



Senate Bill 726: Labor Peace Mandate Violates Federal Law

Prepared for: Chair Pamela Beidle
Maryland Senate Finance Committee

Prepared by: Geoff Lawrence, Director of Drug Policy, Reason Foundation

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Dear Chair Beidle and members of the committee:

On behalf of Reason Foundation, thank you for accepting these comments and making them part of the public record. Reason Foundation is committed to ensuring that state-regulated cannabis markets are designed in such a way that they remain dynamic and offer genuine economic opportunity to individuals from a range of backgrounds.

We are concerned that Senate Bill 726 would unconstitutionally usurp the exclusive jurisdiction of the National Labor Relations Board to govern private-sector labor relations. SB 726 would require a cannabis licensee to execute a labor peace agreement prior to seeking license renewal, and upon receiving said license renewal would require the licensee to maintain and abide by the labor peace agreement as a condition of licensure.

Senate Bill 726 also expands the definition of parties able to file a protest against a cannabis license renewal with the Maryland Cannabis Administration. Currently protests may only be filed by a group of at least 10 individuals directly impacted by the existence and presence of a cannabis licensee, such as residents, tenants, and neighbors. Senate Bill 726 would change the law to allow any “bona fide labor organization” to file a protest cannabis license renewals. This would open the door to any labor organization, for any reason, to delay license renewals and create an administrative burden, possibly without proper cause.

The Supremacy Clause to the U.S. Constitution elevates federal law above state and local laws that may be in conflict, and federal law reserves to the National Labor Relations Board the sole authority to regulate private-sector labor relations. Further, to the extent the Maryland Cannabis Administration would require an applicant to enter into a labor peace agreement as a condition of licensure, the agency would run afoul of relevant federal court precedents. In 1987 the U.S. Supreme Court ruled the city of Los Angeles could not withhold the license of a taxicab company (a privileged license type similar to those for cannabis) based solely on the condition that the company resolve a labor dispute.¹ The city’s regulation of private-sector labor disputes, noted the court, was preempted by the National Labor Relations Board’s authority and therefore no privileged license can be conditioned on a labor peace agreement. Similarly, in 2005, a U.S. Court of Appeals ruled that a provision in Wisconsin that would have required contractors with local governments to enter a labor peace agreement ran afoul of the National Labor Relations Act.²

¹ *Golden State Transit Corp. vs. City of Los Angeles*, 660 F Supp. 571 (1987).

² *Metro Milwaukee Commerce vs. Milwaukee County*. United States Court of Appeals, Seventh Circuit, 431 F 3d 277. Dec. 5,

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Proponents of Senate Bill 726 will likely point to a similar provision within California's cannabis licensing scheme as support for Maryland's proposed rule. California's rules require a marijuana licensee with more than 20 employees to enter a labor peace agreement. Many legal scholars expect the California rule to eventually be legally challenged and struck down as violative of the National Labor Relations Act.³ In the meantime, the rule is failing on the ground. Many licensed cannabis growers in California have avoided the requirement by contracting with farm labor services or structuring their operations such that no licensed entity exceeds the threshold of 20 direct employees.

Lawmakers in Michigan and Oregon considered rules similar to Maryland's Senate Bill 726, but did not advance them after Reason Foundation highlighted the nature of federal court precedent and primacy of federal law on this issue.

Federal law is clear on these issues and excludes states from enacting requirements such as those contained in Senate Bill 726. Even where states enact marijuana laws that may conflict with federal interpretation of the Controlled Substances Act, those states still have no leeway within such laws to simultaneously usurp or violate federal labor law. We are concerned that these actions—which have also been proposed elsewhere—could jeopardize Maryland's state-regulated cannabis markets overall.

Sincerely,

Geoffrey Lawrence, Director of Drug Policy
Reason Foundation

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³ See, e.g., Keahn N. Morris, "AB 1291 Forces California Cannabis Companies to Sign 'Labor Peace Agreements' with Unions, but Statute May Be Unconstitutional," *The National Law Review*, October 23, 2019, <https://www.natlawreview.com/article/ab-1291-forces-california-cannabis-companies-to-sign-labor-peace-agreements-unions>; Chandler Armistead et al., "California Attempts to Weed Out Unfair Labor Practices at the State Level by Enacting Union-Friendly Regulation on Employers in the Cannabis Industry," *JD Supra*, November 18, 2019, <https://www.jdsupra.com/legalnews/california-attempts-to-weed-out-unfair-48662/>.

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