

Insurance for Businesses in the Cannabis Industry

The cannabis industry continues to be stuck in legal limbo. For businesses operating in this industry, including those businesses that provide support to cannabis companies, this creates a complicated insurance picture. Although capacity for D&O and EPLI coverage for the cannabis industry is improving, challenges remain.

The Current Legal Status of Cannabis

At least 37 states have laws that allow the medical use of cannabis products, according to the [National Conference of State Legislatures](#), along with four territories and the District of Columbia. Additionally, 18 states, two territories and the District of Columbia allow recreational use.

This means that marijuana is now allowed, at least in some situations, in the majority of states. However, on the federal level, marijuana remains an illegal, Schedule I drug with no approved medical uses. The 2018 Farm Bill removed hemp from this classification, but cannabis products with more than 0.3% THC remain illegal according to the federal government.

The contradictory legal status of cannabis has created financial and insurance complications. New legislation could address these issues, including [the Secure and Fair Enforcement \(SAFE\) Banking Act of 2021](#), which would prohibit federal banking regulators from penalizing depository institutions for providing banking services to cannabis businesses. However, this law has not yet passed the Senate, and many cannabis businesses operate as cash-only businesses.

Insurance Coverage Availability for Marijuana Companies

Cannabis companies, like all companies, have risks. Some of these risks are similar to the exposures faced by other companies, such as claims involving discrimination or harassment, while others may be unique to the marijuana industry. For example, the [NAIC](#) points out that cannabis-infused products could be involved in safety recalls, and products could be accused of being mislabeled, misrepresented or harmful.

Because cannabis companies face risks, they can benefit from insurance. However, securing D&O and EPLI coverage for cannabis companies can be challenging. According to [Business Insurance](#), a lack of capacity makes it difficult to find D&O coverage for cannabis and hemp businesses, and the majority of insurers refuse to speak to a broker once cannabis is mentioned.

[The Policyholder Perspective](#) from Reed Smith notes that the D&O market for cannabis companies remains limited in 2022. Some insurers offer coverage, but the terms may be limited, and the premiums may be two to 10 times higher than market average.

Regulatory Exclusions Can Limit Coverage

Due to the nature of the industry, regulatory claims are a significant exposure for cannabis companies. This makes obtaining coverage with affirmative regulatory coverage ideal. However, finding such coverage can be difficult.

When insurers offer D&O coverage, it may be limited by broad exclusions. Exclusions to watch for include regulatory exclusions that could potentially be applied to all regulations and not just cannabis regulations. Other exclusions may limit coverage further. In addition to looking for overly broad regulatory exclusions, it's also important to evaluate coverage for bankruptcy or creditor exclusions.

Insurance Coverage Availability for Marijuana Companies

With so many insurers refusing to cover cannabis companies or only offering limited, pricy policies, some cannabis company leaders may feel that coverage is out of reach. However, this is not necessarily true. The market is challenging, but it can be navigated successfully.

The legal cannabis industry is still relatively new. Washington and Colorado legalized cannabis for recreational use in 2012, which was only 10 years ago. Since then, we have seen the 2018 Farm Bill become law, the SAFE Banking Act of 2021 pass the House and many more states legalize cannabis for medical or recreational use. The legal landscape is changing, and so is the insurance landscape.

Currently, businesses that are cannabis-adjacent – those that offer services to cannabis companies but do not manufacture or sell cannabis products themselves – may have a much easier time securing coverage. For businesses that deal with cannabis directly, coverage is more challenging, but still feasible.

Brokers seeking coverage for clients in the cannabis industry should consider the following:

- Many D&O and EPLI insurance carriers still refuse to deal with cannabis companies. It's important to know the market and which carriers have an appetite for cannabis-related risks.
- Premiums tend to be higher, so applicants should be ready for this, and submissions should be as strong as possible to secure favorable terms.
- Exclusions are common. Review policies carefully for overly broad or restrictive exclusions that could severely limit the coverage provided.
- Watch for legislative and industry changes. This is still an evolving situation, and new options may become available in the near future.

There is no denying that it can be challenging to secure insurance for businesses in the cannabis industry. If you need assistance navigating this market, reach out to Socius for help.



Mike Mahoney

Senior Vice President
email: mmahoney@sociusinsurance.com
mobile: (415) 847-8874



Tom Mahoney

Vice President
email: tmahoney@sociusinsurance.com
mobile: (925) 408-0994