Date: 10/4/24

2024 Fall National Meeting
Denver, Colorado

CANNABIS INSURANCE (C) WORKING GROUP
Monday, November 18, 2024
12:00 – 1:00 p.m.
Gaylord Rockies Hotel—Colorado Ballroom C/D—Level 3

ROLL CALL

Ricardo Lara/Katey Piciucco, Chair	California	Melissa Robertson/ Ursula Almada	New Mexico
Andrew R. Stolfi/TK Keen, Vice Chair	Oregon	Glen Mulready	Oklahoma
Nathan Hall	Alaska	Michael Humphreys/ Sebastian Conforto	Pennsylvania
Jimmy Harris	Arkansas	Carlos Vallés	Puerto Rico
Catherine Reaves	Delaware	Beth Vollucci	Rhode Island
Angela King	District of Columbia	Karla Nuissl	Vermont
C.J. Metcalf	Illinois	Michael Walker	Washington
Ryan Blakeney	Mississippi		
Gennady Stolyarov	Nevada		
Justin Zimmerman	New Jersey		

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

AGENDA

1. Consider Adoption of its May 8 Minutes —*Katey Piciucco (CA)* — Attachment A

2. Hear a Presentation on Cannabis Regulation in Colorado and Cannabis Regulators Association (CANNRA) Activities —*Dominique Mendiola (Colorado Department of Revenue and CANNRA)* — Attachment B

3. Hear a Presentation on Impediments for Otherwise Admitted Carriers to Write Coverage for Cannabis—*Christy Thiems (American Property Casualty Insurance Association—APCIA)* — Attachment C

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

5. Adjournment

Draft: 6/17/2024

Cannabis Insurance (C) Working Group
Virtual Meeting
May 8, 2024

The Cannabis Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met May 8, 2024. The following Working Group members participated: Tyler McKinney, Chair (CA); TK Keen, Vice Chair (OR); Austin Childs and Nathan Hall (AK); Catherine Reaves (DE); C.J. Metcalf (IL); Deborah Ivory (MS); Randall Currier (NJ); Elouisa Macias (NM); Gennady Stolyarov (NV); Sebastian Conforto (PA); Carlos Vallés (PR); Beth Vollucci (RI); Karla Nuissl (VT); and Michael Walker (WA).

1. <u>Adopted its Dec. 19, 2023, Minutes</u>

Currier proposed the phrase "for a jewelry store" be removed from the first paragraph on the fourth page of the Working Group's Dec. 19, 2023, minutes.

Currier made a motion, seconded by Walker, to adopt the Working Group's Dec. 19, 2023, minutes (Attachment One-A) with the aforementioned revision. The motion passed unanimously.

2. <u>Heard an Update on Cannabis-Related Legislative Activities</u>

Alex Swindle (NAIC) stated that there continues to be a lot of activity on cannabis issues in the U.S. Congress (Congress). Members of Congress from states where cannabis is legal have historically supported giving the cannabis industry access to insurance and banking services. Most financial services continue to be reluctant to do business with cannabis-related businesses due to the federal classification of marijuana as a Schedule I controlled substance under the Controlled Substances Act (CSA). This leaves many legal businesses unable to access insurance bank accounts or lines of credit. The result is that most cannabis businesses operate on a cash basis, which is very risky. A few bills have been introduced over the years to address this. However, the Secure and Fair Enforcement Regulation (SAFER) Banking Act has had the most momentum. This bill provides protection for federally regulated financial institutions that serve state-sanctioned marijuana businesses. Under the bill, a federal banking regulator may not penalize a depository institution for providing banking services to a state-sanctioned marijuana business. The bill also prohibits a federal banking regulator from requesting or requiring a depository institution to terminate a deposit account unless: 1) there is a valid reason, such as the regulator has cause to believe that the depository institution is engaging in an unsafe or unsound practice; and 2) reputational risk is not the dispositive factor. Additionally, proceeds from a transaction conducted by a state-sanctioned marijuana business are no longer considered proceeds from unlawful activity. Furthermore, a financial institution, insurer, or federal agency may not be held liable or subject to asset forfeiture under federal law for providing a loan, mortgage, or other financial service to a state-sanctioned marijuana business.

The SAFER Banking Act would improve the transparency and accountability of these businesses by enabling their financial information to be tracked and reported. The text of the bill also provides protections for insurers engaging in the business of insurance with a state-sanctioned marijuana business or service provider of the relevant legal jurisdiction against being held liable pursuant to any federal law or regulation solely for providing a financial service or for further investing any income derived from such a financial service. The language of the SAFER Banking Act also expands these protections to insurers that "otherwise engage with a person in a transaction permissible pursuant to a law (including regulations)," Sec. 5(c), language that is not in the U.S. House of Representatives' (House's) Secure and Fair Enforcement (SAFE) Banking Act of 2023. The bill passed the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Senate Banking Committee) with bipartisan support.

It has 35 cosponsors from both sides of the aisle but could still face some challenges in reaching a consensus with all members from both parties. House leadership has made some efforts to bundle the bill with other legislation.

In 2022, President Biden ordered the U.S. Department of Health and Human Services (HHS) to study the effect of moving marijuana from a Schedule I substance to a Schedule III substance under the CSA. In May 2024, the U.S. Department of Justice (DOJ) formally moved to reclassify marijuana by sending a proposed rule to the federal register recognizing the medical uses of cannabis and acknowledging that it has less potential for abuse. The plan would not legalize marijuana for recreational use. The Drug Enforcement Agency (DEA) will next take public comment on the proposal in a potentially lengthy process. It would then need to be reviewed by an administrative judge, and the final rule would be published. If approved, the rule would move marijuana to a Schedule III substance alongside ketamine and some anabolic steroids. Attorney General Merrick Garland's approval of the plan signals that the Biden Administration is prioritizing the reschedule. There are some efforts to entirely remove cannabis from scheduling through congressional actions. However, these seem unlikely to gain support.

McKinney asked if the timeframe for the rule is known. Swindle stated that the timing is unclear and potential approval for the rule will be a long road.

3. Heard a Presentation from BDSA on Trends and Emerging Issues in the Cannabis Space

Roy Bingham (BDSA) stated that BDSA uses point-of-sale and transactional information data from almost 2,000 regulated dispensaries nationwide. It cleanses and catalogs the data because there are no standardized skew bar codes in the cannabis industry yet. From this data, BDSA is able to identify very accurate industry trends and projections of categories and subcategories of products. It also conducts a semiannual survey on consumer behavior trends and consumption patterns. Before this, the cannabis industry did not have the type of data commonly found in other industries. From this data, BDSA develops market forecasting state-by-state.

Due to federal prohibition, BDSA also uses publicly available information to identify locations and provide information to its clients, who are the leading cannabis companies. It works with 28 of the top 30 cannabis companies. There are complexities around the industry with hemp-derived intoxicating cannabinoid products. Many of these products are similar to what is available in dispensaries and are popular in states that do not have licensed and regulated adult-use or medical cannabis. Cannabis prices have been stabilizing and reflect the volatile nature of local supply and demand. When a new market is launched, you typically have a period of short supply because the growers do not have enough supply yet. Then, there is a steady price decline. Prices have declined substantially in the most mature markets, such as California and Colorado. The price decline also reflects competition from illicit markets that operate side-by-side. Cannabis products have become sophisticated. Only about a quarter of sales are from cannabis flower, and much of it is now branded. Packaged vaporizer products and edibles are also branded like any other consumer packaged goods. Investors have been eagerly awaiting federal reform to enter the market. Many anticipate the rescheduling will happen by November. Federal reform would also allow institutions to touch the plant and get started on researching health benefits.

New market expansion is what has been driving the industry. Cannabis is fully legal in most of the states in the western and northeast portions of the U.S. 36 states have legalized it for medical use. The majority of U.S. adults are positive about cannabis consumption. Nearly half of adults in the U.S. have access to recreational cannabis. About half of adults have consumed it in the past six months. When a state first legalizes cannabis, consumption is usually around 30% of the population and then steadily rises. Detailed surveys have shown that the majority of people consume on at least a weekly basis. Consumption occurs on a broad demographic profile. Many recreational users consume cannabis products to treat issues such as pain, anxiety, or trouble sleeping. They no longer have to register for a medical card if they are in a recreational-use state. For this reason, medical-use cannabis is declining and is anticipated to continue doing so.

Globally, the cannabis market is anticipated to grow 10% per year and reach $58 billion globally by 2028. The U.S. market is anticipated to grow 10% to $32 billion in 2024, due largely to new recreational markets like New York and New Jersey. Additionally, strong growth is anticipated in Michigan. Florida and Ohio are expected to become recreational-use states. Growth in mature markets, which tend to be in the West, has been slow due to price reductions. At the same time, the Northeast and Midwest markets are growing rapidly. Growth in California has been negatively impacted by its massive illicit market. It is difficult for consumers to differentiate between a regulated and non-regulated location. Legal states bordering non-legal states are benefiting from consumers crossing state lines to purchase cannabis.

By volume, mature recreational-use markets still had the highest sales in 2023. California led with over $5 billion in sales, and Michigan was close behind with over $3 billion. However, emerging markets are close behind the recreational-use giants. Florida brought in $2.5 billion in medical sales alone, roughly a 16% increase over 2022. Illinois had just under $2 billion in sales.

Price compression has been a big story over the past two years. Although it has affected all legal markets, emerging markets are still holding much higher average retail prices than more mature ones. New Jersey and New York hold the highest prices. Prices are expected to hold more stable in emerging markets amid tight market conditions (such as limited cultivation capacity and restricted licensing). It is worth noting, however, that New Jersey has massively expanded the number of licensed businesses, which will likely lead to price decreases once many of these new businesses get online.

Discounting is widespread, with the five largest categories (flower, pre-rolled, vape, edible, and extracts) all having sold prices about 30% lower than the list price. Multistate brands are the majority of sales in major markets. While some mature markets see a strong presence of "home-grown" brands, Oregon was the lone state to have more than 50% of sales come from single-state brands.

4. Heard a Presentation from Jencap on Insurance Availability, Coverage Trends, and New Risks in the Cannabis Space

Erich Schutz (Jencap Specialty Insurance Services—Jencap) stated that the entrance of some new reinsurers into the market has increased the availability and affordability of named storm and wind/hail coverage over the last two years. Directors and Officers (D&O) and cyber coverage are becoming more affordable with better coverage. However, bonds related to banking or loans, such as default-type bonds, are unavailable. Additionally, outdoor crop coverage remains unavailable outside of parametric coverage, with an extremely high minimum premium coverage. Parametric crop coverage is usually only suitable for unique placements for savvy operations with significant outdoor exposures. On the positive side, parametric crop coverage is now available in more states than just Florida. Reinsurance capacity has increased. Additionally, due to losses from equipment breakdown coverages, insurers are capping equipment breakdown to $1 million or excluding it. Multi-line excess insurance limit products for cannabis-related businesses are not as available as in other markets. Some combinations, such as excess coverage for workers' compensation and auto, can be found together. However, there is no one robust product that provides all excess limit coverage needs.

Coverage take-up is greatest for compulsory coverages, such as workers' compensation, general liability, and property. In states such as California, where product liability coverage is not necessarily required, cannabis-related businesses are more likely to just secure general liability coverage. Property coverage is the most likely coverage to be self-insured. Of the coverages most companies should have, cyber is the least requested coverage. Life insurance is still very difficult for cannabis-related businesses to find. Auto insurance is still problematic and expensive, especially in states with no risk pool and fixed rates, such as Massachusetts and Michigan. There is much room for state insurance regulators to encourage surplus lines carriers to enter markets where admitted auto coverage is not compulsory. This is especially true in the hemp space since hemp is a federally legal product and can be transported across state lines and internationally. Brokers also have difficulty finding international coverage, whether it is a domestic policy with a worldwide extension that will defend an insured in a foreign country or protection against a lawsuit that is alleged outside the U.S. and tried in the U.S.

Key person coverage has recently become available in the cannabis space. Brokers are seeing increased requests for personal cyber, kidnap and ransom, and travel coverages from high-net-worth cannabis professionals. Cannabis-focused specialty solution programs with language specific to cannabis are also becoming available. Coverage for product contamination is also emerging in the cannabis space. There are a number of coverages available on a minor package basis in the admitted market, including general liability, auto, and property. Admitted general liability and product liability coverages are available in 10–15 states. Property is limited. Mature markets, such as California, Colorado, Illinois, Massachusetts, Michigan, Oregon, and Washington, are most likely to be able to support an admitted market. The way an admitted market is implemented and regulated matters. California is a good example of state insurance regulators reaching out to surplus lines carriers and working to transition them to admitted carriers. Michigan is a good example of where the carrier led to charge to provide the admitted coverage mandated by the state's law. However, the Michigan carrier's paper was downgraded last year, resulting in a vacuum in the space and forcing a lot of insurers to rewrite their policies and face issues with their banks for not meeting loan conditions.

Jencap released its *Preparing for the Future of Cannabis Insurance* white paper in 2023, in which it examined four different scenarios of federal cannabis reform. Rescheduling to Schedule III would allow cannabis-related businesses to have access to traditional banking sources. It would also lower their tax rate by about 30–50% by resolving issues with Section 280E of the Internal Revenue Code (IRC). Section 280E currently prevents businesses selling illegal drugs, such as cannabis, from deducting common business expenses such as rent, utilities, and payroll. However, it would also mean that cannabis would be regulated like a pharmaceutical drug; thus, medical cannabis dispensaries would have to compete with pharmacy stores like CVS. This would likely lead to most medical cannabis dispensaries going out of business. Consumers would likely want to shop at pharmacy stores where they can get their medical cannabis and other prescription medications. Unlike CVS stores, medical dispensaries are also not equipped to deal with DEA regulations and lack the infrastructure and knowledge to ship over state lines. Additionally, medical cannabis manufacturers would likely struggle as they lack the knowledge and finances to go through a now-required Food and Drug Administration (FDA) trial.

Pharmacies should not be permitted to sell medical cannabis before cannabis is federally rescheduled. Georgia allowed private pharmacies in its state to dispense low-potency cannabis. The private pharmacies immediately lost their insurance because their insurance carriers did not allow them to sell federally illegal marijuana. As mentioned earlier, Michigan's mandate that cannabis businesses carry product liability insurance coverage by licensed and admitted carriers is another troubled regulation, focusing on the classification of coverage as admitted or nonadmitted rather than the quality of the coverage and financial strength of the insurer. In March 2024, AM Best downgraded the Financial Strength Rating of the primary admitted cannabis insurer to C (Weak) from B+ (Good). This resulted in a panic among cannabis businesses and a flurry of refiled forms to remain compliant. State insurance regulators could help brokers and underwriters in the insurance industry by assisting with more communication and collaboration to prevent these types of problematic circumstances. The industry needs its insurance and cannabis regulators to be in lockstep with each other. This includes addressing the issues in Georgia, Michigan, and other states where there are overly restrictive regulations for cannabis that are impacting insurance availability and pricing.

5. <u>Heard a Presentation on the Work of the IIHS and HLDI on the Legalization of Marijuana for Recreational Use</u>

Matt Moore (Highway Loss Data Institute—HLDI) stated that he is representing the Insurance Institute for Highway Safety (IIHS) and HLDI, which U.S. auto insurers fully fund. Member companies provide them with their coverage and claims data on a monthly basis for both automobiles and motorcycles insured for private use. The data is then scrubbed clean and homogenized in order to conduct studies that can inform insurance customers and/or contribute to the national dialogue around highway safety. At the National Advanced Driving Simulator at the University of Iowa, researchers dosed study participants with both alcohol and marijuana and observed their driving behavior. Those dosed only with alcohol engaged in driving behaviors that are likely to increase crash risk, particularly speeding. By contrast, those only dosed with marijuana exhibited no change in several at-risk driving behaviors, including speeding. They also had greater following distance and drove below the speed limit, which are behaviors associated with reduced crash risk.

The HLDI published two studies analyzing changes in collision claim frequencies in Colorado, Oregon, and Washington, relative to nearby states following the inception of legal recreational use. The results indicated that for all three states, the legalization of retail marijuana sales was correlated with increases in collision claim frequency. However, those increases attenuate over time. The most current study expanded on the 2018 study by including collision loss data through 2019 and adding Nevada as a study state. The study found the legalization of retail marijuana sales is associated with increases in collision claim frequencies in Colorado, Nevada, and Washington but a decrease in Oregon. The collision claim frequency in Colorado was 7.2% higher than in Nebraska, Utah, and Wyoming after legalization. Similarly, claim frequency in Washington state increased by 5.6% compared with Idaho and Montana. For Nevada, claim frequency was 5.4% higher than in Idaho and Utah. However, in Oregon, collision claim frequency decreased by 3.5% compared with Idaho and Montana.

A single analysis that combined these four states was also conducted. In this analysis, the study states were compared with other western states whose monthly collision claim frequencies were highly correlated with the frequencies for each study state before legalization. Using this approach, the legalization of retail sales was associated with a 3.8% increase in collision claim frequency.

The IIHS conducted a similar set of analyses using police-reported crashes to examine differences between injury-producing crashes and fatal crashes. Similar to the results of the HLDI studies, there are some differences between states, and there are differences over time. It found that marijuana legalization was associated with a 5.9% increase in fatal crashes in the five study states.

Stolyarov asked how the percentage of fatal crash rates could exceed either the retail sales or the recreational use. Moore said the slide does not include individual study control states and each time period. He offered to email the full study to anyone who requested it (mmoore@hldi.org).

The HLDI and IIHS studies do not address the critical issue of finding the true relationship between the likelihood of crashing when dosed with marijuana. This is critical because impairment is not necessarily scientifically linked to marijuana use as it is to alcohol use. Results from a 1985 IIHS study that looked at drivers killed in crashes illustrate the complexity. The study found that those who tested positive for alcohol were deemed to be responsible for the crash 92% of the time. Those who tested positive for alcohol and marijuana were deemed to be responsible for the crash 95% of the time. Those who tested negative for both were found to be at fault 71% of the time. However, those who tested positive for just marijuana were only at fault 53% of the time.

A federally funded study published in 2015 examined the relationship between crash risk and marijuana and found a 28% increase in crash risk when no variables were controlled. After adjusting for demographic variables, the study found a 5% increase in crash risk, similar to increases found in the collision claim frequency data and the fatal crash data. However, after adjusting for demographic variables and alcohol use, there was no change in crash risk associated with marijuana use.

To further examine the relationship between marijuana and crash risk, the IIHS partnered with medical centers in California, Colorado, and Oregon. The partnership evaluated injured drivers who were in a motor vehicle crash (cases) and medical patients not in a motor vehicle crash (controls). The study results found that, among the crash survivors, the self-reported substance use in the cases group was much lower than among the control group. Additionally, actual tested consumption of these substances was higher than the self-reported use for both groups. However, the use of alcohol or alcohol and marijuana represented an outsized portion of the risk.

A critical problem in states legalizing marijuana for recreational use is there is no accepted, rapid test that law enforcement can use in the field to test for impairment that is on par with tests for alcohol impairment. This makes testing and/or enforcement of marijuana laws difficult. Alcohol is still responsible for about 30% of fatal crashes. The IIHS messaging around marijuana is that enforcing existing speed and driving-while-impaired laws is an effective way of addressing problems related to marijuana impairment.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/2024_Summer/Cannabis/5-CannabisWG.docx

Attachment B

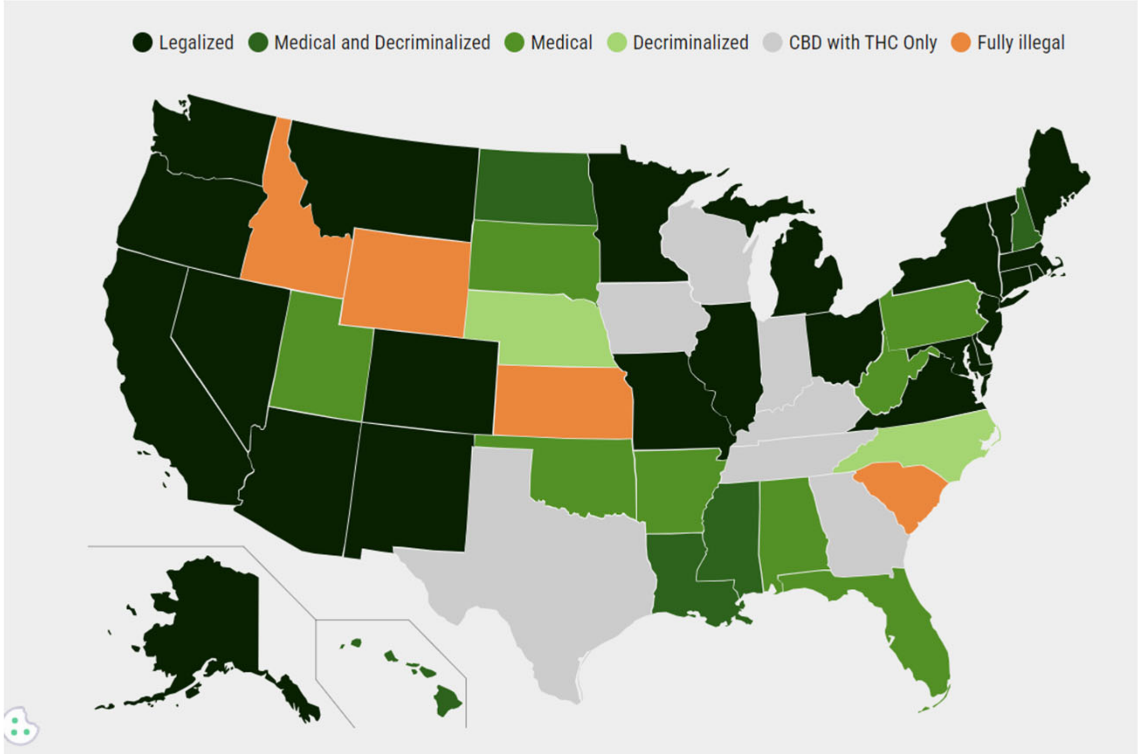
Presentation on Cannabis Regulation in Colorado and Cannabis Regulators Association (CANNRA) Activities

American Property Casualty Insurance Association℠

NAIC Cannabis Insurance (C) Working Group

November 18, 2024

Where Do the States Stand on Cannabis?



https://disa.com/marijuana-legality-by-state (October 2024)

Insurance Concerns Arising from Legalization

- Unique or expanded exposures for established coverages.
- Safety concerns in the workplace and on the road.
- Coverage mandates and exclusion concerns.
- Continued federal illegality.

Federal Conflict

Use and sale of marijuana violates federal law.

- Controlled Substances Act[1]
- Title 18 of the federal criminal statutes
  - Aiding and abetting[2] a criminal enterprise
  - Transport/transmission of funds derived from marijuana distribution[3]

There is no exception for medical use or state legalization.

[1] 21 U.S. Code §§ 812, 822, 823(f)
[2] 18 U.S. Code §2
[3] 18 U.S. Code §1960

Uncertainty for Insurers

- Federal enforcement priorities are subject to change even within the same administration.
  - Cole Memo[4]
  - Administration Changes
- Services provided now could be prosecuted under future administrations.

[4] Memorandum from James M. Cole, Deputy Attorney General, to United States Attorneys August 29, 2013

Federal Proposals

- Safe Harbor Legislation
  - Secure and Fair Enforcement Regulation (SAFER) Banking Act
    - Protection for financial industry including insurance
  - Clarifying Law around Insurance of Marijuana (CLAIM) Act
    - Insurance focused
- Rescheduling

Attachment C

American Property Casualty Insurance Association℠

Questions?

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