

## **BILL ANALYSIS**

Senate Research Center  
77R15950 GJH-D

C.S.H.B. 1183  
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Health & Human Services  
5/10/2001  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

A surgical assistant stands across from a surgeon at the operating table and assists the surgeon in performing a surgical procedure. In the past, most surgical assistance was performed by another licensed surgeon, but because of the cost and other factors, in recent years surgeons have begun to choose nonphysician surgical assistants to assist during surgery. Currently, there is not a surgical assistant educational program or license in Texas; instead surgical assistants are credentialed at hospitals. Physician assistants, nurses, and other licensed professionals often serve as surgical assistants, but sometimes other health care professionals who do not hold a license perform these duties. A surgical assistant license in Texas would benefit patients by helping to ensure that the person assisting a physician during a surgical procedure is qualified and meets certain educational and training standards. C.S.H.B. 1183 sets forth provisions relating to the practice, education, and training of a surgical assistant and creates an advisory committee to advise the Texas State Board of Medical Examiners concerning the regulation of surgical assistants.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Medical Examiners in SECTION 1 (Sections 206.153, 206.210, and 206.351) of this bill.

### **SECTION BY SECTION ANALYSIS**

H.B. 1183 amends the Occupations Code to prohibit a person from practicing as a surgical assistant unless the person is licensed by the Texas State Board of Medical Examiners (TSBME) as a surgical assistant (Sec. 206.201). The bill sets forth exceptions to the licensing requirements (Sec. 206.002). The bill creates an informal advisory committee (advisory committee) that is not subject to provisions regarding state agency advisory committees to advise TSBME and provides for the appointment, membership, administration, and operation of the advisory committee (Secs. 206.051-206.058). The bill requires TSBME to establish qualifications, examination requirements, education and training requirements, application forms, and continuing education requirements for surgical assistants (Sec. 206.101). The bill sets forth provisions relating to:

- reporting information to the advisory committee regarding the actions of a surgical assistant and immunity from civil liability for such reporting (Sec. 206.159);
- the development and implementation of policies to provide the public access to TSBME for purposes of public participation and access to its programs and services and the availability of information regarding TSBME (Secs. 206.151 and 206.152);
- procedures by which complaints are filed, resolved, recorded, and accessed and by which information is provided (Secs. 206.153-206.156);
- the confidentiality and permitted disclosure of investigative information (Secs. 206.157 and 206.158);

- licensing requirements, including application, eligibility, examination, issuance, fees, renewal, and license holder information (Secs. 206.201-206.206, and 206.208-206.214); and
- assistance from TSBME to administer licensing requirements (Sec. 206.207).

### Scope of Practice

The bill provides that the practice of a surgical assistant is limited to surgical assisting performed under the direct supervision of a physician who delegated the acts. The bill authorizes the practice of a surgical assistant to be performed in any place authorized by a delegating licensed physician (Sec. 206.251). The bill sets forth provisions regarding service contracts and prohibits a licensed surgical assistant from engaging in certain medical practices. The bill prohibits certain entities from requiring a registered nurse or physician assistant to be licensed as a surgical assistant (Secs. 206.252 and 206.253). The bill requires a surgical assistant and the surgical assistant's delegating physician to establish functions and standards for a surgical assistant (Sec. 206.254).

### Disciplinary Proceedings

The bill requires TSBME to take action against an applicant or license holder if TSBME determines that the applicant or license holder has taken part in certain inappropriate conduct (Sec. 206.301). The bill authorizes TSBME to take disciplinary action against an applicant or license holder who:

- commits certain fraudulent, deceptive, or unlawful acts;
- commits a violation of state law relating to surgical assistants or a rule or law of these provisions; or
- engages in conduct that is unprofessional or who lacks fitness to safely perform the duties of a surgical assistant.

The bill provides that proof that an act which violates state law was committed while practicing as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for TSBME to take disciplinary action, and that a complaint, indictment, or conviction for a violation of law is not necessary (Sec. 206.303). The bill authorizes TSBME, through an agreed order or after a contested case proceeding, to impose a rehabilitation order on an applicant as a prerequisite for issuing a license or on a license holder based on the persons behavior or actions (Sec. 206.305). The bill sets forth provisions for a rehabilitation order, subpoena, and protection of patient identity equivalent to existing provisions established for a physician assistant (Sec. 206.305-206.309).

The bill sets forth rules for disciplinary proceedings and provisions related to the suspension of a license, including the appointment of a disciplinary panel (Secs. 206.310-206.312)

### Administrative Penalty

The bill sets forth administrative penalties for violations of these provisions equivalent to existing provisions established for physicians assistants (Sec. 206.351).

### Rulemaking

The bill requires TSBME to adopt rules for the administration and enforcement of these provisions not later than January 1, 2002, and provides that the advisory committee has no independent rulemaking authority (Sec. 206.051 and SECTION 6). The bill requires TSBME to adopt rules that provide for the annual renewal of a surgical assistant license and authorizes TSBME by rule to adopt a system

under which a license expires on various dates during the year (Sec. 206.210). The bill requires TSBME by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of TSBME for the purpose of directing complaints about licensed surgical assistants to TSBME (Sec. 206. 153).

#### Miscellaneous Provisions

The bill amends the Insurance Code to add licensed surgical assistant to provisions relating to accident and sickness insurance coverage and the selection of practitioners by a consumer (SECTIONS 2, 3, 4, and 5).

#### Effective Date

September 1, 2001; however, a person is not required to obtain a surgical assistant license until September 1, 2002. The modification to the Insurance Code in the Act applies only to an insurance policy, contract, or evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 2003 (SECTIONS 6, 7, and 8).