BLOGS
Cannabis Insurance

Five Insurance Considerations for Cannabis-Related Businesses

Even though the cannabis industry has grown rapidly since many states have authorized the sale and use of cannabis to some extent, traditional insurers have been less willing to enter the industry because marijuana remains illegal under federal law as a Schedule 1 drug.

Even though the cannabis industry has grown rapidly since many states have authorized the sale and use of cannabis to some extent, traditional insurers have been less willing to enter the industry because marijuana remains illegal under federal law as a Schedule 1 drug. Tension between federal and state law directly affects the insurance options for cannabis cultivators, processors, manufacturers, retailers, testers, lessors, transporters, deliverers, and any professional service that interacts with cannabis-related businesses.

Optimistically, the prospect of being fully insured is brighter than in years past. Cannabis-related businesses can now focus on where and how to obtain insurance rather than wonder if they can obtain insurance at all. Some states are lowering the bar for insurance carriers to be "admitted" in their states, so more insurance options will have proper state licensing and oversight. Even where the number of admitted carriers is still lacking, an increased number of surplus insurance lines are available. Surplus lines are offered by insurance carriers who are not officially admitted nor regulated by their state, yet the state charges them higher taxes and fees to allow them to offer their own private insurance coverage to consumers.

Realistically, however, cannabis-related businesses will face certain challenges that other businesses do not face and must keep these five considerations for obtaining insurance in mind:

1. Insurance carriers that do not specifically serve the cannabis industry likely have gaps in coverage through "exclusions" for illegal activity. In *V.G. Properties, Inc. v. Westfield Ins. Co.*, 900 F.3d 818 (6th Cir. 2018), a lessor's insurance claim was denied because the tenant was illegally cultivating cannabis under state law, which triggered the insurance policy's criminal acts exclusion. Insurers that specifically serve cannabis-related businesses would seemingly be less likely to deny coverage with such an exclusion even if cannabis remains illegal under federal law.

2. Insurers who offer surplus lines for cannabis-related policies will often pass on the taxes and fees imposed on them to their consumers by charging higher premiums. For example, a cannabis-related business seeking commercial general liability insurance may pay double the premium of a non-cannabis-related business. Additionally, insureds often must pay this

Related People

Alexander (Alex) T. Brown
Partner
Kansas City
816.460.5629
alexander.brown@lathropgpm.com

Jay Harrington
Associate
Kansas City
816.460.5537
jay.harrington@lathropgpm.com

premium in cash because banks have not been permitted under federal law to enter the cannabis marketplace. Moreover, cannabis insurers typically have strict policy limits of $1-5 million when many businesses would prefer policies insuring $5-10 million or more. This limits risk for insurers in an uncertain market, in which it is difficult for them to find reinsurance.

3. Types of insurance to consider obtaining includes but is not limited to: commercial property; crop; commercial general liability; cash and contents for premises; cyber liability; excess liability; professional liability; product liability; product recall; employment practices liability; business crime; transportation; commercial auto; cargo; goods-in-process; inland marine; kidnap and ransom; surety; equipment breakdown; worker's compensation; directors' and officers'; employee health benefits; pollution and environmental; and intellectual property.

4. Some of these policies are difficult to obtain. For instance, crop insurance is often available for indoor marijuana crops but not outdoor marijuana crops. Other policies are even more expensive than the inflated prices generally facing the cannabis industry. Most prospective board members and investors of cannabis-related businesses want directors' and officers' insurance before they will join a business venture, to protect themselves against potential future litigation. Yet a $1 million directors' and officers' policy could cost an entry-level premium of $250,000.

5. Cannabis insurance applications are long and thorough, the requirements are stringent, and the process is often redundant because it must be repeated with separate carriers and policies. There will not likely be a one stop shop. Many companies navigating this space may seek a consultation with an independent broker. A broker knows about and works with most or all the cannabis-related insurance options in a state and offers tailor-made recommendations about what insurer may best meet a business' needs for each type of coverage. Brokers are beginning to make themselves more available as the industry grows, even though cannabis remains illegal under federal law.