

Substitute for HOUSE BILL No. 2246

By Committee on Commerce, Labor and Economic Development

2-13

1 AN ACT concerning peer review for certain technical professions.

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3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. (a) As used in this section:

5 (1) "Board" means the state board of technical professions established
6 pursuant to K.S.A. 74-7004, and amendments thereto.

7 (2) "Design profession" means the practice of architecture, landscape
8 architecture, land surveying, geology or engineering as specified in K.S.A.
9 74-7003, and amendments thereto.

10 (3) "Design professional" means an architect, landscape architect,
11 land surveyor, geologist or professional engineer or geologist or a business
12 entity authorized pursuant to K.S.A. 74-7036, and amendments thereto, to
13 practice one or more of the technical professions specified in paragraph
14 (2).

15 (4) "Architect" shall have the meaning ascribed to such term in
16 K.S.A. 74-7003, and amendments thereto.

17 (5) "Geologist" shall have the meaning ascribed to such term in
18 K.S.A. 74-7003, and amendments thereto.

19 (6) "Landscape architect" shall have the meaning ascribed to such
20 term in K.S.A. 74-7003, and amendments thereto.

21 (7) "Land surveyor" shall have the meaning ascribed to such term in
22 K.S.A. 74-7003, and amendments thereto.

23 (8) "Lessons learned" means any internal meeting, class, publication
24 in any medium, presentation, lecture, or other means of teaching and
25 communicating after substantial completion of the project which are
26 conducted solely and exclusively by and with the employees, partners, and
27 coworkers of the design professional who prepared the project's design for
28 the purpose of learning best practices and reducing errors and omissions in
29 design documents and procedures.

30 (9) "Peer review" or "peer review process" means any of the
31 following functions:

32 (A) Evaluate and improve the design, drawings specifications or
33 quality of services rendered by a design professional;

34 (B) evaluate the design, construction, procedures and results of
35 improvements to real property based upon services rendered by a design
36 professional during or after completion of such improvements; or

1 (C) prepare an internal lessons learned review of any project or
2 services rendered for the purpose of improving the quality of services
3 rendered by a design professional.

4 (10) "Peer reviewer" or "peer review committee" means an individual
5 design professional or a committee of design professionals retained,
6 employed, designated or appointed by:

7 (A) A state, county or local society of design professionals; or

8 (B) the board of directors, chief executive officer, quality control
9 director, or employed design professional of a business entity authorized
10 pursuant to K.S.A. 74-7036, and amendments thereto, to practice one or
11 more of the technical professions specified in paragraph (2).

12 (b) (1) Except as provided by K.S.A. 60-437, and amendments
13 thereto, and by subsections (c) and (d), the reports, statements,
14 memoranda, proceedings, findings and other records submitted to or
15 generated by any peer review committee or peer reviewer shall be
16 privileged and shall not be subject to discovery, subpoena or other means
17 of legal compulsion for their release to any person or entity or be
18 admissible in evidence in any judicial or administrative proceeding.
19 Information contained in such records shall not be discoverable or
20 admissible at trial in the form of testimony by an individual who
21 participated in the peer review process.

22 (2) The design professional who retains, employs, designates or
23 appoints the peer reviewer or peer review committee is the holder of the
24 privilege established by this section. This privilege may be claimed by
25 such design professional and shall not be waived as a result of any
26 disclosure by a peer reviewer or peer review committee.

27 (c) (1) Subsection (b) shall not apply to proceedings by the board in
28 which a design professional contests the revocation, denial, restriction or
29 termination of the license, registration, certification or other authorization
30 to practice of the design professional. In any disciplinary proceeding
31 conducted by the board in which admission of any peer review report,
32 record or testimony is proposed by the licensee, the board shall hold the
33 hearing in closed session when any such report, record or testimony is
34 disclosed. Unless otherwise provided by law, in a disciplinary proceeding
35 involving a design professional, the board may close only that portion of
36 the hearing in which disclosure of a report or record privileged under this
37 section is proposed. In closing a portion of a hearing as provided by this
38 section, the presiding officer may exclude any person from the hearing
39 location except the licensee, the licensee's attorney, the agency's attorney,
40 the witness, the court reporter and appropriate staff support for either
41 counsel.

42 (2) Upon motion of the design professional who is subject to the
43 proceeding, a district court or the board shall make the portions of the

1 agency record in which such report or record is disclosed subject to a
2 protective order prohibiting further disclosure of such report or record.

3 (3) Such report or record shall not be subject to discovery, subpoena
4 or other means of legal compulsion for its release to any person or entity.
5 No person in attendance at a closed portion of a disciplinary proceeding
6 shall at a subsequent civil, criminal or administrative hearing, be required
7 to testify regarding the existence or content of a report or record privileged
8 under this section which was disclosed in a closed portion of a hearing, nor
9 shall such testimony be admitted into evidence in any subsequent civil,
10 criminal or administrative hearing.

11 (4) In conducting a disciplinary proceeding, the board may review
12 peer review committee process, records, testimony or reports but must
13 prove its findings with independently obtained testimony or records
14 offered by the licensee which shall be presented as part of the disciplinary
15 proceeding in open meeting of the board. Reports and records so furnished
16 by the licensee shall not be subject to discovery, subpoena or other means
17 of legal compulsion for their release to any person or entity and shall not
18 be admissible in evidence in any judicial or administrative proceeding
19 other than a disciplinary proceeding by the board.

20 (5) Offering such testimony or records in an open public hearing shall
21 not be deemed a waiver of the peer review privilege relating to any peer
22 review committee testimony, records or report.

23 (d) Nothing in this section shall limit the authority, which may
24 otherwise be provided by law, of the board to impose disciplinary action
25 pursuant to K.S.A. 74-7026, and amendments thereto, against a design
26 professional. Reports and records so furnished shall not be subject to
27 discovery, subpoena or other means of legal compulsion for their release to
28 any person or entity and shall not be admissible in evidence in any judicial
29 or administrative proceeding other than a disciplinary proceeding by the
30 board.

31 (e) (1) A peer review committee or peer reviewer may report to and
32 discuss its activities, information and findings to other peer review
33 committees or peer reviewers or to the design professional who
34 retains, employs, designates or appoints the peer reviewer or peer review
35 committee and to any officer, director or quality control director thereof
36 without waiver of the privilege provided by subsection (b) and the records
37 of all such peer review committees or peer reviewers relating to such
38 report shall be privileged as provided by subsection (b).

39 (2) Each peer reviewer and member of a peer review committee shall
40 be immune from civil liability for such acts so long as the acts are
41 performed in good faith, without malice, and are reasonably related to the
42 scope of inquiry of the peer review process. The immunity in this
43 subsection is intended to cover only outside peer reviews by a third-party

1 design professional who:

2 (A) Is not an employee, coworker, or partner of the design
3 professional whose design is being peer reviewed; and

4 (B) has no other role in the project besides performing the peer
5 review.

6 (f) No provision of this act shall be construed to supersede or conflict
7 with the authority of the board of technical professions pursuant to K.S.A.
8 74-7001 et seq., and amendments thereto.

9 Sec. 2. This act shall take effect and be in force from and after its
10 publication in the statute book.