



In the Weeds – Marijuana and the Insurance Industry

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Like it or not: Marijuana is a thing

- Marijuana impacts all aspects of the insurance business
- There are serious legal issues for insurers/reinsurers to consider when considering venturing into the marijuana space
- Recreational marijuana presents different issues from medical marijuana
- The future will reward companies that have thought this through



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No stone(r) undisturbed

Marijuana touches everything

- Property and casualty lines are heavily impacted by marijuana.
- Life and health are similarly going to have to consider the impact of marijuana on how business is done
- Even less-common lines have to consider this (surety, financial guaranty, etc....)



*Disclaimer: This image was modified from official Pixar footage, there is no evidence that either Woody or Buzz (despite his name) had anything to do with marijuana.

Property & Casualty

- **Property lines** (people are growing this stuff in places, and those places need insurance)
- **Fire** (stuff burns...and well...you get it)
- **Liability** (“hey! Your weed harshed my deal man! I’m suing you!” or “hey! I slipped and fell in your pot store! I want money man!”)
- **Workers Comp** (“Dude, I can’t sell bongos today, my hands like totally have carpal tunnel from rolling joints!”)
- **Business Interruption** (like, weed is totally my gig, and the power company bricked my grow man.)
- **Auto** (apparently, weed delivery is a thing. Who knew? Seriously, if you knew about this, your boss wants to speak with you)
- **Employee Theft** (no explanation needed. I mean, come on. There’s a whole room full of grass)
- **Cyber** (yes! Pot has gone high-tech. Some Russian could boost your genetic blueprint for sweet nugs without cotton-mouth!)
- **Earthquake** (as luck would have it, a lot of green is grown in Cali brah.)

Life & Health

- **Health** (well...some doctors are saying that there is real medical benefit to marijuana. Is it covered? Should it be? “My insurer is the bomb, it hooked me up with this sweet skunk for my insomnia!”)
- **Group Medical** (We offer choice benefits including health!)
- **Non-Major Medical Travel** (I went to Amsterdam, and the doc prescribed me two bingers a day dude.)
- **Workers Comp Carve-out** (“Dude, my tweaked knee feels way better after I burn one! Pay up!”)
- **Life** (“Broseph! My daily blunt stops my seizures! I’ll totally live longer!”)



Lots of \$\$\$ means ...

- **Surety:** Investors are making big plays into marijuana grow operations
- **Financial Guaranty:** Many states are starting up monopolized grow operations...now they need to pay for it



So let's “totally” get on board dude...

Guess what?
It's not “totally” “legal” dude



Brief look at the law...



- **Controlled Substances Act (“CSA”):** 21 USC s 801 et seq.
- Marijuana is a Schedule I drug (meaning, under federal law, it is literally the most dangerous kind of drug.)
- As long as marijuana is a schedule I drug, any use, cultivation, transportation, sale, or possession is subject to federal law...
- *Question:* How to have a national policy?

Brief look at the law...

Banks' hands are tied:

- **Bank Secrecy Act:** Banks must act as informants to the federal government and report “suspicious activity” (such as violations of the CSA). In 2015 more than 1.6MM such reports were filed. Failure to file reports is, itself, a criminal act. Any bank that accepts “illegal” deposits is committing money laundering
- **Currency Transaction Reports** (no ability to deal in cash)
- **KYC laws**

State Banks are not the solution (ATM, Wires, Debit/Credit cards, internet use, etc....all implicate federal law)

Brief look at the law...

Other Federal Laws:

- **Patriot Act:**

- Technically, accepting marijuana \$\$\$ can be considered a form of money-laundering
- Patriot Act is used more often to justify drug warrants than terrorism warrants

- **Anti-Money Laundering Act:**

Again, laundry of this sort is not cool, dudes

Brief look at the law...

What would happen if an insurer were to work with a marijuana business, or a marijuana user, for that matter?

- Is it aiding and abetting a crime?
- Is it possibly engaging in racketeering?

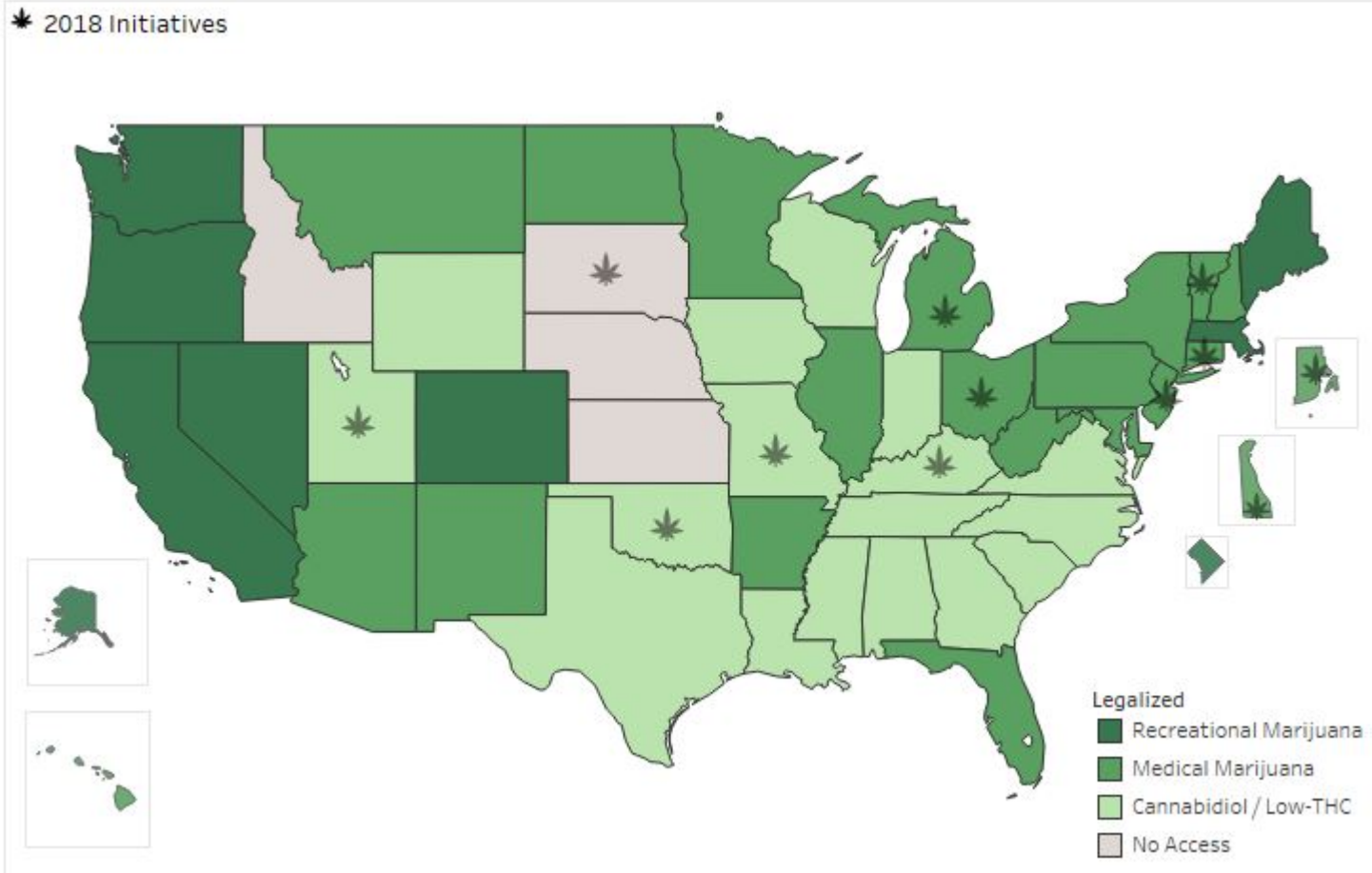


Brief look at the law

- McCarran-Ferguson Act: Federal Law
 - Insurance regulated by States
 - **But**...does this preempt the CSA? Any of the other federal laws on marijuana and criminal activity?



Twenty-nine States and the District of Columbia Had Some Form of Legalization in 2018



Issues insurers must consider:

1. Is there an insurable interest? Maybe yes, maybe no. In Tracy v USAA (D. HI)(2011), it was held that there can be no insurable interest in an illegal product. But some states are seeking to specifically preempt Tracy (see, RCW 48.18.040, and Oregon Measure 91 s. 12)
2. Is marijuana a special “tree, shrub, or plant” worthy of special coverage beyond the typical \$500?
3. Is the medical science behind marijuana as a treatment sound?
4. Should it matter if employees “drop dirty” for marijuana in a marijuana business?
5. Is it legal to help form group captives to insure businesses? Or is this an illegal effort to avoid federal laws?
6. Can the US Government seize reserves held to pay claims?

So what do we do, Dude?



* No Disclaimer needed, because the Dude abides.

Insurers and Reinsurers Must Plan For This...

- Momentum is clear. Marijuana is going to become legal
- Businesses must decide whether, and how, they want to be involved:
 - Insuring related entities?
 - Personal lines?
 - Commercial lines?
 - “All in?”
- Opportunity to invent the market

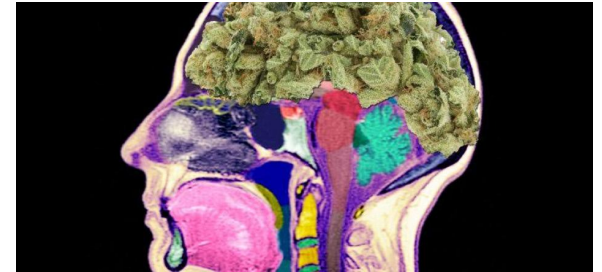


Pot is popular!

- Third most-used drug in America, behind alcohol and nicotine
- More than 25MM use marijuana, 14MM use it regularly (and these numbers are getting “higher”)
- The vast majority of adults believe alcohol is more dangerous than marijuana
- Pot (and its components) is being used to treat more and more illnesses, such as: Alzheimer’s, MS, CP, Epilepsy, Parkinson’s, anxiety, depression, insomnia, chronic pain, nausea, AIDS, and on and on
- The marijuana industry is directly responsible for hundreds of thousands of jobs, and indirectly responsible for millions more

Some Creative Ideas

- **Find a way to service commercial operators** (e.g. RRG, captive, or other alternative risk solutions that find a way to transmogrify the swag into the kush)
- **Get ahead of the data** (If \$50 worth of marijuana can save an insurer from covering \$1000 worth of Zofran, that's worth knowing)
- **Cooperation** (let the government know that industry is behind this. Work with those in the industry to make the best economic and ethical case to legalize insurance in the space.)



What To Think About...



- Marijuana is a major industry that requires insurance at the commercial and personal lines levels
- There are billions of dollars at stake
- Current federal laws make it difficult to be directly involved in the business
- The tension between state and federal laws is being loosened
- Insurers and reinsurers need to get ahead of the curve so they are ready when “the wall falls”
- Thinking creatively about the problem will position insurers and reinsurers to get in the game as quickly as possible

Conclusion

- What does the greatest Olympian ever have in common with the last president, the father of the personal computer, most of Hollywood, Phil Jackson, Maya Angelou, Clarence Thomas, and Tom Brokaw?
- Huh? What was I asking?
- Oh yeah. Marijuana is a thing.



Thank You

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