

ESSB 5173 - H COMM AMD

By Committee on State Government, Elections & Information Technology

ADOPTED AS AMENDED 04/05/2017

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~~

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

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

21 (3) The loss prevention review team shall review the death,
22 serious injury, or other incident and the circumstances surrounding
23 it, evaluate its causes, and recommend steps to reduce the risk of
24 such incidents occurring in the future. The loss prevention review
25 team shall accomplish these tasks by reviewing relevant
26 documents~~((τ))~~ and interviewing persons with relevant knowledge~~((τ~~
27 ~~and reporting its recommendations))~~. The loss prevention review team
28 must submit a report in writing to the director and the ~~((director))~~
29 head of the state agency involved in the loss or risk of loss
30 ~~((within the time requested by the director))~~. The report must
31 include the teams' findings, analyze the causes and contributing
32 factors, analyze future risk, include methods that the agency will
33 use to address and mitigate the risks identified, which may include
34 changes to policies or procedures, and any legislative recommendation
35 necessary to address and carry out the risk treatment strategies
36 identified in the subject report and include the manner in which the
37 agency will measure the effectiveness of its changes. The final
38 report shall not disclose the contents of any documents required by
39 law or regulation to be kept private or confidential, or that are
40 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 **Sec. 3.** RCW 43.19.783 and 2011 1st sp.s. c 43 s 509 are each
12 amended to read as follows:

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

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

33 (3) No member of a loss prevention review team may be examined in
34 a civil or administrative proceeding as to (a) the work of the loss
35 prevention review team, (b) the incident under review, (c) his or her
36 statements, deliberations, thoughts, analyses, or impressions
37 relating to the work of the loss prevention review team or the
38 incident under review, or (d) the statements, deliberations,
39 thoughts, analyses, or impressions of any other member of the loss

1 prevention review team, or any person who provided information to it,
2 relating to the work of the loss prevention review team or the
3 incident under review.

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

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

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

30 ~~(7) ((Within one hundred twenty days after completion of the~~
31 ~~final report of a loss prevention review team, the agency under~~
32 ~~review shall issue to the department a response to the report. The~~
33 ~~response will indicate (a) which of the report's recommendations the~~
34 ~~agency hopes to implement, (b) whether implementation of those~~
35 ~~recommendations will require additional funding or legislation, and~~
36 ~~(c) whatever other information the director may require. This~~
37 ~~response shall be considered part of the final report and shall be~~
38 ~~subject to all provisions of this section that apply to the final~~
39 ~~report, including without limitation the restrictions on~~

1 ~~admissibility and use in civil or administrative proceedings and the~~
2 ~~obligation of the director to make the final report public.~~

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

6 ~~((9))~~ (8) Nothing in RCW ~~((43.41.370))~~ 43.19.782 or in this
7 section affects chapter 70.41 RCW and application of that chapter to
8 state-owned or managed hospitals licensed under chapter 70.41 RCW."

9 Correct the title.

EFFECT: Makes the following changes to the underlying bill:

- Provides that any review conducted by another agency or under other requirements must contain elements required for a review conducted by a loss prevention review team, and is subject to the review team provisions regarding making reports public, public disclosure, discovery, and admissibility to the extent those provisions do not conflict with statutes or laws governing those reviews.

- Strikes the specific exception for adverse event reporting for medical facilities. Strikes provisions stating that adverse event investigations continue to be subject to adverse event requirements and that adverse event reports continue to be subject to confidentiality, privileges, and exemptions in relevant laws, and must be provided to the Department of Health.

- Strikes the requirements that at least the majority of review team members be from agencies other than the affected agency and have relevant expertise, and that a minority of members may be from the affected agency. Requires instead that no more than half the members may be employees of the affected agency and restores current law that at least one member must have relevant expertise.

- Strikes the annual report requirement.

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