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

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

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

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

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

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

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

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

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

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

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

(D) 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.

(9) "Peer review officer or committee" means an individual design professional or a committee of not to exceed three design professionals employed, designated or appointed by:
(A) A state, county or local society of design professionals; or

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

(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 review officer 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 peer review officer or committee creating or initially receiving the record is the holder of the privilege established by this section. This privilege may be claimed by the legal entity creating the peer review committee or officer.

(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 committee report, record or testimony is proposed, 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) 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 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.

(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 require a peer review committee or peer review officer to report to it any disciplinary action or recommendation of such peer review committee or peer review officer; to transfer to the board records of such peer review committee's or peer review officer's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a design profession. Reports and records so furnished 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.

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

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