

SECOND REGULAR SESSION

# SENATE BILL NO. 913

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time January 22, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5041S.01I

## AN ACT

To repeal section 537.033, RSMo, and to enact in lieu thereof one new section relating to the peer review process for design professionals.

*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Section A. Section 537.033, RSMo, is repealed and one new section  
2 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  
2 otherwise, the following words and terms shall have the meanings indicated:

3 (1) "Design professional", an architect, landscape architect, professional  
4 land surveyor, or professional engineer licensed under the provisions of chapter  
5 327 or any corporation authorized to practice architecture, landscape architecture,  
6 land surveying, or engineering under section 327.401 while acting within their  
7 scope of practice;

8 (2) "Lessons learned", internal meetings, classes, publications in any  
9 medium, presentations, lectures, or other means of teaching and communicating  
10 after substantial completion of the project which are conducted solely and  
11 exclusively by and with the employees, partners, and coworkers of the design  
12 professional who prepared the project's design for the purpose of learning best  
13 practices and reducing errors and omissions in design documents and  
14 procedures. Lessons learned shall not include presentations, lectures, teaching,  
15 or communication made to or by third parties who are not employees, partners,  
16 and coworkers of the design professional whose work is being evaluated and  
17 discussed;

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 landscape architectural, land surveying, or engineering services, prepare internal  
21 lessons learned, or exercise any combination of such responsibilities;

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

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

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

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

50 5. Except for documents related to lessons learned, the interviews,  
51 memoranda, proceedings, findings, deliberations, reports, and minutes of the peer  
52 review process, or the existence of the same, concerning the professional services  
53 provided to a client or member of the public are subject to discovery, subpoena,  
54 or other means of legal compulsion for their release to any person or entity and  
55 shall be admissible into evidence in any judicial or administrative action for

56 failure to provide appropriate architectural, landscape architectural, land  
57 surveying, or engineering services, subject to applicable rules of the court or  
58 tribunal. Except as otherwise provided in this section, no person who was in  
59 attendance at, or participated in, any lessons learned process or proceedings shall  
60 be permitted or required to disclose any information acquired in connection with  
61 or in the course of such proceeding, or to disclose any opinion, recommendation,  
62 or evaluation made in a lessons learned process or proceeding; provided, however,  
63 that information otherwise discoverable or admissible from original sources is not  
64 to be construed as immune from discovery or use in any proceeding merely  
65 because it was presented during a lessons learned process or proceeding nor is a  
66 member, employee, or agent involved in any such process or proceeding, or other  
67 person appearing before a peer reviewer, to be prevented from testifying as to  
68 matters within his or her personal knowledge and in accordance with the other  
69 provisions of this section, but such witness cannot be questioned about a lessons  
70 learned process or proceeding or about opinions formed as a result of such process  
71 or proceeding. The disclosure of any memoranda, proceedings, reports, or  
72 minutes of a lessons learned proceeding to any person or entity, including but not  
73 limited to governmental agencies, professional accrediting agencies, or other  
74 design professionals, whether proper or improper, shall not waive or have any  
75 effect upon its confidentiality, nondiscoverability, or nonadmissibility.

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

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

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