

SECOND REGULAR SESSION

HOUSE BILL NO. 2300

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (32).

5098H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 537.033, RSMo, and to enact in lieu thereof one new section relating to peer review committees.

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

Section A. Section 537.033, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.033, to read as follows: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 and terms shall have the meanings indicated:

(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 their scope of practice;

(2) "Lessons learned", internal meetings, classes, publications in any medium, presentations, lectures, 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. Lessons learned shall not include presentations, lectures, teaching, or communication made to or by third parties who are not employees, partners, and coworkers of the design professional whose work is being evaluated and discussed;

(3) "Peer review process", a process through which design professionals evaluate, maintain, or monitor the quality and utilization of architectural, landscape architectural, land

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.

17 surveying, or engineering services, prepare internal lessons learned, or exercise any combination
18 of such responsibilities;

19 (4) "Substantial completion", the construction of the project covered by the design
20 professional's design documents has reached substantial completion, as that term is defined in
21 section 436.327.

22 2. A peer review process shall only be performed by a design professional licensed in
23 any jurisdiction in the United States in the same profession as would be required under chapter
24 327 to prepare the design documents being reviewed, or in a case requiring multiple professions,
25 by a person or persons holding the proper licenses. A peer review process may be performed by
26 one or more design professionals appointed by the partners, shareholders, board of directors,
27 chief executive officer, quality control director, or employed design professionals of a
28 partnership or of a corporation authorized under section 327.401 to practice architecture,
29 landscape architecture, land surveying, or engineering, or by the owner of a sole proprietorship
30 engaged in one or more of such professions. Any individual identified in this subsection and
31 performing a peer review shall be deemed a peer reviewer.

32 3. Each peer reviewer described in this subsection shall be immune from civil liability
33 for such acts so long as the acts are performed in good faith, without malice, and are reasonably
34 related to the scope of inquiry of the peer review process. The immunity in this subsection is
35 intended to cover only outside peer reviews by a third-party design professional who is not an
36 employee, coworker, or partner of the design professional whose design is being peer reviewed
37 before substantial completion of the project and who has no other role in the project besides
38 performing the peer review.

39 4. This section does not provide immunity to any in-house peer reviewer when
40 performed by employees, coworkers, or partners of the design professional who prepares the
41 design, nor are any such documents or peer review comments, other than lessons learned,
42 inadmissible into evidence in any judicial or administrative action.

43 5. Except for documents related to lessons learned, 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 of the
46 public are subject to discovery, subpoena, or other means of legal compulsion for their release
47 to any person or entity and shall be admissible into evidence in any judicial or administrative
48 action for failure to provide appropriate architectural, landscape architectural, land surveying,
49 or engineering services, subject to applicable rules of the court or tribunal. Except as otherwise
50 provided in this section, no person who was in attendance at, or participated in, any lessons
51 learned process or proceedings shall be permitted or required to disclose any information
52 acquired in connection with or in the course of such proceeding, or to disclose any opinion,

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

66 6. Nothing in this section shall limit authority otherwise provided by law of the Missouri
67 board for architects, professional engineers, professional land surveyors, and landscape architects
68 to obtain information by subpoena or other authorized process from a peer reviewer or to require
69 disclosure of otherwise confidential information relating to matters and investigations within the
70 jurisdiction of such licensing board.

71 ~~[7. The provisions of this section shall expire on January 1, 2023, unless reauthorized~~
72 ~~by an act of the general assembly. The provisions of this section shall continue to apply to peer~~
73 ~~reviews and lessons learned proceedings performed prior to the expiration date of this section.]~~

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