

# Personal Lines Emerging Risk: Cannabis



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## CISR Other Personal Lines Solutions



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The information below has been developed for the CISR Other Personal Lines Solutions course. Use this information to aid your understanding of “cannabis” as a personal lines emerging risk. Do not worry if you are unable to conduct a full review of the material during the time allotted; more time will be spent on this subject during an open discussion of the topic.

The purpose of this activity is to practice applying the basics of risk management to any risk unknown to you. You are not expected to be an expert on this topic.

## Introduction



Therapeutic indications of cannabis are mentioned in the historic texts of the Indian Hindus, Assyrians, Greeks, and Romans. These texts described cannabis as a treatment for a vast array of different health problems including arthritis, depression, amenorrhea, inflammation, pain, lack of appetite, and asthma.

Today cannabis is considered an emerging risk due, no doubt, to a combination of its legalization for medicinal and recreational use in a growing number of states along with lagging federal decisions.

By the fall of 2022, 19 states and Washington, D.C., legalized marijuana for recreational use, 37 states approved it for medicinal purposes, and several decriminalized it. **The number of states making changes to their cannabis laws changes with every legislative session.** Despite state acceptance, cannabis remains classified as a Schedule I narcotic and is illegal at the federal level, and insurance companies have sometimes treated it as such when it comes to your Homeowners insurance coverage, even in states where marijuana is legal. But there is no denying the importance of Homeowners insurance when it comes to the future of personal cannabis use and cultivation.



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## Consider the Risk(s)

Legislative work started in the late 1960s has gained considerable traction in recent years with state legalization, but not much has changed on the federal level. State legalization has forced insurers to attempt to control the exposures associated with cannabis in the Homeowners Policy world.

- What are the potential property/liability concerns?
  - The concerns are many from a property standpoint. Is cannabis covered under the current HO-3 Policy for named perils coverage, the same as any other personal property? Consider the electrical requirements of a “grow room” or the process of turning a cannabis plant into a consumable product.
  - What, if any, liability is associated with its use, particularly for guests?
  - Could there potentially be “business” exposures (i.e., serving or selling a product)?
- What risk mitigation tactics should the client be educated about?
  - Are personal use cannabis plants, edibles, or other items placed in secured storage? Consider the use of cannabis by friends while in the “insured’s” home and the similarities to liquor liability exposure.
  - Consider exclusions for pollutants or contaminants. How can the client avoid chemical contamination or pollution exposures from pesticides used in the process of growing personal cannabis plants?
  - How can/should the client address electrical safety and exposures?
- What current market products (policies, endorsements, residual markets, etc.) are available?
  - Take some time to review the most recent edition of the HO3 policy. How does it treat cannabis as a function of Section I and Section II coverages and exclusions?
  - Are there endorsements that can assist in filling the coverage gaps?

Review the sample Homeowners Policy language below while considering the questions above.



## The ISO Homeowners 3 – Special Form, effective March 2022

The Insurance Services Office (ISO) updated the Homeowners Program effective March 2022, and it now includes language for “cannabis.” Review the example excerpts below from the ISO Homeowners 3 – Special Form HO 00 03 03 22.

- “Cannabis” is now defined.

#### 4. “Cannabis” means:

- a. Any good or product that consists of or contains any amount of Tetrahydrocannabinol (THC) or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.
- b. Paragraph 4.a. above includes, but is not limited to, any of the following containing such THC or cannabinoid:
  - (1) Any plant of the genus Cannabis L., or any part thereof, such as seeds, stems, flowers, stalks and roots; or
  - (2) Any compound, by-product, extract, derivative, mixture or combination, such as:
    - (a) Resin, oil or wax;
    - (b) Hash or hemp; or
    - (c) Infused liquid or edible cannabis;  
whether or not derived from any plant or part of any plant set forth in Paragraph 4.b.(1) above.
- c. Paragraph 4.a. above includes, but is not limited to, marijuana.

- Section I – Property Coverages, Coverage C – Personal Property

#### 4. Personal Property Not Covered

##### We do not cover:

- n. Any:
  - (1) Controlled Substances, other than “cannabis”, as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812; and
  - (2) “Cannabis” regardless of whether such “cannabis” is considered a Controlled Substance. Controlled Substances include but are not limited to cocaine, LSD and all narcotic drugs. However, this Paragraph 4.n. does not apply to:
  - (3) Prescription drugs obtained following the lawful orders of a licensed health care professional;  
or



- Section I – Property Coverages, Coverage E – Additional Coverages

**3. Trees, Shrubs And Other Plants**

We will pay up to 5% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$1,500 of this limit will be paid for any one tree, shrub or plant. We do not cover:

- h. Property, other than “cannabis”, grown for “business” purposes; or
- i. “Cannabis” whether or not grown for “business” purposes.

- Section II – Liability Coverages: Exclusions

**E. Coverage E – Personal Liability And Coverage F – Medical Payments To Others**

Coverages E and F do not apply to the following:

**8. Controlled Substance**

“Bodily injury” or “property damage” arising out of the use, sale, manufacture, delivery, transfer or possession by any person of:

- a. A Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812; or
- b. Any “cannabis” regardless of whether such “cannabis” is considered a Controlled Substance.

With the addition of “cannabis” language in the ISO HO-3 Policy, ISO also added two new endorsements to allow a buy-back of coverage:

**LIMITED CANNABIS PROPERTY COVERAGE (HO 06 01)**



This endorsement removes “cannabis” from Coverage C – Property Not Covered and provides a schedule by which to select a limit for “cannabis” property. The form starts with a minimum of \$1,000, but this can be increased. Coverage is only provided for seven named perils: fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned or operated by a resident of the “residence premises,” vandalism and malicious mischief, and theft.

**CANNABIS LIABILITY COVERAGE (HO 24 01)**



This endorsement replaces the controlled substances exclusion in Section II – Liability Coverage and adds an exception for liability arising from the legitimate use of prescription drugs including other lawful use or possession of cannabis.



## Resources

Below are some additional resources to help you further examine this topic. For this activity, focus on the summarized points of each resource as you may not have enough time to thoroughly review each one during class. Consider continuing your research after class.

### Insurance Issues Raised by the Legalization of Recreational Marijuana, by Lawrence Gottlieb and Matthew Munson, Betts Patterson & Mines, P.S.

[https://www.harmonie.org/file/Cannabis-Opioids%2FCO-Insurance\\_Issues\\_Raised\\_by\\_Legalization\\_Rec\\_Marijuana.pdf](https://www.harmonie.org/file/Cannabis-Opioids%2FCO-Insurance_Issues_Raised_by_Legalization_Rec_Marijuana.pdf)

The tension between federal and state laws, as well as the language of existing coverage forms, gives rise to several insurance coverage issues. A review of the case law and common insurance forms in this area highlight the insurance coverage issues likely to arise in the future.



- **The case of 12 stolen medical marijuana plants**  
(*Tracy v. USAA Cas. Ins. Co.*, No. 11- 00487 LEK- KSC, 2012 WL 928186)

USAA denied theft coverage of 12 medical marijuana plants in Hawaii because of a statute that requires an insured's interest in property to be lawful. USAA argued the plant to be unlawful under federal law. The court found the USAA Homeowners Policy unenforceable for the cannabis theft since requiring USAA to pay would be contrary to federal law and policy.

- **Limited coverage for outdoor plants**

In *Tracy v. USAA Cas. Ins. Co.*, the insured valued mature plants at \$4,000 and others at \$3,000 (claiming a total of \$45,600). Even if the policy could have paid the claim, coverage in the HO-3 (2011) for Trees, Shrubs, And Other Plants is limited to 5% of the limit of liability that applies to the dwelling but no more than \$500 for any one tree, shrub, or plant. The insured would have been greatly underinsured. **How does the HO-3 (2022) policy compare?**

- **The case of mold**  
(*Bowers v. Farmers Ins. Exch.*, 991 P.2d 734, 736)

After a police raid, a landlord discovered a marijuana grow operation in her rental home had caused extensive mold-related damage. Farmers denied the claim due to a mold exclusion in the policy ("direct or indirect loss from... mold"). The court ruled that the proximate cause of loss was vandalism and not mold.

Some carriers have begun excluding losses from the illegal manufacturing, production, or operation of "...growing plants, raising or keeping animals, or the manufacture, production, operation or processing of chemical, biological, animal, or plant materials."

- **Business limits in Homeowners Policies**

If someone is running a home-based cannabis "business," consider that the HO-3 (2022) limits business personal property to \$3,000 on the "residence premises" and \$1,500 away from the premises.



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## How growing marijuana affects your Homeowners insurance, by Pat Howard, updated October 12, 2022.

<https://www.policygenius.com/homeowners-insurance/cannabis-insurance/>

This article specifically addresses cannabis issues as they relate to residential property insurance. The article identifies the state-level legal landscape of cannabis across the country and then details how cannabis laws impact Homeowners insurance at the state and local levels.

## How Homeowners Insurers Can Prepare for the Cannabis Era, by William Schlager and Angela Cuonzo, August 2, 2021

<https://www.insurancejournal.com/magazines/mag-features/2021/08/02/625041.htm>

This article addresses cannabis issues related to the Homeowners Policy.

- **Cannabis products stored at home:** Losses related to personal property can occur to cannabis.
- **Cannabis grown at home:** Consider that some states have passed laws that permit growing cannabis for personal consumption. Is there coverage for plants?
- **Liability and medical payments:** Apply the same principles of host liquor liability to cannabis and at-home parties.
- **Cannabis exposures crossing state borders:** Consider what happens when insureds take products that are legal in their state across state lines, where the product is not legal. What property or liability exposures could they face while on vacation in a state where medical or recreational use of cannabis is legal?
- **Cannabis insurance pricing:** How should/could insurers price coverage for these exposures?



Now that you have completed your review of these resources, begin applying the risk management process you've learned about to this risk by answering the activity questions in your Learning Guide.

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# Resource Remediation

## 1. Risk Identification

What questions could you ask clients to help determine whether they have an exposure to this risk?

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## 2. Risk Analysis

What are some potential property and/or liability exposures that may occur with this risk?

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3. Risk Control

How might a client avoid, prevent, or reduce the property and/or liability exposures outlined above?

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4. Risk Financing

What risk financing solutions, including policies or policy endorsements, might you recommend to clients?

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5. Risk Administration

Once you and your client have implemented a coverage plan, what steps might you take to monitor the risk?

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## Answer Key

### 1. Risk Identification

What questions could you ask clients to help determine whether they have an exposure to this risk?

Do you possess cannabis for medicinal purposes?

Do you possess cannabis for recreational purposes?

Do you actively grow cannabis for either of those reasons?

How much cannabis do you possess at any one time?

### 2. Risk Analysis

What are some potential property and/or liability exposures that may occur with this risk?

Do you grow cannabis for sale?

How do you distribute cannabis?

Are you licensed by the state to distribute?

What are your annual sales of cannabis?

Do you serve cannabis in your home to friends and family?

Are you a licensed physician who prescribes cannabis to his patients?



3. Risk Control

How might a client avoid, prevent, or reduce the property and/or liability exposures outlined above?

Do you have a secure place to store your cannabis, safe from fire, theft, or any other peril?

Have you considered commercial lines coverage for the growing, processing and sale of cannabis?

As with serving alcohol in your home to guests, are you aware of their levels of cannabis intoxication before letting them drive themselves home?

4. Risk Financing

What risk financing solutions, including policies or policy endorsements, might you recommend to clients?

The HO-3 policy is the place to start. It has some serious limitations for coverage (Review the HO-3 policy provided).

Familiarize yourself with the HO 06 01 03 22 - Limited Cannabis Property Coverage form and the HO 24 01 03 22 - Cannabis Liability form.

5. Risk Administration

Once you and your client have implemented a coverage plan, what steps might you take to monitor the risk?

Conduct an annual review to determine if the cannabis exposure has changed in a way that may warrant securing commercial lines coverage for growing, distributing and serving operations.

Secure updates to the questions in #1, #2, and #3 above.

