

# Risk Management and Insurance Manual

INTRODUCTION TO CANNABIS INSURANCE

**NATIONAL CANNABIS INDUSTRY ASSOCIATION**  
RISK MANAGEMENT & INSURANCE COMMITTEE



**ADVOCACY. EDUCATION. COMMUNITY.**

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# RMIC Insurance Manual Introduction

## Foreword

The National Cannabis Industry Association’s Risk Management & Insurance Committee is a multidisciplinary group of risk management professionals convened to draw on the expertise and experiences of professionals dedicated to the cannabis community.

This manual is the first in a series of insurance manuals that will help guide you through the various coverages and definitions used in the cannabis insurance industry. This first edition of the RMIC Insurance manual will outline the entry level knowledge base for the cannabis insurance industry. Future additions will dive deeper into more specific insurance topics.

The cannabis industry is one of the fastest growing industries in the USA maturing at more than 25% annually. As the cannabis industry continues to emerge and flourish from state to state, there remains uncertainty as to the future of federal definition of cannabis as a “Schedule 1” controlled substance. (1)

The future of the cannabis industry will continue to experience the convergence between state and federal government regulations until a uniform regulatory and compliance framework can be established. Fundamental services such as banking, financing, and insurance along with IRS 280E tax regulations will continue to burden state regulated cannabis business. And, with the industry still in its relative infancy, emerging and shifting regulatory backdrops create risks to these businesses.

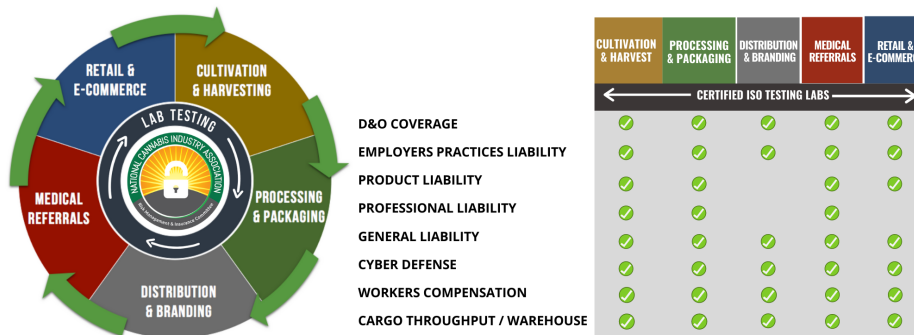
Cannabis businesses can manage these risks in a variety of ways. Perhaps the foremost among them are the procurement of appropriate insurance coverage. In just a few years, insurance coverage options for cannabis operators have grown from nothing to dozens of insurance carriers serving the industry.

It is predicted that by 2025, legal cannabis sales will be valued at \$23B in the United States, and this emerging industry will create upwards of 18,000 new businesses.(2) In 2020 and 2021, plant-touching cannabis companies were deemed essential businesses during the covid-19 pandemic. Businesses had to adopt and pivot to new operating standards such as curbside pick-up, drive-up windows, and delivery. This allowed the industry to continue to move forward serving its local communities with uninterrupted healthcare options, legal access, and continued economic activity.

This manual will explore the various insurable risks attributed to the cannabis supply chain. Cannabis operators must be proactive in developing a risk management program that conforms to local

and state compliance and security requirements. As the industry continues to evolve, operators will need to be more diligent in controlling and managing risk. Every aspect of the supply chain contains some portion of risk. Your qualified cannabis insurance broker should be able to assist your company in evaluating and obtaining proper insurance coverages to protect you, your business, and your employees.

## CANNABIS SUPPLY CYCLE & RISK MANAGEMENT



## Introduction

Every business has operational risks and cannabis businesses are no different. “Risk” is a difficult term to define and has several different connotations. For our purposes, risk is defined as the operational possibility of an occurrence or event. In addition to its unique risks, the cannabis industry faces exposures that are similar to those faced by other industries. Companies throughout the supply chain are subject to risks such as product contamination and theft. Cannabis operators must address risks that have not previously been addressed by the insurance industry. Cannabis operators are forced to consider the impact of continued federal prohibition. Federal illegality obliges many cannabis companies to do business exclusively in cash, which carries additional risks. With the industry still in relative infancy, new laws or regulations can help to reduce or create risks for these businesses. For example, a change in the interpretation of a regulation might make certain product lines unfit for sale or place restrictions on the ownership of a licensed business.

Cannabis businesses can manage these risks in a variety of ways. Risk transfer includes transfer of risk to another party via contract or other methods, including the purchase of appropriate insurance coverage. Risk acceptance includes self-insurance or employing management policies or procedures. And risk avoidance, which would entail an operational decision to avoid certain types of risk. Just a few years ago, insurance options for cannabis operators were limited; today there are dozens of insurance companies serving the industry. Selecting the right insurance coverages is a complicated and necessary process and may require the purchasing of multiple policies. Most buyers should seek professional guidance. The National Cannabis Industry Association

(NCIA) recommends that cannabis businesses seek out professionals with substantial experience in the cannabis and/or hemp insurance sector.

This Risk Management and Insurance Manual is designed to provide a broad introduction to risk management and insurance coverage for cannabis industry operators to learn about how insurance works for cannabis and hemp businesses. We hope that you find it helpful.

## Definitions of Insurance

### Insurance: Risk Transfer Method

Insurance provides indemnification and compensation for loss sustained by the buyer of a policy, referred to as the “insured.”. The insurance policy is a legal contract that sets out how, and in what circumstances, the insurance company will provide indemnification and pay compensation. The loss need not be financial, but it must be expressible in financial terms. Through insurance, businesses transfer their risks to an insurance company in exchange for annual or monthly payments, called premiums. When a covered loss occurs, the insured business, directly or through their insurance broker, files a claim with its insurer. Depending on the nature of the loss and policy in question, the insurer may: make payments to compensate the insured for damage to property or covered financial losses; hire a lawyer to defend the insured; make a settlement with a third party injured by the insured; or pay for judgments entered against the insured.

### Insurance Company

An insurance company is an institution that provides insurance policies to protect individuals and businesses against the risk of financial losses in return for regular payments of premiums. An insurance policy is a form of risk transfer. Insurance companies are all rated in terms of their financial strength.

## Types of Insurance Companies

Admitted insurance companies are licensed in the states in which they sell policies. These companies are domiciled in a single state but must be specifically licensed in each state where it intends to conduct business, and must comply with each state's insurance codes and financial requirements. Admitted insurance companies must submit their policy forms and rates for approval by the state, and if an admitted insurer becomes insolvent, that state's guarantee fund will provide some protection for the policyholders. It is important to note that this protection is limited and may not fully indemnify the policyholders for losses they may suffer.

A non-admitted insurance company – commonly known as a surplus lines insurance company – can offer insurance, but only when coverage is not available from admitted insurers. The insured pays additional taxes and fees and must be informed that the non-admitted company is not backed by the state if it becomes insolvent and unable to pay claims. These insurers usually write coverage through an excess and surplus lines broker licensed in that jurisdiction. Non-admitted companies can adjust and modify their forms and rates to meet various market conditions.

Captive insurance companies and Risk Retention Groups are private insurance companies created to insure the risks of the insured/owners or their related corporations. They are a form of self-insurance used widely in the United States and increasingly available to the cannabis industry.

## Selling Channels: How Insurance Policies are Sold

The terms “agent” and “broker” are often used interchangeably. Although not always the case, an agent usually represents an insurance company whereas a broker usually represents the client. Both may have the ability to offer policies from different insurers, but some agents work exclusively for one insurance company. Brokers and agents are paid commissions or fees by the insurance companies for the policies they bind or sell.



Managing General Agent (“MGAs”) – These organizations are agents appointed by insurance companies to manage all or a portion of their business. They have contractual authority to underwrite and issue policies, settle claims and generally act on behalf of the insurance company. They are regulated by their state’s Division of Insurance.

Underwriters are individuals who evaluate risk for an insurance company. They review applications, and determine premiums, rates, and coverage options. Most underwriters evaluate a prospective insured company based on size, number of employees, gross revenues, number and/or types of products and past losses or claims, to name a few variables that go into the process.

### Cannabis

Cannabidiol (CBD) and tetrahydrocannabinol (THC) are the two most prominent cannabinoids found in cannabis. THC is the psychoactive chemical compound in cannabis responsible for a euphoric high. An average batch of cannabis contains between 5% and 20% THC, and some premium cannabis can have up to 30% THC. The first step to understanding THC is to understand cannabinoids. Cannabinoids are chemical compounds found in the cannabis plant that interact with receptors in the brain and body to create various effects. There exist dozens of terpenes, and potentially more than 100 cannabinoids in the cannabis plant, but THC is the most widely known among these due to its abundance and psychoactive attributes.

### Hemp

Hemp is cannabis with a maximum delta-9 THC level of 0.3% (3), essentially making it less likely for a consumer to feel any inebriating psychoactive effect. Hemp is also used in thousands of commercial and industrial products, such as paper, cordage, construction material, textiles, and clothing. Hemp is stronger and more durable than cotton. It is also a source of foodstuffs (hemp milk, hemp seed, hemp oil) and biofuels.

High-THC cannabis looks different from Hemp. The plants tend to be either broad leafed, a tight bud, or resemble a nugget with hairs. Hemp, on the other hand, has skinnier leaves that are concentrated at the top of the plant.

Hemp plants are available for purchase online and home delivery, or at retailers in all 50 states and over 40 countries around the world.

## CBD

CBD is officially known as cannabidiol, and is typically extracted from the cannabis or hemp plant. CBD extract has become widely popular and is being introduced into many consumer products such as food/beverage, cosmetics, soaps, oils and vape pens, although the FDA has explicitly stated as of this writing that CBD cannot be used as a food/beverage supplement until it publishes product approval regulations

The passage of the 2018 Farm Bill removed hemp and hemp-derived CBD from the Drug Enforcement Administration's list of "Schedule 1" controlled substances, making it an ordinary agricultural commodity and allowing it to be legally sold under federal law. Cannabis with THC content greater than 0.3% remains classified as a Schedule 1 substance. Insurance companies take a different view of hemp and CBD companies now that the hemp plant is not a Schedule 1 substance.

### *Insurance for Cannabis (THC/CBD) vs Hemp (CBD Only)*

When we refer to the cannabis industry, we mean licensed companies involved in the sale, manufacture, cultivation, transportation, and testing of legal cannabis, hemp, CBD and ancillary goods and services directly associated with the cannabis industry.

Cannabis with greater than 0.3% THC is still considered federally illegal, and is regulated in each state where the cannabis industry has been adopted and licensed. Cannabis insurance policies are mostly offered by non-admitted or surplus lines insurance companies, though there are a handful of admitted insurance companies writing policies in the State of California. Because hemp is now federally legal, admitted insurance options are more widely available. There are more insurance carriers available for the hemp industry.

### **Why is cannabis insurance different from other insurance products?**

Federal banking restrictions are one of the reasons larger admitted insurance companies do not offer cannabis-related insurance policies. The banking system is essential for all insurance companies and violating federal law on cannabis could jeopardize their ability to use that system, thus reducing the number of insurance carriers willing to provide policies in the cannabis market.

Policies that insure cannabis risks often contain exclusions and endorsements that restrict or

delete coverage in a policy. Reviewing an insurance policy is as important as reading a legal contract, because it *is* a legal contract. The NCIA recommends that all cannabis operators have an attorney review their policies for suitability.

### **How do I find an agent/broker who understands cannabis insurance?**

Prospective insured parties should seek out agents and brokers who have a comprehensive understanding of this state-regulated industry. The agent or broker must be educated on the many local, state, and federal regulations that affect the insured and their operations.

Cannabis/hemp companies need many types of insurance, including but not limited to: property insurance, product and general liability insurance, employment practices insurance, cyber liability, auto liability, and workers compensation insurance. A qualified agent or broker must be able to analyze and address all the exposures.

One challenge in getting the right insurance policy for a cannabis business lies in understanding the limitations due to the legal restrictions surrounding cannabis and making sure that the cannabis insurance policy is crafted around those restrictions. At a minimum, cannabis operators should:

- Make sure their broker stays current with the laws and policies relevant to the national and state regulated cannabis industry.
- Make sure your agent or broker has access to all insurance companies offering policies.
- Obtain references from existing cannabis clients.
- Ask to see sample policies. If you don't understand the policy wordings, ask your agent or broker to explain it to you.
- Read the endorsements and exclusions for each policy closely. Make sure they provide needed coverage for your cannabis operations.
- Have your own attorney review all insurance policies.
- Develop a comprehensive risk assessment of your business. Professional risk managers and specialist insurance attorneys are resources to consider along with your broker or agent.

Cannabis operators must take risk mitigation seriously. A comprehensive risk management and loss prevention program will help secure coverage and lower premiums. Your risk management program should address all aspects of your operations, including physical and intangible risks. Specific areas of risk exist with employee hiring practices, driver safety review, product labeling and testing which should be covered in proper standard operating procedures and compliance manuals. Be mindful to address all aspects of your business, including all departments, social media and physical property.

## How to Select a Cannabis/Hemp Insurance Broker

### Plant Touching and Non-Plant Touching Business

The cannabis industry supply chain is typically broken down into two segments: Plant Touching (sometimes called direct-to-plant) and Not-Plant Touching. This distinction often determines if the business will have access to banking and other ancillary services based on perceived or actual legal risk.

Operators who grow and cultivate cannabis, own a cannabis dispensary, manufacture extracts, distributors, own a cannabis lab testing company, or employ people to handle the cannabis plant are considered Plant Touching businesses. Cannabis cultivators, extractors, testing labs, and retailers are required to adhere to all regulations established by each state's regulatory agencies.

Cannabis operators need to be comfortable asking questions – and a lot of them – of their insurance brokers.

Operators should read and understand their entire policy, especially the exclusions and endorsements. Make sure the agent or broker can explain the policy and coverages in an understandable way. Insurance agents and brokers should provide references from current cannabis clients.

Ask your peers in the cannabis industry who they do business with. Cannabis insurance specialists will be knowledgeable about the insurance policies and regulations in each state where an operator conducts business.

### **What type of insurance should I buy for my cannabis business?**

Each segment of the supply cycle of the cannabis industry is exposed to various risks that may be protectable by insurance. This manual will provide information on the range of policies available. Please note that this is not an exhaustive list and you should consult your insurance agent and legal advisers for guidance on the appropriate policies for your business.

Your business should be ready to provide the essential information like sales revenues, number of employees, listing of business properties, security details, annual payroll expenses, and a business operation plan with your insurance broker. Your broker will navigate the marketplace and make sure that your coverage is tailored to meet your business's needs.

## **Types of Coverages**

Cannabis insurance protects your business and financial assets if you are sued due to negligence in your business operations. A company can be held liable for a variety of third-party claims, such as property damage or bodily injuries from cannabis products manufactured, distributed, or sold to your customers.

## **General Liability**

Insurance coverage that protects against bodily injury and property damage liability claims arising out of premises exposures, business operations, products sold, as well as advertising and personal injury exposures.

**Coverage A:** Bodily Injury & Property Damage (Pays when the insured's business operations or premises is legally liable for 3rd party bodily injury or property damage)

**Coverage B:** Personal & Advertising Injury (Coverage pertaining to misacts such as libel, slander, malicious prosecution, copyright infringement)

**Coverage C:** Medical Payments (Covers those who have suffered bodily injury as a result of the insured's negligence. Legal liability is not necessary for this coverage to be effective and can help deter lawsuits by paying medical costs)

## Damage to Premises Rented to You

Coverage for fire damage to rented premises and damage by any cause other than fire to premises and/or its contents rented for a maximum of 7 days.

## Excess Liability

Insurance coverage that provided additional limits, exceeding those of the underlying liability policies.

## Product Liability

Insurance that provides protection from bodily injury or property damage claims resulting from products that have been manufactured or sold. Product liability involves strict legal liability, and all businesses that come into contact with a product can be liable for damages, regardless of their role in the manufacturing or distribution chain.

To minimize risk, your business should demand certificates of insurance (and ideally the full policy) from vendors to confirm protection in the event of a claim arising from another company's product that you may sell to consumers.

## Property Insurance

Insurance that protects a property owner for loss of covered property or loss of income resulting from damage to covered property. This includes both real property (buildings), as well as business personal property (contents). Fire is a typical cause of a property loss where the insurance policy would respond to make the policyholder whole.

**Crop Insurance:** Insurance for cultivators that covers plants in-process, seeds, clones, vegetative, flowering, harvest, and finished stock.

**Equipment Breakdown Insurance:** Covers a loss due to mechanical or electrical breakdown. Coverage applies to the cost incurred to repair or replace the damaged equipment or property caused by the equipment breakdown. This also includes loss of Business Income and Extra Expense from such an event, as well as Data Compromise and Reputation Recovery.

## Business Income & Extra Expense

Covers the loss of net income suffered by a business when damages, due to a covered event, have been sustained. This coverage helps replace lost income and make the business whole again.

## Business Auto Insurance

Insurance that covers a company for the use of its vehicles for business. This may include company-owned vehicles, hired or non-owned vehicles, leased vehicles, or employee-owned vehicles.

## Cargo Insurance

Specific to the cannabis industry, this insurance covers property in transit, as well as money and securities.

## Workers Compensation

Insurance, required by law in many states, to be carried by employers, which provides compensation to those employees who have been injured at work or who have contracted an occupational disease. Workers compensation is available for all cannabis class codes and is available in all legal cannabis states. A Workers Compensation policy will pay for medical care and lost wages for employees who are injured on the job.

The coverage pays damages regardless of who is at fault in the accident. If the employee dies, the policy can pay compensation benefits to the employee's family.

## **Errors & Omissions (E&O) / Professional Liability**

Coverage designed to protect professionals (e.g., medical directors, doctors, accountants, attorneys) and quasi-professionals (e.g., growers, consultants, etc.) against liability incurred as a result of errors and omissions in performing their professional services. This typically applies to financial losses. E&O and Professional Liability are often used as interchangeable terms.

If you employ doctors for your medical cannabis business, be aware most medical malpractice insurance policies do not cover cannabis recommendations, unless a specific cannabis endorsement is agreed upon with the insurance company.

## **Employment Practices Liability Insurance (EPLI)**

Protects an employer against claimed injury arising out of the employment process, including claims such as discrimination, sexual harassment, wrongful termination, or breach of employment contract.

## **Directors and Officers Liability**

Insurance that covers the directors and officers of a company for claims of willful negligence and misconduct made against them while serving in such a capacity. It protects against claims resulting from managerial decisions that result in financial consequences. The policy will pay for legal defense, damages, and fees.

## **Cyber Liability/Data Breach**

Insurance policy or endorsement utilized to protect an insured from electronic and internet-based risks, such as loss of electronic data, privacy breach, network security, cyber extortion, electronic media liability, and – in some cases – errors & omissions.



# Policy Definitions

- **Coinsurance:** A clause that can be found in many insurance policies requiring the insured to cover their property to a specified percentage of its actual value (ex. 80%, 90%, 100%). If the insured fails to do so, and a loss occurs, the insured may be subject to a Coinsurance penalty. Coinsurance values and calculations vary by policy, so it is important to understand and discuss the policy terms and conditions with your agent.
- **Replacement Cost (RC):** Calculation used to determine the cost to replace property that is damaged due to a covered loss.
- **Actual Cash Value (ACV):** Calculation based on depreciated value of property at the time of loss. In many cases, this means replacement cost minus depreciated value.
- **Agreed Value Coverage:** A clause by which the insurer waives the coinsurance requirement. The insurer will often require a signed statement of property values from the insured and will cover the insured's property up to 100% of the mutually agreed value in the event of a loss.
- **Basic Causes of Loss Form:** An industry standard ISO (Insurance Services Office, Inc.) form that provides coverage for named perils, which include: fire, lightning, explosion, smoke, windstorm, hail, riot, civil commotion, aircraft, vehicles, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action.
- **Broad Causes of Loss Form:** An industry standard ISO (Insurance Services Office, Inc.) form that provides coverage for all of the perils named on the Basic Causes of Loss form in addition to the following: falling objects; weight of snow, ice, or sleet; water damage (in the form of leakage from appliances); and collapse from specified causes.
- **Special Causes of Loss Form:** An industry standard ISO (Insurance Services Office, Inc.) form, also referred to as an all risk form, which covers against all risks except for those specifically excluded in the policy.
- **Occurrence Policy:** Insurance policy that covers claims that occur during any point within the policy period.
- **Claims-Made Policy:** Insurance policy that provides coverage for claims that are filed with the insurance company during the policy period. If a retroactive date is specified, the event that gave rise to the claim must have occurred on or after that date for coverage to apply.
- **Retroactive Date:** A clause in many claims-made policies stating that a wrongful act must have taken place on or after a specific date for coverage to apply.

- **Policy Effective and Expiration Dates:** The dates on which a policy becomes effective and through which the insured's coverage extends.
- **Contractual Liability:** Covers an insured for the liability they have assumed by entering into a contract (in accordance with such contractual terms).
- **Defense Inside or Outside the Limits:** Insurance policies may be written with defense costs contained within the policy limits or outside of the limits. A policy that includes defense cost within the limits provides less coverage than a policy that pays for defense costs in addition to the limits of indemnity.

## Endorsements/Exclusions/Protective Safeguard or Warranty

An insurance **endorsement** is an amendment or addition to an existing insurance contract which changes the terms or scope of the original policy. Endorsements may sometimes be referred to as riders. An insurance endorsement is used to add, delete, exclude, and/or otherwise alter coverage in the insurance policy.

An **exclusion** is a policy provision that eliminates coverage for some portion of the risk. Exclusions narrow the scope of coverage provided by the insuring agreement. The insurance agreement is very broadly worded in most insurance contracts. Insurers then use exclusions and endorsements to carve out or limit coverage for risks they do not wish to insure. It is important to read the exclusionary language in each policy.

Exclusionary language may leave your company exposed to risks that can directly impact your operations and the survival of your company. It is vital that any policy you obtain provides the coverage necessary to indemnify you in the event of a claim.

A **protective safeguard or warranty** is simply the confirmation or promise to have a specific safety element in place that will or should reduce the risk of a loss. For example, if the safeguard of fire sprinklers

was required and a fire occurred without you having functioning fire sprinklers, your coverage could be voided.

Some examples of safeguards or warranties:

- Vault requirements
- Safe weight and fire rating
- Stock or inventory & monies are outside the safe during non-business hours
- Central station burglar & fire alarms
- Video Surveillance System with backup data of 14 days
- Compliance with all local/city/county and state ordinances/laws/regulations
- QA/QC program that is formal and documented
- Licensed & insured contractor has inspected or performed all work
- Locked vehicle warranty

A cannabis business should also confirm whether there is a **“duty to defend”** covenant in its liability policies. The duty to defend describes an insurance company’s obligation to provide legal defense of claims made under a liability insurance policy. As a general rule, an insured need only establish that there is potential occurrence for coverage under a policy to give rise to the insurer's duty to defend.

The following is a non-exhaustive list of exclusions that are included in some cannabis policies, and may become the basis for a coverage dispute:

**Federal Crimes Exclusion:** This exclusion may void all cannabis coverage within a policy.

**Health Hazard Exclusion:** Any products sold by a company that may cause some form of health hazard will not be covered. These hazards include any form of adverse health effects, including injuries sustained from vaping.

**Cannabis Exclusion:** The general cannabis exclusion is designed to render an insurance policy ineffective if the insured operates within the cannabis industry. For cannabis companies, this can leave them exposed to a variety of risks associated with product liability, directors’ and officers’ claims, and regulatory claims.

**Carcinogens Exclusion:** Cannabis companies that sell dried flower, vaporizers, and any form of a cannabis product that contains carcinogens or has the potential to create carcinogens could not respond if their insurance policy contains this exclusion. The carcinogen exclusion will prohibit coverage for bodily injury, property damage, and personal and advertising injury.

**Impairment Exclusion:** Any products with the potential to alter an individual’s mental state would not be covered in a product liability lawsuit if this exclusion was included in the policy. Virtually all forms of cannabis alter your mental state, whether or not they are psychoactive.

**Hardware Exclusion:** Be certain to check for this exclusion if you sell vape cartridges, batteries, or any hardware that assists with consumption.

**Drugs/Controlled Substances Exclusion:** This exclusion typically excludes coverage for the use, sale, manufacture, delivery, transfer, or possession of a controlled substance as defined by the federal Controlled Substances Act (“CSA”). Under the CSA, it is illegal to manufacture, distribute, dispense, or possess cannabis.

**Governmental Acts Exclusion:** This exclusion removes coverage for any loss or damage caused by or resulting from confiscation or destruction by the government or public authority.

**Business Risk Exclusion:** This exclusion concerns claims for damages associated with a business’s faulty goods or services, as opposed to damage caused to others.

**Designated Premises Limitation:** This limitation is included on many policies issued for cannabis/hemp companies. This limitation excludes operations that are beyond your primary location, such as a special event or delivery services or locations that were not disclosed to the carrier.

**Adverse Health Effects Exclusion:** This endorsement is often attached to product liability policies.

**Ingredients Exclusion:** Cannabis/hemp insurance companies that offer products coverage may apply this endorsement to their policies. However, the scope of this endorsement can vary greatly from company to company.

**Vaporizing Equipment and Components Exclusion:** For manufacturers, distributors, wholesalers, and retailers, this form can be a massive risk to your operations. If this exclusion is included in your policy, there is no coverage for any claim arising out of the use, handling, or ownership of vaporizing equipment, or any part of the accessories attached or used with vaporizing equipment, including pens, cartridges, mouth pieces, batteries, chargers, coils and any miscellaneous products used with, or attached to, vaporizing equipment. Considering the wrongful death lawsuits and bodily injury lawsuits emerging recently, it is important to negotiate the removal of this form from your policy, if possible and applicable.

**Assault and Battery Exclusion:** If an employee removes a patron from a facility, even if to protect others or property, there is absolutely no coverage for bodily injury or property damage, and likewise there is no defense for a lawsuit.

**Medical Malpractice Exclusion:** Our review of most standard medical malpractice policies excludes cannabis related practices. Here is what most policy exclusions state: *“use, administration or prescription of any drug, pharmaceutical, medical device or procedure which has not **received final approval by the U.S. Food and Drug Administration (FDA)** for treatment of human beings or which is not used, administered or prescribed as part of an FDA approved study;”*

# Claims

An occurrence caused by an accident or wrongful act can trigger an insurance claim. An insurance claim is a formal request by a policyholder to an insurance company to review the occurrence facts. Based on the facts of the claim, the insurer will determine if the policy provides for compensation for a covered loss. Once the insurance company validates the claim, it then issues payment to the insured or an approved interested party on behalf of the insured.

Disputes over insurance coverage are often resolved with lawsuits. A court will make a fact-specific evaluation of the claim to determine if the insurance policy provides coverage for that claim.

Cannabis insurance claims data has been difficult to capture for several reasons. First and foremost, there is a lack of historical data. Ours is a new industry that is not federally legal, leaving a large degree of uncertainty when it comes to insurance claims. Many of the filed lawsuits that will provide guidance have not yet been fully adjudicated. Further, there is also a lack of claim reporting by cannabis companies as well as cannabis insurers. This is a trend that can be expected to continue if cannabis remains illegal at the federal level.

Of the known and reported claims, property claims are the most frequently occurring. Of those claims, most are related to fire or theft. This includes the equipment used to grow and produce the cannabis plant as well as the plants themselves.

Property loss claims related to fires are also common amongst cannabis companies. In a landmark insurance payout, one California cannabis cultivator received over \$1 million for crop damages when ash from a wildfire contaminated the plants inside a greenhouse.

While there is not a great deal of pure claims data available for the cannabis industry, there are several areas of litigation that signal the claims trends the cannabis industry can anticipate. Product liability claims and directors' & officers' claims are at the forefront of cannabis litigation.

**First-party claims** refer to any type of claim arising from an accident, injury, or loss caused by manufacturing defects, improper labeling, and failure to warn consumers about a wide variety of potential hazards. These claims range from inaccurate THC measurements to mold to the presence of carcinogens.

**Third-party claims** refer to any type of claim that could see a business held liable for damages that result from the use of a product. This may include property damage, loss of wages, driving under the influence claims, medical expenses, and bodily injury.

## How the COVID-19 Pandemic May Impact Your Cannabis Business and Ways to Minimize Risk

Cannabis companies may have gotten a boost when numerous states declared them essential businesses that could remain open during the coronavirus (COVID-19) pandemic. However, businesses operating in the medical and adult use cannabis industry face numerous risks during these unprecedented times.

Cannabis companies need to be careful about sanitation, safety, compliance, and risk management – including having adequate risk management plans and insurance policies, especially during a public health crisis. Given the nature of how COVID-19 spreads, it is imperative for companies to abide by social distancing rules and take other necessary measures to prevent the spread of COVID-19.

Consumption habits are changing how cannabis products are consumed. The highly publicized dangers associated with vaping unregulated cannabis products, coupled with the current pandemic – both in terms of the damage COVID-19 causes to the lungs and the need for social distancing – are shifting demand from smokable products to more edibles and tinctures. Edibles are particularly vulnerable to product liability claims for various reasons.

Companies have had to change their business models from a retail experience to online ordering, curbside pickup, or home delivery. As the pandemic continues, more employees are working from home, even in the cannabis industry and particularly among administrative staff. This leads to a heightened risk for network vulnerability and data breaches. If your company stores private information about your employees or customers on a computer or server, you are legally liable for protection of this personal information. To help mitigate risk, it is strongly recommended that you have Cyber Defense & Data Breach Insurance. Companies need to review their online presence and make sure proper safeguards are in place.

Delivery service requires more in-depth review of coverages in addition to commercial auto which covers the vehicle and driver, you may need cargo and fiduciary coverage to protect the inventory and money while in transit.

## Summary

This insurance manual provides the reader with the fundamental elements of recognizing and defining the various risks involved with the cannabis industry. Depending on what aspects of the cannabis supply cycle your company participates in, there are insurance products to assist your company transfer and mitigate that risk through insurance products. It is important to review every aspect of your company, its operations and regulatory/compliance requirements in order to operate in your State's regulated cannabis industry. Formulating a proper risk management program is an essential business pillar of your business foundation.

The industry will continue to emerge, grow and evolve. As it does, the risks of doing business will also evolve and change over time. It is important to select a cannabis insurance broker who can assist your company form and maintain a risk management program, secure the proper insurance products and advise on any claims issues that might arise.

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## Appendix

“Guide for Workplace Safety & Health for Cannabis Industry”- Sandra Sheils, BCSP

It goes without saying that cannabis companies need to be extra careful about sanitation, safety, compliance and risk management – including having adequate insurance – during this public health crisis and going forward. There will be lawsuits by consumers given the nature of how COVID-19 spreads and if your business allegedly fails to sanitize the premise, abide by social distancing rules or otherwise prevent the spread of COVID-19, your company may be at risk.

**Below are some highlights from this informative document:**

Cannabis cultivators, extractors, labs and retailers are required to adhere to all regulations established by your State’s regulatory agencies.

The cannabis industry in the United States falls under federal OSHA jurisdiction and businesses must comply with OSHA regulations and recordkeeping requirements. In addition to OSHA regulations, cannabis businesses are required to comply with other state regulations including labor laws, workers’ compensation laws, hazardous waste laws, EPA Pesticide Applicator’s Act, local fire codes, and other regulations that are specific to employment and labor as well as the production of retail and medical cannabis despite cannabis’s federal status.

27 States have their own OSHA plans, and the remainder are under Federal OSHA. In general, OSHA states if an employer has more than 10 workers a written safety program is required. Worker responsibility is outlined for employees, supervisors, and managers and must comply with the requirements of and perform their responsibilities defined in this program. Failure to comply may subject the license suspension, fines, or revocation.

The Safety Equation LLC has developed this Cannabis Safety Program in conjunction with the NCIA RMIC in order to provide every employer and every employee within this industry a safe and healthy workplace specific to the operations. Our goal is zero accidents, injuries, and occupational illnesses and business excellence for all Cannabis Business Operations.

**Safety** is a belief system, quality system, a set of values. Safety-accountability sets the company foundation up for success. Your community image and business culture are driven by safety.

Safety must be fundamental to everything that you do.

Develop a “Safety Statement of Intent” along with your business mission. A safe workplace begins with the employer developing and implementing an occupational safety and health program that includes the following EHS/OHS recommended standards and other industry related standards and practices such as GMP (Good Manufacturing Practices) as required by your state rules of Marijuana Regulation.

**Employer Responsibilities** - Employers are obligated to provide employees with current information about workers’ rights and federal or state labor laws as they relate to safety and health issues. Regardless of the current federal status of cannabis, all entities covered by OSHA, meaning any employer with ten or more employees are required to comply with the OSHA requirements. State requirements may exceed federal requirements. Check to see if you are one of the 27 states with your own OSHA program.

**Notification of worker’s rights** - Employers are obligated to provide employees with current information about workers’ rights and labor laws as they relate to safety and health issues. All entities covered by OSHA are required to display the “OSHA Job Safety and Health: It’s the Law” poster in the workplace.

**OSHA reporting & recordkeeping** - Employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses. Minor injuries requiring first aid only do not need to be reported but rather recorded. These records must be maintained at the worksite for at least five years. Each February through April, employers must post a summary of the injuries and illnesses recorded for the previous year.

**Start-up Safety Training** - It is your requirement as an Employer to train all employees on the hazards, tasks, chemicals and protections within your Operation *before* they are exposed.

**Chemical Handling** - Your Operation needs to establish a Chemical Inventory and Safety Data Sheets of all materials containing hazardous chemicals used in the workplace must be readily accessible. The SDS file must also include a list of all hazardous chemicals used in the workplace, a Chemical Inventory. The SDS file must be located where it is readily available to all employees.

**Assess Workplace Hazards & Controls** - You have a duty as an Employer to make the Workplace safe and free from “recognizable health & safety hazards.”. Failure to identify or recognize hazards is frequently one of the root causes of workplace injuries, illnesses, and incidents.

### **Cannabis workplace potential hazards**

About cannabis safety, what you don't know can burn you. Below summarizes some typical cannabis positions and associated types of potential hazards observed in the cannabis industry. Given the rapid evolution of this industry will continue to expand and job titles, tasks, and hazards will also change.

Every occupational role should be considered throughout the program to ensure potential hazards are adequately recognized and reduced. If you as much as issue gloves, you must train the employee on the reasons to use them, correct care and use as required by OSHA's 29CFR 1910.132 General Requirements for PPE. Every workplace and every employee works with exposures.

Accidents can happen but all *injuries* can be prevented. An example of some costly injuries that can be prevented fall into these groups: slips/trips/falls, muscle strains, hit by falling objects, repetitive strain injury, crashes or collisions, cuts and lacerations, inhaling toxic fumes, noise exposure, walking into objects, workplace violence to name a few. Below are some common exposures by work group,, and tips to avoid injury.

**Provide Personal Protective Equipment** - Ensure that adequate supplies of the personal protective equipment is provided.

**Safety Training** - All employees must receive safety training prior to starting work, whenever the hazards in their work area change, and when they are given new work assignments with different hazards.

Refresher training may be conducted from time to time to ensure all employees retain the necessary safety related information. Training will also be conducted when a new workplace hazard is recognized. Safety training for all employees will be conducted when the Safety Program is first established.

**Records Retention** - Records documenting the administration of most Safety Programs need to be retained for at least three (3) to five (5) years.