

Federal Crop Insurance Available for Hemp: Implications for Marijuana and the Insurance Industry

Although insurance is regulated by the state, there remain legal boundaries for a marijuana business to buy insurance, and the federal prohibition on marijuana remains the biggest obstacle. Not having access to insurance brings marijuana business owners a different host of problems. An important form of insurance people growing marijuana legally cannot typically purchase is crop insurance. A lack of crop insurance coverage can be devastating to licensed growers who lose their crops to many natural disasters such as hurricanes and wildfires. A recent change in the law, however, may be a game changer for the insurance industry and the future of legal marijuana businesses.

On December 20, 2018, President Donald Trump signed into law the Agricultural Improvement Act of 2018 (commonly known as the Farm Bill), which removed "hemp" from the definition of "Marihuana" in the Controlled Substances Act, decriminalizing the plant and its components, and transferring oversight of the cultivation and sale of the crop from the Drug Enforcement Agency (DEA) to the Department of Agriculture. Cannabis plants must contain less than 0.3 percent tetrahydrocannabinol (THC) in order to be classified as hemp. Marijuana, on the other hand, produced on cannabis plants with greater than 0.3 percent tetrahydrocannabinol (THC), which is the principal psychoactive portion of the plant.

Importantly, the new law makes hemp farmers eligible for, among other things, insurance under the Federal Crop Insurance Act. Federal crop insurance offers an array of insurance policies that cover loss of crop value arising from extremely hot weather, drought, excessive moisture, flood, wildlife damage, earthquake, insects, and disease. These policies protect a farmer against production or revenue losses when a particular insured crop does not meet a preset production guarantee. In addition to reducing risk and protecting their investments, crop insurance enables farmers to borrow money to expand and improve their businesses by providing lenders the assurance that farmers will have sufficient economic security to repay their loans.

The Farm Bill fundamentally transforms the business of hemp by making major changes to the laws surrounding the cultivation, processing, and sale of hemp and its derivatives. Because the DEA will no longer be able to interfere with the interstate commerce of hemp products, insurers will now be able to do business with hemp farmers. A lack of access to federally regulated banks in the past has also created major insurance issues for marijuana related companies because of the risk involved with storing large quantities of cash and paying premiums through alternative methods. This hurdle, with respect to hemp, is now removed.

Comment: While it is not clear whether marijuana/cannabis will also become eligible for crop insurance, given the cannabis industry's rapid evolution and continual changes, it is critical for the insurance industry to keep up with the trends since it seems likely that the legalization of marijuana is likely to occur in the near future. Unless and until Congress legalizes marijuana, or fully legalizes the banking of marijuana businesses, however, the inability to access banks and insurance will be just another example of where state-legal marijuana businesses face significant hurdles different from other businesses. Consulting experienced counsel can offer guidance and direction in developing a strategy to address any insurance risk associated with Marijuana even though hemp production is no longer prohibited.

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