

**ESSB 5173** - H COMM AMD

By Committee on State Government, Elections & Information Technology

ADOPTED AND ENGROSSED 4/5/17

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

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

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

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

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

15 (1) ~~((The director))~~ In consultation with the department and upon  
16 delegation, a state agency shall appoint a loss prevention review  
17 team when the death of a person, serious injury to a person, or other  
18 substantial loss is alleged or suspected to be caused at least in  
19 part by the actions of a state agency~~((, unless the director in his~~  
20 ~~or her discretion determines that the incident does not merit~~  
21 ~~review))~~ except when the death, injury, or substantial loss is  
22 already being investigated by another federal or state agency, or by  
23 the affected state agency, pursuant to the federal or state agency  
24 requirements. Any review conducted by another agency or under other  
25 requirements must contain elements of subsection (3) of this section  
26 and must comply with section 3 of this act to the extent section 3 of  
27 this act does not conflict with statutes or rules governing those  
28 reviews. The department may also direct a state agency to conduct a  
29 loss prevention review ~~((team may also be appointed when any other~~  
30 ~~substantial loss occurs as a result of agency policies, litigation or~~  
31 ~~defense practices, or other management practices. When the director~~  
32 ~~decides not to appoint a loss prevention review team he or she shall~~

1 ~~issue a statement of the reasons for the director's decision. The~~  
2 ~~statement shall be made available on the department's web site. The~~  
3 ~~director's decision pursuant to this section to appoint or not~~  
4 ~~appoint a loss prevention review team shall not be admitted into~~  
5 ~~evidence in a civil or administrative proceeding.))~~ after  
6 consultation with the affected agency as to the purpose, scope,  
7 necessary resources, and intended outcomes of the loss prevention  
8 review. The department may provide guidance to the state agency  
9 conducting the loss prevention review as requested by the state  
10 agency.

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

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

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

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

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

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

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

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

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

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

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

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

37 ~~(7) ((Within one hundred twenty days after completion of the~~  
38 ~~final report of a loss prevention review team, the agency under~~  
39 ~~review shall issue to the department a response to the report. The~~  
40 ~~response will indicate (a) which of the report's recommendations the~~

1 agency hopes to implement, (b) whether implementation of those  
2 recommendations will require additional funding or legislation, and  
3 (c) whatever other information the director may require. This  
4 response shall be considered part of the final report and shall be  
5 subject to all provisions of this section that apply to the final  
6 report, including without limitation the restrictions on  
7 admissibility and use in civil or administrative proceedings and the  
8 obligation of the director to make the final report public.

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

12 ((9)) (8) Nothing in RCW ((43.41.370)) 43.19.782 or in this  
13 section affects chapter 70.41 RCW and application of that chapter to  
14 state-owned or managed hospitals licensed under chapter 70.41 RCW."

15 Correct the title.

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