

AMENDMENTS TO LB205

Introduced by Health and Human Services.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 19 of this act shall be known and may be
4 cited as the Surgical Technologist Registration Act.

5 Sec. 2. For purposes of the Surgical Technologist Registration Act,
6 the definitions found in sections 3 to 6 of this act apply.

7 Sec. 3. Board means the Board of Medicine and Surgery.

8 Sec. 4. Department means the Department of Health and Human
9 Services.

10 Sec. 5. Registered surgical technologist means a person registered
11 as a surgical technologist pursuant to the Surgical Technologist
12 Registration Act.

13 Sec. 6. Surgical Technologist Registry means the registry created
14 pursuant to section 10 of this act.

15 Sec. 7. Beginning January 1, 2020, any surgical technologist
16 contracted with or employed as a surgical technologist by (1) a facility
17 licensed under the Health Care Facility Licensure Act or (2) a physician
18 engaged in the practice of medicine and surgery in Nebraska, shall
19 register with the Surgical Technologist Registry no later than one
20 hundred eighty days after the commencement of the contract period or the
21 date of employment or July 1, 2020, whichever is later.

22 Sec. 8. (1) To be eligible to register as a surgical technologist,
23 an individual shall:

24 (a) Be at least nineteen years of age;

25 (b) Be a high school graduate or be officially recognized by the
26 State Department of Education as possessing the equivalent of a high
27 school education; and

1 (c) Be of good moral character.

2 (2) An eligible individual shall:

3 (a) File an application with the Department of Health and Human
4 Services. The application shall include:

5 (i) The applicant's name, address, date of birth, and social
6 security number;

7 (ii) Evidence of eligibility under subsection (1) of this section as
8 determined necessary by the department;

9 (iii) Documentation of any felony or misdemeanor conviction, along
10 with the date of occurrence and the county and state in which the
11 conviction occurred; and

12 (iv) One of the following:

13 (A) Documentation of certification as a surgical technologist by the
14 State of Nebraska or a national certifying body approved by the board if
15 the applicant is certified at the time of application;

16 (B) Documentation of completion of an accredited program in surgical
17 technology accredited by the Commission on Accreditation of Allied Health
18 Education Programs or the Accrediting Bureau of Health Education Schools
19 if the applicant is a graduate of such a program; or

20 (C) Certification of the applicant's competency assessment completed
21 by a licensed health care professional. The assessment shall include an
22 assessment of the components listed in section 9 of this act; and

23 (b) Pay the required nonrefundable fee as determined by the
24 department.

25 (3) An applicant who is a military spouse may apply for temporary
26 registration as provided in section 38-129.01.

27 Sec. 9. A registered surgical technologist may, under the authority
28 of a practitioner who is licensed under the Uniform Credentialing Act and
29 consistent with any rules and regulations adopted pursuant to section 19
30 of this act, and who directs surgical tasks and functions based on the
31 surgical technologist's education, knowledge, training, and skill,

1 perform tasks and functions, including, but not limited to:

2 (1) Preparing the operating suite for the planned surgical
3 procedure, including gathering and opening all equipment, supplies, and
4 instrumentation, including, but not limited to, sterile dressings and
5 instruments, scrubs, gowns, gloves, medications, and solutions;

6 (2) Creating and maintaining the sterile field through organization
7 and preparation of instruments and supplies, including performance of
8 necessary surgical counts;

9 (3) Gowning and gloving the surgeon and assistants;

10 (4) Providing visualization of the surgical site;

11 (5) Preparing and draping the patient for the surgical procedure;

12 (6) Positioning the patient;

13 (7) Passing instruments, supplies, and equipment to the surgeon and
14 assistants during the procedure while anticipating the needs of the
15 surgical team;

16 (8) Assisting the surgeon as directed in accordance with applicable
17 law and rules and regulations;

18 (9) Assisting the circulating nurse as directed in the care of the
19 surgical patient, including conducting appropriate counts prior to the
20 surgical procedure and before the incision is closed;

21 (10) Maintaining sterile technique during the surgical procedure;

22 (11) Assisting other members of the surgical team with cleaning the
23 operating suite, including decontamination of instruments, supplies, and
24 equipment utilized during the surgical procedure; and

25 (12) Assisting in preparing the surgical suite for the next surgical
26 procedure.

27 Sec. 10. (1) The Surgical Technologist Registry is created. The
28 registry shall be used to register surgical technologists beginning
29 January 1, 2020.

30 (2) A listing in the registry shall be valid for the term of
31 registration as provided in section 38-142 subject to sections 13 and 14

1 of this act.

2 Sec. 11. The board shall provide supervision and oversight of the
3 Surgical Technologist Registry.

4 Sec. 12. The department shall establish and collect fees for
5 registration under the Surgical Technologist Registration Act as provided
6 in sections 38-151 to 38-157.

7 Sec. 13. (1) The department may deny or refuse renewal of
8 registration or remove a registrant from the Surgical Technologist
9 Registry for failure to meet the standards or for violation of the
10 Surgical Technologist Registration Act or any rules and regulations
11 adopted and promulgated pursuant to the act.

12 (2) If the department proposes to deny, refuse renewal of, or remove
13 a registration, it shall send the applicant or registrant a notice
14 setting forth the action to be taken and the reasons for the
15 determination. The denial, refusal to renew, or removal shall become
16 final thirty days after mailing the notice unless the applicant or
17 registrant gives written notice to the department of his or her desire
18 for an informal conference or for a formal hearing.

19 (3) If an informal conference is requested, the department shall
20 assign a representative of the department to hold an informal conference
21 with the applicant or registrant within fifteen working days after
22 receipt of a request. Within seven working days after the conclusion of
23 such conference, the representative shall affirm, modify, or dismiss the
24 action. The representative shall state in writing the specific reasons
25 for affirming, modifying, or dismissing the action and shall immediately
26 transmit copies of the statement to the department and to the applicant
27 or the registrant. If the representative affirms or modifies the action,
28 such action shall become final unless the applicant or registrant, within
29 ten working days after the statement of reasons is sent, requests in
30 writing a formal hearing to contest the action.

31 (4) Except as provided by subsection (3) of this section, an

1 applicant or registrant who desires to contest an action or to further
2 contest an affirmed or modified action shall do so in the manner provided
3 by the Administrative Procedure Act for contested cases. The chief
4 medical officer as designated in section 81-3115 shall be the
5 decisionmaker in a contested case under this section. The petition for
6 judicial review of any final decision regarding an alleged violation
7 shall be set for hearing at the earliest possible date. The times for
8 pleadings and hearings shall be set by the court with the object of
9 securing a decision at the earliest possible time.

10 (5) Notice under this section or delivery of the statement of
11 reasons under subsection (3) of this section may be served by any method
12 specified in section 25-505.01, or the department may permit substitute
13 or constructive service as provided in section 25-517.02 when service
14 cannot be made with reasonable diligence by any of the methods specified
15 in section 25-505.01.

16 Sec. 14. A person whose registration has been denied, refused
17 renewal, or removed from the Surgical Technologist Registry may reapply
18 for registration or apply for lifting the disciplinary sanction at any
19 time after one year has elapsed since the date such registration was
20 denied, refused renewal, or removed from the registry. The application
21 shall be made in accordance with the Surgical Technologist Registration
22 Act and any rules and regulations adopted and promulgated pursuant to the
23 act.

24 Sec. 15. (1) Any facility or person using the services of a
25 surgical technologist that takes action adversely affecting a surgical
26 technologist due to alleged incompetence shall report to the department,
27 in the manner specified by the department by rule and regulation, any
28 facts relating to such alleged incompetence known to such facility or
29 person, including, but not limited to, the identity of the surgical
30 technologist and the patient. The report shall be made within thirty days
31 after the date of the action or event.

1 (2) Any person or facility may report to the department any facts
2 known to such person or facility concerning any alleged incompetence of a
3 surgical technologist.

4 (3) A report made to the department under this section shall be
5 confidential. The facility or person making such report shall be immune
6 from criminal or civil liability of any nature, whether direct or
7 derivative, for filing a report with or for disclosure of documents,
8 records, or other information to the department under this section. The
9 reports and information shall be subject to the investigatory and
10 enforcement provisions in the Surgical Technologist Registration Act.
11 This subsection does not require production of records protected by the
12 Health Care Quality Improvement Act or section 25-12,123 or patient
13 safety work product under the Patient Safety Improvement Act except as
14 otherwise provided in either of such acts or such section.

15 Sec. 16. Complaints, investigational records, reports, and
16 investigational files of any kind of the department under the Surgical
17 Technologist Registration Act shall not be public records, shall not be
18 subject to subpoena or discovery, and shall be inadmissible as evidence
19 in any legal proceeding of any kind or character except an informal
20 conference or formal hearing before the department or a judicial appeal
21 of such hearing. Such complaints, investigational records, reports, and
22 investigational files shall be public records if made part of the record
23 of a formal hearing before the department. No person, including, but not
24 limited to, department employees, having access to such complaints,
25 investigational records, reports, or investigational files, shall
26 disclose such records or information except as required for investigation
27 of the alleged violation or for purposes of a hearing before the
28 department. Such information, files, and records may be disclosed to law
29 enforcement agencies by the department and such disclosure shall not make
30 the information, files, or records public records.

31 Sec. 17. The department may maintain an action for an injunction in

1 the name of the state for violation of the Surgical Technologist
2 Registration Act or any rules and regulations adopted and promulgated
3 under the act.

4 Sec. 18. Surgical technologists are eligible to participate in the
5 Licensee Assistance Program as prescribed by section 38-175.

6 Sec. 19. The department may adopt and promulgate rules and
7 regulations as necessary to carry out the Surgical Technologist
8 Registration Act, including, but not limited to, rules and regulations
9 setting minimum standards for competencies listed in section 9 of this
10 act and methods for competency assessment of surgical technologists.

11 Sec. 20. Section 38-2025, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 38-2025 The following classes of persons shall not be construed to
14 be engaged in the unauthorized practice of medicine:

15 (1) Persons rendering gratuitous services in cases of emergency;

16 (2) Persons administering ordinary household remedies;

17 (3) The members of any church practicing its religious tenets,
18 except that they shall not prescribe or administer drugs or medicines,
19 perform surgical or physical operations, nor assume the title of or hold
20 themselves out to be physicians, and such members shall not be exempt
21 from the quarantine laws of this state;

22 (4) Students of medicine who are studying in an accredited school or
23 college of medicine and who gratuitously prescribe for and treat disease
24 under the supervision of a licensed physician;

25 (5) Physicians who serve in the armed forces of the United States or
26 the United States Public Health Service or who are employed by the United
27 States Department of Veterans Affairs or other federal agencies, if their
28 practice is limited to that service or employment;

29 (6) Physicians who are licensed in good standing to practice
30 medicine under the laws of another state when incidentally called into
31 this state or contacted via electronic or other medium for consultation

1 with a physician licensed in this state. For purposes of this
2 subdivision, consultation means evaluating the medical data of the
3 patient as provided by the treating physician and rendering a
4 recommendation to such treating physician as to the method of treatment
5 or analysis of the data. The interpretation of a radiological image by a
6 physician who specializes in radiology is not a consultation;

7 (7) Physicians who are licensed in good standing to practice
8 medicine in another state but who, from such other state, order
9 diagnostic or therapeutic services on an irregular or occasional basis,
10 to be provided to an individual in this state, if such physicians do not
11 maintain and are not furnished for regular use within this state any
12 office or other place for the rendering of professional services or the
13 receipt of calls;

14 (8) Physicians who are licensed in good standing to practice
15 medicine in another state and who, on an irregular and occasional basis,
16 are granted temporary hospital privileges to practice medicine and
17 surgery at a hospital or other medical facility licensed in this state;

18 (9) Persons providing or instructing as to use of braces, prosthetic
19 appliances, crutches, contact lenses, and other lenses and devices
20 prescribed by a physician licensed to practice medicine while working
21 under the direction of such physician;

22 (10) Dentists practicing their profession when licensed and
23 practicing in accordance with the Dentistry Practice Act;

24 (11) Optometrists practicing their profession when licensed and
25 practicing under and in accordance with the Optometry Practice Act;

26 (12) Osteopathic physicians practicing their profession if licensed
27 and practicing under and in accordance with sections 38-2029 to 38-2033;

28 (13) Chiropractors practicing their profession if licensed and
29 practicing under the Chiropractic Practice Act;

30 (14) Podiatrists practicing their profession when licensed to
31 practice in this state and practicing under and in accordance with the

1 Podiatry Practice Act;

2 (15) Psychologists practicing their profession when licensed to
3 practice in this state and practicing under and in accordance with the
4 Psychology Interjurisdictional Compact or the Psychology Practice Act;

5 (16) Advanced practice registered nurses practicing in their
6 clinical specialty areas when licensed under the Advanced Practice
7 Registered Nurse Practice Act and practicing under and in accordance with
8 their respective practice acts;

9 (17) Surgical first assistants practicing in accordance with the
10 Surgical First Assistant Practice Act;

11 (18) Persons licensed or certified under the laws of this state to
12 practice a limited field of the healing art, not specifically named in
13 this section, when confining themselves strictly to the field for which
14 they are licensed or certified, not assuming the title of physician,
15 surgeon, or physician and surgeon, and not professing or holding
16 themselves out as qualified to prescribe drugs in any form or to perform
17 operative surgery;

18 (19) Persons obtaining blood specimens while working under an order
19 of or protocols and procedures approved by a physician, registered nurse,
20 or other independent health care practitioner licensed to practice by the
21 state if the scope of practice of that practitioner permits the
22 practitioner to obtain blood specimens;

23 (20) Physicians who are licensed in good standing to practice
24 medicine under the laws of another state or jurisdiction who accompany an
25 athletic team or organization into this state for an event from the state
26 or jurisdiction of licensure. This exemption is limited to treatment
27 provided to such athletic team or organization while present in Nebraska;
28 and

29 (21) Surgical technologists practicing in accordance with the
30 Surgical Technologist Registration Act; and

31 (22) ~~(21)~~ Other trained persons employed by a licensed health care

1 facility or health care service defined in the Health Care Facility
2 Licensure Act or clinical laboratory certified pursuant to the federal
3 Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII
4 or XIX of the federal Social Security Act to withdraw human blood for
5 scientific or medical purposes.

6 Any person who has held or applied for a license to practice
7 medicine and surgery in this state, and such license or application has
8 been denied or such license has been refused renewal or disciplined by
9 order of limitation, suspension, or revocation, shall be ineligible for
10 the exceptions described in subdivisions (5) through (8) of this section
11 until such license or application is granted or such license is renewed
12 or reinstated. Every act or practice falling within the practice of
13 medicine and surgery as defined in section 38-2024 and not specially
14 excepted in this section shall constitute the practice of medicine and
15 surgery and may be performed in this state only by those licensed by law
16 to practice medicine in Nebraska.

17 Sec. 21. Original section 38-2025, Revised Statutes Cumulative
18 Supplement, 2018, is repealed.