

11 - JUD - SB 504 -Discrimination in Employment –

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: FAV



**2021 SESSION
POSITION PAPER**

BILL NO: Senate Bill 504

COMMITTEE: Judicial Proceedings

POSITION: Support

TITLE: Discrimination in Employment – Use of Medical Cannabis – Prohibition

BILL ANALYSIS: Senate Bill (SB) 504 prohibits an employer from discriminating against an individual because of the individual's receipt of a written certification for the use of medical cannabis, or the individual's positive drug test if the individual holds a written certification for the medical use of cannabis, except where failure to do so would violate federal law or regulations, or cause the employer to lose a monetary or licensing-related benefit under federal law or regulation.

SB 504 also establishes that provisions prohibiting employment discrimination do not prohibit an employer from adopting policies and procedures that prohibit an employee from performing the employee's duties while impaired by medical cannabis.

POSITION AND RATIONALE: The Maryland Medical Cannabis Commission (the Commission) supports SB 504.

SB 504 represents an important next step in ensuring medical cannabis patients receive equitable treatment and acknowledges the current reality of the more than 125,000 certified patients who rely on medical cannabis as an important and valued medicine. While individuals who use prescription medications can often seek protection from discrimination under the federal Americans with Disabilities Act (ADA), those same protections do not exist for medical cannabis given its current federal status. In turn, a growing number of states are enacting protections for medical cannabis patients to ensure equal access to employment. Without explicit protections in statute, patients are often forced to seek legal recourse through the court system. For that reason, 12 states and the District of Columbia have enacted explicit anti-employment discrimination provisions for medical cannabis patients. (See *Attachment – States with Employment Protections for Medical Cannabis Patients.*)

Health-General Article §13-3313 sets forth general protections by providing that any individual acting in accordance with the provisions of the subtitle may not be denied any right or privilege for the medical use of cannabis. While this general protection could be extended to apply to prohibit employment discrimination, the Commission believes there is great value to codifying into statute a law that explicitly addresses the employment rights of medical cannabis patients. SB 504 would eliminate employment barriers and prohibit discrimination against medical cannabis

patients, while recognizing the needs of employers to maintain a safe and productive workplace. These protections are made all the more crucial given this unprecedented time of historically high unemployment during the COVID-19 pandemic. SB 504 removes any existing ambiguity for employers concerning their responsibility to medical cannabis patients, and further acknowledges the status of medical cannabis as a legitimate form of medicine.

For these reasons, the Commission requests a favorable report on SB 504.

For more information, please contact Taylor Kasky, Director of Policy and Government Affairs, at (443) 915-5297 or taylors.kasky@maryland.gov.

Attachment – States with Employment Protections for Medical Cannabis Patients

State	Provision
AZ	<p>Unless a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:</p> <ol style="list-style-type: none"> The person's status as a cardholder. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.
AR	<p>Discrimination. An employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon the individual's past or present status as a Qualifying Patient or Designated Caregiver.</p>
CT	<p>No employer may refuse to hire a person or may discharge, penalize or threaten an employee solely on the basis of such person's or employee's status as a qualifying patient or primary caregiver... Nothing in this subdivision shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours.</p>
DE	<p>Discrimination prohibited. Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:</p> <ol style="list-style-type: none"> The person's status as a cardholder; or A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.
DC	<p>Patient protections. A public employer may not refuse to hire, terminate from employment, penalize, fail to promote, or otherwise take adverse employment action against an individual based upon the individual's status as a qualifying patient unless the individual used, possessed, or was impaired by marijuana at the individual's place of employment or during the hours of employment.</p>
IL	<p>Discrimination prohibited. No school, employer, or landlord may refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would put the school, employer, or landlord in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules. This does not prevent a landlord from prohibiting the smoking of cannabis on the premises.</p> <ol style="list-style-type: none"> Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis. Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.

ME	A school, an employer or a landlord may not discriminate. A school, an employer or a landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.
MN	<p>Unless a failure to do so would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:</p> <ol style="list-style-type: none"> 1. The person's status as a patient enrolled in the registry program under sections 152.22 to 152.37; or 2. A patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. <p>An employee who is required to undergo employer drug testing pursuant to section 181.953 may present verification of enrollment in the patient registry as part of the employee's explanation under section 181.953, subdivision 6.</p>
NV	<p>Medical needs of an employee who engages in medical use of marijuana is to be accommodated by the employer, other than law enforcement agency, in certain circumstances. Provisions of this chapter do not:</p> <ol style="list-style-type: none"> 1. Require any employer to allow the medical use of marijuana in the workplace. 2. Except as otherwise provided in subsection 4, require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not: <ol style="list-style-type: none"> (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities. 3. Prohibit a law enforcement agency from adopting policies and procedures that preclude an employee from engaging in the medical use of marijuana.
NY	Being a certified patient shall be deemed to be having a "disability" under article fifteen of the executive law (human rights law), section forty-c of the civil rights law, sections 240.00, 485.00, and 485.05 of the penal law, and section 200.50 of the criminal procedure law. This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. This subdivision shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose a federal contract or funding.
OK	<p>No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites, unless:</p> <ol style="list-style-type: none"> a. The applicant or employee is not in possession of a valid medical marijuana license,

	<ul style="list-style-type: none"> b. The licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or c. The position is one involving safety-sensitive job duties, as such term is defined in subsection K of this section.
PA	<p>Employment.-</p> <p>(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.</p> <p>(2) Nothing in this Act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.</p> <p>(3) Nothing in this Act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.</p>
RI	<p>No employer may refuse to employ, or otherwise penalize, a person solely for his or her status as a cardholder, except:</p> <p>(1) To the extent employer action is taken with respect to such person's:</p> <ul style="list-style-type: none"> (i) Use or possession of marijuana or being under the influence of marijuana in any workplace; (ii) Undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or jeopardize workplace safety; (iii) Operation, navigation, or actual physical control of any motor vehicle or other transport vehicle, aircraft, motorboat, machinery or equipment, or firearms while under the influence of marijuana; or (iv) Violation of employment conditions pursuant to the terms of a collective bargaining agreement; or <p>(2) Where the employer is a federal contractor or otherwise subject to federal law such that failure of the employer to take such action against the employee would cause the employer to lose a monetary or licensing related benefit.</p>

SB 504 position Favorable.pdf

Uploaded by: Doersam, Stephanie

Position: FAV

Written Testimony
SB 504
Position: Favorable

I am writing to ask your support of SB 504 sponsored by Senator Smith.

I am a physical therapist in Maryland. I greatly enjoy my job working with babies who are at risk of delay or who have disabilities and their parents, a position I have held for over 20 years. I also have Ehlers Danlos which has lead to significant early onset arthritis and chronic pain. Recent research* has shown that while opioid use remains high in people with Ehlers-Danlos, 37% report using medical cannabis for symptom relief.

I consider myself fortunate that the opiates my prior primary care doctor swore were safe for me to take chronically for pain did not work for me nor was I able to tolerate the side effects. I am also fortunate that cannabis before bed allows me to sleep without pain. I can tolerate the daytime pain, but when I am still at night, the pain keeps me from sleeping. Cannabis has resolved this.

I use cannabis knowing that there is always a risk that my employer may find out and that it could impact my continued employment despite the fact that I do not use cannabis during the day. Ironically, I could take opiates with a prescription -even a low dose during the day - and not fear loss of my job but yet a much safer option that eliminates my pain without the horrible side effects of opiates, puts my job in danger. Interestingly, current Maryland cannabis laws protect me from loss of my professional license but not loss of my job.

I know of others who have not tried cannabis and instead have taken opiates for decades due to the fear of job loss. I also know of people who do use cannabis who are now stuck in a position because of the fear that a better opportunity may drug test. I waited for the medical cannabis program to become legal before trying cannabis which impacted my health due to the excessive ibuprofen causing a stomach ulcer. I have learned so much about cannabis since Maryland legalized and I know it is a much better, safer option for many people with chronic pain.

Please support this important legislation.

Thank you,

Dr. Stephanie Doersam, PT, DPT, M.Ed. #17910
Pediatric Physical Therapist
317 Jerlyn Ave.
Linthicum, MD 21090
410-508-4048
stephanie@doersams.com

*Demes JS, McNair B, Taylor MRG. Use of complementary therapies for chronic pain management in patients with reported Ehlers-Danlos syndrome or hypermobility spectrum disorders. Am J Med Genet A. 2020 Nov;182(11):2611-2623. doi: 10.1002/ajmg.a.61837. Epub 2020 Sep 10. PMID: 32909698.

LoS - E Medical Cannabis Protections.pdf

Uploaded by: Dove, Spencer

Position: FAV

State of Maryland

Commission on Civil Rights

"Our vision is to have a State that is free from any trace of unlawful discrimination."



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Jeff Rosen
Gina McKnight-Smith, PharmD, MBA

February 9, 2021

Senate Bill 504 – Discrimination in Employment – Use of Medical Cannabis – Prohibition POSITION: Support

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights ("MCCR"; "The Commission") is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

Senate Bill 504 prohibits an employer from discriminating against an employee or applicant because they hold a written certification for the use of medical cannabis under state law, or the individual tests positive for cannabis components or metabolites because they hold that written certification. The bill provides an exemption if having the employee carry out job duties would violate federal law or regulations or cause the employer to lose a monetary or licensing-related benefit under federal law or regulation. Employers are permitted under the bill to adopt policies and procedures that prohibit an employee from performing the job duties while impaired by medical cannabis.

According to the National Conference of State Legislatures, there are currently 13 states that prohibit an employer from discriminating against a qualifying medical cannabis patient or cardholder¹. They are Arizona, Arkansas, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Minnesota, Nevada, New York, Oklahoma, Pennsylvania, and Rhode Island. Of these states, only Nevada requires an employer to accommodate medical cannabis patients as well as those individuals who engage in the recreational use of cannabis.

With the passage of Maryland's medical cannabis program, employers began raising concerns regarding under what circumstances they are permitted to hire/retain employees who are cardholding patients. The State's employment anti-discrimination law in State Government Article Title 20 has not been updated to include an employer's obligations, as well as what conditions exist whereby an employer can deny an applicant or dismiss an employee from employment. Senate Bill 504 is a carefully crafted bill that incorporates the similar provisions

¹ <https://www.ncsl.org/research/labor-and-employment/cannabis-employment-laws.aspx>

found in the aforementioned 13 states that strike the balance between an individual's right to be free from employment discrimination and an employer's right to conduct business without being subjected to undue hardship.

Page 2, lines 11 through 14 of the bill permit an employer to adopt policies and procedures that prohibit an employee from performing the employee's duties while impaired by medical cannabis. However, the bill does not define the term "impaired by medical cannabis", nor does existing statute offer MCCR any guidance. If the Committee entertains any amendments for this legislation, then the Maryland Commission on Civil Rights respectfully recommends considering clarifying language defining "impairment".

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on SB504. Thank you for your time and consideration of the information contained in this letter. The Maryland Commission on Civil Rights looks forward to the continued opportunity to work with you to improve and promote civil rights in Maryland.

SB 504 - MDDCAFLCIO - SUPPORT.pdf

Uploaded by: Edwards, Donna

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Office: (410) 269-1940 • Fax (410) 280-2956

President

Donna S. Edwards

Secretary-Treasurer

Gerald W. Jackson

SB 504 – Discrimination in Employment – Use of Medical Cannabis - Prohibition Senate Judicial Proceedings Committee February 9, 2021

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support SB 504 – Discrimination in Employment – Use of Medical Cannabis - Prohibition. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

Under current law, a person can be prescribed codeine, Percocet, and oxycontin, under the supervision of their doctor, and not face any negative consequences from their employer through discrimination. A person can drink alcohol in their free time, and still be gainfully employed, provided they are not intoxicated at work. No such protections exist for those who have received a prescription for cannabis for medical reasons.

SB 504 is a commonsense bill that brings our medical cannabis law in-line with employment law for all other prescribed medications. Medical cannabis is fluid situation, in the United States, with more States legalizing cannabis for medical use, and a growing conversation on the Federal level about decriminalization and potential legalization. In this uncertain arena, we need to make sure that we provide a level of stability for workers.

SB 504 also provides for the fluidity of cannabis law by ensuring employers are not held at fault for following federal law or regulations if their businesses depend on those regulations to operate. And, for all businesses, the bill allows for the adoption of policies and procedures that prohibit a worker from working while impaired.

We cannot support medical uses for cannabis while simultaneously allowing employers to discriminate based on its usage. With the proper protections in place for businesses, SB 504 gives stability for workers and Maryland's businesses.

We ask for a favorable vote on SB 504.

SB504 Written Testimony Final.pdf

Uploaded by: Wong, Edka

Position: FAV

Written Testimony in Support of Senate Bill 504

Discrimination in Employment - Use of Medical Cannabis - Prohibition
Before the Judicial Proceedings Committee: February 9, 2021

Senate Bill 504 protects medical cannabis patients from employment discrimination based on their status as a medical cannabis patient or a positive test for cannabis components or metabolites.

Senate Bill 504 should be adopted because it reinforces Maryland's decision to recognize medical cannabis as a valid medical treatment. Senate Bill 504 protects Maryland employees who are authorized medical cannabis patients while also considering the needs of employers to follow federal law and provide a safe workplace. Additionally, the passage of Senate Bill 504 would place Maryland among the increasing number of states that have taken affirmative steps to protect medical cannabis patients from discrimination in the workplace.

This Bill Legitimizes the Decision to Recognize Medical Cannabis as Medical Treatment

Maryland and other states across the country recognize medical cannabis as a legitimate treatment for a variety of medical conditions. As with many other medical treatments, Maryland requires a licensed medical provider, who themselves must be certified by the State to prescribe medical cannabis, to determine that medical cannabis is efficacious and medically necessary for the patient's treatment. If a qualified medical provider has determined the patient requires the use of medical cannabis, the patient should be allowed to take their medication without fear of reprisal from their employer. Given this recognition and the protocols in place, medical cannabis patients should not be treated any differently from other patients who similarly use legal and legitimate medication.

Senate Bill 504 Protects Patients and Reasonably Accommodates Employers

The protections afforded by Senate Bill 504 are narrowly tailored to ensure the safety of others, the employer's rights, and the wellbeing of the employee-patient. Specifically, this bill does not require employers to provide protections for medical cannabis patients if doing so will violate federal law, such as the Drug Free Workplace Act, federal regulations, or cause the employer to risk their federal funding sources or licensing. Further, this bill does not prevent employers from adopting policies and protocols that prohibit employees from performing their duties while impaired by medical cannabis. As such, this bill recognizes an employer's need to comply with federal law and accommodates that need by narrowly tailoring the employment protections provided.

The Public Health Impacts of Discrimination of Medical Cannabis Patients

Treating medical cannabis patients in a separate class from other patients is inherently discriminatory and harmfully stigmatizes these patients. As a public health matter, stigmatization is harmful because it can produce negative short- and long-term health effects. A study conducted on California's medical cannabis patients discovered that patients experienced chronic stress because of the stigma they perceived.¹ Chronic stress not only negatively impacts an individual's mental health, but also their physical health. Researchers also discovered that the stigmatization of medical cannabis led patients to delay or not seek beneficial medical cannabis treatment at all. Both concerns, chronic stress and the underutilization of care, can contribute to poor health outcomes and put an employee at an increased risk of job loss.²

If medical cannabis patients fear reprisal from their employers or the stigma associated with their use of cannabis, it may become difficult for these patients to seek and maintain employment. Lack of employment and under employment are linked to poorer health outcomes.³ For example, unemployed individuals tend to suffer more from stress-related illnesses, such as, high blood pressure, stroke, heart attack, heart disease, and arthritis.⁴ Similarly, studies have shown that those who experience underemployment are more likely to report that: their health interferes with their activities; they experience chronic disease and depression; and they have lower positive self-concept than adequately employed workers.⁵ Senate Bill 504 provides needed employment protections which will help cannabis patients avoid the negative health outcomes associated with under employment.

Other States Have Provided Employment Protections for Medical Cannabis Patients

Maryland would not be the first to provide employment protections for medical cannabis patients. Many medical cannabis states protect employees and applicants from discrimination when they are simply taking their legally authorized treatment. Thirteen states and D.C. have enacted statutory provisions providing employment protections for medical cannabis patients.⁶ Many of these laws are very similar to Senate Bill 504. For example, Delaware's statute, enacted in 2011, prohibits employment discrimination based on the person's status as a cardholder or

¹ Travis Satterlund, et al., *Stigma Among California's Medical Marijuana Patients*, 47(1) J. PSYCHOACTIVE DRUGS 10 (2015).

² Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Family Foundation (2018).

³ Linda Rae Murray., *Sick and Tired of Being Sick and Tired*, 93(2) AM. J. PUBLIC HEALTH 221 (2003); Daniel S. Friedland and Richard H. Price, *Underemployment: Consequences for the Health and Well-Being of Workers*, 32(1-2) AM. J. COMMUNITY PSYCHOL. 33 (2003).

⁴ United States Office of Disease Prevention and Health Promotion, *Healthy People 2020: Employment* (October 8, 2020) <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/employment#7>.

⁵ Daniel S. Friedland and Richard H. Price, *Underemployment: Consequences for the Health and Well-being of Workers*, 32(1-2) AM. J. COMMUNITY PSYCHOL. 33 (2003).

⁶ Iris Hentze, *Cannabis and Employment: Medical and Recreational Policies in the States*, National Conference of State Legislatures (2020).

their positive drug test for marijuana components or metabolites. 16 Del. C. § 4905A (2011). Delaware also qualifies this protection by allowing an employer to preclude an individual from employment if failure to do so would violate federal law or regulations or cause the employer to lose federal money or licensing. Further, Delaware's statute does not prevent an employer from prohibiting an employee from performing their workplace duties while impaired by medical cannabis. Some states have passed deeper protections. For example, Nevada law requires employers to make workplace accommodations for medical cannabis employee-patients. Nev. Rev. Stat. Ann. § 678C.850 (2019).

Given this legal landscape, enactment of Senate Bill 504 would solidly stand in the middle ground, striking a balance between providing adequate protections for patients while ensuring employers are not unduly burdened. As such, Maryland should adopt Senate Bill 504 to join the rising tide of states that recognize medical cannabis as a valid and necessary treatment and provide employment protections thereby.

Conclusion

Medical cannabis is an authorized form of medical treatment in Maryland and has been for several years. The Maryland Medical Cannabis Commission has carefully adhered to the directions of the General Assembly to create a system that provides safe access to those qualified for the treatment. Despite this authorization and comprehensive regulations, Maryland does not protect medical cannabis patients against workplace discrimination. Senate Bill 504 prescribes much-needed protections. It should be adopted to ensure medical cannabis patients are not subjected to discrimination and adverse employment actions for their use of a legal, medically necessary treatment.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law or the University of Maryland system.

SB0504-JPR_MACo_SWA.pdf

Uploaded by: Jabin, Drew

Position: FWA



Senate Bill 504

Discrimination in Employment - Use of Medical Cannabis - Prohibition

MACo Position: **SUPPORT**
WITH AMENDMENTS

Date: February 9, 2021

To: Judicial Proceedings Committee

From: Drew Jabin

The Maryland Association of Counties (MACo) **SUPPORTS SB 504 WITH AMENDMENTS**. The bill would prohibit employers, including counties, from taking adverse actions against an employee based on the employee's receipt of a written certification for use of medical cannabis or the employee's positive drug test for cannabis components or metabolites. MACo urges that public sector employees, many in positions of deep public trust, be removed from the bill's effects.

Although the bill does not prohibit an employer from adopting policies and procedures that prohibit an employee from performing work duties while impaired by medical cannabis, current drug testing technology is incapable of definitively discerning between an employee who tests positive for marijuana and is currently impaired versus an employee who tests positive as a result of prior marijuana use. As such, it is virtually impossible for employers to determine through testing whether an employee is impaired by cannabis during work hours.

County employees regularly interact with the public. Law enforcement, code inspection, emergency services, and countless other public functions demand accountability and responsible public interactions. Providing a safe, productive, and drug-free work environment allows county employees to perform the essential functions of their jobs safely and efficiently, which is in the best interest of all employees and the residents they serve.

Despite their differences, Maryland county governments all have one goal in common: to provide for the health, safety, and well-being of their residents. This bill removes one tool available to further that important goal. For these reasons, MACo urges the committee to issue a **FAVORABLE with AMENDMENTS** report and **remove county governments from the scope of SB 504**.

SB504_Testimony_Admendements_Xavier.pdf

Uploaded by: Xavier, Joe

Position: FWA

February 9, 2021

TO: Judicial Proceedings

FROM: Summit Sustainability Solutions, proud member of Associated Builders and Contractors

RE: S.B. 504 – Discrimination in Employment – Use of Medical Cannabis – Prohibition

POSITION: FAVORABLE with Amendment

As an occupational safety and health professional specializing the construction safety, please consider and adopt the following amendment to SB 504. This amendment adds Section 20–606(g)(i):

(i) Cannabis is prohibited from the construction industry, meaning all business with a NAICS code beginning with 23.

Joe Xavier
CEO/Senior Consultant
Summit Sustainability Solutions

Brief Bio:
Former MOSH Compliance Officer/MOSH Training & Education Specialist
Former Director of Safety and Workers Compensation (Baking Industry)
Former Director of Safety/Quality (Construction Services Industry)

MTBMA MAA_SB 504_UNF.pdf

Uploaded by: Clark, Rachel

Position: UNF



MARYLAND ASPHALT ASSOCIATION



Senator William C. Smith, Jr., Chair
Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

UNFAVORABLE

February 5th, 2021

RE: SB 504 – UNFAVORABLE – Discrimination in Employment – Use of Medical Cannabis – Prohibition

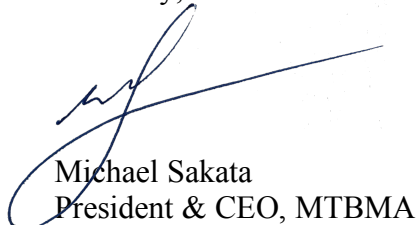
Dear Chairman Smith and Members of Senate Judicial Proceedings Committee:


The Maryland Transportation Builders and Materials Association (“MTBMA”) and the Maryland Asphalt Association (“MAA”) collectively represent tens of thousands of Marylanders who operate in the areas of transportation construction, production and engineering. Together, for nearly 100 years these organizations have served as the voice of the transportation construction industry. The mission of both MTBMA and MAA is to encourage, develop, and protect the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry, and also advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

While we appreciate the purpose behind this piece of legislation, our members feel this will result in unsafe practices within the transportation sector. Every day our employees engage in dangerous tasks, which require practicing the strictest of safety protocols. Performing this kind of labor under the influence of cannabis, medical or otherwise, would be extremely unsafe. Although the bill as written would prohibit the use of medical cannabis while an employee is on the clock, this is almost impossible to regulate. Without confirmation from a negative drug test, we cannot properly ensure the safety of our employees. We have serious concerns this legislation would make it difficult to fire an employee who was using medical cannabis while working if they could show they held a prescription. For these reasons, we ask for an UNFAVORABLE report on SB 504.

We thank you for your time and attention to this important matter.

Sincerely,


Michael Sakata
President & CEO, MTBMA


Marshall Klinefelter
President, MAA

SB504 vmcavoy Written Testimony.pdf

Uploaded by: mcavoy, vince

Position: UNF

UNfavorable SB0504

Vince McAvoy po box 41075 baltimore md

<https://baltimore.cbslocal.com/2018/03/28/eutaw-liquor-drug-raid/>

<https://www.railwayage.com/regulatory/ntsb-amtrak-safety-culture-to-blame-for-fatal-crash/>

<https://trn.trains.com/news/news-wire/2017/02/14-drugs-and-trains>

- Your employees smoke marijuana on their own time?
- Many workers do not want to work next to someone who may have been smoking pot before coming to work. It is hard to tell when someone used marijuana, there is no specific test for impairment. There are effects to using this controlled substance.
- State laws considered and the job functions in your company. Okay if an airplane pilot on your next flight was a pot smoker on the weekends and you are flying cross country on a Monday morning?
- The result of a workplace violation is a "2nd chance". This continues & perpetuates the drug problems in the workplace. The liabilities of an employee who is impaired by a drug do not go away if the drug is legalized. State laws OPENLY conflict with federal law.

Thanks for your time !

humbly

~vince

MD EXC SB 504 Testimony 2.5.21 FINAL.pdf

Uploaded by: Simpson, Maurice

Position: UNF



February 5, 2021

112 West Street
Annapolis, MD 21401

OPPOSE – Senate Bill 504
Discrimination in Employment – Use of Medical Cannabis - Prohibition

Potomac Electric Power Company (Pepco), Delmarva Power & Light Company (Delmarva Power), Baltimore Gas & Electric (BG&E), Constellation, and Exelon Generation (together as “Exelon”) oppose Senate Bill 504 as currently drafted. Senate Bill 504 would prohibit an employer, except under certain circumstances, from discriminating against an individual because of the individual’s receipt of a written certification for the use of medical cannabis or the individual’s positive drug test. The bill would establish that certain provisions prohibiting employment discrimination do not prohibit an employer from adopting policies and procedures that prohibit an employee from performing the employee’s duties while impaired by medical cannabis.

Exelon has concerns regarding the impact of this legislation given the highly regulated nature of our businesses and workforce and the potential conflicts that may arise under this legislation with existing federal rules and regulations. The exception crafted in this legislation allowing actions by a company *only* when failure to take the action “would violate federal law or regulations or cause the employer to lose a monetary or licensing–related benefit under federal law or regulations” is too narrow. As an example, our utility businesses are authorized, and in some instances required, to take certain actions with respect to cannabis use in connection with the federal Department of Transportation’s regulations pertaining to employees who use and maintain commercial drivers’ licenses as part of their employment. In the case of our generation assets, Exelon Generation is required at the Calvert Cliffs Nuclear Power Plant (CCNPP) to take certain actions relating to marijuana use pursuant to Nuclear Regulatory Commission (NRC) rules and regulations. In both cases, the requirement that we prove that a failure to take those actions would violate federal law or cause the loss of a monetary or licensing-related benefit is an impracticable standard. To address our concern on this subject, Exelon recommends the following language be added to the bill, replacing the current language at lines 10-12 and lines 30-32 on pg. 2:

“Unless the action is authorized by or is taken by the employer to comply with the requirements of federal, state or local law or regulations:”

Additionally, to ensure this legislation does not interfere with federal rules and regulations, we suggest the following addition as subsection (H) on pg. 3:

“Nothing in this Act shall be construed to interfere with any federal restrictions on employment including but not limited to the United States Department of Transportation regulations or the Nuclear Regulatory Commission regulations.”

Last, subsection (G) of SB 504 is too narrow as well. The authorization of policies that “prohibit an employee from performing the employee’s duties while impaired by medical cannabis” is limited in scope and could be broadened significantly to better reflect the need for employers to keep employees and, in our case, the general public safe. Illinois has adopted a number of provisions (*See* 410 ILCS 705/10-50 (a-h)) that may

be instructive here in establishing parameters for employer regulations related to the use of medical cannabis.

For the above reasons, Exelon respectfully requests an unfavorable vote on Senate Bill 504 as currently drafted.

Contact:

John P. Slocum
Senior Manager - State Government & Regulatory Affairs
630-301-0909
john.slocum@exelon.corp

SB 504_Discrimination in Employment_Use of Medical

Uploaded by: Griffin, Andrew

Position: INFO



LEGISLATIVE POSITION:

Letter of Information

Senate Bill 504

Discrimination in Employment – Use of Medical Cannabis – Prohibition

Senate Judicial Proceedings Committee

Tuesday, February 9, 2021

Dear Chairman Smith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

SB 504, as introduced, prevents employers from discriminating against applicants or employees in any form based on their holding a written certification for the use of medical cannabis or for an individual's positive drug test for cannabis if the individual holds a written certification for the use of medical cannabis. The Maryland Chamber of Commerce greatly appreciates this legislation and supports all efforts to reduce discrimination in the workplace, however, Maryland employers retain some concern with SB 504 as written.

SB 504 includes an exemption for employers if, "... A FAILURE TO DO SO WOULD VIOLATE FEDERAL LAW OR REGULATIONS OR CAUSE THE EMPLOYER TO LOSE A MONETARY OR LICENSING-RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS...". This provision is critical as Maryland is home to many federal installations, employers, and contractors. However, it is the opinion of the Maryland Chamber of Commerce that this exemption provision should also include "state" and "local" laws and regulations. There are some instances, like state law which disallows the use of medical cannabis to receive an EE license to drive a Commercial Motor Vehicle (CMV).

Additionally, the Maryland Chamber would suggest adding language referring to "any contract" in addition to federal law and regulation for the government contractors whose government clients will not allow a person to work on a government site or contract if they are a medical cannabis card holder or test positive. We suggest "any contract" as there are instances where a private entity could certainly tell a contractor the same thing.

Finally, there is concern about an employer's ability to effectively adopt and enforce any policies and procedures they may adopt laid out in subsection (G) to protect the employee and broader

workplace safety while that employee is impaired by medical cannabis. Currently, an accepted reliable and accurate method of testing for medical cannabis impairment on the job site does not exist. As a result, an employer cannot be expected to reasonably know if an employee is currently under the influence of medical cannabis or not while on the job. Without a reliable method of testing, employers are truly unable to ensure a safe work environment.

The Maryland Chamber of Commerce looks forward to working alongside the bill sponsor and members of the Senate Judicial Proceedings Committee to find agreeable solutions to these very real concerns.



Maryland State Police Position Paper SB 504.pdf

Uploaded by: Williams, Thomas

Position: INFO



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: February 9, 2021

BILL NUMBER: Senate Bill 504 **Position:** Letter of Information

BILL TITLE: Discrimination in Employment – Use of Medical Cannabis - Prohibition

REVIEW AND ANALYSIS:

This legislation seeks to prohibit an employer from discriminating against an employee because the employee is certified to use medical cannabis or the employee's positive drug test related to the use of medical cannabis. The employer is authorized to develop policies and procedures that limit an employee from performing the employee's duties while impaired by medical cannabis.

While the Maryland State Police (MSP) could adopt policies prohibiting employees from working while "impaired", that leaves room for an employee who has a positive drug test for "Cannabis Components or Metabolites" to argue that while they indeed had the drug or metabolite in their system, they were not "impaired." In other words, under (a)(1)(iii)(2), MSP would not be permitted to impose discipline or order drug treatment to a sworn employee simply because of a positive test for cannabis if they were a qualifying medical cannabis patient.

The MSP requires random drug testing of its sworn employees. Sworn employees are also required to notify the agency if they are prescribed any medication or if they are exposed to any drug which could impair the performance of their duties. If an employee is referred for drug screening because of work related issues and comes up negative, the agency moves onto other potential factors. However, if an employee tests positive for Cannabis and has a medical cannabis card, the agency cannot act. The Department may not have any recourse if the employee tests positive for Cannabis on multiple occasions but possesses a medical cannabis card.

Senate Bill 504 does provide an exception for violations of federal law or regulations. The MSP would suggest an amendment to exempt sworn law enforcement officers from this legislation.