

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 205

Introduced by Kolterman, 24; Erdman, 47; Geist, 25; Howard, 9; Linehan,
39; Williams, 36.

Read first time January 11, 2019

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to medicine and surgery; to amend sections
2 38-2001 and 38-2025, Revised Statutes Cumulative Supplement, 2018;
3 to adopt the Surgical Technologist Registration Act; to exclude
4 certain persons from the restriction regarding the unauthorized
5 practice of medicine; to harmonize provisions; and to repeal the
6 original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 13 of this act shall be known and may be
2 cited as the Surgical Technologist Registration Act.

3 Sec. 2. For purposes of the Surgical Technologist Registration Act,
4 the definitions found in sections 3 and 4 of this act apply.

5 Sec. 3. Registered surgical technologist means a person registered
6 as a surgical technologist pursuant to the Surgical Technologist
7 Registration Act.

8 Sec. 4. Surgical Technologist Registry means the registry created
9 pursuant to section 8 of this act.

10 Sec. 5. Beginning January 1, 2020, any surgical technologist
11 contracted with or employed as a surgical technologist by a facility
12 licensed under the Health Care Facility Licensure Act or a physician
13 engaged in the practice of medicine and surgery in Nebraska shall
14 register with the Surgical Technologist Registry no later than one
15 hundred eighty days after the commencement of the contract period or the
16 date of employment or July 1, 2020, whichever is later.

17 Sec. 6. (1) To be eligible to register as a surgical technologist,
18 an individual shall:

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

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

23 (c) Be of good moral character.

24 (2) An eligible individual shall:

25 (a) File an application with the department. The application shall
26 include:

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

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

31 (iii) Documentation of any felony or misdemeanor conviction, along

1 with date of occurrence and county and state in which the conviction
2 occurred; and

3 (iv) One of the following:

4 (A) Documentation of current certification as a surgical
5 technologist by the State of Nebraska or a national certifying body
6 approved by the board, if the applicant is currently certified;

7 (B) Documentation of completion of an accredited program in surgical
8 technology accredited by the Commission on Accreditation of Allied Health
9 Education Programs or the Accrediting Bureau of Health Education Schools,
10 if the applicant is a graduate of such a program; or

11 (C) Certification of competency assessment completed by a licensed
12 health care professional. The assessment shall include the components
13 listed in section 7 of this act; and

14 (b) Pay the required nonrefundable fee as determined by the
15 department.

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

18 Sec. 7. A registered surgical technologist may perform tasks and
19 functions, including, but not limited to:

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

24 (2) Creating and maintaining the sterile field through organization
25 and preparation of instruments and supplies, including performance of
26 necessary surgical counts;

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

28 (4) Providing visualization of the surgical site;

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

30 (6) Positioning the patient;

31 (7) Passing instruments, supplies, and equipment to the surgeon and

1 assistants during the procedure while anticipating the needs of the
2 surgical team;

3 (8) Assisting the surgeon as directed in accordance with applicable
4 law;

5 (9) Assisting the circulating nurse as directed in the care of the
6 surgical patient, including appropriate counts prior to the surgical
7 procedure and before the incision is closed;

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

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

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

14 Sec. 8. (1) The Surgical Technologist Registry is created. The
15 registry shall be used to register surgical technologists beginning
16 January 1, 2020.

17 (2) A listing in the registry shall be valid for the term of
18 registration as provided in section 38-142 subject to sections 11 and 12
19 of this act.

20 Sec. 9. The board shall provide supervision and oversight of the
21 Surgical Technologist Registry.

22 Sec. 10. The department shall establish and collect fees for
23 registration under the Surgical Technologist Registration Act as provided
24 in sections 38-151 to 38-157.

25 Sec. 11. (1) The department may deny or refuse renewal of
26 registration or remove a registrant from the Surgical Technologist
27 Registry for failure to meet the standards or for violation of the
28 Surgical Technologist Registration Act or the rules and regulations
29 adopted and promulgated pursuant to the act.

30 (2) If the department proposes to deny, refuse renewal of, or remove
31 a registration, it shall send the applicant or registrant a notice

1 setting forth the action to be taken and the reasons for the
2 determination. The denial, refusal to renew, or removal shall become
3 final thirty days after mailing the notice unless the applicant or
4 registrant gives written notice to the department of his or her desire
5 for an informal conference or for a formal hearing.

6 (3) Notice may be served by any method specified in section
7 25-505.01, or the department may permit substitute or constructive
8 service as provided in section 25-517.02 when service cannot be made with
9 reasonable diligence by any of the methods specified in section
10 25-505.01.

11 Sec. 12. A person whose registration has been denied, refused
12 renewal, or removed from the Surgical Technologist Registry may reapply
13 for registration or apply for lifting the disciplinary sanction at any
14 time after one year has elapsed since the date such registration was
15 denied, refused renewal, or removed from the registry. The application
16 shall be made in accordance with the Surgical Technologist Registration
17 Act and rules and regulations adopted and promulgated pursuant to the
18 act.

19 Sec. 13. The department shall adopt and promulgate rules and
20 regulations as deemed necessary to implement the Surgical Technologist
21 Registration Act, including, but not limited to, rules and regulations
22 setting minimum standards for competencies listed in section 7 of this
23 act and methods for competency assessment of surgical technologists.

24 Sec. 14. Section 38-2001, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 38-2001 Sections 38-2001 to 38-2063 and the Surgical Technologist
27 Registration Act shall be known and may be cited as the Medicine and
28 Surgery Practice Act.

29 Sec. 15. Section 38-2025, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 38-2025 The following classes of persons shall not be construed to

1 be engaged in the unauthorized practice of medicine:

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

3 (2) Persons administering ordinary household remedies;

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

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

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

16 (6) Physicians who are licensed in good standing to practice
17 medicine under the laws of another state when incidentally called into
18 this state or contacted via electronic or other medium for consultation
19 with a physician licensed in this state. For purposes of this
20 subdivision, consultation means evaluating the medical data of the
21 patient as provided by the treating physician and rendering a
22 recommendation to such treating physician as to the method of treatment
23 or analysis of the data. The interpretation of a radiological image by a
24 physician who specializes in radiology is not a consultation;

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

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

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

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

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

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

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

17 (14) Podiatrists practicing their profession when licensed to
18 practice in this state and practicing under and in accordance with the
19 Podiatry Practice Act;

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

23 (16) Advanced practice registered nurses practicing in their
24 clinical specialty areas when licensed under the Advanced Practice
25 Registered Nurse Practice Act and practicing under and in accordance with
26 their respective practice acts;

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

29 (18) Persons licensed or certified under the laws of this state to
30 practice a limited field of the healing art, not specifically named in
31 this section, when confining themselves strictly to the field for which

1 they are licensed or certified, not assuming the title of physician,
2 surgeon, or physician and surgeon, and not professing or holding
3 themselves out as qualified to prescribe drugs in any form or to perform
4 operative surgery;

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

10 (20) Physicians who are licensed in good standing to practice
11 medicine under the laws of another state or jurisdiction who accompany an
12 athletic team or organization into this state for an event from the state
13 or jurisdiction of licensure. This exemption is limited to treatment
14 provided to such athletic team or organization while present in Nebraska;
15 and

16 (21) Skilled professionals or nonprofessional assistants who are
17 licensed, certified, or registered under relevant areas of practice to
18 whom are assigned tasks by a qualified physician as defined in section
19 38-1212, in a manner consistent with accepted medical standards and
20 appropriate to the skill in the practice area in which the professionals
21 or assistants are licensed, certified, or registered; and

22 (22) ~~(21)~~ Other trained persons employed by a licensed health care
23 facility or health care service defined in the Health Care Facility
24 Licensure Act or clinical laboratory certified pursuant to the federal
25 Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII
26 or XIX of the federal Social Security Act to withdraw human blood for
27 scientific or medical purposes.

28 Any person who has held or applied for a license to practice
29 medicine and surgery in this state, and such license or application has
30 been denied or such license has been refused renewal or disciplined by
31 order of limitation, suspension, or revocation, shall be ineligible for

1 the exceptions described in subdivisions (5) through (8) of this section
2 until such license or application is granted or such license is renewed
3 or reinstated. Every act or practice falling within the practice of
4 medicine and surgery as defined in section 38-2024 and not specially
5 excepted in this section shall constitute the practice of medicine and
6 surgery and may be performed in this state only by those licensed by law
7 to practice medicine in Nebraska.

8 Sec. 16. Original sections 38-2001 and 38-2025, Revised Statutes
9 Cumulative Supplement, 2018, are repealed.