

# The Liability Maze of Legal Marijuana – Implications for your Program

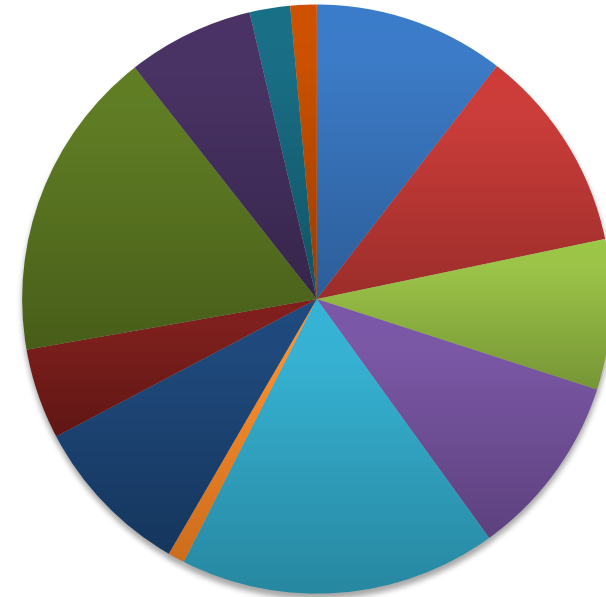
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**Advisen, Ltd**

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# Advisen and cannabis risks

- One of several emerging risks tracked by Advisen
- More than 750 loss events in our database
- Coming soon:
  - Reports
  - Webinars
  - (More) FPN news articles

Case Categories



# Disclaimer

- I am not a lawyer
- Nothing in this presentation should be taken as legal advice
- Seek out competent counsel to answer your questions about marijuana legislation, regulation and law enforcement

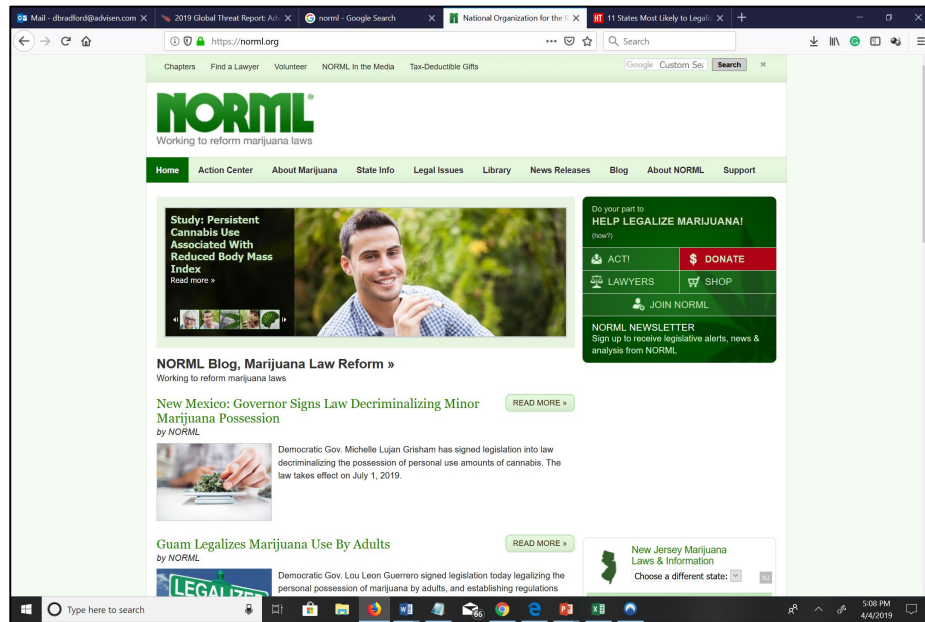
# 2019



1969



# A long strange trip



# Not everyone is happy

**“Good people don’t  
smoke marijuana”**

**- Former US Attorney  
General Jeff Sessions**



# Now its okay to inhale



**Didn't inhale**



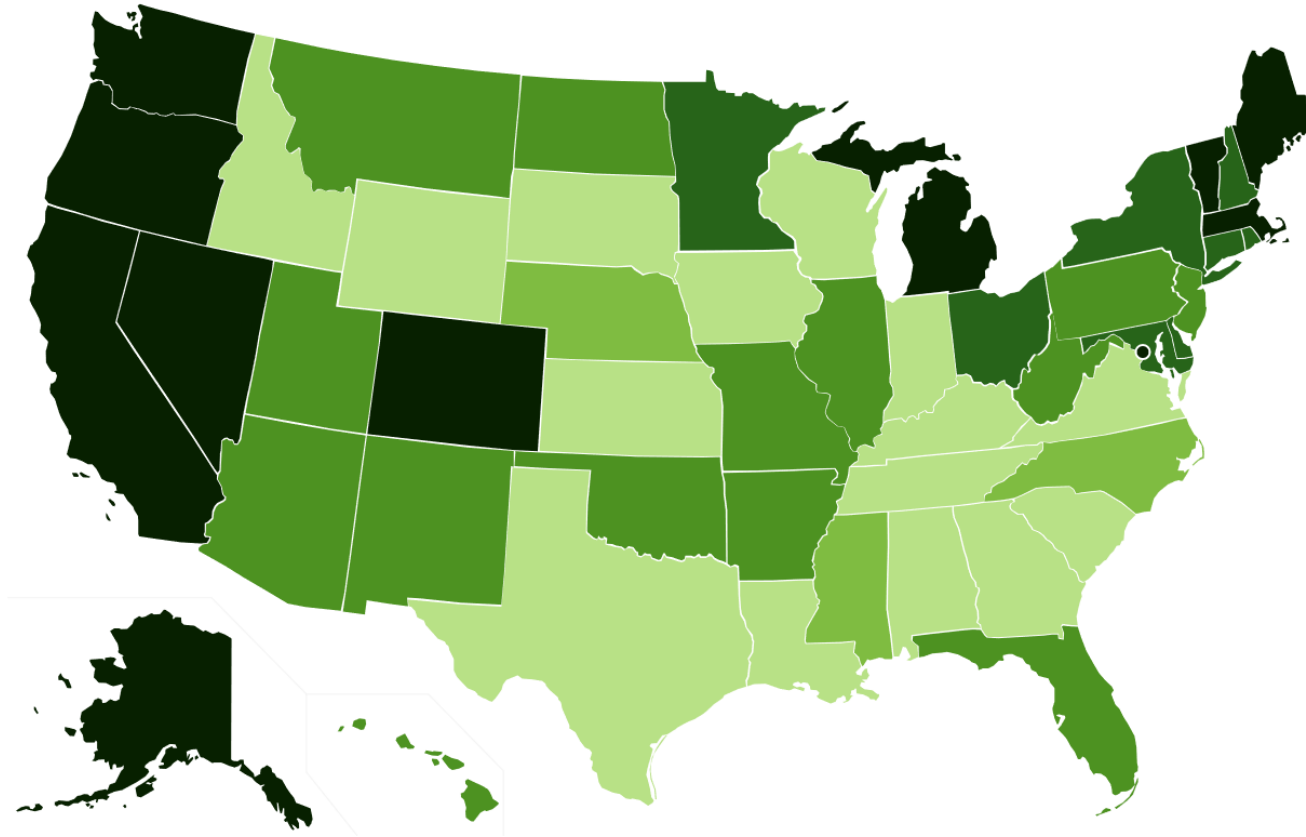
**Inhaled**



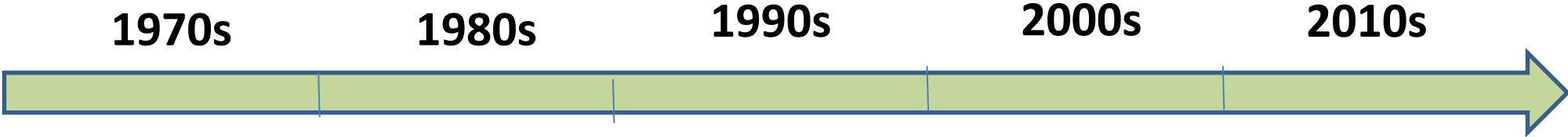


# Legal marijuana

Legalized Medical and decriminalized Medical Decriminalized Fully illegal



# Legal marijuana



**De-criminalized**

1970s: OR, AL, ME, CA, MN, MS, NY, NC, NE

2000s: NV, CT, MA

2010s: VT, MD, MO, IL, NH, NM

**Medical**

1970s: NM (limited), VA (limited)

1990s: OR, AL, ME, CA

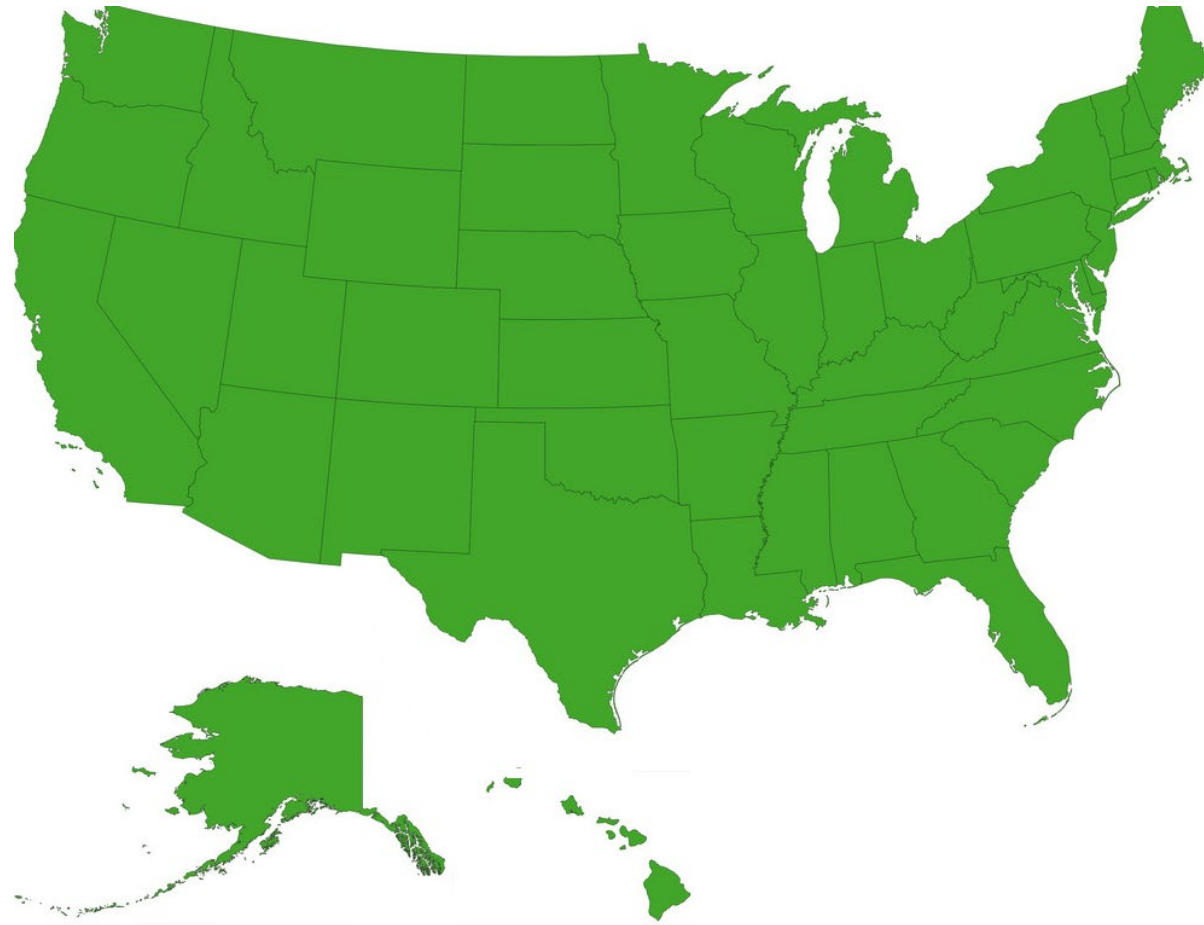
2000s: HI, NV, CO, VT, MT, RI, NM, MI, MD, NJ, AZ, DE, CT,

2010s: MA, NH, IL, UT, FL, MN, NY, AL, KY, NC, WI, MI, TN, IA, SC, MO, VA, GA, OK, TX, WY, PA, OH, AK, FL, ND, WV, IN, KS, MO, UT

**Recreational**

2010s: CO, WA, AL, OR, CA, NV, ME, MA, VT, MI

# Illegal marijuana





“ ”

**“Schedule I drugs ... are defined as drugs with no currently accepted medical use and a high potential for abuse. Some examples of Schedule I drugs are heroin, LSD, **marijuana (cannabis)**, ecstasy, methaqualone, and peyote.”**

**- US Drug Enforcement Administration**



## On the other hand....

**“FDA recognizes the potential opportunities that cannabis or cannabis-derived compounds may offer and the significant interest in these possibilities.”**

**- US Food and Drug Administration**

# ● Federal marijuana law enforcement

- Cole Memorandum
  - Justice Department will not enforce federal marijuana prohibition in states where marijuana is legalized
  - Rescinded by Jeff Sessions
- Rohrabacher–Farr amendment
  - Prohibits DOJ from spending federal funds to interfere with state medical marijuana laws
  - Reauthorized through September 2019

# ● Federal marijuana law enforcement

## Business impact

- Limited banking services
  - AML: Transactions traceable to marijuana operations could be considered money laundering
  - SAFE Banking Act introduced with bipartisan support
- No credit cards
- Murky legal status for patents, etc.
- No federal regulation (EPA, FDA, etc.)

# ● The landscape today

- Widespread support for legalization
- An expanding array of state marijuana laws
- Inconsistent court decisions on key liability issues
- Shifting federal enforcement policy
- An increasingly receptive US Congress



# Medical marijuana



- Legal in 33 states
- May be helpful for:
  - Nausea
  - Pain
  - Inflammation
  - Seizures
  - Mental disorders
  - Substance abuse disorders
  - Immune system disorders
- ***Doctors recommend, not prescribe!***

# Medical marijuana



- Cannabinoids of medical interest: THC and CBD
- FDA has approved one cannabis-derived and three cannabis-related drug products
- CBD oil and creams widely available
  - Online retailers
  - CVS (800 stores)
  - Walgreens (1,500 stores)

# Recreational marijuana



- Colorado first in 2014
- Now Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington
- Decriminalized in 14 other states

# Who is exposed to cannabis-related liability?

Supply chain participants



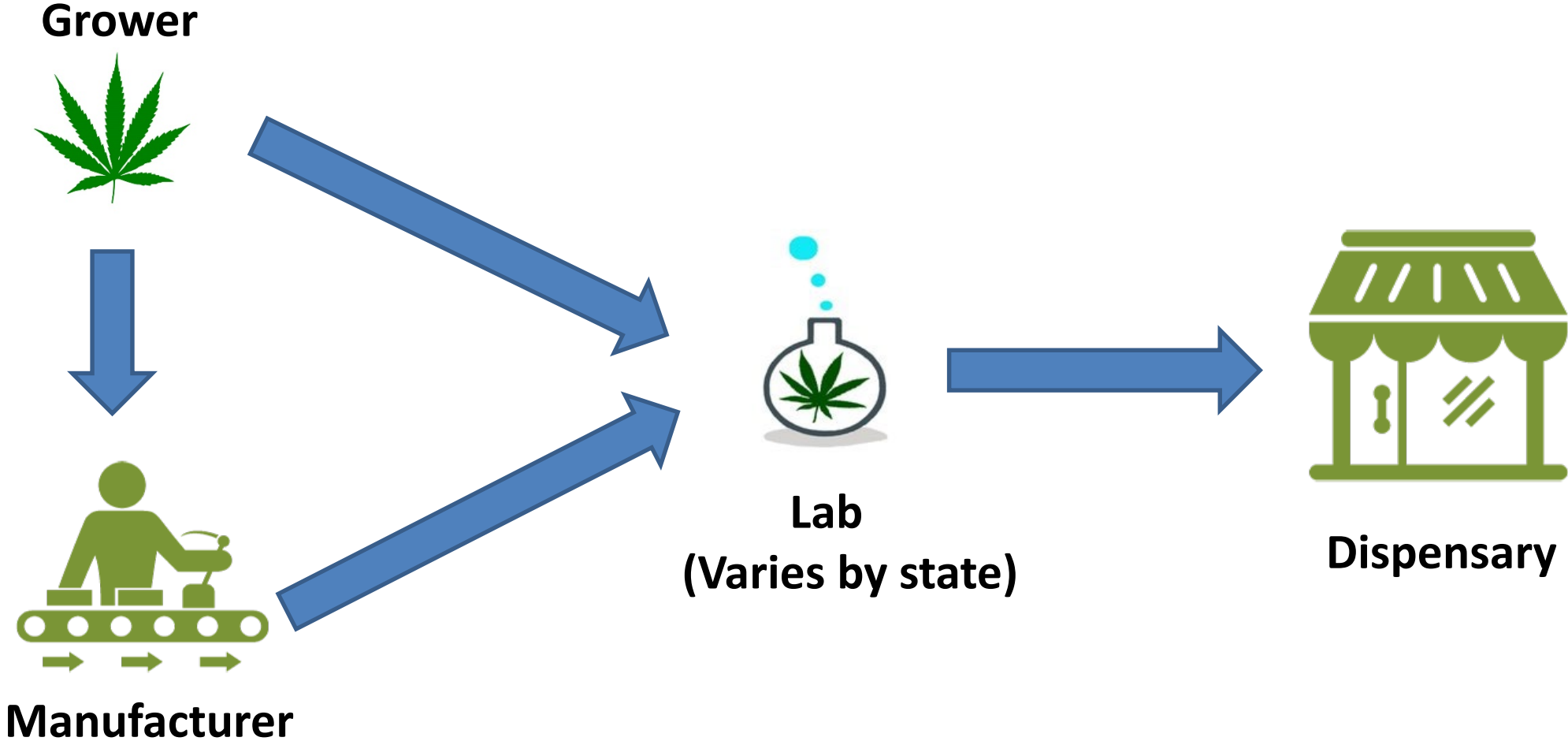
Doctors



All employers



# Cannabis supply chain



# Who is exposed to cannabis-related liability?

## Supply chain



Grower	Manufacturer	Lab	Dispensary/Store
Product liability	Product liability (edibles)	Professional liability	Product liability
Intellectual property	Intellectual property		Professional liability
Diminished prop. Value (RICO)	Diminished prop. Value (RICO)		Diminished prop. Value (RICO)
Nuisance, emotional distress	Nuisance, emotional distress		Nuisance, emotional distress

Plus all the usual exposures of running a business

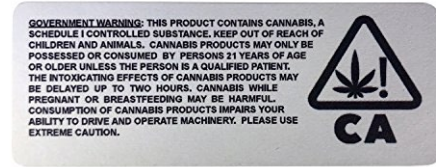
# Who is exposed to cannabis-related liability?

## Product liability

Growers



Manufacturers



Dispensaries

**MEDICAL CANNABIS**

**+**

*Strain*

**WARNING:** Please use extreme caution. May cause drowsiness. Do not drive or operate heavy machinery. Keep out of the reach of children. Unlawful to redistribute. Medication in this package was produced and distributed in compliance with New Jersey Compassionate Use Medical Marijuana Act SB 119, and may be legally possessed only by a patient or registered caregiver. Use as directed by Physician.

**INDICA**

**SATIVA**

**HYBRID**

**THC%** \_\_\_\_\_ **CBD%** \_\_\_\_\_ **Gram(s)** \_\_\_\_\_



# Who is exposed to cannabis-related liability?

## Professional liability

Labs



Dispensaries





# • Who is exposed to cannabis-related liability?

## Supply chain



## Others

- Distributors
- Landlords & property managers
- Banks
- Coming: cannabis cafes

# Who is exposed to cannabis-related liability?

## Cannabis cafes

- “Gram shop liability”
  - Analogous to dram shop liability



Barbrary Coast Lounge, San Francisco

# Who is exposed to cannabis-related liability?

## Directors and officers

- Federal regulation of an illegal industry
- Investment fraud and market manipulation “common”
- Shareholder suits
  - CV Sciences, Aphris, MedMen, ...



# Who is exposed to cannabis-related liability?

## Doctors



- Few, if any, med mal claims to date
  - Potential for suits is real, however
- Issue: No standard of care exists for recommending cannabis

# Who is exposed to cannabis-related liability?

## All employers



- Employee rights/EPL
- Workers' compensation
- 3<sup>rd</sup> party liability
- Social events

# Employers

## Employee rights/EPL

- Must employers accommodate (or not discriminate against) medical marijuana users?
- Must employers accommodate recreational marijuana users who use during non-working hour?

# Employers

## Workers' compensation & worker safety

- Does marijuana on the job increase injuries?
- Can WC be denied to injured employees testing positive?
- Does WC cover the cost of medical marijuana?

# Employers

## 3<sup>rd</sup> Party Liability

- Importance of written and enforced drug policies
  - Employers will feel pressure to liberalize policies

## Social events

- Exposure analogous to liquor liability



# ● Relaxing federal restrictions

- **Banking (SAFE Banking Act)**

- Intent is to lower AML and related threats
- Potential new compliance burdens for banks
- Improved safety for cannabis businesses
- Safe harbor for insurers

- **Decriminalization**

- RICO suits
- ADA implications
- Federal regulation
  - EPA, FDA, others

# • The US cannabis insurance industry

- Roughly 25 insurers
  - Almost all non-admitted
- SAFE Banking Act may spark new capacity
- Federal decriminalization would open the flood gates



Dispensaries



Cultivators



Processors / Manufacturers



Ancillary Businesses



Landlords



Testing Laboratories

# The US cannabis insurance industry

## OUR TARGETED INDUSTRIES INCLUDE:

- DISPENSARIES (MEDICAL & RECREATIONAL)
- GROWING OPERATIONS (INDOOR, OUTDOOR, GREENHOUSE)
- LANDLORDS
- TRANSPORTERS
- WHOLESALE/DISTRIBUTORS
- OIL AND EDIBLE MANUFACTURERS
- DELIVERY
- LABORATORY TESTING
- CONSULTANTS
- ONLINE RETAILERS
- LAWYERS
- PROPERTY MANAGEMENT
- GARDEN/HYDROPONIC STORE
- TOBACCO RETAIL STORE
- SECURITY GUARDS
- HEMP-RELATED INDUSTRIES

## OUR PRODUCTS:

- GENERAL LIABILITY
- PROPERTY
- WORKERS COMPENSATION
- PROFESSIONAL LIABILITY
- CARGO/ MTC
- STOCK THROUGHPUT
- CROP COVERAGE
- CRIME AND EMPLOYEE DISHONESTY
- DIRECTORS & OFFICERS
- EMPLOYMENT PRACTICES LIABILITY
- DATA BREACH
- SMALL AND LARGE GROUP HEALTH INSURANCE
- EMPLOYEE BENEFITS
- FINANCIAL ADVISING

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**Thank you!**





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