Marijuana An Emerging Insurance Industry Risk

INSURANCE ISSUES RELATING TO MARIJUANA GROWTH, MEDICINAL AND RECREATIONAL USE, AND LEGAL LIABILITIES

JOINT CLAIMS EXECUTIVES CONFERENCE 2023

WA
OR
CA
NV
ID
MT
WY
UT
AZ
CO
NM
ND
SD
NE
KS
OK
TX
MN
IA
MO
AR
LA
WI
IL
MI
IN
OH
KY
TN
MS
AL
GA
FL
SC
NC
VA
WV
PA
NY
VT
ME
NH
MA
RI
CT
NJ
DE
MD
WASHINGTON D.C.
AK
HI
LEGAL FOR ADULT RECREATIONAL USE
LEGAL FOR MEDICAL USE ONLY
ONLY LOW THC MEDICALLY LEGAL
NO PROGRAM FOR LEGAL THC

Adult Use Laws

FULLY "LEGAL" VS DECRIMINALIZATION

SUPREMACY CLAUSE IN U.S. CONSTITUTION ESTABLISHES FEDERAL LAW TAKES PRECEDENCE OVER STATE

Wild, Wild West

- Alaska,Washington, Oregon, California, Nevada, Arizona, New Mexico, Colorado, Montana

The California Cannabis Market in Crisis

- Cannabis sales down 8% in 2022. Legitimate businesses cannot compete with the illegal market at cumulative taxes per pound between $677 and $1440, excluding income taxes on licensed businesses. Taxes are passed on to the consumer so they price shop.
- Legal Cannabis retailers are comparatively sparse and highly concentrated geographically. The state's 929 dispensaries are in just 18 cities, while 80% of local jurisdictions had banned the sale of marijuana.
- Cannot file for federal bankruptcy protection or sell a distressed business with an outstanding tax lien.
- Cannabis licensing renewals are averaging 80%.
- Glut of supply on the market leaves unsold inventory.

UP & COMING MIDWEST

- MINNESOTA, MISSOURI, ILLINOIS, MICHIGAN

Missouri Goes Nuts for Weed!

In the first 26 days of adult-use sales, Missouri brought in $102.9 million in total cannabis sales, with $71.7 million for adult use and $31.2 million for medical, according to data from the state's Department of Health and Senior Services (DHSS).

And March sales are on par with February, and even experienced a 23% increase, bringing in $126.2 million in total sales. While March's medical sales increased slightly to $32.7 million, adult-use sales increased by nearly 30% to $93.5 million, according to DHSS data.

Why such a high demand? Iowa, Illinois, Kentucky, Tennessee, Arkansas, Oklahoma, Kansas and Nebraska

ILLINOIS SALES

▶Illinois market has grown to one of the largest in the country surpassing sales in the West, except for California. Adult use plus medicinal cannabis sales reached $165.5 million for the month of September of 2023.

EAST COASTERS

- MAINE, VERMONT, NEW YORK, MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, DELAWARE, MARYLAND, VIRGINIA, DISTRICT OF COLUMBIA

Legalization Update

- 37 STATES HAVE NOW LEGALIZED CANNABIS CONSUMPTION IN SOME FORM.

- The U.S. House of Representatives passed the Marijuana Opportunity Reinvestment Act (MORE) with a 220-204 vote. MORE would legalize the drug, remove marijuana from the list of controlled substances and eliminate criminal penalties for growers, distributors or those who possess it.
- It is not likely to pass the Senate.

SAFE BANKING UPDATE

May 11, 2023 – Senate Committee on Banking, Housing & Urban Affairs held a hearing entitled "Examining Cannabis Banking Challenges of Small Business & Workers".

The SAFE Banking Act, which was recently introduced by Sens. Daines and Sen. Merkley, would harmonize federal and state law for cannabis-related business, allow these businesses access to financial services (including insurance), and shield financial institutions and their employees from federal prosecution or investigation for providing these services. The bill is widely supported by the financial services industry, including banks, insurers, and credit unions. Concerns expressed this could lead to money laundering so this aspect would need to be strengthened but it was agreed that legal cannabis businesses should have access to financial services.

Drawbacks of No Banking

- Cash only businesses are targets for criminals.
- Cash income makes it difficult for cannabis workers to get a home loan.
- Cash income makes it difficult for cannabis workers to get life insurance

Hemp vs. Marijuana

Both are part of the Cannabis family, but hemp has less than .3% of THC and is used primarily for making textiles, biodiesel, and CBD products. Farm Bill of 2018 legalized the growing of hemp. It is much cheaper to grow than marijuana, has a lower carbon footprint.

Marijuana is cannabis with a THC level above .3% dried weight. This is known as Delta-9-THC "THC".

Delta-8-THC can be made synthetically from CBD molecules. It is less potent than Delta-9, but can have intoxicating effects. Seventeen states have banned such products, but many remain available from gas stations to vape shops.

It may make some marijuana grow operations obsolete.

PERSONAL LINES MARIJUANA COVERAGE MOST COMMON CLAIMS

Vandalism & Fire

- Vandalism to a dwelling (such as a tenant's illegal grow operation) and any ensuing loss caused by the vandalism are covered under a standard homeowner's policy and a standard fire dwelling policy unless the dwelling has been vacant for more than 60 consecutive days immediately before the loss.
- Mortgagee may recover for insured's vandalism. Starting to see more with Covid foreclosure protections being lifted.
- Average costs to repair grow house damage range from $75,000 to $150,000

Insurable Risks Facing Marijuana Growers and Dispensaries

- General Liability – Products Liability Coverage
- Property Protection
- Business Income/Extra Expense Insurance
- Marijuana Stock (Stated Value Endorsement)
- Marijuana Crop – Live Plants
- Workers Compensation
- Commercial Auto; Cargo
- Directors & Officers
- Money and Securities
- Equipment breakdown
- Government Actions
- Vendors
- Special Events

Risks Facing Insurers

- New Line of Coverage With Lack of Historical Pricing and Loss Data
- Conflicting State and Federal Law

COMMON COMMERCIAL PROPERTY CLAIMS

- THEFT and ROBBERIES (GANG AND/OR CARTEL RELATED)
- FIRES
- DEFECTIVE GROW LIGHTS
- ITEMS BEING SOLD AND OR INVENTORIED OUTSIDE OF TRACK & TRACE SYSTEM

WWW.MOBOTIX.COM
2018-11-15 PST 03:31:10
EXIT
JUSTRITE
FLAMMABLE
017701 AS UC
REC

Robbery Video 2

Protective Safeguards and Amendatory Endorsements

Armed Security (24 hrs)

- Wired burglar alarm connected to police
- Sprinkler system
- Safe weighing at least 750 lbs.
- Cannabis products stored in locked cabinets or safe
- License Warranty, Track and Trace

POTENTIAL COMMERCIAL INSURANCE RISKS

AUTO INSURANCE AND

GENERAL LIABILITY COVERAGE

Automobile Liability

According to the AAA, motor vehicle fatalities rose by 10.5%, almost 43,000, in 2021.

- Driving under the influence of alcohol was up 24% and cannabis rose to 14%, the biggest risers among reckless behaviors studied.

- The Medical Marijuana Research Act, H.R. 5657, lauded by the insurance industry, passed the House, by a vote of 343 to 75, in April 2022. This legislation would ease restrictions on access to marijuana by research institutions and make it easier to conduct the needed research in order to better understand marijuana impairment.

LIABILITY ISSUES IN DRAM & GRAM SHOP CASES (Toxicologist)

- **There is no science showing that drivers reliably become impaired at a specific level of marijuana in the blood; however, marijuana use leads to slower reaction time and decision making.**
- **Studies have found that simultaneous use of alcohol and cannabis produces significantly higher blood concentrations of THC than cannabis use alone. We continue to see higher incidents of THC use in liquor liability claims across the country.**

CANNABIS SOCIAL CONSUMPTION LOUNGES

Consumption lounges, also called cannabis consumption lounges and marijuana lounges, are spaces where patrons can purchase cannabis and cannabis products to smoke, vape, and/or consume edibles safely, onsite and in a social environment.

They are legal in NV, NJ, NY, IL, CO and CA, patterned after the Dutch coffee shops. Most states require operation by existing cannabis businesses.

- GRAM SHOP LIABILITY
- DRAM SHOP + GRAM SHOP

CANNABIS PRODUCTS LIABILITY

- Product is defective (mold, pesticides, heavy metals)
- Failure to warn (defective labeling – Prop 65)
- Product is not as advertised (where's the beef?)

CANNABIS PRODUCTS LIABILITY

- The US National Institute on Drug Abuse warned that smoking high-potency marijuana daily could increase chances of developing psychosis by near 5 times.
- Marijuana Use Disorder - People who have marijuana use disorder may also be at a higher risk of other negative consequences, such as problems with attention, memory, and learning. High risk of developing during youth or adolescence.

IS MARIJUANA COVERED BY WORKER'S COMPENSATION?

WORKERS COMPENSATION

- Because marijuana is illegal under federal law, payment cannot involve the federal banking system.
- **Currently 7 states are on record as requiring workers' comp insurers to reimburse for medical marijuana. They are Connecticut, Minnesota, New Hampshire, New Jersey, New Mexico, New York and Pennsylvania. Massachusetts has introduced legislation to add cannabis reimbursement in workers' comp claims.**
- Reimbursement is typically made to injured worker, rather than direct payment to dispensary.
- Presenter's personal opinion: Use of medicinal marijuana to treat work place injuries may increase in the future in light of widespread opioid abuses.

California AB-2188 Effective 1-01-2024

Prohibits employers from discriminating against employees for their off-duty use of marijuana, whether it be for medicinal or recreational reasons. This means that an employee cannot be fired or disciplined for using marijuana outside of work. Moreover, the law also prevents employers from taking action against employees who test positive for non-psychoactive traces of THC or marijuana in a drug test.

MORE EMERGING TRENDS

Directors & Officers Exposures

EPLI, Securities Litigation; Monies Mismanaged

"SEC Sues Cannabis Players for $30 Million Offering Fraud – SEC v. American Patriot Brands, over 100 investors victims"

EPLI – DON'T TALK ABOUT THE BOSS' GIRLFRIEND

Is Psilocybin The Next Frontier?

Legalized in Oregon.

California Likely Next - Legislation that would legalize the personal possession of certain psychedelics while establishing a system to facilitate their use has been passed by a key senate committee in California (SB58). Recently vetoed by Governor Newsom.

Decriminalized in Oakland in 2019.

Beth Ossino, VP, AIC
Casualty Claims Manager
Golden Bear Insurance Company
1550 W. Fremont St., 2nd Floor
Stockton, CA 95203
Email: beth@goldenbear.com
209-870-2915

Kim Moody, VP of Claims
Golden Bear Insurance Company
1550 W. Fremont St., 2nd Floor
Stockton, CA 95203
Email: kim.moody@goldenbear.com
209-487-4566

Golden Bear
INSURANCE COMPANY