

Litigators Weigh Implications as Medical Marijuana Legislation Stalls at Adjournment

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Marijuana

What You Need to Know

- Minutes before the debate, a new, 53-page version of a bill that passed the Senate days before returned to the body for deliberation.
- Some senators were vocal in their displeasure of such short notice and the bill did not make it past the Senate floor.
- Supporters of the legislation say that, because the bill failed, their pending litigation will take years to resolve.

A bill that could have a profound impact on medical marijuana litigation across Georgia failed at the eleventh hour of the General Assembly's final day of the 2023 session on Wednesday.

The specifics of the legislation changed as it moved from chamber to chamber, but the most hotly contested provision of the bill would have made more medical marijuana production licenses available than the six originally allotted by the Georgia Access to Medical Cannabis Commission, or GMCC, several years ago.

When the commission was created, companies applied for production licenses, but not all were accepted. Some of the losing bidders sued, alleging that the application and protest process were opaque and that they weren't able to adequately argue their cases because the applications for winning bidders were too heavily redacted to see why those companies got licenses and theirs didn't,

The lawyers representing the protesting companies argued that if this legislation was passed and additional licenses were made available, their lawsuits would be moot, as their clients would have gotten what they wanted—more licenses.

Some of the bill's most vocal opponents represent companies that received licenses but can't start producing cannabis-derived oil until litigation is resolved in court. Now that the companies protesting the initial selection process have failed to get their way in the General Assembly, they are sticking to their guns and claim that their cases could take months, if not years, to resolve.

The lawsuits "will continue to move forward in the same fashion they've been," said Jake Evans, who represents three of the protesters and has pending litigation in the Fulton County Superior Court and petitions for a writ of certiorari with the Georgia Court of Appeals.

But, according to **Vincent Russo, of Robbins Alloy Belinfante Littlefield** who represents TheraTrue, a company whose license has gotten tied up in pending litigation, procedurally, only one of the protestors' cases is holding up the license issuances.

"We're hopeful the court in that remaining case will make its decision soon, be it through dismissal, due to procedural flaws in the filing of the writ of certiorari or on the merits. We're fine with either approach," Russo said.

However, this is another point where the winning bidders and the protestors don't see eye to eye.

"We expect a decision from the Court of Appeals by this summer. From there we will go through the judicial review process, and we think that could probably take another three to six months," said Kristen Goodman, partner at Hall Gilligan Roberts & Shanlever, who represents losing bidders Symphony Medical and Pure Peach.

Goodman said that protestors also filed a separate lawsuit against the GMCC and the Georgia Department of Administrative Services a couple of weeks ago.

"I think that case, and this isn't including any appeals, could be pending anywhere from a year to two years," Goodman said. "And then of course there's appeal options from there. ... I think the reality is we could be tied up in litigation for the next couple of years easily."

Goodman continued to say that, "as soon as a Court of Appeals decision is rendered," the protestors intend to file their protests in whichever courts they are directed to by the Court of Appeals, "and both those options have stays as part of those statutory procedures."

"Our feeling is that the stay will actually be in place quite a bit longer after the Court of Appeals decision is rendered," Goodman said. "So by that time, there will be multiple lawsuits that are staying the issuance of the additional licenses."

Lawyers representing companies that won the bidding war for licenses to produce and distribute medicinal low-THC oil in the state denounced the bill in committee. Their main concern was that making additional licenses available for companies protesting their rejections would open the floodgates for any company wanting to contest a denial for a government contract.

With mere hours left to debate the remaining bills of 2023, a draft of the legislation that would have compromised on the demands of both parties was amended to fold in the text of another contested bill that had nothing to do with low-THC oil production. The end product was a 50-plus-page piece of legislation that raised senators' hackles when it was handed down with only minutes to review before being called on for

debate.

“We are known as a deliberative body. This is making a mockery of deliberations,” said Sen. Bill Cowser, R-Athens, speaking out against the bill on the Senate floor. “Back before Crossover Day, parts of this bill were on our floor and it was such a disaster it ended up being reconsidered, tabled and never got out of this chamber. This has been on our desk literally maybe two or three minutes before it was called up. I haven’t had a chance to even read it.”

Meanwhile, the proponents kept tabs on the debate with bated breath.

“We actually had a commitment from senators who said they were going to support [this] very fair and beneficial legislation who changed their vote literally at the 11th hour,” Goodman said. “And we don’t know if that was financial pressure from the winning bidders ... but we did have quite a bit more support than the votes showed last night. ... We believe it was a political process, and that’s why we intend to keep fighting.”