

Draft Pending Adoption

Attachment Two
Property and Casualty Insurance (C) Committee
12/15/22

Draft: 12/1/22

Cannabis Insurance (C) Working Group
Virtual Meeting (*in lieu of meeting at the 2022 Fall National Meeting*)
November 29, 2022

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met Nov. 29, 2022. The following Working Group members participated: Ricardo Lara, Chair, represented by Melerie Michael and Camilo Pizarro (CA); Michael Conway, Vice Chair, represented by Peg Brown (CO); Jimmy Harris (AR); Angela King (DC); Christina Miller (DE); C.J. Metcalf (IL); Marlene Caride represented by Randall Currier (NJ); Gennady Stolyarov (NV); Andrew R. Stolfi represented by Jan Vitus (OR); Sebastian Conforto (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Karla NuiSSL (VT); and Michael Walker (WA).

1. Adopted its Oct. 19 Minutes

Brown made a motion, seconded by Currier, to adopt the Working Group's Oct. 19 minutes (Attachment Two-A). The motion passed unanimously.

2. Received an Update on Drafting the *Understanding the Market for Cannabis Insurance 2.0* White Paper

The drafting group continues to meet every two to three weeks, and the *Understanding the Market for Cannabis Insurance 2.0* white paper draft is nearly complete. The drafting group is now focused on leveraging information gained during the panel discussion to update the legislative pieces of the white paper for recent activities. Emerging issues, such as on-site consumption, will be explored in 2023 and added to the white paper through an appendix. This will allow the Working Group to publish the white paper without the paper becoming outdated. The drafting group anticipates bringing the completed draft before the Working Group by early next year with full adoption by the next Summer National Meeting.

3. Heard a Panel Discussion on Recent Federal and State Political Movements and How They May Affect the Industry

Michael asked what the outlook for legislative initiatives, such as the Secure and Fair Enforcement (SAFE) Banking Act, the Clarifying Law Around Insurance of Marijuana (CLAIM) Act, the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, Cannabis Administration and Opportunity Act (CAOA), and the Medical Marijuana and Cannabidiol Research Expansion Act is in the lame-duck session and beyond.

Michael Correia (National Cannabis Industry Association—NCIA) stated the SAFE Banking Act, passed by the U.S. House of Representatives (House) in 2019, was the first time the U.S. Congress (Congress) passed a major cannabis reform. The House Democrats have since passed multiple versions of cannabis legalization bills. The SAFE Banking Act has been passed by the House on seven separate occasions, with strong bipartisan support, so it would likely have less trouble being passed by the U.S. Senate (Senate) than some of the other bills. The Medical Marijuana Research Act has been passed by both sides of Congress and is awaiting President Joe Biden's signature. Bills on the legalization of cannabis do not have strong bipartisan support in the Senate, which tends to move slower and be more conservative. The SAFE Banking Act is being discussed in Congress. Correia said he is optimistic that a version of it will be passed.

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Brooke Stringer (NAIC) stated that in 2021, the NAIC voted to endorse the SAFE Banking Act and the CLAIM Act. The CLAIM Act is more focused on insurance. The NAIC represents 56 jurisdictions and takes no position on issues such as legalization, but instead defers to whatever has been decided by each state. It supports these bills as it assists policy issues affecting those states that have chosen to legalize cannabis in some form. There is great bipartisan support for certain bills in the Senate; however, the rules in the Senate are such that one senator can put a hold on something, so Stringer is cautiously optimistic.

Nicole Austin (Reinsurance Association of America–RAA) stated that the RAA, the American Property Casualty Insurance Association (APCIA), the Council of Insurance Agents & Brokers (CIAB), the American Council of Life Insurers (ACLI), the Wholesale & Specialty Insurance Association (WSIA), the Independent Insurance Agents & Brokers of America (IIABA), Professional Insurance Agents (PIA), the American Land Title Association (ALTA), and the National Association of Mutual Insurance Companies (NAMIC) support the SAFE Banking Act and the CLAIM Act. The CLAIM Act provides a safe harbor for the entire industry from agent to reinsurer and all the activities that are involved. The RAA is excited that the NAIC endorsed these acts. The RAA does not take a position on the legalization of cannabis, but it supports the states' positions on it. It is important that the insurance industry can do business with cannabis-related businesses that are state legalized *and* the businesses that do business with them. A notable example was provided by a senator from Ohio about the bank account for an irrigation company being shut down when it sold one of its manufactured farm systems to a cannabis grower. The RAA believes there is a high probability that the SAFE Banking Act with the insurance safe harbor will pass if there is a large omnibus spending package, which Austin believes is likely, during the lame-duck session. Research, social equity, and other issues may be added to the SAFE Banking Act to gain more bipartisan support.

Morgan Fox (National Organization for the Reform of Marijuana Laws–NORML) stated that U.S. Sen. John Cornyn (R-TX) made a procedural protest that delayed the passage of the Medical Marijuana and Cannabidiol Research Expansion Act in September, despite his stated support for cannabis research. The protest was related to broader frustrations that the opposite chamber had not acted on his own unrelated proposals. This is an example of how a single senator can hold things up. The NORML is disappointed the passed bill did not include the House provisions that researchers would be able to access cannabis products that are available in regulated markets. However, it recognizes that it is the first standalone cannabis policy legislation that has ever passed through both chambers of Congress. There will be a lot of opportunities in the House Committee on Appropriations in the near future. Fox believes there will be a continuing resolution until the next session. The ultimate spending package will most likely include the SAFE Banking Act with some antidiscrimination measures and explicit protections for minority deposit institutions. There will likely also be funding for state-level expungement efforts, which is important since most related convictions are at the state level. Bipartisan support for conviction relief, especially with federal funding, is a very new occurrence that was not seen just three years ago.

Stringer stated that the midterm results in Georgia would give a good sense of the makeup of the Senate next year.

Austin stated that any package before the next Congress would likely have the SAFE Banking Act included. The good news is there is no language in the insurance space that is under threat in the SAFE Banking Act.

Fox stated that although the Medical Marijuana and Cannabidiol Research Expansion Act has been passed, it will be a long time before the research stemming from it will be available. However, there is enough research data now to justify making substantive federal changes in policy and law. Even incremental legislative changes propel the issue forward as it raises education and comfort among politicians.

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Stringer stated that insurance has long tentacles and touches everything. There are a lot of opportunities for the insurance industry to encounter the potential for federal action if they serve the cannabis-related industry. Therefore, it is important to move forward on legislative pieces everyone can support, regardless of how comprehensive or incremental.

Austin said the insurance industry supports the passage of legislation providing a safe harbor. The insurance industry is poised to provide products and services to existing customers and ancillary businesses. There are no products and services being offered in the cannabis space, and a safe harbor is needed for this to happen.

Michael stated that on Oct. 7, Biden announced that he would issue pardons to everyone convicted of the federal crime of simple marijuana possession. He also called for governors to make similar moves for convictions under state laws. Michael asked about the implications of this announcement and an explanation of the difference between a pardon and an expungement.

Correia stated that the president's move was historic and symbolic, but he was surprised it was not done at the beginning of his term given how popular the pardon has been.

Fox stated that the pardon would only affect 6,500 people, as most of the simple cannabis possession charges occur at the state level. Twenty states have begun expungements, with two million expungements having already occurred. A pardon is just a note on your record indicating that a presidential pardon has taken place. This helps with civil penalties involved with having a conviction record, such as voting rights. An expungement removes the conviction from the record. However, background check companies may still include the charge. The president's announcement was met with overwhelming bipartisan support. Directing the U.S. Department of Health and Human Services (HHS) to review the marijuana placement on the schedule of controlled substances is symbolically big. However, in practice, there will not likely be much movement on this issue until Congress acts.

Currier asked for clarification on whether the medical research bill has passed. Fox stated that it has not been signed by the president yet, but it is awaiting his signature. The White House has indicated that the president will sign it as soon as it is officially transmitted. It was sponsored in the Senate by U.S. Sen. Dianne Feinstein (D-CA) and U.S. Sen. Chuck Grassley (R-IA) and in the House by U.S. Rep. Earl Blumenauer (D-OR) and U.S. Rep. Barbara Lee (D-CA). The bill will create a facilitation mechanism for approving more research submissions and applications and more research production. Currently, there is only one legal federal producer and provider of research-grade cannabis, and it is too subpar for useful research. This legislation does not allow researchers to be able to access products from legal state markets. Universities would not want to risk losing federal funding by going outside of the federal guidelines. This bill expedites the application process and sets a more stringent timeline for the approval or denial of applications. In the past, these applications could flounder for years in bureaucracy.

Michael stated that the Farm Bill removed hemp from Schedule 1 of the Controlled Substances Act (CSA) and permitted states to create industrial hemp programs. However, the U.S. Food and Drug Administration (FDA) also stated that marketing cannabidiol (CBD) as foods or dietary supplements remains unlawful. This creates uncertainty and product liability coverage concerns in a market now saturated with hemp and CBD products. Michael asked if there have been legislative attempts to clarify the federal legality of CBD and/or the role of the FDA and what role the FDA should play. She also asked if there have been any federal or state legislative movements toward regulating or restricting synthetic cannabinoids derived from legal hemp.

Fox stated that the legality of CBD is established under the Farm Bill, but the FDA has been slow to regulate things like CBD and synthetic cannabinoids. Although there is significant debate, he does not believe synthetic

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cannabinoids are legal under the Farm Bill. There is one circuit court that has ruled that they are legal under the Farm Bill. Ultimately, it will be decided by the U.S. Supreme Court. The fact that CBD has not been regulated or cleared by the FDA has created a situation where large-scale retailers are unwilling to carry CBD products. It is also resulting in a lot of CBD products being mislabeled or lacking labels with professed amounts of CBD or disclosure that they might contain heavy metals. The only testing requirements are from existing state medical cannabis systems, which are now in the minority of CBD products that are available on the commercial market. This has resulted in untested and unregulated products with little scientific research on their clinical effectiveness being sold in gas stations. This creates serious issues for insurers, consumers, businesses producing and selling, and state insurance regulators. The FDA needs to start regulating CBD as soon as possible. It is a good sign that the FDA recently hired a former New York state insurance regulator to start to weigh in on these issues. There is a role for the FDA in an eventual rescheduling and federal regulatory regime, but it should be limited. Most of the regulatory oversight for cannabis products should fall to another agency that is more suited for it.

Correia stated that the fact that the Farm Bill was passed four years ago and the federal government is still working on its related issues illustrates how slow bureaucracy is to catch up to a fast-moving industry. Hemp is a policy issue that needs to be addressed. The original intent was to separate intoxicating and non-intoxicating cannabis. Technology advancements have now made it possible to synthesize intoxicating cannabinoids out of a product originally assumed to hold no intoxicating potential. The NCIA published a paper in 2019 on its perspectives surrounding a federal regulation system on cannabis.

Michael stated that the federal-state law conflict is particularly evident in the financial services sector where cannabis businesses are limited to state charter banks and may incur higher banking fees. She asked if there have been legislative solutions proposed.

Stringer stated that the NAIC will continue to support the SAFE Banking Act and the CLAIM Act. Austin stated that insurers are poised to do business in the cannabis space, but the looming federal-state conflict threat needs to be solved. The SAFE Banking Act and the CLAIM Act are the perfect answer to solving this conflict between federal and state laws.

Having no further business, the Cannabis Insurance (C) Working Group adjourned.

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