

SECOND REGULAR SESSION

HOUSE BILL NO. 1280

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KORMAN (Sponsor) AND ELMER (Co-sponsor).

4884L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to a peer review process for licensed architects, landscape architects, land surveyors, and engineers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.033, to read as follows:

537.033. 1. As used in this section, unless the context clearly indicates otherwise, the following words shall mean:

(1) "Design professional", an architect, landscape architect, professional land surveyor or professional engineer licensed under the provisions of chapter 327 or any corporation authorized to practice architecture, landscape architecture, land surveying, or engineering under section 327.401 while acting within his or her scope of practice;

(2) "Lessons learned", internal meetings, classes, publications in any medium, presentations, lectures, or other means of teaching and communicating 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;

(3) "Peer review process", a process through which one or more design professionals evaluate, maintain, or monitor the quality and utilization of architectural, landscape architectural, land surveying, or engineering services, prepare internal lessons-learned, or exercise any combination of such responsibilities;

(4) "Post-project completion", substantial completion, as defined in section 436.327, of the construction of the project covered by the design professional's design documents.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 **2. (1) A peer review process may be performed by one or more design professionals**
19 **appointed by the partners, shareholders, board of directors, chief executive officer, quality**
20 **control director, or employed design professionals of a partnership or corporation**
21 **authorized under section 327.401 to practice architecture, landscape architecture, land**
22 **surveying, or engineering, or by the owner of a sole proprietorship engaged in one or more**
23 **of such professions.**

24 **(2) The peer reviewer shall be a design professional licensed in any jurisdiction in**
25 **the United States in the same profession as would be required under chapter 327 to**
26 **prepare the design documents being reviewed. In the case of multiple professions, the peer**
27 **review shall be conducted by persons holding the proper licenses.**

28 **3. Each peer reviewer described in this subsection shall be immune from civil**
29 **liability for such acts so long as the acts are performed in good faith, without malice, and**
30 **are reasonably related to the scope of inquiry of the peer review process. The immunity**
31 **in this subsection shall cover only the following:**

32 **(1) Outside peer reviews by a third-party design professional who is not an**
33 **employee, coworker, or partner of the design professional whose design is being peer**
34 **reviewed before, during, or after substantial completion of the project; and**

35 **(2) Post-project completion peer review whether performed in-house by employees,**
36 **coworkers, or partners of the design professional who prepared the design, or by a third-**
37 **party peer reviewer.**

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39 **This subsection shall not provide immunity to any in-house peer reviewer, other than a**
40 **post-project completion review, when performed by employees, coworkers, or partners of**
41 **the design professional who prepares the design, nor are any such documents or peer**
42 **review comments inadmissible under this subsection.**

43 **4. Except as otherwise provided in this section, the interviews, memoranda,**
44 **proceedings, findings, deliberations, reports, and minutes of the peer review process, or the**
45 **existence of the same, concerning the professional services provided to a client or member**
46 **of the public are privileged and shall not be subject to discovery, subpoena, or other means**
47 **of legal compulsion for their release to any person or entity or be admissible into evidence**
48 **in any judicial or administrative action for failure to provide appropriate architectural,**
49 **landscape architectural, land surveying, or engineering services. In addition, to the same**
50 **extent, any post-project completion peer review, including lessons learned, whether**
51 **conducted by in-house employees, coworkers, or partners of the design professional who**
52 **designed the project or a portion thereof shall not be subject to discovery. Except as**
53 **otherwise provided in this section, no person who was in attendance at or participated in**

54 any peer review process or proceedings shall be permitted or required to disclose any
55 information acquired in connection with or in the course of such proceeding, or to disclose
56 any opinion, recommendation, or evaluation of the peer reviewer or any member of a peer
57 review committee; provided, however, that information otherwise discoverable or
58 admissible from original sources shall not be construed as immune from discovery or use
59 in any proceeding merely because it was presented during proceedings before a peer
60 reviewer, nor shall a member, employee, or agent involved in any such process, or other
61 person appearing before a peer reviewer be prevented from testifying as to matters within
62 his or her personal knowledge and in accordance with the other provisions of this section;
63 except that, such witness shall not be questioned about testimony or other proceedings
64 before any peer review process or peer reviewer or about opinions formed as a result of
65 such process. The disclosure of any interview, memoranda, proceedings, findings,
66 deliberations, reports, or minutes to any person or entity, including but not limited to
67 governmental agencies, professional accrediting agencies, or other design professionals,
68 whether proper or improper, shall not waive or have any effect upon its confidentiality,
69 nondiscoverability, or nonadmissibility.

70 5. Nothing in this section shall limit authority otherwise provided by law of the
71 Missouri board for architects, professional engineers, professional land surveyors and
72 landscape architects to obtain information by subpoena or other authorized process from
73 a peer reviewer or to require disclosure of otherwise confidential information developed
74 outside of the peer review process which relate to matters and investigations within the
75 jurisdiction of such licensing board. In addition, final design documents which are sealed
76 in accordance with chapter 327 and are released by the design professional for use in
77 construction are discoverable, and the design professional who prepared and sealed such
78 final documents shall be fully responsible for their content in accordance with Missouri
79 state law.

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