

OUR MEETING WILL BEGIN SHORTLY

WELCOME TO THE CANNABIS INSURANCE (C) WORKING GROUP MEETING

VIRTUAL ATTENDEES

- Audio will be muted upon entry.
- To request to speak, use the "Raise Hand" feature.
The chair will be alerted.
- Video optional.
- Use the “Chat” feature for questions, comments, or assistance.
- If joining by phone, press *6 to mute/unmute.
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WELCOME & CALL TO ORDER

Katey Piciucco, Chair	California	Melissa Robertson/	New Mexico
TK Keen, Vice Chair	Oregon	Ursula Almada	
Nathan Hall	Alaska	Glen Mulready/	Oklahoma
Jimmy Harris	Arkansas	Brian Downs	
Jennifer Welch	Delaware	Michael Humphreys/	Pennsylvania
Angela King	DC	Sebastian Conforto	
C.J. Metcalf	Illinois	Carlos Vallés	Puerto Rico
Ryan Blakeney	Mississippi	Karla Nussl	Vermont
Gennady Stolyarov	Nevada	Michael Walker/	Washington
Justin Zimmerman	New Jersey	Tyler Langford	

Agenda Item #1

Consider Adoption of its Nov. 18, 2024, Minutes

—*Katey Piciucco (CA)*

Draft Pending Adoption

Attachment One
Property and Casualty Insurance (C) Committee
11/19/24

Draft: 11/22/2024

Cannabis Insurance (C) Working Group
Denver, Colorado
November 18, 2024

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met in Denver, CO, Nov. 18, 2024. The following Working Group members participated: Katey Piciucco, Chair (CA); TK Keen, Vice Chair, Raven Collins, and Jason Horton (OR); Nathan Hall and Sian Ng-Ashcraft (AK); Lori Plant and Jimmy Harris (AR); Christina Miller and Catherine Reaves (DE); Angela King (DC); C.J. Metcalf (IL); Ryan Blakeney (MS); Gennady Stolyarov (NV); Randall Currier (NJ); Ursula Almada (NM); Andrew Schallhorn and Brian Downs (OK); Sebastian Conforto and Michael McKenney (PA); Damaris Rosado (PR); Beth Vollucci (RI); Karla Nuissl and Rosemary Raszka (VT); and Michael Walker (WA). Also participating was: Megan VanAusdall (NE).

1. Adopted its May 8 Minutes

The Working Group met May 8 and took the following action: 1) adopted its Dec. 19, 2023, minutes; 2) heard an update on cannabis-related legislative activities; 3) heard a presentation from BDSA on trends and emerging issues in the cannabis space; 4) heard a presentation from Jencap Specialty Insurance Services (Jencap) on insurance availability, coverage trends, and new risks in the cannabis space; and 5) heard a presentation on the work of the Insurance Institute for Highway Safety (IIHS) and the Highway Loss Data Institute (HLDI) on the legalization of marijuana for recreational use.

Vollucci made a motion, seconded by Keen, to adopt the Working Group's May 8 minutes (*see NAIC Proceedings – Summer 2024, Property and Casualty Insurance (C) Committee*). The motion passed unanimously.

2. Heard a Presentation on Cannabis Regulation in Colorado and CANNRA Activities

Dominique Mendiola (Colorado Department of Revenue [DOR] and Cannabis Regulators Association [CANNRA]) said the Colorado DOR licenses and regulates the commercial cultivation, manufacture, laboratory testing, and sale of medical and adult-use marijuana in the state of Colorado. The Colorado DOR brings issues it has navigated in its regulatory work in Colorado into its national engagement with cannabis regulators who are members of CANNRA. This includes the evolution of products in the market, receiverships/probate matters, premises security and surveillance, managing production to avoid oversupply risks and ensure inventory meets demand, and data-driven approaches to risk-based investigations.

CANNRA is a nonpartisan nonprofit association of government agencies involved in cannabis and/or cannabinoid hemp regulation. Its members are current government members from more than 45 states, as well as Canada and the Netherlands. CANNRA is not an advocacy group and takes no formal position for or against cannabis legalization. It is focused on education and peer-to-peer support. CANNRA has more than a dozen committees spanning the breadth of cannabis and cannabinoid policy topics (traffic safety, public health, banking, equity, packaging and labeling, etc.). Colorado is a statewide member (so all agencies with a tie to administering the state's cannabis laws are engaged, including the Department of Regulatory Agencies (DORA) and the insurance regulators.

CANNRA is focused on consumables, not industrial uses. The cannabis plant has over 100 different molecules that interact with the body (endocannabinoid system). The two most well-known cannabinoids are tetrahydrocannabinol (THC) and cannabidiol (CBD). Unlike CBD, THC has psychotropic effects and includes several

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“isomers” (delta-8, delta-9, delta-10). Delta-8 and delta-10 are present in smaller quantities than delta-9. The World Health Organization (WHO) estimates delta-8 is about 50%–75% as potent as delta-9 (but not widely studied or understood). Hemp is federally legal and regulated by the U.S. Department of Agriculture (USDA) as an agricultural plant. The legalization of hemp was done with a focus on hemp as a commodity crop (i.e., textile). Post legalization, CBD could be chemically converted into delta-8, delta-9, and delta-10 THC, using solvents (e.g., ethanol) and acids (e.g., sulfuric acid, nitric acid, etc.). Marijuana is federally illegal and regulated by states that have legal cannabis policies in place.

The 2018 Farm Bill legalized “the plant species *Cannabis Sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3% on a dry weight basis.” The delta-9 THC concentration needs to be not more than 0.3% on a dry weight basis. Its definition focuses on a dry weight measurement of the plant material. When dried, however, a large amount of THC can be extracted in concentrated form, even if it initially met that 0.3% limit. As a result of the Farm Bill’s language, the argument and legal interpretation many are taking is that it is legal to have more delta-9 THC in a hemp-derived product than what is allowed in a regulated marijuana product. This created a gray area of regulation and resulted in an influx of CBD products that could be converted into other cannabinoids. The Drug Enforcement Agency (DEA) made clarification efforts in 2020 but did not directly address “synthetic.” The DEA has issued other positions that have not yet created significant clarity. The U.S. Court of Appeals for the Ninth Circuit’s decision on May 2022 (which was a trademark copyright case over delta-8 vape products) ruled that products that contain delta-8 are completely legal under the 2018 Farm Bill. Other court cases have further assessed whether delta-8 products are legal. The court stated that the text of the Farm Bill was plain and unambiguous and that delta-8 products are lawful. The Farm Bill did not name a regulator for finished cannabinoid products, as the USDA focuses more on farming and cultivation.

Delta-8 products are being advertised in mainstream outlets nationwide (online, convenience stores, etc.). The market is also seeing an increase in delta-10 and products that do not exist in nature (e.g., hexahydrocannabinol [HHC], THC-O-acetate). Products reflect the multiple methods of consumption (edibles, vapes, etc.). Products are marketed with medicinal claims despite there being no consistent required testing or regulatory oversight. The FDA has not taken on regulatory authority but has issued health alerts and warnings to companies making health claims.

Regulatory challenges include limited authority, blurred lines, and a parallel industry that does not have consumer safety in focus but has interstate and online sales. Consumer confusion is a safety concern. Public education is tied to cannabis products. There are not the same educational efforts around hemp-derived cannabinoid products. Hemp-derived cannabinoid molecules are new and unknown, and there is a lack of product testing and oversight (unlike the testing and oversight within the regulated cannabis market). There is no oversight of additives and by-products, and there are risks of heavy metals and other contaminants.

This is evidenced by the crisis in e-cigarette or vaping use-associated lung injuries (EVALI). In the regulated cannabis market, regulators were able to intervene and prevent broad harm from unsafe byproducts (such as vitamin E acetate). The proliferation of intoxicating hemp products is reintroducing the public health/safety risks that cannabis regulators worked hard to mitigate and prevent in the cannabis space. There is no federal regulation for safety over finished products. There is also no recall authority similar to established cannabis frameworks. Medical claims are not approved by the FDA and/or supported by research. Potency, serving sizes, and package limits far exceed the regulated marijuana market. The availability of these hemp-derived intoxicating cannabinoids in retail and online stores makes them widely available to youth. All of these negative factors are undermining the regulated cannabis market, and Colorado is feeling the impact in part due to this parallel market with far lower barriers and oversight.

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Cannabis and hemp-derived cannabinoid products are highly technical subjects. This makes it difficult to educate others, including legislatures. Additionally, legislators are focused on a range of issues, resulting in an education gap. There is disagreement regarding how to define “impairing” and how to treat non-natural products (synthetics). There is no or limited regulatory authority over cannabinoid hemp products. The lack of research hinders regulators’ ability to make decisions on many of these molecules. There is limited federal engagement, increased challenges in understanding data on safety and adverse events, and increased consumer confusion about what is legal, safe, tested, and intoxicating.

The approaches states are taking include banning, regulating like marijuana, regulating like hemp, or using a hybrid approach. Some states, like California, have banned intoxicating hemp cannabinoid products. Other states, including Maryland, Nevada, and Oregon, regulate all or some cannabinoid hemp products through a state cannabis regulator. Oregon’s House Bill 3000 defined “adult-use cannabinoid” and largely moved it under the cannabis regulator with regulatory authority for THC concentration limits. Michigan in 2021 defined THC more broadly (beyond delta-9) and included whether it was artificially or naturally derived and moved it under the cannabis regulatory agency.

Some states regulate cannabinoid hemp products through another state agency (not a cannabis or hemp regulator). For example, Kentucky and Tennessee regulate all or some cannabinoid hemp products through their departments of agriculture. Some states regulate the manufacture of cannabinoid hemp products through their public health department, coupled with restrictions on sales. For example, Colorado has a safe harbor designation for “intoxicating” products, like delta-8, where such products can be manufactured in the state but only sold in other states that do not prohibit them.

Connecticut, Minnesota, and New Jersey provide allowances for THC beverages or other products meeting a specific serving size limit to be sold in certain general retail environments. Minnesota allowed THC derived from hemp to be made available to adults. The state sets a serving size that aligns with some states in their own adult-use policies for the cannabis industry. Colorado allows the manufacture of “intoxicating” cannabinoid hemp products, with restrictions on sales in the state (safe harbor designation). For other categories of products not deemed “intoxicating,” there is an imposed age-gating based on the THC/CBD ratio. State actions have occurred through state legislatures (e.g., Arkansas and North Dakota), rules from regulatory agencies (e.g., Alaska), and executive orders (e.g., Missouri).

More state government agencies are engaging in this area. The Colorado Attorney General (AG) consumer protection unit directly engages in supporting efforts toward addressing risks to public health and safety and evidence of misrepresentations to consumers on labels and marketing. It filed suit against a Greeley hemp company and its owner for allegedly selling cannabis products with THC content up to 35 times higher than the legal limit. The suit, filed June 11 in Weld County District Court, alleged the business not only sold high-THC edibles, flower, and concentrates marketed as hemp and CBD products but also forged lab analysis documents. A separate lawsuit initiated against a CBD company by the Colorado AG recently led to an announcement released this week that the involved company agreed to pay a large fine (\$225,000) to resolve the matter. This case involved allegations of misrepresentations about the source of their products, their “organic” status, and misleading information about their support of particular conservation groups. There was also a lack of age-gating (i.e., age verification).

State departments of agriculture face challenges regarding authority, resources, and capacity to regulate the cannabinoid products dominating the market. There have been declines in licensees (especially licensees engaged in industrial hemp production), resulting in decreased funding for departments of agriculture to do this work.

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Other challenges include an increase in cannabinoid production over industrial production, the rise of tetrahydrocannabinolic acid (THCA) smokeable flower, and the rise of synthetic cannabinoids. There are also challenges in terms of authority, resources, and capacity to regulate the cannabinoid products dominating the market and litigation against states.

State regulators would benefit from federal regulation and oversight of cannabinoid products coming from hemp. It would also be beneficial to clarify existing state authority to regulate this space as they see fit. Additionally, reliable and sustained funding for state work in this space is needed. Investment and funding are also needed to support true industrial hemp production for food, fiber, and building materials. Additionally, state regulators would benefit from increased research on both the cannabinoid hemp and industrial hemp side.

CANNRA resources include:

- CANNRA Letter on Hemp-Derived Cannabinoids (April 2023)
- CANNRA Testimony to Congress (July 2023)
- CANNRA Response to Congressional Request for Information (RFI) (Aug 2024)
- CANNRA Best Practices for Regulating Cannabinoids
- CANNRA Letter on State Authority (May 2024) (Letter to Congress asking for further clarification to existing state authority to regulate cannabinoid hemp sales within their state.)

VanAusdall asked if CANNRA has educational information. Mendiola stated that CANNRA's website has a host of information on key regulatory topics through factsheets and topic summaries. She also recommended attending the annual stakeholder meeting in Denver in June 2025.

Piciucco asked what external influences CANNRA experiences and how it navigates them. She also asked if CANNRA reaches out to currently inactive states. Mendiola stated the annual stakeholder meeting is held to bring in outside perspectives. Attendees must be engaged in cannabis and/or cannabinoid activities and not involved in the manufacture or distribution of alcohol or tobacco. CANNRA does reach out to those not currently in its organization, particularly those in newly legalized states.

3. Heard a Presentation on Impediments for Otherwise Admitted Carriers to Write Coverage for Cannabis

Christy Thiems (American Property Casualty Insurance Association—APCIA) said cannabis remains an active issue, and many of the same challenges remain. Twenty-four states and the District of Columbia (DC) have legalized cannabis for adult use. Medical use is legal in 29 states and DC. Nebraska is the 30th state to legalize cannabis for medical use, but legal challenges are expected. In the state of Florida, 56% of voters supported legalization for adult use, but 60% were required to update the state's constitution, so the measure failed.

The legalization of cannabis failed in North Dakota and South Dakota. The psychedelics measure failed in Massachusetts. The Arkansas Supreme Court ruled the votes could not be counted. Since the Farm Bill descheduled hemp, intoxicating hemp markets have taken off and, in many states, are essentially legal. Thirteen states expressly permit intoxicating hemp products, but it is prevalent countrywide, and many states do not have an agency tasked with monitoring it.

The legal cannabis industry has the same needs as any other industry. It requires commercial insurance coverages, including general liability, property, workers' compensation, product liability, and directors and officers (D&O). Some concerns relate to complex regulations and increased risks within coverages that may seem like a fit. This

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includes liability arising from: 1) third parties (e.g., an already impaired customer); 2) collateral exposures, such as the potential increased crime risk for a landlord renting to a cannabis business; 3) products used outside of the intended purpose, such as prepackaged brownie mixed used for edibles; and 4) exposure of reimbursing for legal growing, such as a homeowners policy in the event of a fire. Without an objective impairment standard and a reliable method to measure impairment, insurers continue to have concerns about roadway and workplace safety. Carriers are also concerned about coverage mandates and previously approved exclusions being rejected. While no state has mandated that admitted insurers provide coverage, going as far back as 2018 in California, admitted insurers were publicly encouraged to write for the legal cannabis industry. Some states have attempted to pass legislation “allowing” admitted carriers to write in their state without fear of prosecution, but these measures cannot provide protection from federal prosecution. The largest barrier is still the continued federal illegality of cannabis and the fear of federal prosecution.

The Secure and Fair Enforcement Regulation (SAFER) Banking Act would provide a safe harbor for the financial industry, including insurance, to do business with the legal cannabis industry. It would provide the insurance industry the certainty it needs to provide services to the legal cannabis industry. It would also address the collateral risks for companies not directly involved with the cannabis industry but still doing business (e.g., grow light and irrigation manufacturers, etc.). While the SAFER Banking Act is not expected to pass this year, there will likely be movement in the next Congress.

Rescheduling cannabis to Schedule III does not solve the federal illegality problem. Many of the same laws and uncertainty will still apply. It will open the door to more research, which is necessary to develop an objective impairment standard and reliable test for impairment. This is key to keeping roadways and workplaces safe as legalization continues.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/2024_Fall/Cannabis/11-CannabisWG.docx

Agenda Item #2

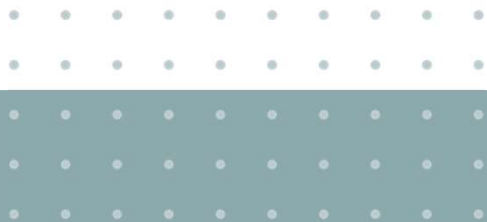
Hear a Presentation on What to Expect in 2025 Related to Cannabis and Hemp with the New Administration

—*Morgan Fox (NORML)*

Agenda Item #3

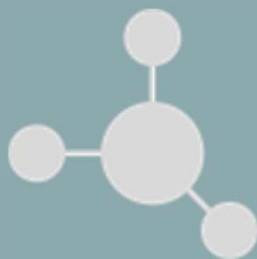
Hear a Presentation on State-Based Regulation of Intoxicating Hemp Cannabinoids

—Chris Lindsey (American Trade Association of Cannabis and Hemp—ATACH)



2025 Status and Policy Trends

Hemp Intoxicants Legislation



Categories of Hemp Regulation

- States fall into four regulatory models
 - Prohibited (full bans)
 - Unregulated (no state oversight)
 - Stand-alone hemp regulation (testing, labeling)
 - Alcohol
 - Cannabis law integration (dispensary-only)

State-by-State Landscape

Most states now regulate—or ban—intoxicating hemp.

- Bans in place: NY, CO, NV, ID, HI
- Unregulated: FL, TX, IN, PA, MO
- Regulate as cannabis: CA, CT, OR, WA
- Stand-alone: TN, GA, KY



Legislative Trends





Youth Access

- 21+ is universal
- School and Youth Zone restrictions
- Public education



Potency

- Per milligram caps
- Some still based on percentage
- Some defining “intoxicating” by mg threshold
- Banning specific form factors
 - THCA flower
 - Synthetics



Types of Bans

- Re-scheduling THC, allowing other cannabinoids
- Blanket ban on sales
- Blanket ban on production
- Banning specific chemicals (THCp), or all synthetics



How Synthetics are Defined

- “Artificially derived cannabinoid” versus “synthetic” versus “semi-synthetic”
- Specific analogs of THC
- “Naturally occurring”
- Defining “intoxicating” by mg threshold



Taxes and Revenue

- Excise taxes
- Parity with marijuana taxes
- Funding for enforcement and research
- Licensing fees

Regulatory Authority

- “Unregulated” is going away
- Southern states looking at shifting authority to Ag departments or tobacco regulators
- Integration into cannabis program is a common theme
- States are pulling in additional agencies for aspects of oversight

Retail Outlets

- Dispensary vs alcohol outlets
- Pharmacy only for CBD
- Alcohol-licensed premises
- Still not seeing strong movement in the direction of import/export management

Testing

- They all want testing
 - Independent vs State Certified
 - Byproducts of synthetic conversion
- Accurate labels
- QR code with penalties for failure to post test results
 - Test results need to be comprehensive
- Banning additives of various kinds



Regional Patterns

- **Southeastern States**
 - Bans and restrictions for intoxicants
- **Western and Northeastern states**
 - Integration into cannabis programs
- **Midwest and Southwestern states don't have strong trends – wide array of solutions**

Emerging Themes

- General agreement on the problem
 - Not just a narrative about farmers or “Big Marijuana” any longer
- Hemp brand is seriously damaged (but lawmakers stuck and can't ban politically.)
- Age limits and safety standards are driving discussions
 - Testing and labeling are huge area of focus
- Three buckets
 - Cannabis
 - Alcohol
 - Hemp only
- Bans are very unpopular
 - All-natural, low dose, outside of dispensaries is the trend

Agenda Item #1

Q&A

Agenda Item #4

Discuss Any Other Matters Brought Before the Working Group
— *Katey Piciucco (CA)*

Adjournment
