

DEPARTMENT OF INSURANCE

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June 12, 2017

Lori Ajax, Chief
Bureau of Marijuana Control, Regulations Office
1625 North Market Blvd., Suite S-202
Sacramento, CA 95834
Via email to BMCR.comments@dca.ca.gov

Re: Formal Comment Submitted by the California Department of Insurance – Section 5108 of the Bureau of Marijuana Control, Medical Cannabis Regulation Proposed Regulation Text

Dear Chief Ajax:

The California Department of Insurance has concerns with Bureau of Marijuana Control (BMC), Medical Cannabis Regulation Section 5108, subparagraph (c). Specifically, the phrase “by the Secretary of State,” which would have the consequence of allowing only licensed insurers to write coverage, as currently written in Section 5108 (c). Only licensed insurers are qualified to do business in California and surplus lines insurers are not required to have any certification from the California Secretary of State. LASLI-listed insurers only provide Secretary of State information from their domiciliary state, not California’s.

Please find below some possible revisions for the proposed regulation text of Section 5108 (c) (deletions are stricken, and additions are underlined):

(c) A distributor licensee shall maintain the insurance required in subsection (b) from an insurance company ~~authorized to do business in California by the Secretary of State~~ that is:

(i) a nonadmitted insurer, that meets the requirements of Insurance Code section 1765.1 or 1765.2, and the insurance is placed pursuant to Insurance Code section 1763 and through a surplus line broker licensed under Insurance Code section 1765; or

(ii) an insurer qualified to do business in California by the Secretary of State and authorized by the Insurance Commissioner to write the liability and property classes of insurance as defined by Insurance Code sections 102, 103, 107, 114, 108 and 120; or

(iii) a registered risk retention group compliant with the California Risk Retention Act of 1991. See California Insurance Code sections 125 – 140.

(d) A distributor licensee shall notify the bureau in writing within 10 calendar days of a lapse in insurance. Admitted insurers and risk retention groups must show proof of capitalization in the amount of at least \$10,000,000.

(e) A distributor licensee shall notify the bureau in writing within 10 calendar days of a lapse in insurance.

Further, it is not clear how many policies are required of a distributor licensee to comply with Section 5108 (b). It should be clarified by the BMC whether the distributor licensee must obtain multiple policies. It appears from the wording of Section 5108 (b) that there could be 1) a commercial general liability policy, 2) a commercial umbrella policy, 3) a property damage policy, 4) a director and officer policy, and 5) a product liability policy.

Finally, the million dollar limit language in Section 5108 (b) is ambiguous and should be expanded upon to clarify whether it is per loss or in the aggregate. Rather than referencing limits, it would be better to express the amount of coverage required, such as the first million dollars of loss. Minimum coverage would allow a distributor licensee to purchase additional coverage.

If you have any questions concerning this matter, please contact Camille Dixon at Camille.Dixon@insurance.ca.gov or 916-492-3537.

Sincerely,



Chris Shultz
Deputy Commissioner, Community Programs and Policy Initiatives

cc: Benjamin J. McKay, Surplus Lines Association
Mark Sektnan, Association of California Insurance Companies
Al Bottalico, Pacific Association of Domestic Insurance Companies
Rex Frazier, Personal Insurance Federation of California
Katie Pettibone, American Insurance Association