



Presented by **PretiFlaherty**
LEGAL PAPERS
The Maine Cannabis Law
Breakfast Series

2019

SESSION 2

Legal and Liable

Insuring Your Cannabis-Related Business

October 28, 2019



INTRODUCTION

**WELCOME
MAINE CANNABIS
INDUSTRY**

PretiFlaherty



AGENDA

PART 1

Legal Risks for Insurers and Underwriters

Matt Warner, Preti Flaherty

PART 2

Cannabis and Insurance

*Jim Chalmers and Katie Piper,
Chalmers Insurance Group*

PART 3

Cannabis Insurance Industry Update

Derek Stevenson, Varney Agency

PART 4

Q&A

Warner, Chalmers, Piper, Stevenson

LEGAL RISKS FOR INSURERS AND UNDERWRITERS



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The primary factor is **RISK**

- ▶ Legal risks
- ▶ Regulatory risks
- ▶ Business risks
- ▶ Natural risks

Inherent legal risks to underwriting cannabis-related businesses

- ▶ **Controlled Substances Act**, 21 USC Sec. 801, et seq.
 - ▶ Prohibits manufacture, importation, possession, use and distribution
 - ▶ Prohibits aiding and abetting

Inherent legal risks to underwriting cannabis-related businesses

- ▶ **Bank Secrecy Act**, 31 USC Sec. 5311, *et seq.*
 - ▶ Technically prohibits banking customers that profit from marijuana sales directly or indirectly
 - ▶ Broad reporting obligations

Inherent legal risks to underwriting cannabis-related businesses

- ▶ Maine Medical Use of Marijuana Act, 22 MRS Sec. 2421
- ▶ Maine Marijuana Legalization Act, Title 28-B
 - ▶ Commercialization of marijuana is legal within strict confines
 - ▶ Grow limits
 - ▶ Who can sell it
 - ▶ Where it can be consumed
 - ▶ Non-compliance makes the activity illegal

CANNABIS AND INSURANCE



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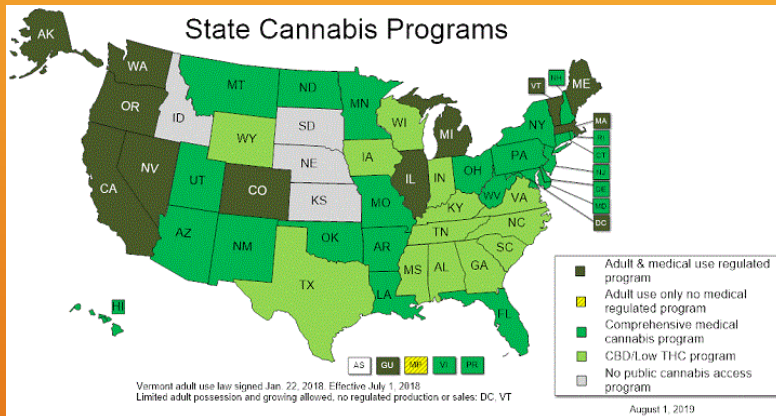
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- ▶ The U.S. House passed legislation on 9/25/19, that would provide financial institutions with a safe harbor for providing services to marijuana-related business in states where the substance is legal.
- ▶ How does this affect insurance: This helps reduce the theft exposure as these businesses will not be holding onto so much cash.

BANKING BILL



- ▶ 33 states and the District of Columbia allow the use of medical marijuana.
- ▶ 11 out of 33 plus DC have legalized recreational marijuana use.
- ▶ 9 states require cannabis businesses to carry commercial general liability, workers' compensation, and auto liability insurance.

STATE CANNABIS PROGRAM

► **State Level:**

Generally have some form of patient registry

May provide some protection against arrest for possession up to a certain amount of marijuana for personal medicinal use

Medical marijuana growers or dispensaries are often called "caregivers" and may be limited to a certain number of plants or products per patient

► **Federal Level:**

Marijuana is a Schedule I substance under the Controlled Substances Act

Considered to have high potential for dependency

Not accepted in use for medical purposes

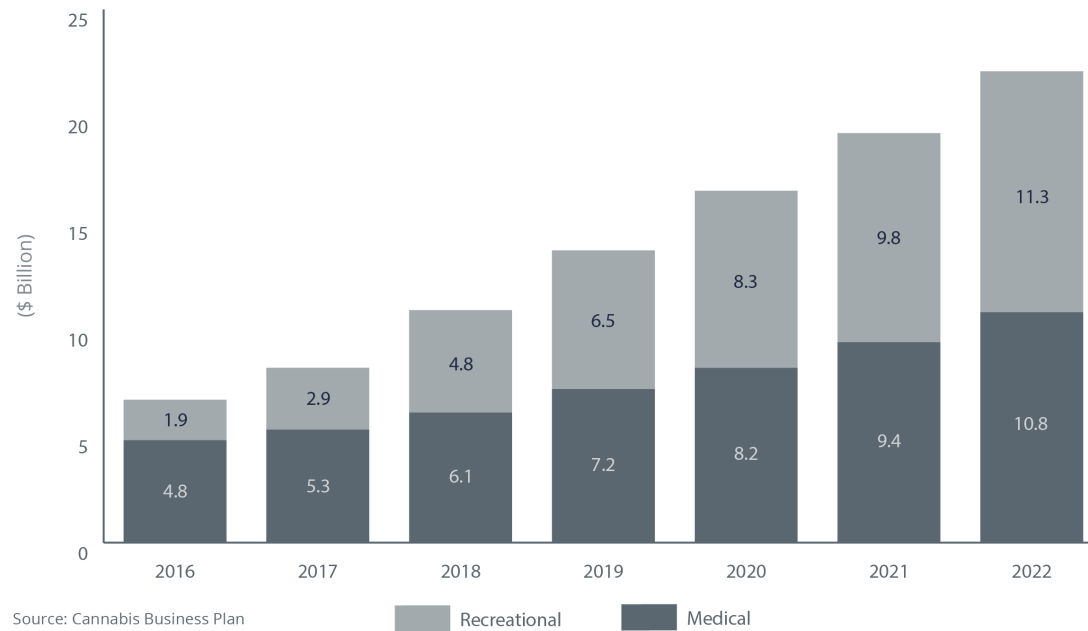
Distribution is a federal offense

STATE VS. FEDERAL LEGALIZATION

- ▶ Cultivators and Laboratories
- ▶ Manufacturing of Derivative Products –
Infused Products
- ▶ Dispensaries and Retail stores
- ▶ Landlords

MARKET SEGMENTS OF CANNABIS

Projected Growth of Marijuana Revenue 2016-2022



- ▶ Insurance carriers are cautious about entering the market
- ▶ Uncertainty of the exposures and not enough data
- ▶ The availability of insurance options are growing however a challenging segment to insure.
- ▶ As this industry grows the insurance carriers will continue to innovate and create coverage forms and products.

▶ Coverages exposures

- ▶ Property – Building, Contents, Machinery and Equipment
- ▶ Equipment Breakdown – Extractors can cost \$50,000 - \$100,000
- ▶ Business Income
- ▶ Crime Coverage
- ▶ General Liability
- ▶ Products Liability (contamination/recall/deceptive advertising)
- ▶ Completed Stock and Goods for sale (inventory)
- ▶ Crop
- ▶ Business Auto
- ▶ Transit Coverage
- ▶ Workers Compensation
- ▶ Management Liability
- ▶ Cyber
- ▶ And many more

GROWING DEMANDS FOR MORE COMPREHENSIVE INSURANCE OPTIONS

- ▶ Required sophisticated security systems, fencing and security personnel to protect against theft
- ▶ Cash required to be stored in a fireproof safe and deposited in a financial institutions
- ▶ Automatic Fire Suppression systems and proper ventilation are frequently required to reduce fire damage to high value cannabis crop and expensive equipment
- ▶ Proper ventilation systems in extraction areas in facilities

MITIGATION REQUIREMENTS

- ▶ Rough Notes

<http://roughnotes.com/cannabis-insurance/>

- ▶ Cannabis Insurance Company

<https://www.thecannabisinsurancecompany.com/news/marijuana-insurance/marijuana-insurable-and-its-not-your-fathers-insurance-company>

- ▶ National Association of Insurance Commissioners

https://content.naic.org/cipr_topics/topic_cannabis_and_insurance.htm

- ▶ National Conference of State Legislatures

<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

- ▶ Admiral Insurance Group

- ▶ CannGen Insurance Services

- ▶ Scottsdale Insurance Company

RESOURCES

The previous slides contain information gathered from the following websites, industry magazine/articles and insurance carrier underwriting guidelines.

CANNABIS INSURANCE INDUSTRY UPDATE



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INSURANCE
& BONDING

Seed to Sale

CULTIVATORS

PROCESSORS

MANUFACTURERS

WHOLESALE

TRANSPORTERS

DISPENSARIES

RETAILERS

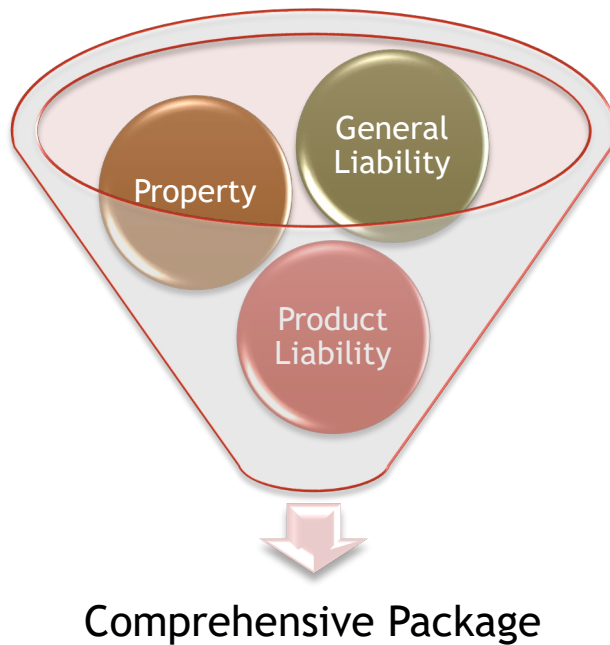
LABORATORIES

PROPERTY MANAGERS

BUILDING OWNERS



Evolution of Cannabis Insurance



- Higher limits
- Less exclusions
- More carrier options
- Competition driven pricing
- Indoor/Outdoor crop coverage
- Cargo coverage
- Shorter applications

The Underwriting Process



- Pricing Factors
 - Building
 - Security
 - Experience
 - Products
- Calculating Premium
 - Sales
 - Number of plants
 - Square footage

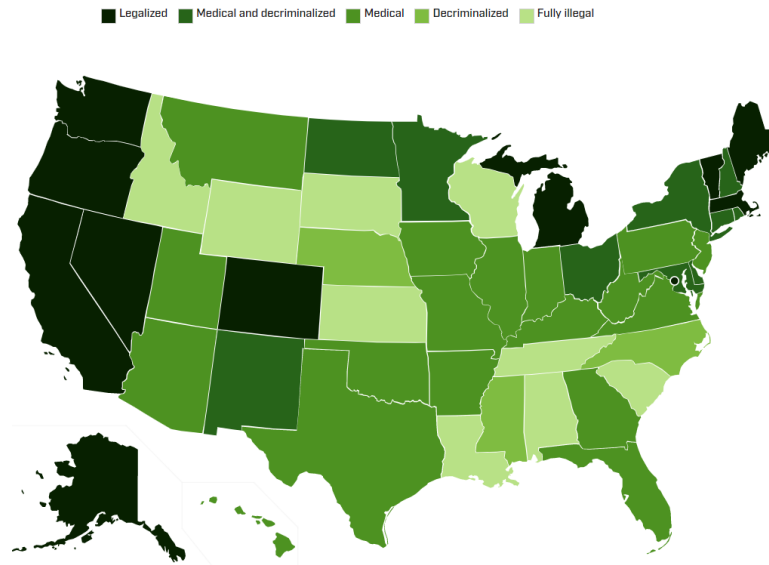
Current Challenges

- ▶ Payment Methods
 - ▶ Financing
- ▶ Projecting Sales
- ▶ Understanding Coverages
 - ▶ Ex. When would product liability help you?
- ▶ Prioritizing Coverages



Forecasting Cannabis Insurance

- ▶ More carriers entering market
- ▶ Lower pricing
- ▶ Massive push once federally legal
- ▶ Pricing for medical vs. recreational
- ▶ Hemp will become just another crop



Q&A

THANK YOU FOR COMING

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