

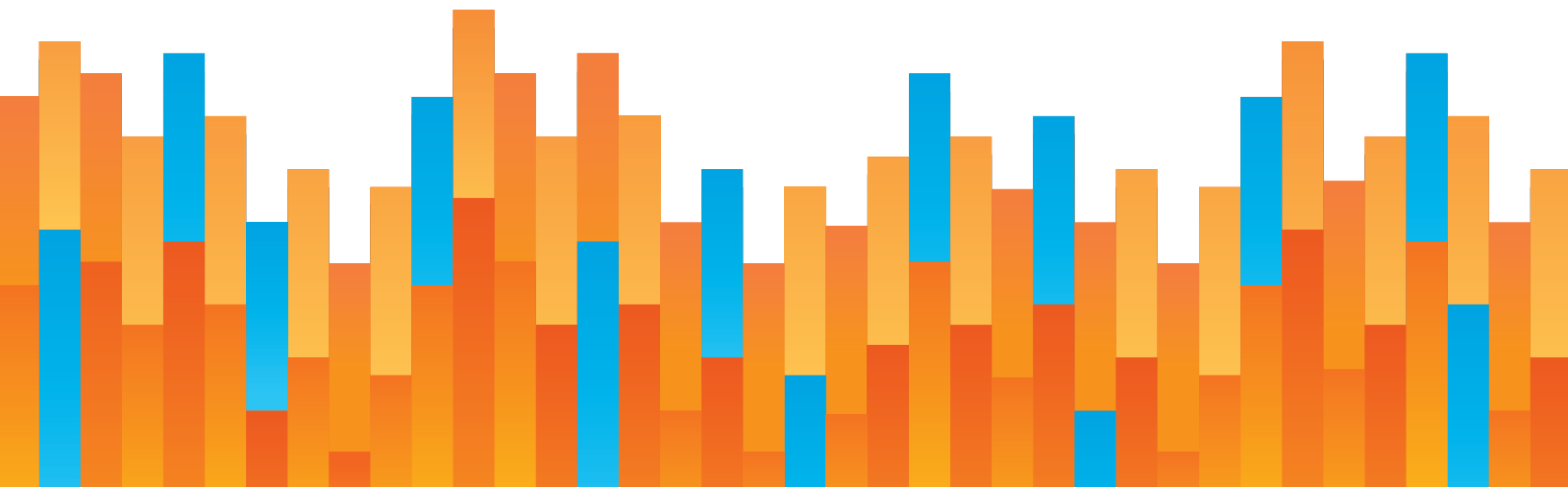


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# MARIJUANA BUSINESS INSURANCE: ANOTHER HURDLE FOR ENTREPRENEURS

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by Allie Howell  
Project Director: Geoff Lawrence  
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## PART 1

# INTRODUCTION

In almost any business in the U.S., risk of loss or lawsuit is covered by private insurance companies. Yet in the marijuana industry, private insurance is extremely difficult and expensive to access. There are few plans available and while some businesses want insurance, others are hesitant to pay the high price or give up their personal information. While some states like California are attempting to make insurance easier for businesses to access, problems will remain until marijuana is legal on the federal level.

## PART 2

# PLAGUED BY LOW SUPPLY

Jane Anthony-Rivera, Senior Sales Executive at LP Insurance, told Reason Foundation that while insurance companies would love to get involved with a new and potentially profitable market, they are hesitant largely because marijuana is still illegal on the federal level. Many insurance companies are publicly traded or have financial divisions backed by banks, which makes violating federal law an unjustifiable risk. Board members of publicly traded corporations, for example, would have their own personal assets at risk.<sup>1</sup>

As a result, there are only three or four managing general agents (MGAs) that Anthony-Rivera works with regularly,<sup>2</sup> and only about 25 carriers providing coverage in the United States and Canada total.<sup>3</sup> In Delaware, where medical marijuana is legal, growers could not find a single insurer willing to write crop insurance—the industry had been deemed

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<sup>1</sup> Correspondence with Jane Anthony-Rivera.

<sup>2</sup> Ibid.

<sup>3</sup> “Cannabis: New Opportunities for Insurers, But With Burgeoning Risks.” *Best’s Special Report*. March 12, 2019. <http://www3.ambest.com/bestweekpdfs/sr497749919749full.pdf>

“untouchable.”<sup>4</sup> In contrast, there are countless carriers providing insurance for businesses in the alcohol industry.<sup>5</sup>

The overall lack of supply has resulted in relatively unstable market conditions. Anthony-Rivera states that within the past three years dozens of companies have cycled in and out. The companies willing to provide coverage are frequently changing and Anthony-Rivera never knows who will be providing coverage within the next 30 days. A lack of competition has also resulted in application backlog and it may take 90–100 days to even get a quote. While the typical insurance renewal application is only a page, marijuana businesses have to fill out forms ranging from eight to 13 pages.<sup>6</sup>

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Furthermore, given the constant changes in the marijuana industry and lack of data, it is difficult for insurers to adequately assess risk and provide policies that address insurance needs. The constant rollout of new products like vape pens, for example, is difficult for insurance companies to keep up with.<sup>7</sup>

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<sup>4</sup> “Regulatory Guide: Understanding the Market for Cannabis Insurance.” *National Association of Insurance Commissioners*. July 19, 2019. [https://naic-cms.org/sites/default/files/inline-files/cmte\\_c\\_cannabis\\_wg\\_exposure\\_understanding\\_cannabis\\_marketplace\\_0.pdf](https://naic-cms.org/sites/default/files/inline-files/cmte_c_cannabis_wg_exposure_understanding_cannabis_marketplace_0.pdf)

<sup>5</sup> Correspondence with Jane Anthony-Rivera.

<sup>6</sup> Ibid.

<sup>7</sup> “Regulatory Guide: Understanding the Market for Cannabis Insurance.” *National Association of Insurance Commissioners*.

## PART 3

# SUPPLIER RESPONSES TO MARKET CONDITIONS

In California, Insurance Commissioner Dave Jones worked to address the low supply of insurance carriers during his term from 2011–2019. As part of his push to get more insurance carriers offering plans to marijuana businesses, Jones sent a letter to 1,300 licensed insurance companies in California telling them that the Trump administration would not take steps to enforce federal law against legal cannabis businesses.<sup>8</sup> Jones' successor Ricardo Lara has continued to work to bring more admitted insurers to the California market by giving the California Department of Insurance discretion to issue insurance licenses to people with past cannabis convictions.<sup>9</sup>

The private market has also responded to the shortage of big insurance carriers. Middlemen have begun working with the cannabis industry to connect marijuana businesses to insurers. Next-Wave was one of the first companies to market marijuana insurance and now marijuana clients make up 50% of revenue, totaling \$50 million in premiums from 2016 to

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<sup>8</sup> Carreon, Mary. "Cannabis Industry And Insurance: California's Next Trend." *Forbes*. June 8, 2018. <https://www.forbes.com/sites/marycarreon/2018/06/08/cannabis-industry-insurance-californias-next-trend/#7278fd136ed1>

<sup>9</sup> Jergler, Don. "California Commissioner Spearheading National Cannabis Insurance Framework." *Insurance Journal*. Jan. 28, 2020. <https://www.insurancejournal.com/news/west/2020/01/28/556733.htm>

2017. A larger company, AAG, now does 5%–10% of business with cannabis businesses.<sup>10</sup> Anthony-Rivera works as a commercial lines broker, seeking the best terms, conditions, and pricing for a client on the market.<sup>11</sup>



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Additionally, niche insurance companies that cater solely to marijuana businesses have emerged. Cannasure, a company focused on the marijuana industry, estimates that it insures one third of the Colorado marijuana market.<sup>12</sup>

Non-admitted insurance companies currently provide the majority of coverage.<sup>13</sup> Unlike an admitted insurance company, a non-admitted carrier is not approved by the state and policy holders are not protected in case the insurer becomes insolvent.<sup>14</sup> In 2017, the California Insurance Commissioner approved the first admitted insurer to provide coverage for cannabis businesses in the state.<sup>15</sup> Since then, a few other insurers have been admitted to do business in the state and a commercial “package” cannabis business policy known as

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<sup>10</sup> “Cannabis.” *Best’s Special Report*.

<sup>11</sup> Correspondence with Jane Anthony-Rivera.

<sup>12</sup> Nobile, Jeremy. “Marijuana insurance biz finding ‘niche’.” *Crain’s Cleveland Business*. Jan. 7, 2018. <https://www.crainscleveland.com/article/20180105/news/147641/marijuana-insurance-biz-finding-niche>

<sup>13</sup> “Cannabis.” *Best’s Special Report*.

<sup>14</sup> “Admitted vs. non-admitted insurance carriers.” *Insureon*. <https://www.insureon.com/insurance-glossary/admitted-vs-non-admitted-insurance-carriers>

<sup>15</sup> “Cannabis.” *Best’s Special Report*.



CannaBOP was approved.<sup>16</sup> California now has seven admitted insurance carriers offering cannabis policies.<sup>17</sup>

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<sup>16</sup> Tievsky, Benjamin. "The times they are a-changin' for cannabis insurance in California." *Silicon Valley Business Journal*. Oct. 4, 2018. <https://www.bizjournals.com/sanjose/news/2018/10/04/the-times-they-are-a-changin-for-cannabis.html>

<sup>17</sup> Jergler, Don. "California Commissioner Spearheading National Cannabis Insurance Framework." *Insurance Journal*. Jan. 28, 2020.

## PART 4

# PLAGUED BY LOW DEMAND

Many participants in the marijuana industry see compliance with state law and best business practices as a way to avoid federal interference. Maintaining insurance coverage can be a big component of this approach and, indeed, is generally required by state and local regulations on the marijuana industry. Yet as a result of low supply, insurance policies are extremely expensive in the marijuana industry. Jerry Derevyanny, who serves as general counsel for a large Washington cultivator, told *Marijuana Business Daily* that the company's premiums cost "hundreds of thousands of dollars per year." Additionally, in California, basic insurance for cultivators costs \$20,000–\$30,000 a year and retailer premiums can reach \$200,000 annually.<sup>18</sup>

In addition to being priced out of the market, many business owners are still hesitant to sign up for insurance in the first place. For example, many entrepreneurs worry that giving information to insurance companies would make it easier for federal authorities to investigate them.<sup>19</sup> Matt Porter, a vice president at Brown and Brown Insurance, has been trying to gain clients in California. He jokingly told the *Santa Barbara Independent* that he

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<sup>18</sup> Sacirbey, Omar. "Finding right insurance is key to any marijuana company's business plan." *Marijuana Business Daily*. Feb. 28, 2018. <https://mjbizdaily.com/finding-right-insurance-policy-key-marijuana-companys-business-plan/>

<sup>19</sup> Ibid.

could not just call businesses and say: “I want to sell you insurance. Tell me more about your marijuana operation.”<sup>20</sup> Even after purchasing insurance, fear of drawing federal attention results in many not notifying their insurance company after a break-in.<sup>21</sup>

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*Even after purchasing insurance, fear of drawing federal attention results in many not notifying their insurance company after a break-in.*

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<sup>20</sup> Brugger, Kelsey. “Cannabis Farmer Gets Over \$1 Million Insurance Payout.” *Santa Barbara Independent*. March 19, 2018. <https://www.independent.com/2018/03/19/cannabis-farmer-gets-over-1-million-insurance-payout/>

<sup>21</sup> Correspondence with Jane Anthony-Rivera.

## PART 5

# COVERAGE CURRENTLY AVAILABLE

Currently, the core set of policies available are commercial general liability, property liability, and products liability with a \$1 million per occurrence and \$2 million aggregate limit. These limits may not meet the needs of all cannabis businesses, but insurance companies currently believe that they are one of the best ways to manage risk. Furthermore, low limits are necessary because it is so difficult to find reinsurers willing to back marijuana-related liabilities books. These policies potentially have other problems for insureds such as shared limits between general and products liability policies, no duty to defend, meaning insurance companies are only required to indemnify the insured rather than assuming control of the claim defense process, or non-stacking endorsements which means the policyholder cannot apply multiple sets of deductibles or limits to the same event.<sup>22</sup>

There is a wide range of insurance policies a cannabis business may consider purchasing. Additionally, what each company needs depends on business type, business size, and business practices. For example, different cultivation businesses will need different insurance depending on manufacturing techniques, the type of facilities they operate and

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<sup>22</sup> “Cannabis.” *Best’s Special Report*.

the level of automation in growing techniques.<sup>23</sup> Below is a breakdown of just a few types of insurance and some of the unique challenges insurance carriers and businesses face.

## 5.1 CROP INSURANCE

One of the biggest and potentially most expensive risks facing marijuana businesses is crop loss. Marijuana plants are especially susceptible to both indoor and outdoor fires. Wild fires in California, for example, caused devastating crop loss. Many plants that survived the fires were still destroyed by smoke and ash, which resulted in plants testing positive for asbestos, magnesium, lead, and arsenic.

One cannabis business made headlines when it recovered a \$1 million insurance payout after ash made it inside the greenhouse through a retractable roof. The business had paid \$30,000 in premiums with a \$25,000 deductible for their crop insurance. The payout was justified by specific language in the contract: “change in atmospheric conditions.” Perhaps surprised by the high market value of the damaged product, the insurance company has elected to cease insuring cannabis farmers.<sup>24</sup>

Unfortunately, most farmers who suffered losses in the 2018 fires were uninsured. Since cannabis plants take approximately four months to harvest, the destruction of crops can be catastrophic for a business.<sup>25</sup>

Many outdoor growing operations are located in remote areas far away from fire stations, which makes it difficult to find any fire protection—never mind an affordable policy.<sup>26</sup> Further, insurers are hesitant to cover any product that will cross state lines because of fear of federal involvement. Again, reading the fine print is essential: while many big insurance

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<sup>23</sup> “Regulatory Guide: Understanding the Market for Cannabis Insurance.” *National Association of Insurance Commissioners*.

<sup>24</sup> Brugger. “Cannabis Farmer Gets Over \$1 Million Insurance Payout.”

<sup>25</sup> National Cannabis Insurance Services. “Product Liability and Crop Insurance: The Must-Have Insurance Policies to Protect Your Cannabis Business.” *Cannabis Business Times*. June 11, 2018. <https://www.cannabisbusinesstimes.com/article/national-cannabis-insurance-services-product-liability-crop-insurance-cannabis-business/>

<sup>26</sup> Schroyer, John. “Industry Snapshot: Insurance.” *Marijuana Business Magazine*. Nov. 2015. <https://mjbizmagazine.com/industry-snapshot-insurance/>

companies offer coverage against damage from a fire or earthquake, the policy may only cover building damage rather than the products inside.<sup>27</sup>

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*Insurers are hesitant to cover any product that will cross state lines because of fear of federal involvement.*



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Other common risks to marijuana growers include contamination of crops with molds or pests. State laws generally require all harvested marijuana to be tested for molds and insecticides before it can be sold. Marijuana that exceeds given thresholds of these contaminants generally must be destroyed, causing substantial loss to the farmer. A general lack of crop insurance availability hampers marijuana cultivators' ability to safeguard against these risks.

## 5.2 COMMERCIAL PROPERTY

Marijuana businesses face a heightened risk of theft due to extremely limited access to banking and lots of cash stored on the premises. Some insurance policies require cannabis businesses to mitigate their own riskiness by eliminating coverage when property is not properly locked up outside of regular business hours.<sup>28</sup> Passage of a federal law that would give marijuana businesses access to federally insured banking<sup>29</sup> would certainly help alleviate this concern.<sup>30</sup>

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<sup>27</sup> Sacirbey. "Finding right insurance is key to any marijuana company's business plan."

<sup>28</sup> "Cannabis." *Best's Special Report*.

<sup>29</sup> Lawrence, Geoffrey. "Marijuana Industry Financial Services: The Obstacles and the Policy Solutions." Reason Foundation Policy Brief. September 17, 2019, <https://reason.org/policy-brief/marijuana-industry-financial-services-the-obstacles-and-the-policy-solutions/>.

<sup>30</sup> Armstrong, Robert. "Why Insurers Aren't Yet High on Cannabis." *Ozy*. Dec. 11, 2019. <https://www.ozy.com/the-new-and-the-next/why-insurers-arent-yet-high-on-cannabis/253214/>

Similar to crop insurance, there is also a substantial risk of fires impacting commercial property due to complex electrical configurations for indoor cultivation. These risks of fire and theft can extend to neighboring tenants located near the business as well.<sup>31</sup>



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For manufacturers of cannabis-infused products, obtaining commercial property insurance can be particularly challenging. Infused products are generally manufactured by extracting cannabinoids from harvested marijuana using flammable solvents under pressure. The resultant risk of explosion, combined with other risks of insuring a federally illegal product, can be enough to dissuade many insurers from even entering the market.

## 5.3 PRODUCT LIABILITY INSURANCE

Cannabis business are susceptible to a wide range of product liability claims such as mold or fungus, misrepresentation, product labeling claims, or failure to warn.<sup>32</sup> The popularity of edibles and other infused products increases the risk of liability.<sup>33</sup> Even the most careful business can make mistakes. For example, a medical marijuana provider in Canada voluntarily recalled dried marijuana when the labeled CBD content ended up being higher in concentration than what was actually in the plants.<sup>34</sup> Insurance industry experts have estimated an increase in product liability claims for cannabis products in 2020.<sup>35</sup>

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<sup>31</sup> “Cannabis.” *Best’s Special Report*.

<sup>32</sup> National Cannabis Insurance Services. “Product Liability and Crop Insurance.”

<sup>33</sup> “Cannabis and Insurance.” *The Center for Insurance Policy and Research*. Sept. 19, 2019. [https://content.naic.org/cipr\\_topics/topic\\_cannabis\\_and\\_insurance.htm](https://content.naic.org/cipr_topics/topic_cannabis_and_insurance.htm)

<sup>34</sup> National Cannabis Insurance Services. “Product Liability and Crop Insurance.”

<sup>35</sup> Jergler, Don. “2020 Predictions from Cannabis Industry Experts: More Insurance Business.” *Insurance Journal*. Jan. 2, 2020. <https://www.insurancejournal.com/news/national/2020/01/02/553432.htm>

Product liability insurance is so expensive because the long term costs of providing liability coverage are still unknown. With widespread legal marijuana use being so new, there is a risk that in the future there will be claims from the health effects of long term use. Insurance companies must be willing to take the risk of insuring a business for the future.<sup>36</sup>

## 5.4 LANDLORD INSURANCE

Landlords who fill a vacant space with a cannabis tenant may run into problems maintaining their previous insurance policy. Anthony-Rivera states that many landlords cannot keep their old property insurance once they take on a cannabis tenant and have to purchase insurance from the same markets as marijuana businesses. Thus, these landlords face higher premiums and then pass these costs onto their tenants.<sup>37</sup> Insurance rates for cannabis occupancy can be 80% to 200% greater than standard mercantile rates.<sup>38</sup>



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*...many landlords cannot keep their old property insurance once they take on a cannabis tenant and have to purchase insurance from the same markets as marijuana businesses.*

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In May 2018, California Insurance Commissioner Jones approved California Mutual Insurance Company as the state's first provider to offer lessor's risk coverage for property owners who rent to cannabis tenants. This policy includes liability and property insurance for commercial property owners who lease space for marijuana labs, product manufacturing, cultivation and dispensaries.<sup>39</sup>

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<sup>36</sup> Correspondence with Jane Anthony-Rivera.

<sup>37</sup> Ibid.

<sup>38</sup> "Regulatory Guide: Understanding the Market for Cannabis Insurance." *National Association of Insurance Commissioners*.

<sup>39</sup> Carreon, Mary. "Cannabis Industry And Insurance: California's Next Trend." *Forbes*. June 8, 2018.



## PART 6

# LEGALLY REQUIRED INSURANCE

Despite the volatility in the insurance market, some marijuana regulations require insurance for a business to operate. Most states require vehicles transporting marijuana products to hold insurance. Additionally, many states require worker's compensation insurance. Depending on state market conditions, worker's compensation insurance may have to be purchased through a state market of last resort,<sup>40</sup> which can be up to 30% more expensive than private worker's compensation insurance.<sup>41</sup> Otherwise workers compensation insurance is purchased through a non-admitted provider.<sup>42</sup>

Additionally, state regulations may require specified amounts of insurance in order to qualify for business licensure. In the Golden State, a distributor license requires commercial general liability insurance in the aggregate in an amount no less than \$2,000,000 and in an

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<sup>40</sup> "Regulatory Guide: Understanding the Market for Cannabis Insurance." *National Association of Insurance Commissioners*.

<sup>41</sup> Correspondence with Jane Anthony-Rivera.

<sup>42</sup> "Regulatory Guide: Understanding the Market for Cannabis Insurance." *National Association of Insurance Commissioners*.

amount no less than \$1,000,000 for each loss.<sup>43</sup> Similarly, in Massachusetts, each marijuana establishment must obtain general liability insurance coverage and product liability insurance coverage for no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate annually with a deductible no higher than \$5,000 per occurrence. If the business demonstrates an inability to obtain the minimum insurance, the establishment must place no less than \$250,000 in escrow to be expended for coverage of liabilities.<sup>44</sup> Colorado has insurance requirements for a few types of licenses including for licensed hospitality businesses.<sup>45</sup>



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*Washington has the most comprehensive insurance requirements for recreational marijuana.*

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Washington has the most comprehensive insurance requirements for recreational marijuana. Each licensee must carry commercial general liability or commercial umbrella insurance for bodily injury and property damage with a limit no less than \$1,000,000. This insurance must cover all claims caused by any act, omission, or negligence of its officers, agents, representatives, assigns, or servants, and the insurance must also cover bodily injury including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. Insurance carriers must meet minimum rating requirements.<sup>46</sup>

Local governments can add their own insurance requirements. For example, in Goleta, California, marijuana regulations require all cannabis businesses to hold a \$2,000,000

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<sup>43</sup> California Code of Regulations. Title 16. Division 42. Bureau of Cannabis Control. <https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/01/Order-of-Adoption-Clean-Version-of-Text.pdf>

<sup>44</sup> 935 Code of Massachusetts Regulations 500. Cannabis Control Commission. [https://mass-cannabis-control.com/wp-content/uploads/2019/11/935\\_CM\\_500.000\\_Adult\\_Use\\_of\\_Marijuana\\_11.1.19.pdf](https://mass-cannabis-control.com/wp-content/uploads/2019/11/935_CM_500.000_Adult_Use_of_Marijuana_11.1.19.pdf)

<sup>45</sup> 1 Code of Colorado Regulations 212-3. <https://drive.google.com/file/d/1elp1bpu7Jz7yusFvhA6kbC5icRYwzqkK/view>

<sup>46</sup> Washington Administrative Code 314-55-0882. <https://apps.leg.wa.gov/wac/default.aspx?cite=314-55-082>

policy with the city named as the insured. The policy must be issued by an “A” rated carrier.<sup>47</sup> This local regulation is more stringent than the state’s requirement, which only applies to distributor licenses.<sup>48</sup>

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<sup>47</sup> Goleta Municipal Code. 5.09 Commercial Cannabis Businesses. <http://qcode.us/codes/goleta/>

<sup>48</sup> For a detailed breakdown of state and city insurance requirements, see Gilmore, Shay, Adam Patt and Ian Stewart. “Making Sense of State and Local Cannabis Insurance Regulations.” *National Cannabis Industry Association*. June 2019.  
[https://cdn2.hubspot.net/hubfs/790303/NCIA%20Committee%20White%20Papers/FIC\\_InsuranceRequirementsFinal\\_digital.pdf](https://cdn2.hubspot.net/hubfs/790303/NCIA%20Committee%20White%20Papers/FIC_InsuranceRequirementsFinal_digital.pdf)

## PART 7

# POTENTIAL ENFORCEABILITY CONCERNS

One potential problem caused by marijuana being illegal on the federal level is that insurance companies may try to avoid their obligations under contract.<sup>49</sup> There is very limited case law on the subject. In 2012, in *Tracy v. USAA Casualty Insurance Company*, a Federal District Court in Hawaii ruled for the insurance company in a suit brought by a homeowner's insurance policyholder. When 12 marijuana plants were stolen from the plaintiff's home, USAA stopped making payments under the policy, which included coverage for loss to "trees, shrubs, and other plants" because it decided that the homeowner did not have an insurable interest in the plants. While the court concluded that a qualifying patient in compliance with medical marijuana laws would have a lawful interest in their marijuana supply, the insurance company was still not required to pay. The court ruled that "[t]o require Defendant to pay insurance proceeds for the replacement of medical marijuana plants would be contrary to federal law and public policy...as a matter of law, Defendant's refusal to pay for Plaintiff's claim for the loss of her medical marijuana plants did not constitute a breach of the parties' contract."<sup>50</sup>

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<sup>49</sup> Industry experts claim this is the "primary challenge" to getting admitted insurers to write coverage for cannabis business. "Regulatory Guide: Understanding the Market for Cannabis Insurance." *National Association of Insurance Commissioners*. July 19, 2019.

<sup>50</sup> *Tracy v. USAA Casualty Insurance Co.*, Civ. No. 11-00487 LEK-KSC, 2012 WL 928186 (D. Hi. Mar. 16, 2012).

In 2016, a Federal District Court in Colorado ruled in favor of Green Earth, a cannabis retailer and grow facility. Green Earth had a commercial property and general liability insurance policy through Atain. After plants and harvested products were lost, Atain denied Green Earth's claims. In motions submitted to the court, Atain argued that a provision in the contract denying coverage for "contraband" excludes coverage for marijuana products and that enforcing the contract would be contrary to public policy. Unlike in *Tracy*, the court rejected public policy arguments:<sup>51</sup>

*...in light of several additional years evidencing continued erosion of any clear and consistent federal public policy in this area, this court declines to follow Tracy. Accordingly, the court declines Atain's indirect invitation to declare the Policy void on public policy grounds. Atain, having entered into the Policy of its own will, knowingly and intelligently, is obligated to comply with its terms or pay damages for having breached it.*

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***If the federal government became less tolerant of state marijuana markets, courts may be less inclined to follow Green Earth.***



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It is more likely that in later cases, courts will follow *Green Earth* rather than *Tracy* given the federal government's relative tolerance of recreational and medical marijuana at the state level. If the federal government became less tolerant of state marijuana markets, courts may be less inclined to follow *Green Earth*. The expansion of the industry between *Tracy* and *Green Earth* may also explain the change in ruling as courts may now be unwilling to disrupt a multibillion-dollar industry. Still, given the conflict between state and federal law, the best bet for marijuana businesses is to keep any disputes in state court, rather than federal.<sup>52</sup>

One way that business owners can protect themselves is by carefully reading their insurance policy. Fine print coverage exclusions for "schedule 1," "federally illegal," or

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<sup>51</sup> *Green Earth Wellness Center v. Atain Specialty Insurance Co.*, 163 F.Supp.3d. 821 (D. Colo. 2016).

<sup>52</sup> Simpson, Andrew G. "Making a Federal Case Out of 'Legal' Marijuana Insurance Claims." *Insurance Journal*. April 11, 2017. <https://www.insurancejournal.com/news/national/2017/04/11/447446.htm>

“health hazard” could result in a worthless policy to a cannabis business.<sup>53</sup> Anthony-Rivera has worked with clients who were paying for a policy that explicitly excluded cannabis products and services. She stated that policies her company sells regularly through Next-Wave and Cannasure have a government action exclusion “which means that the policy would basically become null and void should anything happen as a result of a government stepping in or mandating anything.”



*This is a risk marijuana businesses currently have to take, knowing full well that insurance claims may never be paid. As a result, many marijuana businesses may simply view state and local requirements to carry insurance as simply another form of taxation because premiums must be paid even if no benefit is received.*



This is a risk marijuana businesses currently have to take, knowing full well that insurance claims may never be paid. As a result, many marijuana businesses may simply view state and local requirements to carry insurance as simply another form of taxation because premiums must be paid even if no benefit is received. Despite *Tracy*, Anthony-Rivera stated that potential problems at the court level are not a big concern for her clients. Instead, they are simply focused on obtaining the necessary insurance so clients can continue to operate.<sup>54</sup>

<sup>53</sup> Sacirbey. “Finding right insurance is key to any marijuana company’s business plan.”

<sup>54</sup> Correspondence with Jane Anthony-Rivera.

## PART 8

# CONCLUSION

While some uncertainty is unavoidable in insuring a new, heavily regulated industry, insurance for marijuana businesses is burdened by the conflict between state and federal law. The current regulatory landscape has resulted in business owners who are hesitant to purchase insurance and few companies willing to provide insurance. The best path forward for marijuana business insurance is the legalization of marijuana on the federal level. In Canada, where marijuana is legal, big insurance companies such as The Lloyds Market have announced plans for cannabis businesses.<sup>55</sup> Anthony-Rivera points out that a banking solution for the marijuana industry would also be beneficial for business owners.<sup>56</sup>

In the meantime, there are unique challenges to insuring the marijuana industry such as fire hazards and uncertainty in products liability. The market has already made some progress addressing these problems with the growth of cannabis-focused insurance companies and brokers. Until a more complete market develops, however, regulations with certain insurance requirements may keep many entrepreneurs from entering the industry.

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<sup>55</sup> The Lloyds Market is a major supplier in the United States and is made up of nearly 90 syndicates. "Cannabis." *Best's Special Report*.

<sup>56</sup> Correspondence with Jane Anthony-Rivera.

# ABOUT THE AUTHOR

**Allie Howell** is a research intern at Reason. Previously, she was a Burton C. Gray Memorial intern at Reason and an economic policy intern at the Manhattan Institute. Allie has been published on Economics21.org, the Foundation for Economic Education, and *Reason*. She is a recent graduate of Hillsdale College where she majored in economics and mathematics. Allie is a student at Notre Dame Law School.



