

An Act

ENROLLED SENATE
BILL NO. 748

By: Jech of the Senate

and

Martinez of the House

An Act relating to professions and occupations; defining terms; making certain peer review records privileged information; providing that certain records not be discoverable or admissible in trial; declaring certain holder of privilege; authorizing peer review committee to report and discuss information and findings without waiver of privilege; providing immunity from civil liability for certain acts performed in good faith; providing for codification; and providing an effective date.

SUBJECT: Maintenance of privileged information

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 475.40 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Design profession" means the practice of architecture, landscape architecture, land surveying or engineering;

2. "Design professional" means an architect, landscape architect, land surveyor or professional engineer or a business entity authorized to practice one or more of the design professions specified in paragraph 1 of this subsection;

3. "Architect" shall have the same meaning ascribed to such term in Section 46.3 of Title 59 of the Oklahoma Statutes;

4. "Landscape architect" shall have the same meaning ascribed to such term in Section 46.3 of Title 59 of the Oklahoma Statutes;

5. "Land surveyor" shall have the same meaning ascribed to such term in Section 475.2 of Title 59 of the Oklahoma Statutes;

6. "Professional engineer" shall have the same meaning ascribed to such term in Section 475.2 of Title 59 of the Oklahoma Statutes;

7. "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 is conducted solely and exclusively by and with the employees, partners, consultants 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;

8. "Peer review" or "peer review process" means any of the following functions:

- a. evaluating and improving the design, drawings specifications or quality of services rendered by a design professional,
- b. evaluating 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. preparing 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; and

9. "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, risk manager or employed design professional of a business entity authorized to practice one or more of the design professions specified in paragraph 1 of this subsection.

B. 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.

C. 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.

D. A peer review committee or peer reviewer may report to and discuss activities, information and findings with 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 with any officer, director or quality control director, risk manager or employed design professional thereof without waiver of the privilege provided by subsection B of this section, and the records of all such peer review committees or peer reviewers relating to such report shall be privileged as provided by subsection B of this section.

E. Each peer reviewer and member of a peer review committee shall be immune from civil liability for such acts described in paragraph 8 of subsection A and subsection D of this section, 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:

1. Is not an employee, coworker or partner of the design professional whose design is being peer reviewed; and

2. Has no other role in the project besides performing the peer review.

SECTION 2. This act shall become effective November 1, 2021.

Passed the Senate the 10th day of February, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____