

House Bill 562

By: Representatives Hawkins of the 27<sup>th</sup>, Taylor of the 173<sup>rd</sup>, Clark of the 101<sup>st</sup>, Rogers of the 29<sup>th</sup>, Gardner of the 57<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to  
2 physicians, physician assistants, and others, so as to provide for the certification of  
3 polysomnographic technologists; to repeal a current law regarding polysomnography; to  
4 provide a short title; to provide legislative findings; to provide for definitions; to provide for  
5 applications to be made to the Georgia Composite Medical Board to obtain certification to  
6 practice polysomnography; to provide for powers and duties of the board; to provide for  
7 certification standards and requirements; to provide for the issuance and renewal of  
8 certification; to provide for permitted and prohibited activities; to provide for representation  
9 on an advisory committee; to provide for sanctions; to provide for statutory construction; to  
10 provide for administrative procedures; to provide for related matters; to provide for an  
11 effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,  
15 physician assistants, and others, is amended by repealing Code Section 43-34-45, relating to  
16 polysomnography.

17 style="text-align:center">**SECTION 2.**

18 Said chapter is further amended by revising paragraph (9) of subsection (b) of Code Section  
19 43-34-151, relating to the practice of respiratory care or representation as respiratory care  
20 professionals without certification prohibited, as follows:

21 "(9) ~~Persons who perform polysomnography under Code Section 43-34-45~~  
22 Polysomnographic technologists certified pursuant to Article 11 of this chapter."



54 43-34-303.

55 The board, in consultation with the advisory committee, shall have the power and  
56 responsibility, with respect to polysomnographic technologists, to:

57 (1) Determine the qualifications and fitness of applicants for certification, renewal of the  
58 certificate, and reciprocal certification;

59 (2) Adopt and revise rules consistent with the laws of the State of Georgia that are  
60 necessary to conduct its business, carry out its duties, and administer this article;  
61 provided, however, that the initial rules necessary to administer this article shall be  
62 adopted no later than one year after the effective date of this article;

63 (3) Examine for, approve, issue, deny, revoke, suspend, and renew the certification of  
64 applicants and certificate holders under this article and conduct hearings in connection  
65 with these actions;

66 (4) Conduct hearings on complaints concerning violations of this article and the rules  
67 adopted under this article and cause the prosecution and enjoinder of the violations;

68 (5) Establish application, examination, certification, and renewal fees;

69 (6) Request and receive the assistance of state educational institutions or other state  
70 agencies;

71 (7) Solicit, receive, and accept gifts, grants, donations, or contributions from any person,  
72 firm, or corporation for the purposes of administering this article;

73 (8) Prepare information of consumer interest describing the regulatory functions of the  
74 board and describing the procedures by which consumer complaints are filed with and  
75 resolved by the board. The board shall make the information available to the general  
76 public and appropriate agencies; and

77 (9) Establish continuing education requirements.

78 43-34-304.

79 (a) Each applicant for certification as a polysomnographic technologist shall meet the  
80 following requirements:

81 (1) Is at least 18 years of age;

82 (2) Has submitted a completed application as required by the board;

83 (3) Has submitted any fees required by the board;

84 (4) Has satisfactory results from a fingerprint record check report conducted by the  
85 Georgia Crime Information Center and the Federal Bureau of Investigation, as  
86 determined by the board. Application for certification under this article shall constitute  
87 express consent and authorization for the board or its representative to perform a criminal  
88 background check. Each applicant agrees to provide the board with any and all  
89 information necessary to run a criminal background check, including, but not limited to,

90 classifiable sets of fingerprints. The applicant shall be responsible for all fees associated  
91 with the performance of such background check;

92 (5)(A) Has valid, current credentials as a polysomnographic technologist issued by a  
93 national accrediting agency approved by the board; or

94 (B) Has graduated from a nationally accredited polysomnographic educational  
95 program, including programs recognized by a national accrediting agency that has been  
96 approved by the board;

97 (6)(A) Has passed a national certifying examination that has been accredited by an  
98 independent national accrediting agency that has been approved by the board; or

99 (B) Has submitted proof to the board that he or she has been engaged in the practice  
100 of polysomnography for at least three years in a manner that is acceptable to the board;  
101 provided, however, that an individual practicing polysomnography shall have 36  
102 months after the effective date of this article to pass a national certifying examination  
103 accredited by an independent national accrediting agency that has been approved by the  
104 board in order to retain certification under this article; and

105 (7) Has met such other requirements as may be prescribed by the board.

106 (b) In addition to the requirements specified in subsection (a) of this Code section, each  
107 polysomnographic technologist certified under this article shall work under the supervision  
108 of a physician licensed under Article 2 of this chapter and shall, in order to maintain  
109 certification, continue to work under the supervision of a physician licensed under Article  
110 2 of this chapter.

111 43-34-305.

112 After evaluation of an application and other evidence submitted, the board shall notify each  
113 applicant that the application and evidence submitted are satisfactory and accepted or  
114 unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

115 43-34-306.

116 (a) Any document evidencing certification issued by the board is the property of the board  
117 and shall be surrendered on demand.

118 (b) The certificate holder shall display the document evidencing certification in an  
119 appropriate and public manner.

120 (c) The certificate holder shall inform the board of any change of address.

121 (d) The certificate shall be renewed biennially if the certificate holder is not in violation  
122 of this article at the time of application for renewal and if the applicant fulfills current  
123 requirements of continuing education as established by the board.

124 (e) Each person certified under this article is responsible for renewing his or her certificate  
125 before the expiration date.

126 (f) Under procedures and conditions established by the board, a certificate holder may  
127 request that his or her certification be declared inactive. The certificate holder may apply  
128 for active status at any time and upon meeting the conditions set by the board shall be  
129 declared active.

130 43-34-307.

131 (a) The board, in consultation with the advisory committee, may:

132 (1) Refuse to grant or renew certification to an applicant;

133 (2) Administer a public or private reprimand, but a private reprimand shall not be  
134 disclosed to any person except the certificate holder;

135 (3) Suspend the certificate of any certificate holder for a definite period or for an  
136 indefinite period in connection with any condition which may be attached to the  
137 restoration of said certificate;

138 (4) Limit or restrict any certificate as the board deems necessary for the protection of the  
139 public;

140 (5) Revoke any certificate;

141 (6) Levy a fine; and

142 (7) Condition any penalty or withhold formal disposition of any matter pending the  
143 applicant's or certificate holder's submission to such care, counseling, or treatment as the  
144 board may direct.

145 (b) The board may take any action specified in subsection (a) of this Code section upon  
146 a finding by the board that the certificate holder or applicant has:

147 (1) Failed to demonstrate the qualifications or standards for certification contained in this  
148 article, or under the laws, rules, or regulations under which certification is sought or held;  
149 it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board  
150 that he or she meets all the requirements for certification, and, if the board is not satisfied  
151 as to the certification holder or applicant's qualifications, it may deny certification  
152 without a prior hearing; provided, however, that the certificate holder or applicant shall  
153 be allowed to appear before the board if he or she so desires;

154 (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the  
155 practice certified under this article or on any document connected therewith, or practiced  
156 fraud or deceit or intentionally made any false statement in obtaining certification to  
157 practice a certified business or profession, or made a false statement or deceptive  
158 registration with the board;

159 (3) Been convicted of any felony or of any crime involving moral turpitude in the courts  
160 of this state or any other state, territory, or country or in the courts of the United States.  
161 As used in this paragraph and paragraph (4) of this subsection, the term 'felony' shall  
162 include any offense which, if committed in this state, would be deemed a felony, without  
163 regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction'  
164 shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an  
165 appeal of the conviction has been sought;  
166 (4) Been arrested, charged, and sentenced for the commission of any felony or any crime  
167 involving moral turpitude where:  
168 (A) A plea of nolo contendere was entered to the charge;  
169 (B) First offender treatment without adjudication of guilt pursuant to the charge was  
170 granted; or  
171 (C) An adjudication or sentence was otherwise withheld or not entered on the charge.  
172 The plea of nolo contendere or the order entered pursuant to the provisions of Article 3  
173 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender  
174 treatment shall be conclusive evidence of arrest and sentencing for such crime;  
175 (5) Had his or her certificate under this article revoked, suspended, or annulled by any  
176 lawful authority other than the board; had other disciplinary action taken against him or  
177 her by any such lawful authority other than the board; or was refused the renewal of  
178 certification by any such lawful authority other than the board, pursuant to disciplinary  
179 proceedings;  
180 (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct  
181 or practice harmful to the public, which conduct or practice materially affects the fitness  
182 of the certificate holder or applicant to practice as certified under this article, or of a  
183 nature likely to jeopardize the interest of the public, which conduct or practice need not  
184 have resulted in actual injury to any person or be directly related to the practice of  
185 polysomnography but shows that the certificate holder or applicant has committed any  
186 act or omission which is indicative of bad moral character or untrustworthiness.  
187 Unprofessional conduct shall include any departure from, or the failure to conform to, the  
188 minimal standards of acceptable and prevailing practice of the business or profession  
189 certified under this article;  
190 (7) Knowingly performed any act which in any way aids, assists, procures, advises, or  
191 encourages any uncertified person or any certificate holder whose certificate has been  
192 suspended or revoked by the board to engage in any practice outside the scope of any  
193 disciplinary limitation placed upon the certificate holder by the board;  
194 (8) Violated, without regard to whether the violation is criminally punishable, a statute,  
195 law, or any rule or regulation of this state, any other state, the board, the United States,

196 or any other lawful authority, which statute, law, or rule or regulation relates to or in part  
 197 regulates the practice certified under this article, when the certificate holder or applicant  
 198 knows or should know that such action is violative of such statute, law, or rule; or  
 199 violated a lawful order of the board previously entered by the board in a disciplinary  
 200 hearing, consent decree, or certification reinstatement;

201 (9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or  
 202 outside this state. Any such adjudication shall automatically suspend the certification of  
 203 any such person and shall prevent the reissuance or renewal of any certification so  
 204 suspended for as long as the adjudication of incompetence is in effect; or

205 (10) Displayed an inability to practice polysomnography with reasonable skill and safety  
 206 to the public or has become unable to practice polysomnography with reasonable skill  
 207 and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals,  
 208 or any other type of material.

209 43-34-308.

210 The board shall appoint at least one person engaged in the practice of polysomnography  
 211 or in sleep medicine to serve on the advisory committee to represent the practice of  
 212 polysomnography. The advisory committee shall be composed of five persons. Such  
 213 members shall receive no compensation for service on the advisory committee. The  
 214 advisory committee shall advise the board on issues relating to certification and regulation  
 215 of polysomnographic technologists under this article, including education and experience  
 216 requirements. The advisory committee shall have such other advisory duties and  
 217 responsibilities in accordance with this article and as the board may determine.

218 43-34-309.

219 (a) On and after one year after the effective date of this article, unless certified under this  
 220 article or exempted under subsection (b) of this Code section, no person shall:

221 (1) Practice polysomnography;

222 (2) Represent himself or herself to be a polysomnographic technologist who is certified  
 223 under this article; or

224 (3) Attach the title 'certified polysomnographic technologist' to his or her name.

225 (b) The prohibition in subsection (a) of this Code section shall not apply to the practice of  
 226 polysomnography which is an integral part of the program of study by students enrolled as  
 227 a trainee in a polysomnography education program recognized by the board. Students  
 228 enrolled in polysomnography education programs shall only provide polysomnography  
 229 care under the direct clinical supervision of a certified polysomnographic technologist or  
 230 a respiratory care professional.

231 (c) Any person violating the prohibition of subsection (a) of this Code section shall be  
232 guilty of a misdemeanor.

233 (d) Nothing in this article shall be construed to permit the practice of medicine as defined  
234 in Article 2 of this chapter by polysomnographic technologists.

235 (e) Nothing in this article shall be construed to prohibit a health care provider licensed in  
236 this state from engaging in the practice for which he or she is licensed, including, but not  
237 limited to, respiratory care professionals certified under Article 6 of this chapter.

238 43-34-310.

239 Proceedings under this article shall be governed by Chapter 13 of Title 50, the 'Georgia  
240 Administrative Procedure Act.'

241 **SECTION 4.**

242 This Act shall become effective upon its approval by the Governor or upon its becoming law  
243 without such approval.

244 **SECTION 5.**

245 All laws and parts of laws in conflict with this Act are repealed.