

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 2880

By: Sanders of the House

5 and

6 **Jech** of the Senate

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8
9 AS INTRODUCED

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

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

23 SECTION 1. NEW LAW A new section of law to be codified
24 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;

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

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

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

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

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

13 7. "Lessons learned" means any internal meeting, class,
14 publication in any medium, presentation, lecture, or other means of
15 teaching and communicating after substantial completion of the
16 project which is conducted solely and exclusively by and with the
17 employees, partners, consultants and coworkers of the design
18 professional who prepared the project's design for the purpose of
19 learning best practices and reducing errors and omissions in design
20 documents and procedures;

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

1 subject to discovery, subpoena or other means of legal compulsion
2 for their release to any person or entity or be admissible in
3 evidence in any judicial or administrative proceeding. Information
4 contained in such records shall not be discoverable or admissible at
5 trial in the form of testimony by an individual who participated in
6 the peer review process.

7 C. The design professional who retains, employs, designates or
8 appoints the peer reviewer or peer review committee is the holder of
9 the privilege established by this section. This privilege may be
10 claimed by such design professional and shall not be waived as a
11 result of any disclosure by a peer reviewer or peer review
12 committee.

13 D. A peer review committee or peer reviewer may report to and
14 discuss activities, information and findings with other peer review
15 committees or peer reviewers or to the design professional who
16 retains, employs, designates or appoints the peer reviewer or peer
17 review committee and with any officer, director or quality control
18 director, risk manager or employed design professional thereof
19 without waiver of the privilege provided by subsection B of this
20 section, and the records of all such peer review committees or peer
21 reviewers relating to such report shall be privileged as provided by
22 subsection B of this section.

23 E. Each peer reviewer and member of a peer review committee
24 shall be immune from civil liability for such acts described in

1 paragraph 8 of subsection A and subsection D of this section, so
2 long as the acts are performed in good faith, without malice, and
3 are reasonably related to the scope of inquiry of the peer review
4 process. The immunity in this subsection is intended to cover only
5 outside peer reviews by a third-party design professional who:

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

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

10 SECTION 2. This act shall become effective November 1, 2020.

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12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
13 02/26/2020 - DO PASS, As Coauthored.
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