

Ga. Attys Divided Over Failure Of Cannabis License Expansion

Law360 (April 4, 2023, 8:23 PM EDT) — Georgia attorneys are split over the impact of the failure of legislation that would have more than tripled the number of cannabis cultivation licenses in the Peach State and mooted litigation over the handling of applications.

Parts of **H.B. 196** and **S.B. 97** would have allowed for up to 20 production licenses instead of six and scrapped the existing Georgia Access to Medical Cannabis Commission, folding its work into the Georgia Department of Agriculture. Just one vote prevented H.B. 196 from passing in the state Senate and moving on to the governor's desk on the last day of Georgia's legislative session March 29. S.B. 97 stalled in the state House.

The legislation cut to the heart of a yearslong debate about how the state issues licenses for making medical cannabis oil and related products. Many companies that lost out on licenses have taken their protest to state trial and appellate courts, stalling the final award of licenses to most of the businesses selected to receive them.

Jake Evans of Hall Booth Smith PC, an attorney for a handful of protesting companies, said the legislation would have effectively mooted the litigation.

"I'm disappointed that it failed by one vote," Evans told Law360. "One more vote and it would have went through. All this would have been resolved."

But **Vincent Russo** of Robbins Alloy Belinfante Littlefield LLC, who represents one of the successful applicants whose license is stayed pending litigation, said the proposed change would likely have prompted more lawsuits if approved. He said the legislation "turned sound procurement policy on its head."

Russo's client TheraTrue Georgia LLC was one of four applicants selected for a Class 2 license to cultivate up to 50,000 square feet of cannabis. The final award of those licenses is being held up by the litigation.

Under Georgia's Hope Act of 2019, just two licenses are provided for Class 1 indoor cannabis cultivation of up to 100,000 square feet. The companies with those licenses — Botanical Sciences LLC and Trulieve Ga Inc. — are the only companies currently able to produce cannabis oil in the state.

Russo said the litigation is meritless. He said many of the unsuccessful applicants relying on the legislation to get a license "were barely in the top 50% of the applicant rankings."

"In their administrative appeals, the judge found that the claims of the losing companies were unsupported by evidence and that some allegations were based on nothing more than unfounded rumor," the Robbins Alloy attorney said. "The bill would have paved the way for those companies that filed frivolous lawsuits to get the

new licenses just because they pursued groundless protests and litigation. It was simply bad policy."

Russo said TheraTrue and the other companies selected for Class 2 licenses have been respondents or defendants in almost 30 different lawsuits filed by unsuccessful applicants since 2021. He said they hope the courts end the cases soon.

"At that time, with the license in hand, our client can put the final operational pieces of the business in place so production can begin and the company can start delivering vital, medical-grade products that will improve the quality of life for patients suffering from debilitating medical conditions in Georgia," Russo said.

The Hope Act allows license holders to grow, manufacture and produce medical cannabis in the form of oil and related products with no more than 5% tetrahydrocannabinol, or THC, the main psychoactive component in cannabis. Georgia had approximately 14,000 registered patients eligible for cannabis oil treatment as of February 2021, reports from the state cannabis commission show.

The protesting companies, including Pure Peach Organic Inc., Symphony Medical LLC, GA Bioscience Research Inc. and Aspire Medical Partners LLC, are seeking either licenses or a redo of the license procurement process, Evans said.

"If the legislation went through, they would have gotten the licenses, so there would have been no need to go forward with the litigation," said Evans of Hall Booth. "If the protesters get the licenses, they're not going to continue to litigate it."

The Georgia Access to Medical Cannabis Commission announced the award of its first licenses in September after receiving almost 70 applications. Licenses were awarded to the six highest-scoring applicants, the commission said.

The commission reportedly received 21 protests from unsuccessful applicants, all of which were ultimately denied by an administrative law judge in September, records show. That sparked multiple lawsuits in state trial courts, some of which are now before the Georgia Court of Appeals, having been dismissed by lower courts.

Other litigation against the commission, the administrative law judge and the license winners has been stayed pending the appellate court's decision.

Evans said the legislation could be revived in the next session of the Georgia General Assembly. He said it would likely reflect what happens with the litigation in the meantime.

"If, which is likely, the litigation is still pending, then [proponents of the legislation] are still going to want to have language in there which addresses or gets rid of the litigation," he said. "We'll have to see how things will play out in the courts."

Evans said he was surprised the legislation failed, after a "long process" to get it through multiple committees. He said a number of state senators acknowledged during debate that the handling of license applications was a mess.

"To then vote against it and allow litigation to continue indefinitely was surprising," he said.

But others following the legislation thought it was a big ask, comprising drastic changes including a shift in regulatory authority and a large jump in the number of licenses.

The legislation allowed for up to nine additional Class 1 licenses and up to 12 additional Class 2 licenses, capping the total number of licenses at 20. And it called for mediation between state officials and existing applicants, which could have resulted in the award of licenses.

In addition to abolishing the state's cannabis licensing commission, the legislation would have expanded conditions for which cannabis oil and associated products could be prescribed.

It also addressed consumable hemp establishment licenses and called for a joint legislative committee to oversee the Agriculture Department's handling of licenses. Greater transparency in the bid process was also incorporated in the proposal to address concerns by unsuccessful applicants about conflicts of interest between commission members and winning bidders.

Counsel for the Class 1 license holders and sponsors of the legislation did not immediately respond to requests for comment.