

By: Zerwas

H.B. No. 3813

A BILL TO BE ENTITLED

AN ACT

relating to the registration and regulation of surgical
technologists; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle K, Title 3, Occupations Code, is
amended by adding Chapter 606 to read as follows:

CHAPTER 606. SURGICAL TECHNOLOGISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 606.001. SHORT TITLE. This chapter may be cited as the
Surgical Technologist Certification Act.

Sec. 606.002. DEFINITIONS. In this chapter:

(1) "Ambulatory surgical center" means a facility
licensed under Chapter 243, Health and Safety Code.

(2) "Department" means the Department of State Health
Services.

(3) "Executive commissioner" means the executive
commissioner of the Health and Human Services Commission.

(4) "Education program" means clinical training or any
other program offered by an organization approved by the executive
commissioner that:

(A) has a specified objective;

(B) includes planned activities for
participants; and

(C) uses an approved method for measuring the

1 progress of participants.

2 (5) "Hospital" means a facility licensed under Chapter
3 241, Health and Safety Code.

4 (6) "Surgical technologist" means a person certified
5 under this chapter to perform the practice of surgical technology.

6 (7) "Surgical technology" means perioperative
7 surgical patient care that involves:

8 (A) preparing the operating room for surgical
9 procedures and ensuring that surgical equipment is functioning
10 properly and safely;

11 (B) preparing the operating room and the sterile
12 field for surgical procedures by preparing sterile supplies,
13 instruments, and equipment using sterile technique;

14 (C) anticipating the needs of the surgical team
15 based on knowledge of human anatomy and pathophysiology related to
16 a surgical patient and the patient's surgical procedure; and

17 (D) as directed in an operating room setting,
18 performing tasks that include:

19 (i) passing supplies, equipment, or
20 instruments;

21 (ii) sponging or suctioning an operative
22 site;

23 (iii) preparing and cutting suture
24 material;

25 (iv) transferring fluids or drugs;

26 (v) holding retractors; and

27 (vi) assisting in counting sponges,

1 needles, supplies, and instruments.

2 [Sections 606.003-606.050 reserved for expansion]

3 SUBCHAPTER B. POWERS AND DUTIES OF

4 EXECUTIVE COMMISSIONER AND DEPARTMENT

5 Sec. 606.051. CERTIFICATION PROGRAM. The bureau of
6 licensing and compliance of the department shall administer the
7 certification program required by this chapter.

8 Sec. 606.052. RULES. The executive commissioner may adopt
9 rules necessary to implement this chapter.

10 Sec. 606.053. MINIMUM STANDARDS. The executive
11 commissioner by rule shall establish minimum standards for:

12 (1) issuing, renewing, suspending, or revoking a
13 certificate issued under this chapter;

14 (2) approving curricula and education programs to
15 train persons to perform surgical procedures as a surgical
16 technologist;

17 (3) approving instructors to teach approved curricula
18 or education programs to train persons to perform surgical
19 procedures; and

20 (4) rescinding an approval described by Subdivision
21 (2) or (3).

22 Sec. 606.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING
23 PROGRAMS. (a) An applicant for approval of a curriculum or training
24 program must apply to the department on a form and under rules
25 adopted by the executive commissioner.

26 (b) The department shall approve a curriculum or training
27 program that meets the minimum standards adopted under Section

1 606.053. The department may review the approval annually.

2 (c) The executive commissioner may set a fee for approval of
3 a curriculum or training program not to exceed the estimated amount
4 that the department projects to be required for the evaluation of
5 the curriculum or training program.

6 Sec. 606.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL.

7 (a) An applicant for approval of an instructor must apply to the
8 department on a form and under rules adopted by the executive
9 commissioner.

10 (b) The department shall approve an instructor who meets the
11 minimum standards adopted under Section 606.053. The department
12 may review the approval annually.

13 Sec. 606.056. FEES. The executive commissioner may set
14 fees for examination, certificate issuance, registration of a
15 person under this chapter, and application processing under Section
16 606.102 in amounts that are reasonable to cover the costs of
17 administering this chapter without the use of additional general
18 revenue.

19 Sec. 606.057. RULES RESTRICTING ADVERTISING OR COMPETITIVE
20 BIDDING. (a) The executive commissioner may not adopt rules
21 restricting advertising or competitive bidding by a surgical
22 technologist except to prohibit false, misleading, or deceptive
23 practices.

24 (b) In its rules to prohibit false, misleading, or deceptive
25 practices, the executive commissioner may not include a rule that:

26 (1) restricts the use of any medium for advertising;

27 (2) restricts the use of a surgical technologist's

1 personal appearance or voice in an advertisement;

2 (3) relates to the size or duration of an
3 advertisement by the surgical technologist; or

4 (4) restricts the surgical technologist's
5 advertisement under a trade name.

6 [Sections 606.058-606.100 reserved for expansion]

7 SUBCHAPTER C. CERTIFICATION REQUIREMENTS

8 Sec. 606.101. CERTIFICATION REQUIRED. A person may not
9 perform the practice of surgical technology unless the person holds
10 a certificate of registration as a surgical technologist under this
11 chapter, except as otherwise provided by Subchapter D.

12 Sec. 606.102. APPLICATION; APPLICATION FEE. An applicant
13 for a certificate under this chapter must:

14 (1) apply to the department on a form and under rules
15 adopted by the executive commissioner; and

16 (2) submit with the application a nonrefundable
17 application fee in an amount determined by the executive
18 commissioner.

19 Sec. 606.103. EXAMINATION. The executive commissioner may
20 prepare and conduct an examination for applicants for a
21 certificate.

22 Sec. 606.104. NOTIFICATION OF EXAMINATION RESULTS. (a) Not
23 later than the 30th day after the date a person takes an examination
24 for a certificate under this chapter, the department shall notify
25 the person of the results of the examination.

26 (b) If the examination is graded or reviewed by a testing
27 service, the department shall notify the person of the results of

1 the examination not later than the 14th day after the date the
2 department receives the results from the testing service. If
3 notice of the examination results will be delayed for longer than 90
4 days after the examination date, the department shall notify the
5 person of the reason for the delay before the 90th day.

6 (c) The department may require a testing service to notify a
7 person of the results of the person's examination.

8 (d) If requested in writing by a person who fails an
9 examination for a certificate administered under this chapter, the
10 department shall furnish the person with an analysis of the
11 person's performance on the examination.

12 Sec. 606.105. ISSUANCE OF CERTIFICATE. (a) The department
13 shall issue a certificate to an applicant who meets the minimum
14 standards for certification established under Section 606.053.

15 (b) A certificate is valid for a period established by the
16 executive commissioner.

17 Sec. 606.106. TRANSFER OF CERTIFICATE PROHIBITED. A
18 certificate issued under this chapter is not transferable.

19 Sec. 606.107. CERTIFICATION BY ENDORSEMENT. In adopting
20 minimum standards for certifying surgical technologists, the
21 executive commissioner may establish criteria for issuing a
22 certificate to a person licensed or otherwise registered as a
23 surgical technologist by the Association of Surgical Technologists
24 or another state whose requirements for licensure or registration
25 were on the date of licensing or registration substantially equal
26 to the requirements of this chapter.

27 Sec. 606.108. CONTINUING EDUCATION AND OTHER GUIDELINES.

1 (a) The executive commissioner may establish guidelines for
2 practice as a surgical technologist.

3 (b) The executive commissioner shall prepare, recognize, or
4 administer continuing education programs for surgical
5 technologists.

6 (c) A surgical technologist shall annually complete at
7 least 15 hours of continuing education approved by the Association
8 of Surgical Technologists or another certification organization
9 approved by the department to keep the person's certificate of
10 registration under this chapter.

11 (d) A hospital or ambulatory surgical center that employs a
12 person to practice surgical technology shall verify that the person
13 meets the continuing education requirements under this section each
14 year on the anniversary of the person's employment.

15 (e) A person employed by a hospital or ambulatory surgical
16 center to practice surgical technology as authorized under Section
17 606.154(b)(1) may demonstrate compliance with the continuing
18 education requirements of this section by providing evidence that
19 the person has maintained the certified surgical technologist
20 credential.

21 (f) A hospital or ambulatory surgical center shall adopt
22 policies to enforce Subsections (d) and (e) and may allow a grace
23 period not to exceed six months for compliance.

24 Sec. 606.109. PROVISIONAL CERTIFICATE. (a) The department
25 may issue a provisional certificate to an applicant currently
26 licensed or certified in another jurisdiction who seeks
27 certification in this state and who:

1 (1) has been licensed or certified in good standing as
2 a surgical technologist for at least two years in another
3 jurisdiction, including a foreign country, that has licensing or
4 certification requirements substantially equivalent to the
5 requirements of this chapter;

6 (2) has passed a national or other examination
7 recognized by the department relating to the practice of surgical
8 technology; and

9 (3) is sponsored by a surgical technologist certified
10 by the department under this chapter with whom the provisional
11 certificate holder will practice during the time the person holds a
12 provisional certificate.

13 (b) The department may waive the requirement of Subsection
14 (a)(3) for an applicant if the department determines that
15 compliance with that subsection would be a hardship to the
16 applicant.

17 (c) A provisional certificate is valid until the date the
18 department approves or denies the provisional certificate holder's
19 application for a certificate. The department shall issue a
20 certificate under this chapter to the provisional certificate
21 holder if:

22 (1) the provisional certificate holder is eligible to
23 be certified under Section 606.107; or

24 (2) the provisional certificate holder passes the part
25 of the examination under Section 606.103 that relates to the
26 applicant's knowledge and understanding of the laws and rules
27 relating to the practice of surgical technology in this state and:

1 (A) the department verifies that the provisional
2 certificate holder meets the academic and experience requirements
3 for a certificate under this chapter; and

4 (B) the provisional certificate holder satisfies
5 any other licensing requirements under this chapter.

6 (d) The department must approve or deny a provisional
7 certificate holder's application for a certificate not later than
8 the 180th day after the date the provisional certificate is issued.
9 The department may extend the 180-day period if the results of an
10 examination have not been received by the executive commissioner
11 before the end of that period.

12 (e) The department may establish a fee for a provisional
13 certificate in an amount reasonable and necessary to cover the cost
14 of issuing the certificate.

15 Sec. 606.110. CERTIFICATE EXPIRATION. (a) Not later than
16 the 30th day before the date a person's certificate is scheduled to
17 expire, the department shall send written notice of the impending
18 expiration to the person at the person's last known address
19 according to the records of the department.

20 (b) The executive commissioner by rule may adopt a system
21 under which certificates expire on various dates during the year.
22 For the year in which the certificate expiration date is changed,
23 the department shall prorate certificate fees on a monthly basis so
24 that each certificate holder pays only that portion of the
25 certificate fee that is allocable to the number of months during
26 which the certificate is valid. On renewal of the certificate on
27 the new expiration date, the total certificate renewal fee is

1 payable.

2 Sec. 606.111. CERTIFICATE RENEWAL PROCEDURE. (a) A person
3 who is otherwise eligible to renew a certificate may renew an
4 unexpired certificate by paying the required renewal fee to the
5 department before the expiration date of the certificate. A person
6 whose certificate has expired may not engage in activities that
7 require a certificate until the certificate has been renewed.

8 (b) A person whose certificate has been expired for 90 days
9 or less may renew the certificate by paying to the department a
10 renewal fee that is equal to 1-1/2 times the normally required
11 renewal fee.

12 (c) A person whose certificate has been expired for more
13 than 90 days but less than one year may renew the certificate by
14 paying to the department a renewal fee that is equal to two times
15 the normally required renewal fee.

16 (d) A person whose certificate has been expired for one year
17 or more may not renew the certificate. The person may obtain a new
18 certificate by complying with the requirements and procedures,
19 including the examination requirements, for an original
20 certificate.

21 Sec. 606.112. RENEWAL OF CERTIFICATE BY OUT-OF-STATE
22 PRACTITIONER. (a) A person who held a certificate in this state,
23 moved to another state, and currently holds a certificate or
24 license and has been in practice in the other state for the two
25 years preceding the date of application may obtain a new
26 certificate without reexamination.

27 (b) The person must pay to the department a fee that is equal

1 to twice the normally required renewal fee for the certificate.

2 [Sections 606.113-606.150 reserved for expansion]

3 SUBCHAPTER D. EXEMPTIONS FROM CERTIFICATION

4 AND REGISTRATION REQUIREMENTS

5 Sec. 606.151. EXEMPTION. A person is not required to hold a
6 certificate of registration issued under this chapter to perform a
7 surgical procedure if the person is registered or licensed under
8 other law and performs the procedure in the course and scope of the
9 profession for which the person holds a license or certificate of
10 registration.

11 Sec. 606.152. STUDENTS. A person is not required to hold a
12 certificate issued under this chapter or to comply with the
13 registration requirements adopted under this chapter if the person:

14 (1) is a student enrolled in a training program that
15 meets the minimum standards adopted under this chapter; and

16 (2) is performing a surgical procedure in an academic
17 or clinical setting as part of the training program.

18 Sec. 606.153. PROCEDURE PERFORMED AS PART OF CONTINUING
19 EDUCATION PROGRAM. A person is not required to hold a certificate
20 issued under this chapter or to comply with the registration
21 requirements adopted under this chapter if the person is:

22 (1) licensed or otherwise registered as a surgical
23 technologist by another state or a professional organization or
24 association recognized by the executive commissioner;

25 (2) enrolled in a continuing education program that
26 meets the requirements adopted under Section 606.108; and

27 (3) performing a surgical procedure as part of the

1 continuing education program for not more than 10 days.

2 Sec. 606.154. EXEMPTION FOR HOSPITAL OR AMBULATORY SURGICAL
3 CENTER. (a) A hospital or ambulatory surgical center may employ a
4 person to practice surgical technology who does not meet the
5 requirements of this chapter or is not registered under this
6 chapter if:

7 (1) after a diligent and thorough effort has been
8 made, the hospital or center is unable to employ a sufficient number
9 of persons who meet the requirements of this chapter; and

10 (2) the hospital center makes a written record of its
11 efforts under Subdivision (1) and retains the record at the
12 hospital or center.

13 (b) A hospital or ambulatory surgical center may not employ
14 a person to practice surgical technology unless the person:

15 (1) has successfully completed an educational program
16 for surgical technologists accredited by the Commission on
17 Accreditation of Allied Health Education Programs or another
18 accreditation body selected by the department and holds and
19 maintains the certified surgical technologist credential
20 administered by the National Board of Surgical Technology and
21 Surgical Assisting;

22 (2) has completed an appropriate training program for
23 surgical technology in the army, navy, air force, marine corps, or
24 coast guard of the United States or in the United States Public
25 Health Service;

26 (3) provides evidence that the person, during the five
27 years preceding September 1, 2007, was employed to practice

1 surgical technology for not less than two years in a hospital or
2 center; or

3 (4) is in the service of the federal government, to the
4 extent the person is performing duties related to that service.

5 Sec. 606.155. SUPERVISION REQUIRED. A hospital or
6 ambulatory surgical center shall supervise each person employed to
7 practice surgical technology by the hospital or center in
8 accordance with the hospital or center's policies and procedures to
9 ensure that the person performs delegated tasks intraoperatively
10 within the person's scope of practice and according to this chapter
11 or other law.

12 [Sections 606.156-606.200 reserved for expansion]

13 SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY ACTION

14 Sec. 606.201. CERTIFICATE DENIAL AND DISCIPLINARY ACTION.

15 The department may, for a violation of this chapter or a rule
16 adopted under this chapter:

17 (1) suspend, revoke, or refuse to renew a certificate;

18 (2) rescind approval of a curriculum, training
19 program, or instructor;

20 (3) deny an application for certification or approval;

21 (4) issue a reprimand; or

22 (5) place the offender's certificate on probation and
23 require compliance with a requirement of the department, including
24 requiring the offender to:

25 (A) submit to medical or psychological
26 treatment;

27 (B) meet additional education requirements;

1 (C) pass an examination; or

2 (D) work under the supervision of a surgical
3 technologist or other practitioner.

4 Sec. 606.202. GROUNDS FOR CERTIFICATE DENIAL OR
5 DISCIPLINARY ACTION. The department may take action under Section
6 606.201 against a person subject to this chapter for:

7 (1) obtaining or attempting to obtain a certificate
8 issued under this chapter by bribery or fraud;

9 (2) making or filing a false report or record made in
10 the person's capacity as a surgical technologist;

11 (3) intentionally or negligently failing to file a
12 report or record required by law;

13 (4) intentionally obstructing or inducing another to
14 intentionally obstruct the filing of a report or record required by
15 law;

16 (5) engaging in unprofessional conduct, including the
17 violation of the standards of practice of surgical technology
18 established by the executive commissioner;

19 (6) developing an incapacity that prevents the
20 practice of surgical technology with reasonable skill, competence,
21 and safety to the public as the result of:

22 (A) an illness;

23 (B) drug or alcohol dependency; or

24 (C) another physical or mental condition or
25 illness;

26 (7) failing to report to the department the violation
27 of this chapter by another person;

1 (8) employing, for the purpose of applying ionizing
2 radiation to a person, a person who is not certified under or in
3 compliance with this chapter;

4 (9) violating this chapter, a rule adopted under this
5 chapter, an order of the department previously entered in a
6 disciplinary proceeding, or an order to comply with a subpoena
7 issued by the department;

8 (10) having a certificate revoked, suspended, or
9 otherwise subjected to adverse action or being denied a certificate
10 by another certification authority in another state, territory, or
11 country; or

12 (11) being convicted of or pleading nolo contendere to
13 a crime directly related to the practice of surgical technology.

14 Sec. 606.203. ADMINISTRATIVE PROCEDURE. The procedure by
15 which the department takes a disciplinary action and the procedure
16 by which a disciplinary action is appealed are governed by:

17 (1) department rules for a contested case hearing;
18 and

19 (2) Chapter 2001, Government Code.

20 Sec. 606.204. REINSTATEMENT. (a) A person subject to
21 disciplinary action under Section 606.202(6) shall, at reasonable
22 intervals, be given an opportunity to demonstrate that the person
23 is able to resume the practice of surgical technology.

24 (b) The executive commissioner may not reinstate a
25 certificate to a holder or issue a certificate to an applicant
26 previously denied a certificate unless the executive commissioner
27 is satisfied that the holder or applicant has complied with

1 requirements set by the executive commissioner and is capable of
2 engaging in the practice of surgical technology.

3 Sec. 606.205. EMERGENCY SUSPENSION. (a) The department
4 shall temporarily suspend the certificate of a certificate holder
5 if the department determines from the evidence or information
6 presented to it that continued practice by the certificate holder
7 would constitute a continuing and imminent threat to the public
8 welfare.

9 (b) A certificate may be suspended under this section
10 without notice or hearing on the complaint if:

11 (1) action is taken to initiate proceedings for a
12 hearing before the State Office of Administrative Hearings
13 simultaneously with the temporary suspension; and

14 (2) a hearing is held as soon as practicable under this
15 chapter and Chapter 2001, Government Code.

16 (c) The State Office of Administrative Hearings shall hold a
17 preliminary hearing not later than the 14th day after the date of
18 the temporary suspension to determine if there is probable cause to
19 believe that a continuing and imminent threat to the public welfare
20 still exists. A final hearing on the matter shall be held not later
21 than the 61st day after the date of the temporary suspension.

22 [Sections 606.206-606.250 reserved for expansion]

23 SUBCHAPTER F. ADMINISTRATIVE PENALTY

24 Sec. 606.251. IMPOSITION OF PENALTY. The department may
25 impose an administrative penalty against a person who violates this
26 chapter or a rule adopted under this chapter.

27 Sec. 606.252. AMOUNT OF PENALTY. (a) The amount of the

1 administrative penalty may not exceed \$1,000 for each violation.

2 Each day of a continuing violation is a separate violation.

3 (b) The amount of the penalty shall be based on:

4 (1) the seriousness of the violation;

5 (2) the history of previous violations;

6 (3) the amount necessary to deter a future violation;

7 (4) efforts made to correct the violation; and

8 (5) any other matter that justice may require.

9 Sec. 606.253. NOTICE OF VIOLATION AND PENALTY. (a) If,
10 after investigating a possible violation and the facts surrounding
11 that possible violation, the department determines that a violation
12 occurred, the department shall give written notice of the violation
13 to the person alleged to have committed the violation.

14 (b) The notice must:

15 (1) include a brief summary of the alleged violation;

16 (2) state the amount of the proposed administrative
17 penalty; and

18 (3) inform the person of the person's right to a
19 hearing on the occurrence of the violation, the amount of the
20 penalty, or both.

21 Sec. 606.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
22 Not later than the 20th day after the date the person receives the
23 notice, the person may:

24 (1) accept the department's determination, including
25 the proposed administrative penalty; or

26 (2) make a written request for a hearing on that
27 determination.

1 (b) If the person accepts the department's determination,
2 the commissioner of state health services or that commissioner's
3 designee by order shall approve the determination and impose the
4 proposed penalty.

5 Sec. 606.255. HEARING. (a) If the person timely requests a
6 hearing, the department shall:

7 (1) set a hearing;

8 (2) give written notice of the hearing to the person;

9 and

10 (3) designate a hearings examiner to conduct the
11 hearing.

12 (b) The hearings examiner shall make findings of fact and
13 conclusions of law and promptly issue to the commissioner of state
14 health services or that commissioner's designee a proposal for
15 decision as to the occurrence of the violation and the amount of any
16 proposed administrative penalty.

17 Sec. 606.256. DECISION BY COMMISSIONER. (a) Based on the
18 findings of fact and conclusions of law and the recommendations of
19 the hearings examiner, the commissioner of state health services or
20 the commissioner's designee by order may determine that:

21 (1) a violation has occurred and may impose an
22 administrative penalty; or

23 (2) a violation did not occur.

24 (b) The department shall give notice of the order to the
25 person. The notice must include:

26 (1) separate statements of the findings of fact and
27 conclusions of law;

1 (2) the amount of any penalty imposed; and

2 (3) a statement of the right of the person to judicial
3 review of the order.

4 Sec. 606.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

5 (a) Not later than the 30th day after the date on which the order
6 becomes final, the person shall:

7 (1) pay the administrative penalty;

8 (2) pay the penalty and file a petition for judicial
9 review contesting the occurrence of the violation, the amount of
10 the penalty, or both; or

11 (3) without paying the penalty, file a petition for
12 judicial review contesting the occurrence of the violation, the
13 amount of the penalty, or both.

14 (b) Within the 30-day period, a person who acts under
15 Subsection (a)(3) may:

16 (1) stay enforcement of the penalty by:

17 (A) paying the penalty to the court for placement
18 in an escrow account; or

19 (B) giving to the court a supersedeas bond that
20 is approved by the court for the amount of the penalty and that is
21 effective until all judicial review of the order is final; or

22 (2) request the court to stay enforcement of the
23 penalty by:

24 (A) filing with the court a sworn affidavit of
25 the person stating that the person is financially unable to pay the
26 penalty and is financially unable to give the supersedeas bond; and

27 (B) giving a copy of the affidavit to the

1 department by certified mail.

2 (c) If the department receives a copy of an affidavit as
3 provided by Subsection (b)(2), the department may file with the
4 court a contest to the affidavit not later than the fifth day after
5 the date the copy is received.

6 (d) The court shall hold a hearing on the facts alleged in
7 the affidavit as soon as practicable and shall stay the enforcement
8 of the penalty on finding that the alleged facts are true. The
9 person who files an affidavit has the burden of proving that the
10 person is financially unable to pay the penalty and to give a
11 supersedeas bond.

12 Sec. 606.258. COLLECTION OF PENALTY. If the person does not
13 pay the administrative penalty and the enforcement of the penalty
14 is not stayed, the department may refer the matter to the attorney
15 general for collection.

16 Sec. 606.259. DETERMINATION BY COURT. (a) If the court
17 sustains the determination that a violation occurred, the court may
18 uphold or reduce the amount of the administrative penalty and order
19 the person to pay the full or reduced amount.

20 (b) If the court does not sustain the determination that a
21 violation occurred, the court shall order that a penalty is not
22 owed.

23 Sec. 606.260. REMITTANCE OF PENALTY AND INTEREST. (a) If,
24 after judicial review, the administrative penalty is reduced or not
25 imposed by the court, the court shall, after the judgment becomes
26 final:

27 (1) order the appropriate amount, plus accrued

1 interest, be remitted to the person by the department if the person
2 paid the penalty under Section 606.257(a)(2); or

3 (2) if the person paid the penalty under Section
4 606.257(b)(1)(A) or posted a supersedeas bond, order the department
5 to:

6 (A) execute a complete release of the escrow
7 account or bond, as appropriate, if the penalty is not imposed; or

8 (B) release the escrow account or bond, as
9 appropriate, after the reduced penalty has been paid from the
10 account or by the person.

11 (b) The interest paid under Subsection (a)(1) is accrued at
12 the rate charged on loans to depository institutions by the New York
13 Federal Reserve Bank. The interest shall be paid for the period
14 beginning on the date the penalty is paid and ending on the date the
15 penalty is remitted.

16 Sec. 606.261. EXPENSES AND COSTS. (a) In this section,
17 "reasonable expenses and costs" includes expenses incurred by the
18 department and the attorney general in the investigation,
19 initiation, or prosecution of an action, including reasonable
20 investigative costs, court costs, attorney's fees, witness fees,
21 and deposition expenses.

22 (b) The department may assess reasonable expenses and costs
23 against a person in an administrative hearing if, as a result of the
24 hearing, an administrative penalty is assessed against the person.
25 The person shall pay expenses and costs assessed under this
26 subsection not later than the 30th day after the date the order of
27 the commissioner of state health services or that commissioner's

1 designee requiring the payment of expenses and costs is final. The
2 department may refer the matter to the attorney general for
3 collection of the expenses and costs.

4 (c) If the attorney general brings an action against a
5 person to enforce an administrative penalty assessed under this
6 subchapter and the person is found liable for an administrative
7 penalty, the attorney general may recover, on behalf of the
8 attorney general and the department, reasonable expenses and costs.

9 Sec. 606.262. ADMINISTRATIVE PROCEDURE. A proceeding under
10 this subchapter is subject to Chapter 2001, Government Code.

11 [Sections 606.263-606.300 reserved for expansion]

12 SUBCHAPTER G. ENFORCEMENT AND OTHER PENALTY PROVISIONS

13 Sec. 606.301. INJUNCTION; CIVIL PENALTY. (a) If it appears
14 that a person has violated, is violating, or is threatening to
15 violate this chapter or a rule adopted under this chapter, the
16 commissioner of state health services or the department may bring
17 an action to enjoin the continued or threatened violation.

18 (b) A person who violates this chapter or a rule adopted
19 under this chapter is subject to a civil penalty in an amount not to
20 exceed \$1,000 for each day of violation.

21 (c) At the request of the commissioner of state health
22 services or the department, the attorney general shall bring an
23 action in the name of the state for the injunctive relief, to
24 recover the civil penalty, or both.

25 Sec. 606.302. CRIMINAL OFFENSES. (a) A person who is
26 required to be certified under this chapter commits an offense if
27 the person:

1 (1) knowingly administers a surgical procedure to
2 another person without holding a valid certificate issued by the
3 department;

4 (2) practices surgical technology without holding a
5 certificate under this chapter;

6 (3) uses or attempts to use a suspended or revoked
7 certificate;

8 (4) obtains or attempts to obtain a certificate
9 through bribery or fraudulent misrepresentation;

10 (5) uses the title or name "certified surgical
11 technologist" or any other title or name that implies the person is
12 certified to practice surgical technology, unless the person is
13 certified under this chapter; or

14 (6) knowingly conceals information relating to
15 enforcement of this chapter or a rule adopted under this chapter.

16 (b) An offense under this section is a Class B misdemeanor.

17 SECTION 2. Section 241.0262, Health and Safety Code, is
18 repealed.

19 SECTION 3. Not later than December 1, 2007, the executive
20 commissioner of the Health and Human Services Commission shall
21 adopt the rules necessary to implement Chapter 606, Health and
22 Safety Code, as added by this Act.

23 SECTION 4. Notwithstanding Chapter 606, Health and Safety
24 Code, as added by this Act, a person is not required to hold a
25 certificate of registration as a surgical technologist to perform
26 the practice of surgical technology before September 1, 2008.

27 SECTION 5. (a) Except as provided by Subsection (b) of this

1 section, this Act takes effect September 1, 2007.

2 (b) Subchapters C, E, and F, Chapter 606, Occupations Code,
3 as added by this Act, take effect September 1, 2008.