

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.

2
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) ***"Professional engineer" shall have the meaning ascribed to***
24 ***such term in K.S.A. 74-7003, and amendments thereto.***

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

32 ~~(9)~~(10) "Peer review" or "peer review process" means any of the
33 following functions:

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

36 (B) evaluate the design, construction, procedures and results of

1 improvements to real property based upon services rendered by a design
2 professional during or after completion of such improvements; or

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

6 ~~(10)~~(11) "Peer reviewer" or "peer review committee" means an
7 individual design professional or a committee of design professionals
8 retained, employed, designated or appointed by:

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

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

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

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

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

1 (2) Upon motion of the design professional who is subject to the
2 proceeding, a district court or the board shall make the portions of the
3 agency record in which such report or record is disclosed subject to a
4 protective order prohibiting further disclosure of such report or record.

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

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

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

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

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

42 (2) Each peer reviewer and member of a peer review committee shall
43 be immune from civil liability for such acts so long as the acts are

1 performed in good faith, without malice, and are reasonably related to the
2 scope of inquiry of the peer review process. The immunity in this
3 subsection is intended to cover only outside peer reviews by a third-party
4 design professional who:

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

7 (B) has no other role in the project besides performing the peer
8 review.

9 (f) No provision of this act shall be construed to supersede or conflict
10 with the authority of the board of technical professions pursuant to K.S.A.
11 74-7001 et seq., and amendments thereto.

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