

## HOUSE BILL No. 2246

By Committee on Commerce, Labor and Economic Development

2-6

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

8 (2) "Design professional" means an architect, landscape architect,  
9 land surveyor or professional engineer.

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

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

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

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

18 (7) "Professional engineer" shall have the meaning ascribed to such  
19 term in K.S.A. 74-7003, and amendments thereto.

20 (8) "Peer review" means any of the following functions:

21 (A) Evaluate and improve the quality of services rendered by a design  
22 professional;

23 (B) evaluate services rendered by a design professional and determine  
24 whether such services were performed in compliance with the applicable  
25 standards of the design profession and the requirements of the state board  
26 of technical professions specified in K.S.A. 74-7001 et seq., and  
27 amendments thereto, and any rules and regulations adopted thereunder;

28 (C) evaluate the qualifications, competence and performance of a  
29 design professional or to act upon matters relating to the discipline of any  
30 design professional; or

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

34 (9) "Peer review officer or committee" means an individual design  
35 professional or a committee of not to exceed three design professionals  
36 employed, designated or appointed by:

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

2 (B) the board of directors or chief executive officer of a corporation  
3 authorized pursuant to K.S.A. 74-7036, and amendments thereto, to  
4 practice as a design professional.

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

15 (2) The peer review officer or committee creating or initially  
16 receiving the record is the holder of the privilege established by this  
17 section. This privilege may be claimed by the legal entity creating the peer  
18 review committee or officer.

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

33 (2) The board shall make the portions of the agency record in which  
34 such report or record is disclosed subject to a protective order prohibiting  
35 further disclosure of such report or record.

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

1 (4) In conducting a disciplinary proceeding, the board may review  
2 peer review committee records, testimony or reports but must prove its  
3 findings with independently obtained testimony or records which shall be  
4 presented as part of the disciplinary proceeding in open meeting of the  
5 board.

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

9 (d) Nothing in this section shall limit the authority, which may  
10 otherwise be provided by law, of the board to require a peer review  
11 committee or peer review officer to report to it any disciplinary action or  
12 recommendation of such peer review committee or peer review officer; to  
13 transfer to the board records of such peer review committee's or peer  
14 review officer's proceedings or actions to restrict or revoke the license,  
15 registration, certification or other authorization to practice of a design  
16 profession. Reports and records so furnished shall not be subject to  
17 discovery, subpoena or other means of legal compulsion for their release to  
18 any person or entity and shall not be admissible in evidence in any judicial  
19 or administrative proceeding other than a disciplinary proceeding by the  
20 board.

21 (e) A peer review committee or peer review officer may report to and  
22 discuss its activities, information and findings to other peer review  
23 committees or peer review officers or to the board of directors or chief  
24 executive officer of a corporation authorized pursuant to K.S.A. 74-7036,  
25 and amendments thereto, to practice as a design professional without  
26 waiver of the privilege provided by subsection (b) and the records of all  
27 such peer review committees or peer review officers relating to such report  
28 shall be privileged as provided by subsection (b).

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