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**SUBSTITUTE SENATE BILL 5173**

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**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)

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

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

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

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

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

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

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

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

(1) ((~~The director~~)) In consultation with the department and upon delegation, a state agency shall appoint a loss prevention review team when the death of a person, serious injury to a person, or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency((~~, unless the director in his or her discretion determines that the incident does not merit review~~)) except when the death, injury, or substantial loss is already being investigated by another federal or state agency or by the affected state agency pursuant to the federal or state agency requirements. The department may also direct a state agency to conduct a loss prevention review ((~~team may also be appointed when any other substantial loss occurs as a result of agency policies, litigation or defense practices, or other management practices. When the director decides not to appoint a loss prevention review team he or she shall issue a statement of the reasons for the director's decision. The statement shall be made available on the department's web site. The director's decision pursuant to this section to appoint or not appoint a loss prevention review team shall not be admitted into evidence in a civil or administrative proceeding.~~)) after consultation with the affected agency as to the purpose, scope, necessary resources, and intended outcomes of the loss prevention review. The department may provide guidance to the state agency conducting the loss prevention review as requested by the state agency.

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

(3) The loss prevention review team shall review the death, serious injury, or other incident and the circumstances surrounding it, evaluate its causes, and recommend steps to reduce the risk of such incidents occurring in the future. The loss prevention review team shall accomplish these tasks by reviewing relevant documents((~~,~~)) and interviewing persons with relevant knowledge((~~, and reporting its recommendations~~)). The loss prevention review team must submit a report in writing to the director and the ((~~director~~)) head of the state agency involved in the loss or risk of loss ((~~within the time requested by the director~~)). The report must include the teams' findings, analyze the causes and contributing factors, analyze future risk, include methods that the agency will use to address and mitigate the risks identified, which may include changes to policies or procedures, and any legislative recommendation necessary to address and carry out the risk treatment strategies identified in the subject report and include the manner in which the agency will measure the effectiveness of its changes. The final report shall not disclose the contents of any documents required by law or regulation to be kept private or confidential, or that are subject to legal privilege or exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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