

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

May 29, 2019

The Honorable Jason Rapert
State Senator
Chairman, Senate Committee on
Insurance and Commerce
State Capitol
500 Woodlane Street, Suite 320
Little Rock, AR 72201

VIA E-MAIL

Dear Chairman:

I am in receipt of your request for testimony before the joint meeting of the Senate and House Committees on Insurance and Commerce on June 4. Thank you for the opportunity to share the Department's position on proposed amendments to the federal Bank Secrecy Act offered through H.R. 1595, the SAFE Banking Act, which recently cleared the U.S. House Committee on Financial Services.

In advance of my testimony, I ask that you please accept this letter provided in the context of how the proposed congressional legislation would affect companies seeking insurance products under our state's cannabis-based business legal and regulatory framework.

In response to your request, I have instructed my staff to review and research this issue. It is our understanding that, under the current language of the Bank Secrecy Act, financial institutions—namely banks—are not able to handle funds legally from cannabis-based businesses due to federal anti-money laundering restrictions despite various states legalizing cannabis-based businesses. These restrictions also affect and limit asset transfers by cannabis-based businesses into “covered” insurance products.

In August 2018, the National Association of Insurance Commissioners (NAIC) formed a Cannabis Insurance Working Group under the auspices of the Property and Casualty Insurance (C) Committee to identify insurance issues, gaps and opportunities facing the cannabis industry and to identify best regulatory practices to address insurance issues. On May 6, 2019, the Working Group exposed a draft white paper for public comment that identified types of insurance products needed by the cannabis industry, including:

- Automobile (including auto and cargo distribution)
- Commercial General Liability
- Crop (Indoor/Outdoor)

While the NAIC has not taken a specific position on H.R. 1595, the Working Group has received communications from the American Property Casualty Insurance Association (APCIA) and the Council of Insurance Agents and Brokers. Both organizations expressed their desire to see Congress address the conflict between federal and state laws when it comes to the legality of providing financial services to the cannabis industry, including insurance.⁴

Based on our conversations with NAIC government relations staff, the future of H.R. 1595 is uncertain due primarily to the divisions in party control between the Senate and the House. Additionally, there is difference in focus as to how to address the legal issues surrounding the cannabis industry—whether to change the legal status of cannabis, then fix then reform the financial services law or change the financial services law as a precursor to changing the legal status of cannabis.

The Department understands that admitted market insurers are reluctant to participate in a market where there still exists potential federal illegality. As such, what insurance coverage that exists for the cannabis industry today is available through non-admitted (surplus lines) carriers.

Given the difficulty of cannabis-related businesses obtaining financial services in Arkansas and the likelihood that H.R. 1595 will not make it into law, the Department has identified one path to make sure these businesses have the ability to obtain needed insurance coverage without conflicting with federal anti-money laundering laws: forming their own captive insurance company.

The Department currently regulates captive insurance companies as defined under Ark. Code Ann. § 23-63-101, *et seq.* and through AID Rule 73.

I look forward to discussing this issue with your committee on June 4. Until then, the Department stands available for any further questions or requests.

Sincerely,



Allen Kerr
Arkansas Insurance Commissioner

⁴ Attachments A and B, "Agenda of the Cannabis Insurance (C) Working Group, May 23, 2019," https://www.naic.org/documents/cnte_c_cannabis_wg_190523_materials.pdf?78; accessed May 28, 2019