

**United States House of Representatives
Committee on Energy & Commerce
Subcommittee on Health**

Cannabis Policies for the New Decade

January 15, 2020

Statement of the American Property Casualty Insurance Association

INTRODUCTION

Dear Chairwoman Eshoo, Ranking Member Burgess, and Members of the Subcommittee:

The American Property Casualty Insurance Association (APCIA) appreciates the House Energy and Commerce Subcommittee on Health's interest in the future of cannabis policy and welcomes the opportunity to submit comments for the Subcommittee's hearing titled "Cannabis Policies in the New Decade."

Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

The following comments do not seek to promote views for or against the legalization of marijuana. However, to the extent that states decide to make marijuana "state legal", APCIA believes that Congress must play a role in providing legal certainty to businesses otherwise abiding state law as well as supporting expanded scientific research into the effects of marijuana on public health and safety.

APCIA supports full consideration of a broad range of necessary regulatory and enforcement standards and a resolution of the direct conflict between state and federal law on the legality of providing financial services, including insurance, to marijuana related business and activities. Specifically, APCIA supports S. 2201, CLAIM Act, and the house-passed version of H.R. 1595, SAFE Banking Act, providing a safe harbor allowing voluntary coverage of state legal marijuana related activities.

APCIA is also concerned about the growing risks of marijuana use and its effects on highway and workplace safety. Unfortunately, federal restrictions on scientific research into marijuana's effects has resulted in a lack of effort into the development of a meaningful impairment standard and related testing technology. Therefore, we would support legislation that would allow for expanded research of marijuana focusing on types of marijuana and products representative of those found in state-legal marketplaces.

BACKGROUND

Thirty-three states and the District of Columbia have approved medicinal marijuana, twelve of which have also approved recreational use. These state laws conflict with federal law, which classifies marijuana as a Schedule I drug under the Controlled Substances Act (CSA), with no currently accepted medical use and a high potential for abuse¹.

As states continue to legalize marijuana, and its use increases, more people are getting behind the wheel and working under its influence. In states where marijuana is legal, studies have shown an increase in motor vehicle collision claim frequencies² and an increase in traffic deaths involving drivers who tested positive for marijuana³.

In the workplace, marijuana is the most commonly detected illicit substance in drug testing.⁴ The National Institute on Drug Abuse (NIDA) reported that employees who tested positive had 55 percent more industrial incidents and 85 percent more injuries.⁵ The National Safety Council has stated that no level of marijuana use is acceptable for those in safety sensitive positions.⁶

Despite this, there has been very little high-quality scientific research on marijuana impairment. Unlike alcohol, the extent and effect of marijuana does not have a clear correlation with the amount of the psychoactive component, THC, in a user's blood. The amount of THC can peak before a user experiences impairment and remains in a user's system for weeks after use, which means a positive blood test is not a reliable indicator of impairment. ***There is presently no objective standard for marijuana impairment and no reliable test to measure it.***

To ensure the safety of workplaces and roads, it is imperative that an objective impairment standard and a reliable test for impairment be developed. High-quality scientific study, using marijuana product comparable to what consumers can access in legal marketplaces, is key to that development.

MARIJUANA IMPAIRMENT RESEARCH

Regardless of whether one supports or opposes legalizing marijuana, we can all agree on the importance of preventing marijuana impairment on our roads and in the workplace. There is no objective standard or reliable methodology to determine marijuana impairment. In comparison, when testing for alcohol impairment there is a clear correlation between the amount of alcohol in the blood and a level of impairment. Detecting marijuana impairment through a standardized test is more complicated.

Marijuana is metabolized by the body differently from alcohol. The level of THC (tetrahydrocannabinol), the psychoactive ingredient of marijuana, in the body can vary based on several factors, including how marijuana is ingested and the potency of the product. The level of THC can drop before a user experiences impairment, but traces of THC may still be found in the body weeks after using marijuana. This means that a positive test results for the present of marijuana in someone's system does not necessarily mean he or she is impaired.

APCIA supports high quality scientific research into the health and safety impacts of marijuana use, including observational, behavioral, and physiological studies using marijuana and products containing marijuana.

Few studies have evaluated the effect of marijuana use on driver and workers performance. Government agencies face difficulties in developing marijuana impairment standards and determining medical efficacy because of federal prohibitions and arduous requirements placed on scientists seeking to use marijuana in studies, due to its Schedule I classification. The federal application process, including clearance through the FDA, to study marijuana impairment can delay a research program by years.

- APCIA recommends allowing marijuana impairment research without application through the FDA Investigational New Drug program to expedite research to determine how marijuana impairs users and how impaired users impact public safety.

Additionally, marijuana's classification as a Schedule I drug under the CSA places it in the same category as heroin, LSD, and ecstasy (MDMA), and defines it as having high potential of abuse, and no currently accepted medical use. To study Schedule I drugs, researchers must complete an extensive application process through the Drug Enforcement Administration (DEA) that exceeds the already stringent requirements to study Schedule II and III drugs.

- APCIA recommends, allowing institutions and researchers already authorized to conduct research with controlled substances in Schedules II or III, to facilitate research while not reducing safety or diversion controls.

Once approved, marijuana for study can only be obtained through the National Institute on Drug Abuse (NIDA), which requires marijuana to be obtained from a single source. The marijuana available to researchers through NIDA's sole source contract is not representative of what is available in state-legal cannabis markets for either medical or recreational use. NIDA-sourced marijuana contains a much lower amount of THC than marijuana commercially available to consumers in states where marijuana is legal. The NIDA program produces cannabis containing 12 percent or less THC by weight. In comparison, states with legal marijuana offer flower containing 20-30 percent THC, concentrates containing 60-90 percent THC, and edible products which may contain anywhere from five to hundreds of milligrams of THC.

A genetic analysis conducted by researchers at the University of Northern Colorado report the NIDA product is genetically related to hemp,⁷ which is unlike the plant material available to consumers. It is not representative of actual use of marijuana in the 33 states and the District of Columbia, where it is legal, and cannot produce scientifically meaningful and useful results when researchers test for medical efficacy or driving and workplace impairment.

- APCIA recommends, allowing authorized researchers and institutions in states where marijuana is legal to access marijuana and marijuana products that are representative of what adult consumers may legally obtain in those states.

- APCI also recommends permitting the NIDA sole source program to provide marijuana products, that are representative of what adult consumers may legally obtain in states where marijuana-legal states, to authorized institutions and researchers located in states where marijuana is not legal.

FEDERAL – STATE CONFLICT FOR LEGAL BUSINESSES

In addition to the twelve states and the District of Columbia where is recreational marijuana is already legal, 23 states proposed legalization in 2019. Gallup polling reports continued increase in support for marijuana legalization, with 66 percent of Americans supporting in 2018, up from 51 percent in 2014⁸. We expect this trend to continue and for the legal cannabis industry to continue to expand.

Like businesses in any other industry, a cannabis-related legal business (CRLB) requires commercial general liability, property, directors and officers, professional liability, and other insurance coverages. However, a CRLB may not have access to the same number of insurers, the same selection of policies, or the same limits as other non-cannabis-related businesses. This potential gap in insurance leaves consumers, employees, vendors, and businessowners without adequate financial protection in the event of a loss.

A key reason for this discrepancy is that cannabis remains illegal under U.S. federal law. Marijuana's Schedule I classification makes no exception for states that approved the legal use of marijuana. Possession, purchase, or sale of even small amounts is a violation of federal law. Title 18 of the federal criminal statutes expands the CSA to include the transportation or transmission of funds known to have been derived from the distribution of marijuana⁹. The federal treatment of marijuana has varied and financial institutions, including insurers, fear federal prosecution should they provide coverage to a state legal CRLB. The house-passed H.R 1595, SAFE Banking Act is an important step toward legal certainty for consumers and the insurance industry and will encourage insurers to provide needed coverage for the financial exposures faced by these legal businesses.

CONCLUSION

APCIA appreciates the opportunity to provide feedback on this important issue. We strongly urge the passage of the SAFE Banking Act to resolve the legal predicament consumers, businesses, and insurers face under competing state and federal laws. Further, we support the committee addressing public safety by expediting the expansion and advancement of high-quality scientific research into marijuana impairment and the development of an objective impairment standard.

APCIA would be happy to answer any questions the Committee or its Members may have and look forward to engaging with Members, staff, and other stakeholders.