
ENGROSSED 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 including the provisions required under chapter 70.56
6 RCW. Investigations made pursuant to chapter 70.56 RCW shall continue
7 to be subject to the investigative, reporting, and confidentiality
8 requirements under chapter 70.56 RCW, RCW 43.70.510 and 70.41.200,
9 and the requirements of the department of health. The department may
10 also direct a state agency to conduct a loss prevention review ((team
11 ~~may also be appointed when any other substantial loss occurs as a~~
12 ~~result of agency policies, litigation or defense practices, or other~~
13 ~~management practices. When the director decides not to appoint a loss~~
14 ~~prevention review team he or she shall issue a statement of the~~
15 ~~reasons for the director's decision. The statement shall be made~~
16 ~~available on the department's web site. The director's decision~~
17 ~~pursuant to this section to appoint or not appoint a loss prevention~~
18 ~~review team shall not be admitted into evidence in a civil or~~
19 ~~administrative proceeding.))~~ after consultation with the affected
20 agency as to the purpose, scope, necessary resources, and intended
21 outcomes of the loss prevention review. The department may provide
22 guidance to the state agency conducting the loss prevention review as
23 requested by the state 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.

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

1 ~~((within the time requested by the director)).~~ The report must
2 include the teams' findings, analyze the causes and contributing
3 factors, analyze future risk, include methods that the agency will
4 use to address and mitigate the risks identified, which may include
5 changes to policies or procedures, and any legislative recommendation
6 necessary to address and carry out the risk treatment strategies
7 identified in the subject report and include the manner in which the
8 agency will measure the effectiveness of its changes. The final
9 report shall not disclose the contents of any documents required by
10 law or regulation to be kept private or confidential, or that are
11 subject to legal privilege or exemption. Reports made by medical
12 facilities under the requirements of chapter 70.56 RCW shall remain
13 subject to the confidentiality provisions, privileges, and exemptions
14 described in chapter 70.56 RCW and RCW 43.70.510, 42.56.360, and
15 70.41.200, and be provided to the department of health.

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

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

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

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

35 (1) The final report from ~~((a))~~ the state agency's loss
36 prevention review team to the director shall be made public by the
37 director promptly ~~((upon receipt))~~ after review, and shall be subject
38 to public disclosure. The final report shall be subject to discovery
39 in a civil or administrative proceeding. However, the final report

1 shall not be admitted into evidence or otherwise used in a civil or
2 administrative proceeding except pursuant to subsection (2) of this
3 section.

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

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

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

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

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

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

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

28 ~~((9))~~ (8) Nothing in RCW ~~((43.41.370))~~ 43.19.782 or in this
29 section affects chapter 70.41 RCW and application of that chapter to
30 state-owned or managed hospitals licensed under chapter 70.41 RCW.

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