

Substitute for HOUSE BILL No. 2246

AN ACT concerning peer review for certain technical professions.

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

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

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

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

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

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

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

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

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

(8) “Professional engineer” shall have the meaning ascribed to such term in K.S.A. 74-7003, and amendments thereto.

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

(10) “Peer review” or “peer review process” means any of the following functions:

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

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

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

(11) “Peer reviewer” or “peer review committee” means an individual design professional or a committee of design professionals retained, employed, designated or appointed by:

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

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

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

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

(c) (1) Subsection (b) shall not apply to proceedings by the board in which a design professional contests the revocation, denial, restriction or termination of the license, registration, certification or other authorization to practice of the design professional. In any disciplinary proceeding conducted by the board in which admission of any peer review report, record or testimony is proposed by the licensee, the board shall hold the hearing

in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, in a disciplinary proceeding involving a design professional, the board may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel.

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

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

(4) In conducting a disciplinary proceeding, the board may review peer review committee process, records, testimony or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the board. Peer review committee process, records, testimony or reports received by the board shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the board.

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

(d) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the board to impose disciplinary action pursuant to K.S.A. 74-7026, and amendments thereto, against a design professional.

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

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

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

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

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

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*