 identified in the subject report and include the manner in which the  
9 agency will measure the effectiveness of its changes. The final  
10 report shall not disclose the contents of any documents required by  
11 law or regulation to be kept private or confidential, or that are  
12 subject to legal privilege or exemption.

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

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

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

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

32 (1) The final report from ((a)) the state agency's loss  
33 prevention review team to the director shall be made public by the  
34 director promptly ~~((upon receipt))~~ after review, and shall be subject  
35 to public disclosure. The final report shall be subject to discovery  
36 in a civil or administrative proceeding. However, the final report  
37 shall not be admitted into evidence or otherwise used in a civil or  
38 administrative proceeding except pursuant to subsection (2) of this  
39 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  
3 a civil or administrative proceeding only if the party wishing to use  
4 the excerpt or excerpts from the report first shows the court by  
5 clear and convincing evidence that the witness, in testimony provided  
6 in deposition or at trial in the present proceeding, has contradicted  
7 his or her previous statements to the loss prevention review team on  
8 an issue of fact material to the present proceeding. In that case,  
9 the party may use only the excerpt or excerpts necessary to  
10 demonstrate the contradiction. This section shall not be interpreted  
11 as expanding the scope of material that may be used to impeach a  
12 witness.

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

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

37           (5) Documents prepared by or for the loss prevention review team  
38 are inadmissible and may not be used in a civil or administrative  
39 proceeding, except that excerpts may be used to impeach the  
40 credibility of a witness under the same circumstances that excerpts

1 of the final report may be used pursuant to subsection (2) of this  
2 section.

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

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

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

24 ~~((9))~~ (8) Nothing in RCW ~~((43.41.370))~~ 43.19.782 or in this  
25 section affects chapter 70.41 RCW and application of that chapter to  
26 state-owned or managed hospitals licensed under chapter 70.41 RCW.

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