

'This Bill Rewards Bad Behavior': Georgia's Medical Marijuana Licensing Debate Sees Major Twists in Committee

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What You Need to Know

- HB 196, the original licensing bill, passed committee with an amendment to remove the provision that would increase the state medical marijuana production license cap.
- Then, the language of the original legislation was inserted into SB 97, a completely unrelated bill.
- Now, the both versions of the legislation are working their way through the general assembly and are waiting on chamber votes.

Two Georgia General Assembly committees weighed bills that could majorly change the face of medical marijuana licensing litigation in Georgia by awarding medical marijuana production licenses to companies that were rejected in the original bidding process.

After extensive testimony from opponents on Wednesday, the original legislation, HB 196 was amended to keep its open records provisions that would bring bidders' redacted applications in line with the Open Records Act but got rid of the section that would add additional licenses.

However, while the discussion of HB 196 wound down in the Senate's Regulated Industries committee, the bill's sponsor, Rep. Alan Powell, R-Hartwell, and his bill made an appearance in the Public Safety Committee hearing's discussion of an amendment to SB 97, a completely unrelated bill. There, the statutory licensing increase was revived and increased, from a 15 license to a 20 license cap.

"The only thing this [provision] serves is a direct path to get [the protestors] out of court," Powell said as he testified on his SB 97 amendment. "We've been dealing with this for seven years."

Opponents disagree with the sentiment.

"This bill is not going to end litigation. No one said they were going to drop their suits," said Vincent Russo, of the Robbins Firm, who represents Theratrue, a company that qualified for a production

license, but can't access it because of the protest litigation brought by losing bidders. "If we're rewarding these protestors by giving them licenses, I think we're creating more litigation. I'm not saying my group would sue, but there are plenty of groups out there that scored higher than the protestors."

"If this legislation passes, all of that litigation is moot. So therefore, if this legislation passes and the protestors do receive licenses, there will be no more litigation." countered Kristen Goodman of Hall, Gilligan, Roberts & Shanlever, who represents losing bidders and current protestors Symphony Medical and Pure Peach, in her testimony on the bill.

The lawyers opposing this bill broadly fall into two camps: those who represent the two companies that were awarded Class One licenses and those who represent the companies who were picked for Class Two licenses but haven't yet received them because of pending protest litigation.

The difference between the two licenses is that Class One licenses allow for greater production space and quantity, and the companies who got them are able to start low THC oil production. The companies who were awarded Class Two licenses aren't able to begin production because the losing companies filed protests before they were able to receive them.

The latter litigants are frustrated because the lawsuits protesting the Class Two licensing awards have tied them up in the courts and kept them from getting down to business.

As for the Class One license recipients who have already begun production, Goodman argued that "nothing in this legislation takes away their licenses. Nothing affects their operation. They're here for two reasons, two words: money and market share."

But for the Class Ones, there's more to the story—why should the rejected companies sue when they lost the bids fair and square? After all, this could set a dangerous precedent for future rejected government contractors to gum up the wheels of power with lawsuits until they get their way.

"This bill rewards bad behavior," said Jeremy Berry of Chilivis Grubman, who represents TruLieve, one of the companies that received a Class One production license, "The protestors knew the rules going in. They played by the rules and now they're upset and they want a do-over. All this will do is incentivize future contractors who lose to just go to the Legislature. So [if] someone who's bidding on a contract for road paving—if they lose, guess what? It's gonna turn this legislature into a de facto evaluation attorney."

As things stand right now, both amended bills are awaiting a vote on their respective chamber floors. If they pass, they return to the chambers they began in for further discussion. However, if things don't shake out in the protestors' favor, it might be a while before the end is in sight.

According to Jake Evans of Hall Booth Smith, an attorney representing three losing bidders with pending protest litigation, if more licensees don't become available, "the lawsuits will continue full steam ahead with the possibility of overturning the bid. At that point [we would] go right back to where we all started."