

FIRST REGULAR SESSION

HOUSE BILL NO. 311

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MAY (Sponsor), WILDBERGER, SATER, BAKER (25),
SCHAAF AND PORTWOOD (Co-sponsors).

Read 1st time January 25, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0635L.011

AN ACT

To amend chapter 334, RSMo, by adding thereto sixteen new sections relating to the registered surgical assistant and registered surgical technologist title protection act, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 334, RSMo, is amended by adding thereto sixteen new sections, to
2 be known as sections 334.1100, 334.1103, 334.1106, 334.1109, 334.1112, 334.1115, 334.1118,
3 334.1121, 334.1124, 334.1127, 334.1130, 334.1133, 334.1136, 334.1139, 334.1142, and
4 334.1145, to read as follows:

334.1100. 1. Sections 334.1100 to 334.1145 shall be known and may be cited as the
2 **"Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act".**

3 **2. As used in sections 334.1100 to 334.1145, the following terms shall mean:**

4 **(1) "Board", the state board of registration for the healing arts;**

5 **(2) "Direct supervision", supervision by an operating physician licensed in this**
6 **state, licensed podiatrist, or licensed dentist who is physically present and who personally**
7 **directs delegated acts and remains available to personally respond to an emergency until**
8 **the patient is released from the operating room. A registered surgical assistant or**
9 **registered surgical technologist shall perform duties as assigned;**

10 **(3) "Physician" or "operating physician", a person licensed to practice medicine**
11 **in this state;**

12 **(4) "Registered surgical assistant", a person who:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 13 (a) Is not licensed to practice medicine;
- 14 (b) Is certified by the National Surgical Assistant Association on the Certification
15 of Surgical Assistants, the Liaison Council on Certification for the Surgical Technologist
16 as a certified first assistant, or the American Board of Surgical Assisting;
- 17 (c) Performs duties under direct supervision;
- 18 (d) Provides services only in a licensed hospital, ambulatory surgical center, or
19 office of a physician licensed to practice medicine; and
- 20 (e) Is registered under sections 334.1100 to 334.1145;
- 21 (5) "Registered surgical technologist", a person who:
- 22 (a) Is not a physician licensed to practice medicine;
- 23 (b) Is certified by the Liaison Council on Certification for the Surgical
24 Technologist;
- 25 (c) Performs duties under direct supervision;
- 26 (d) Provides services only in a licensed hospital, ambulatory surgical center, or
27 office of a physician licensed to practice medicine, or as a clinical or didactic educator in
28 a surgical technology program, or in a tissue harvesting or management capacity; and
- 29 (e) Is registered under sections 334.1100 to 334.1145.

334.1103. 1. An application for an initial registration as a registered surgical
2 assistant or registered surgical technologist shall be made to the state board of registration
3 for the healing arts in writing on forms prescribed by the board and shall be accompanied
4 by the required nonrefundable fee. An application shall require information that, in the
5 judgment of the board, will enable the board to evaluate the qualifications of an applicant
6 for registration.

7 2. If an applicant fails to obtain a certificate of registration under sections 334.1100
8 to 334.1145 within three years after filing his or her application, the application shall be
9 denied. The applicant may make a new application which shall be accompanied by the
10 required nonrefundable fee.

334.1106. In addition to any other information required to be contained on the
2 application, every application for an original, renewal, or restored certificate of
3 registration shall include the applicant's Social Security Number.

334.1109. No person shall hold himself or herself out as a registered surgical
2 assistant or a registered surgical technologist without being so registered by the board.
3 This is a title protection and not licensure by the board.

334.1112. Nothing in sections 334.1100 to 334.1145 shall be construed to prohibit
2 the following:

- 3 (1) A person licensed in this state under any other act from engaging in the practice

4 for which he or she is licensed, including but not limited to a licensed physician, physician
5 assistant, registered nurse, or nurse performing surgery-related tasks within the scope of
6 his or her license, nor are such individuals required to be registered under sections
7 334.1100 to 334.1145;

8 (2) A person from engaging in practice as a surgical assistant or surgical
9 technologist in the discharge of his or her official duties as an employee of the United States
10 government;

11 (3) One or more registered surgical assistants from forming a professional service
12 corporation in accordance with state law and applying for licensure as a corporation
13 providing surgical assistant services;

14 (4) A student engaging in practice as a surgical assistant or surgical technologist
15 under the direct supervision of a licensed physician as part of his or her program of study
16 at a school approved by the board or in preparation to qualify for the examination
17 prescribed in sections 334.1115 and 334.1118;

18 (5) A hospital, health system or network, ambulatory surgical center, licensed
19 physician, physician medical group, or any other entity that provides surgery-related
20 services from employing individuals that the entity considers competent to assist in
21 surgery. Such entities are not required to utilize registered surgical assistants or registered
22 surgical technologists when providing surgery-related services to patients. Nothing in this
23 subdivision shall be construed to limit the ability of an employer to utilize the services of
24 any person to assist in surgery within the employment setting consistent with the
25 individual's skill and training.

334.1115. A person shall qualify for registration as a surgical assistant if he or she
2 has applied in writing on the prescribed form, has paid the required fees, and meets all of
3 the following requirements:

4 (1) Is at least twenty-one years of age;

5 (2) Has not violated any provision of section 334.1130. In addition, the board may
6 take into consideration any felony conviction of the applicant, but a conviction shall not
7 operate as an absolute bar to registration;

8 (3) Has completed a commission on accreditation of allied health education
9 programs accredited program in surgical assisting or has graduated from a United States
10 Military Program that emphasized surgical assisting;

11 (4) Has successfully completed a national certification examination and is currently
12 certified by the National Surgical Assistant Association on the Certification of Surgical
13 Assistants, the Liaison Council on Certification for the Surgical Technologist as a certified
14 first assistant, or the American Board of Surgical Assisting.

334.1118. A person shall qualify for registration as a surgical technologist if he or she has applied in writing on the prescribed form, has paid the required fees, and meets all of the following requirements:

(1) Is at least eighteen years of age;

(2) Has not violated any provision of section 334.1130. In addition, the board may take into consideration any felony conviction of the applicant, but a conviction shall not operate as an absolute bar to registration;

(3) Has completed a surgical technologist program approved by the board that has been accredited by the commission on accreditation of allied health care programs or its successor, or has completed a program that was in the process of becoming accredited by the commission on accreditation of allied health care programs at the time the surgical technologist completed the program;

(4) Has successfully completed the surgical technologist national certification examination provided by the Liaison Council on Certification for the Surgical Technologist, or its successor agency;

(5) Is currently certified by the Liaison Council on Certification for the Surgical Technologist, or its successor agency, and has met the requirements set forth for certification.

334.1121. 1. The expiration date and renewal period for each certificate of registration issued under sections 334.1100 to 334.1145 shall be set by the board by rule. Renewal shall be conditioned on paying the required fee and maintaining the national certification under section 334.1118.

2. A registrant whose registration has expired or whose registration is on inactive status may restore his or her registration by making application to the board, by filing proof acceptable to the board of his or her fitness to have the registration restored, and by paying the required fees. Proof of fitness may include sworn evidence certifying to active lawful practice in another jurisdiction.

3. If the registrant has not maintained an active practice in another jurisdiction satisfactory to the board, the board shall determine, by an evaluation program established by rule, his or her fitness for restoration of the registration and shall establish procedures and requirements for restoration. However, a registrant whose registration expired while he or she was in federal service on active duty with the Armed Forces of the United States or the State Militia called into service or training, or in training or education under the supervision of the United States before induction into the military service may have the registration restored without paying any lapsed renewal fees if within two years after honorable termination of the service, training, or education he or she furnishes the board

19 with satisfactory evidence to the effect that he or she has been so engaged and that his or
20 her services, training, or education has been so terminated.

334.1124. A registrant who notifies the board in writing on forms prescribed by the
2 board may elect to place his or her registration on inactive status and shall, subject to rules
3 of the board, be excused from payment of renewal fees until he or she notifies the board
4 in writing of his or her intention to restore the registration. A registrant requesting
5 restoration from inactive status shall pay the current renewal fee and shall restore his or
6 her registration in accordance with section 334.1121. A registrant whose license is on
7 inactive status shall not hold himself or herself out as a registered surgical assistant or
8 registered surgical technologist. Any violation of this section is grounds for disciplinary
9 action under section 334.1130.

334.1127. 1. The board shall set by rule fees for the administration of sections
2 334.1100 to 334.1145, including but not limited to fees for initial and renewal registration
3 and restoration of a certificate of registration.

4 2. All fees and fines collected under sections 334.1100 to 334.1145 shall be deposited
5 in the "Registered Surgical Assistant and Registered Surgical Technologist Fund" which
6 is hereby created in the state treasury. All moneys in the fund shall be used by the board
7 for the administration of sections 334.1100 to 334.1145.

334.1130. The board may refuse to issue, renew, or restore a registration, may
2 revoke or suspend a registration, or may place on probation, censure, reprimand, or take
3 other disciplinary action with regard to a person registered under sections 334.1100 to
4 334.1145, including but not limited to the imposition of fines not to exceed five thousand
5 dollars for each violation, for any one or combination of the following causes:

- 6 (1) Making a material misstatement in furnishing information to the board;
- 7 (2) Violating a provision of sections 334.1100 to 334.1145 or its rules;
- 8 (3) Conviction under the laws of a United States jurisdiction of a crime that is a
9 felony or misdemeanor, an essential element of which is dishonesty, or of a crime that is
10 directly related to the practice as a surgical assistant or surgical technologist;
- 11 (4) Making a misrepresentation for the purpose of obtaining, renewing, or restoring
12 a registration;
- 13 (5) Wilfully aiding or assisting another person in violating any provision of sections
14 334.1100 to 334.1145 or its rules;
- 15 (6) Failing to provide information within sixty days in response to a written request
16 made by the board;
- 17 (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character
18 likely to deceive, defraud, or harm the public, as defined by rule of the board;

19 **(8) Discipline by another United States jurisdiction or foreign nation, if at least one**
20 **of the grounds for discipline is the same or substantially equivalent to those set forth in this**
21 **section;**

22 **(9) Directly or indirectly giving to or receiving from a person, firm, corporation,**
23 **partnership, or association a fee, commission, rebate, or other form of compensation for**
24 **professional services not actually or personally rendered;**

25 **(10) A finding by the board that the registrant, after having his or her registration**
26 **placed on probationary status has violated the terms of probation;**

27 **(11) Wilfully making or filing false records or reports in his or her practice,**
28 **including but not limited to false records or reports filed with state agencies;**

29 **(12) Wilfully making or signing a false statement, certificate, or affidavit to induce**
30 **payment;**

31 **(13) Wilfully failing to report an instance of suspected child abuse or neglect as**
32 **required under chapter 210, RSMo;**

33 **(14) Being identified in the child abuse and neglect registry as a perpetrator of child**
34 **abuse or neglect in a substantiated report by the children's division;**

35 **(15) Employment of fraud, deception, or any unlawful means in applying for or**
36 **securing a certificate of registration as a registered surgical assistant or registered surgical**
37 **technologist;**

38 **(16) Failure to report to the board any adverse action taken against the registrant**
39 **by another registering or licensing jurisdiction or liability for conduct that would**
40 **constitute grounds for action as set forth in this section;**

41 **(17) Habitual intoxication or addiction to the use of drugs;**

42 **(18) Physical illness, including but not limited to deterioration through the aging**
43 **process or loss of motor skills, which results in the inability to practice the profession for**
44 **which he or she is registered with reasonable judgment, skill, or safety;**

45 **(19) Gross malpractice resulting in permanent injury or death of a patient;**

46 **(20) Immoral conduct in the commission of an act related to the registrant's**
47 **practice, including but not limited to sexual abuse, sexual misconduct, or sexual**
48 **exploitation.**

334.1133. If a person holds himself or herself out as a registered surgical assistant
2 **or registered surgical technologist without being registered under sections 334.1100 to**
3 **334.1145, any registrant under sections 334.1100 to 334.1145, interested party, or person**
4 **injured thereby may petition the court for relief.**

334.1136. Any person who is found to have knowingly violated section 334.1109 is
2 **guilty of a class A misdemeanor for a first offense and is guilty of a class D felony for a**

3 second or subsequent offense.

2 **334.1139. 1. In addition to any other penalty provided by law, a person who**
3 **violates section 334.1109 shall pay a civil penalty to the board in an amount not to exceed**
4 **five thousand dollars for each offense as determined by the board.**

4 **2. The board has the authority and power to investigate any and all unregistered**
5 **activity.**

6 **3. The civil penalty assessed under this section shall be paid within sixty days after**
7 **the effective date of the order imposing the penalty. The order shall constitute a judgment**
8 **and may be filed and execution had on the judgment in the same manner as a judgment**
9 **from a court of record.**

2 **334.1142. Any rule or portion of a rule, as that term is defined in section 536.010,**
3 **RSMo, that is created under the authority delegated in sections 334.1100 to 334.1145 shall**
4 **become effective only if it complies with and is subject to all of the provisions of chapter**
5 **536, RSMo, and, if applicable, section 536.028, RSMo. Sections 334.1100 to 334.1145 and**
6 **chapter 536, RSMo, are nonseverable and if any of the powers vested with the general**
7 **assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to**
8 **disapprove and annul a rule are subsequently held unconstitutional, then the grant of**
9 **rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be**
10 **invalid and void.**

2 **334.1145. The provisions of sections 334.1100 to 334.1145 shall become effective**
3 **July 1, 2006.**