

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 57
95TH GENERAL ASSEMBLY

0352L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.211, 210.245, and 701.353, RSMo, and to enact in lieu thereof twenty-one new sections relating to certain safety occupations, with penalty provisions.

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

Section A. Sections 210.211, 210.245, and 701.353, RSMo, are repealed and twenty-one
2 new sections enacted in lieu thereof, to be known as sections 210.211, 210.245, 334.1100,
3 334.1103, 334.1106, 334.1109, 334.1112, 334.1115, 334.1118, 334.1121, 334.1124, 334.1127,
4 334.1130, 334.1133, 334.1136, 334.1139, 334.1142, 334.1150, 701.353, 1, and 2, to read as
5 follows:

210.211. 1. It shall be unlawful for any person to establish, maintain or operate a
2 child-care facility for children, or to advertise or hold himself or herself out as being able to
3 perform any of the services as defined in section 210.201, without having in effect a written
4 license granted by the department of health and senior services; except that nothing in sections
5 210.203 to 210.245 shall apply to:

6 (1) Any person who is caring for four or fewer children. For purposes of this
7 subdivision, children who are related by blood, marriage or adoption to such person within the
8 third degree shall [not be considered] **be included** in the total number of children being cared
9 for; **except that, children of such person who live in the home shall not be included in the**
10 **total number of children cared for;**

11 (2) Any person who has been duly appointed by a court of competent jurisdiction the
12 guardian of the person of the child or children, or the person who has legal custody of the child
13 or children;

14 (3) Any person who receives free of charge, and not as a business, for periods not
15 exceeding ninety consecutive days, as bona fide, occasional and personal guests the child or

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.

16 children of personal friends of such person, and who receives custody of no other unrelated child
17 or children;

18 (4) Any graded boarding school, summer camp, hospital, sanitarium or home which is
19 conducted in good faith primarily to provide education, recreation, medical treatment, or nursing
20 or convalescent care for children;

21 (5) Any child-care facility maintained or operated under the exclusive control of a
22 religious organization. When a nonreligious organization, having as its principal purpose the
23 provision of child-care services, enters into an arrangement with a religious organization for the
24 maintenance or operation of a child-care facility, the facility is not under the exclusive control
25 of the religious organization;

26 (6) Any residential facility or day program licensed by the department of mental health
27 pursuant to sections 630.705 to 630.760, RSMo, which provides care, treatment and habilitation
28 exclusively to children who have a primary diagnosis of mental disorder, mental illness, mental
29 retardation or developmental disability, as defined in section 630.005, RSMo; and

30 (7) Any nursery school.

31 2. Notwithstanding the provisions of subsection 1 of this section, no child-care facility
32 shall be exempt from licensure if such facility receives any state or federal funds for providing
33 care for children, except for federal funds for those programs which meet the requirements for
34 participation in the Child and Adult Care Food Program pursuant to 42 U.S.C. 1766. Grants to
35 parents for child care pursuant to sections 210.201 to 210.257 shall not be construed to be funds
36 received by a person or facility listed in subdivisions (1) and (5) of subsection 1 of this section.

37 **3. Any child-care facility exempt from licensure shall disclose the licensure exempt**
38 **status of the facility to the parents or guardians of children for which the facility provides**
39 **care.**

210.245. 1. Any person who violates any provision of sections 210.201 to 210.245, or
2 who for such person or for any other person makes materially false statements in order to obtain
3 a license or the renewal thereof pursuant to sections 210.201 to 210.245, [shall be] **is** guilty of
4 an infraction for the first offense and shall be assessed a fine not to exceed two hundred dollars
5 and [shall be] **is** guilty of a class A misdemeanor **and shall be assessed a fine of two hundred**
6 **dollars per day, not to exceed a total of ten thousand dollars** for subsequent offenses. In case
7 such guilty person is a corporation, association, institution or society, the officers thereof who
8 participate in such misdemeanor shall be subject to the penalties provided by law.

9 2. If the department of health and senior services proposes to deny, suspend, place on
10 probation or revoke a license, the department of health and senior services shall serve upon the
11 applicant or licensee written notice of the proposed action to be taken. The notice shall contain
12 a statement of the type of action proposed, the basis for it, the date the action will become

13 effective, and a statement that the applicant or licensee shall have thirty days to request in writing
14 a hearing before the administrative hearing commission and that such request shall be made to
15 the department of health and senior services. If no written request for a hearing is received by
16 the department of health and senior services within thirty days of the delivery or mailing by
17 certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect
18 on the thirty-first day after such delivery or mailing of the notice to the applicant or licensee. If
19 the applicant or licensee makes a written request for a hearing, the department of health and
20 senior services shall file a complaint with the administrative hearing commission within ninety
21 days of receipt of the request for a hearing.

22 3. The department of health and senior services may issue letters of censure or warning
23 without formal notice or hearing. Additionally, the department of health and senior services may
24 place a licensee on probation pursuant to chapter 621, RSMo.

25 4. The department of health and senior services may suspend any license simultaneously
26 with the notice of the proposed action to be taken in subsection 2 of this section, if the
27 department of health and senior services finds that there is a threat of imminent bodily harm to
28 the children in care. The notice of suspension shall include the basis of the suspension and the
29 appeal rights of the licensee pursuant to this section. The licensee may appeal the decision to
30 suspend the license to the department of health and senior services. The appeal shall be filed
31 within ten days from the delivery or mailing by certified mail of the notice of appeal. A hearing
32 shall be conducted by the department of health and senior services within ten days from the date
33 the appeal is filed. The suspension shall continue in effect until the conclusion of the
34 proceedings, including review thereof, unless sooner withdrawn by the department of health and
35 senior services, dissolved by a court of competent jurisdiction or stayed by the administrative
36 hearing commission. Any person aggrieved by a final decision of the department made pursuant
37 to this section shall be entitled to judicial review in accordance with chapter 536, RSMo.

38 5. In addition to initiating proceedings pursuant to subsection 1 of this section, or in lieu
39 thereof, the prosecuting attorney of the county where the child-care facility is located may file
40 suit for a preliminary and permanent order overseeing or preventing the operation of a child-care
41 facility for violating any provision of sections 210.201 to 210.245. The order shall remain in
42 force until such a time as the court determines that the child-care facility is in substantial
43 compliance. If the prosecuting attorney refuses to act or fails to act after receipt of notice from
44 the department of health and senior services, the department of health and senior services may
45 request that the attorney general seek an injunction of the operation of such child-care facility.

46 6. In cases of imminent bodily harm to children in the care of a child-care facility, the
47 department may file suit in the circuit court of the county in which the child-care facility is

48 located for injunctive relief, which may include removing the children from the facility,
49 overseeing the operation of the facility or closing the facility.

50 **7. The department of health and senior services may immediately close any illegally**
51 **operating unlicensed child-care facility. The prosecuting attorney of the county where**
52 **such illegal child-care facility is located may file suit for a permanent order preventing the**
53 **operation of a child-care facility. The order shall remain in effect until such a time as the**
54 **court determines that the child-care facility is in compliance with all licensure**
55 **requirements. Any person who operates an illegal unlicensed child-care facility is subject**
56 **to the penalties set forth in subsection 1 of this section.**

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

3 **2. As used in sections 334.1100 to 334.1142, 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 technologist", a person who:**

13 **(a) Is not a physician licensed to practice medicine;**

14 **(b) Is certified by the Liaison Council on Certification for the Surgical**
15 **Technologist;**

16 **(c) Performs duties under direct supervision;**

17 **(d) Provides services only in a licensed hospital, ambulatory surgical center, or**
18 **office of a physician licensed to practice medicine, or as a clinical or didactic educator in**
19 **a surgical technology program, or in a tissue harvesting or management capacity; and**

20 **(e) Is registered under sections 334.1100 to 334.1142.**

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

6 **2. If an applicant fails to obtain a certificate of registration under sections 334.1100**
7 **to 334.1142 within three years after filing his or her application, the application shall be**

8 denied. The applicant may make a new application which shall be accompanied by the
9 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 technologist without being so registered by the board. This is a title protection and not
3 licensure by the board.

334.1112. Nothing in sections 334.1100 to 334.1142 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 334.1142;

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

10 (3) A student engaging in practice as a surgical technologist under the direct
11 supervision of a licensed physician as part of his or her program of study at a school
12 approved by the board or in preparation to qualify for the examination prescribed in
13 section 334.1115.

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

4 (1) Is at least eighteen years of age;

5 (2) Has not violated any provision of section 334.1127. 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 surgical technologist program approved by the board that has
9 been accredited by the commission on accreditation of allied health care programs or its
10 successor, or has completed a program that was in the process of becoming accredited by
11 the commission on accreditation of allied health care programs at the time the surgical
12 technologist completed the program;

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

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

334.1118. 1. The expiration date and renewal period for each certificate of
2 **registration issued under sections 334.1100 to 334.1142 shall be set by the board by rule.**
3 **Renewal shall be conditioned on paying the required fee and maintaining the national**
4 **certification under section 334.1115.**

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

10 **3. If the registrant has not maintained an active practice in another jurisdiction**
11 **satisfactory to the board, the board shall determine, by an evaluation program established**
12 **by rule, his or her fitness for restoration of the registration and shall establish procedures**
13 **and requirements for restoration. However, a registrant whose registration expired while**
14 **he or she was in federal service on active duty with the Armed Forces of the United States**
15 **or the State Militia called into service or training, or in training or education under the**
16 **supervision of the United States before induction into the military service may have the**
17 **registration restored without paying any lapsed renewal fees if within two years after**
18 **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.**

334.1121. 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 334.1118. 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 334.1127.**

334.1124. 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 334.1142 shall be deposited**
5 **in the "Registered Surgical Technologist Fund" which is hereby created in the state**
6 **treasury. All moneys in the fund shall be used by the board for the administration of**
7 **sections 334.1100 to 334.1142.**

334.1127. 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 **334.1142, 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 334.1142 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 334.1142 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.

 334.1130. If a person holds himself or herself out as a registered surgical
2 technologist without being registered under sections 334.1100 to 334.1142, any registrant
3 under sections 334.1100 to 334.1142, interested party, or person injured thereby may
4 petition the court for relief.

 334.1133. 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.

 334.1136. 1. In addition to any other penalty provided by law, a person who
2 violates section 334.1109 shall pay a civil penalty to the board in an amount not to exceed
3 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.

 334.1139. Any rule or portion of a rule, as that term is defined in section 536.010,
2 RSMo, that is created under the authority delegated in sections 334.1100 to 334.1142 shall
3 become effective only if it complies with and is subject to all of the provisions of chapter
4 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 334.1100 to 334.1142 and

5 chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
6 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to
7 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
8 rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be
9 invalid and void.

334.1142. The provisions of sections 334.1100 to 334.1142 shall become effective
2 July 1, 2010.

334.1150. 1. As used in this section, "surgical technology" means intraoperative
2 surgical patient care that involves:

3 (1) Preparing the operating room for surgical procedures by ensuring that surgical
4 equipment is functioning properly and safely;

5 (2) Preparing the operating room and the sterile field for surgical procedures by
6 preparing sterile supplies, instruments, and equipment using sterile techniques; and

7 (3) As directed in an operating room setting, performing tasks within the sterile
8 field, including:

9 (a) Passing supplies, equipment, or instruments;

10 (b) Sponging or suctioning an operative site;

11 (c) Preparing and cutting suture materials;

12 (d) Transferring fluids or drugs;

13 (e) Holding retractors; and

14 (f) Assisting in counting sponges, needles, supplies, and instruments.

15 2. No person shall practice surgical technology in a health care facility unless the
16 person meets one of the following:

17 (1) Has successfully completed an accredited educational program for surgical
18 technologists and holds and maintains the surgical technologist certification administered
19 by the National Board of Surgical Technology and Surgical Assisting or its successor;

20 (2) Has completed an appropriate training program for surgical technology in the
21 Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States or in the
22 United States Public Health Service; or

23 (3) Provides evidence that during the five-year period immediately preceding the
24 effective date of this section was employed to practice surgical technology for not less than
25 two years in a health care facility; or

26 (4) Is in the service of the federal government, to the extent the person is
27 performing duties related to such service.

28 3. (1) A person who qualifies to be employed to practice surgical technology in a
29 health care facility under subdivision (1), (2), or (3) of subsection 2 of this section shall

30 **annually complete fifteen hours of continuing education to remain qualified for**
31 **employment.**

32 **(2) A health care facility that employs a person to practice surgical technology shall**
33 **verify that the person meets the continuing education requirements of subdivision (1) of**
34 **this subsection and, where applicable, that the person has maintained the surgical**
35 **technologist certification.**

36 **4. A health care facility shall supervise each person employed by the facility to**
37 **practice surgical technology according to the facility's policies and procedures to ensure**
38 **that the person competently performs delegated tasks intraoperatively and in accordance**
39 **with this section or other law.**

40 **5. Nothing in this section shall prohibit any licensed practitioner from performing**
41 **surgical technology tasks or functions if the practitioner is acting within the scope of his**
42 **or her license.**

43 **6. The department of health and senior services shall enforce the provisions of this**
44 **section.**

701.353. 1. There is hereby established an "Elevator Safety Board" to be composed of
2 [eleven] **twelve** members, one of whom shall be the director of the department of public safety,
3 **or his or her designee.** The remaining ten members of the board shall be appointed by the
4 governor with the advice and consent of the senate. Each member appointed by the governor
5 shall be appointed for a term of five years or until his **or her** successor is appointed. The
6 governor shall fill any vacancy on the board for the remainder of the unexpired term with a
7 representative of the same interest as that of the member whose term is vacant. No more than
8 six members of the board, who are not employees of state or local government, shall be members
9 of the same political party.

10 2. Two members of the board shall represent the interests of labor and shall be involved
11 in the elevator industry. Two members of the board shall be representatives of manufacturers
12 of elevators used in this state. **One member of the board shall be a representative of an**
13 **elevator company that installs, services, and maintains elevators and elevator-related**
14 **equipment in this state but that is not an elevator manufacturer.** One member of the board
15 shall be an architect or mechanical engineer. One member of the board shall be a representative
16 of owners of buildings affected by sections 701.350 to 701.380. Two members shall be building
17 officials with responsibility for administering elevator regulations, one from each municipality
18 having a population of at least three hundred fifty thousand inhabitants. One member of the
19 board shall be a representative of the disabled community who is familiar with the provisions
20 of the Federal Americans with Disabilities Act. One member shall be a representative of the
21 special **elevator** inspectors.

22 3. The director of the department shall call the first meeting of the board within sixty
23 days after all members have been appointed and qualified. The members from among their
24 membership shall elect a chairman. After the initial meeting the members shall meet at the call
25 of the chairman, but shall meet at least four times per year. Six members of the board shall
26 constitute a quorum.

27 4. The members of the board shall serve without pay, but they shall receive per diem
28 expenses in an equivalent amount as allowed for members of the general assembly.

**Section 1. Notwithstanding any provision of the law to the contrary, prior to the
2 coordinating board for higher education, through the department of higher education,
3 issuing a certificate of approval as defined in section 173.600, RSMo, to a medical school
4 organized as a for-profit corporation, the board shall submit a study to the general
5 assembly examining the need for medical schools in the state and the impact to the state of
6 certifying medical schools organized as a for-profit corporation.**

**Section 2. Any person who provides teeth-whitening services to another person by
2 use of products not readily available to the public through over-the-counter purchase shall
3 be deemed to be engaging in the practice of dentistry. Licensed dental hygienists and
4 dental assistants may apply teeth-whitening formulations, but only under the appropriate
5 level of supervision of a licensed dentist as established by rule. Any individual who takes
6 the dental impression of another person or who performs any phase of any operation
7 incident to teeth-whitening, including but not limited to the instruction or application of
8 on-site-teeth-whitening materials or procedures, except under the appropriate level of
9 supervision of a licensed dentist, shall be deemed to be engaging in the practice of
10 dentistry.**

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