

PUBLICATION

New Hope in Georgia – The Landscape for the Application/Licensing Process for Cannabis

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On April 2, 2019, the Georgia General Assembly passed monumental cannabis-related legislation for the state, HB 324 titled "Georgia's Hope Act," which legalizes the limited in-state cultivation, production, manufacturing, sale and purchase of low-THC CBD oil. Governor Kemp signed the bill on April 17, 2019. This new legislation is indicative of the country's shift towards the general acknowledgement and acceptance of the medicinal properties contained in the cannabis plant.

Since 2015 it has been legal for certain registered Georgia residents that suffer from at least one ailment (out of several listed in the statute) to possess and ingest cannabis-derived cannabidiol oil (more commonly known as CBD oil) containing "low amounts" – less than five percent – of tetrahydrocannabinol (more commonly known as THC). Despite what appeared to be a victory for patients seeking alternative treatment options (typically used in addition to the "normal" pharmaceutical-based treatment(s)), the cultivation, production, distribution and purchase/sale of CBD oil in the state of Georgia still remained against the law.

Georgia's Hope Act creates the Georgia Access to Medical Cannabis Commission (the Commission), to facilitate the licensing process to prospective operators and to oversee the regulation of ongoing operations of the licensees, which will include a comprehensive data aggregating tracking system from "seed to sale" of the low-THC CBD oil. The Commission will consist of seven members, three appointed by the Governor, two appointed by the Lieutenant Governor and two appointed by the Speaker of the House of Representatives, each to serve a four-year term.

Georgia's Hope Act permits the issuance of two Class 1 production licenses, which will allow a licensee to grow cannabis only in indoor facilities limited to 100,000 square feet of "cultivation space," for use in producing low-THC CBD oil, and to manufacture low-THC CBD oil. To apply for this Class 1 license, each applicant is required to pay a non-refundable application fee in the amount of \$25,000, and if awarded the license, an initial license fee of \$200,000 (with a \$100,000 annual renewal fee). The Class 1 license shall be revoked if the licensee is not operational within 12 months of the effective date of the license. In addition, Georgia's Hope Act permits the issuance of four Class 2 production licenses, which will allow a licensee to grow cannabis only in indoor facilities limited to 50,000 square feet of "cultivation space," for use in producing low-THC CBD oil, and to manufacture low-THC CBD oil. To apply for this Class 2 license, each applicant is required to pay a non-refundable application fee in the amount of \$5,000, and if awarded the license, an initial license fee of \$100,000 (with a \$50,000 annual renewal fee). The Class 2 license shall be revoked if the licensee is not operational within 12 months of the effective date of the license.

One major difference between the initial bill that was introduced in the Georgia House of Representatives, and Georgia's Hope Act that was ultimately signed into law (after extensive committee revisions in the Senate), is the creation of a specialty dispensing license for pharmacies to be developed by the State Board of Pharmacy, and to permit pharmacies to dispense low-THC CBD oil to registered patients. Georgia's Hope Act also authorizes the Commission to develop dispensing licenses for retail outlets.

The production licenses will be issued to applicants selected by the Commission following "a competitive application and review process" and each licensee will be required to be a Georgia entity and maintain a bank account with a bank located in Georgia.

Georgia's Hope Act provides some initial requirements that the Commission will seek in any application for a Class 1 or Class 2 license:

1. Class 1 license applicant must provide written documentation showing that on the date of application and on the date of the award of the license, the applicant holds at least \$2,000,000 (\$1,250,000 for Class 2 applicants) in available cash reserves to invest in operations in Georgia;
2. Written production plan, which, at a minimum, must include details about the chain of custody of the low-THC CBD oil;
3. Comprehensive security plan, which must include 24/7 interior/exterior video monitoring and a centralized controlled access system;
4. Written plan for secured transportation and tracking of delivered products;
5. Detailed employment plan, including the jobs and salaries of employees and the expected economic impact of proposed activities in Georgia;
6. Written plan to assure no pesticides are used, other than those certified by the Organic Materials Review Institute (or similar body);
7. Detailed designs of all production facilities;
8. Letters of support from one or more local governmental entities, where the applicant's primary facility will be located;
9. Demonstration of significant involvement in the business by one or more minority business enterprises (as defined in Georgia Code Section 50-5-131), either as co-owners or as significant suppliers of goods and services. Further, applicants shall be encouraged to form business relationships with Georgia agricultural businesses and military veterans;
10. Documentation of industry capabilities and management experience;
11. Sufficient documentation to prove that a \$1.5 million (\$625,000 for Class 2 applicants) cash bond payable to the State of Georgia or irrevocable letter of credit can be obtained within 30 days of obtaining a license (and the failure to obtain the bond or the letter of credit is cause for revocation of the license);
12. At least one set of classifiable electronically recorded fingerprints; and
13. Description of any efforts to create jobs or locate facilities in tier 1 or tier 2 counties (as defined in Georgia Code Section 48-7-40).

Further, applicants may not have an ownership interest in more than one license.

In addition to the above considerations, there are other requirements relating to product testing, location of facilities in proximity to "Covered Entities," prohibition on advertising/marketing, on-demand access by certain law enforcement agencies, prohibition on the use of certain tax credits, criminal history and rules surrounding the subsequent transfer or sale of a license.

Applicants also need to consider the federal implications of operating in this industry, such as federal banking laws and regulations and the Internal Revenue Code.

For assistance in navigating the application/licensing process and/or for answers to your questions surrounding state and federal law and the cannabis industry, please contact a member of Baker Donelson's [Cannabis Law and Regulation Group](#).