

# Insurance Buyers' News



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Legislation

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## Insurance Access Legislation for Marijuana Industry Introduced in Senate

Current federal law makes access to insurance products by cannabis businesses illegal.

**T**he Clarifying Law Around Insurance of Marijuana (CLAIM) Act of 2021 has been reintroduced by U.S. Senator Bob Menendez of New Jersey, a senior member of the Senate Banking Committee and chairman of the subcommittee that oversees the insurance industry. The CLAIM Act seeks to help legal marijuana and related businesses access comprehensive and affordable insurance



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## This Just In ...

**T**hinking of starting your own cryptocurrency business or just need coverage for your crypto stash? As in the marijuana business, getting insurance has been hard. But more insurance companies are getting on board.

New York Digital Investment Group (NYDIG) just raised \$100 million that it will use to expand the use of bitcoin insurance. The round comes just a month after announcing \$200 million in new financing. NYDIG's strategic partners include property/casualty insurers Starr Insurance, Liberty Mutual Insurance, and others.

There are four main types of cryptocurrency insurance:

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coverages including workers' comp, property, casualty and title insurance. The bill is cosponsored by Sens. Rand Paul (R-Ky.) and Jeff Merkley (D-Ore.).

All but six states have marijuana legalization or decriminalization laws on the books for recreational or medicinal purposes. In the 2020 election, voters in New Jersey, Arizona, Montana, Mississippi and South Dakota approved of creating or expanding the legal use of marijuana.

The Bill was first introduced by Senator Menendez in July 2019 and referred to the Committee on Banking, Housing, and Urban Affairs.

### Insuring Cannabis Businesses is Illegal

"Current federal law prevents ... small business owners from getting insurance coverage, and without it, they can't protect their property, employees or customers," said Senator Menendez in a statement. "Our legislation simply levels the playing field for legal cannabis businesses, allowing them to fully operate just as any other legal small business would by permitting insurance companies to provide coverage to these enterprises without risk of federal prosecution or other unintended consequences."

"The principles behind the CLAIM Act are simple: respect the voices of the states and their people and stop shutting out legitimate businesses from obtaining basic protections," said Sen. Paul. "The states

are making their own decisions on these issues, and it's time for the federal government to accept that."

"State legal cannabis businesses should not be shut out from the kind of tools and financial services all businesses need to thrive — including insurance to protect stores, customers, and workers from an unexpected emergency," said Sen. Merkley. "It's time to pass the CLAIM Act, so we can deliver on that principle, and continue working together to support our local businesses."

The CLAIM Act ensures businesses operating under state laws that have legalized recreational or medical marijuana have access to insurance products such as worker's compensation, property, casualty and title insurance.

Because they could be prosecuted or face penalties under federal law, these state-authorized cannabis businesses are often denied access to the insurance market, leaving them vulnerable and risking the safety of employees, customers, and the community. Businesses can also be denied bank financing if they do not have the proper insurance.

### What the CLAIM Act Does

The CLAIM Act would:

- ✱ Prohibit penalizing or discouraging an insurer from providing coverage to a state-sanctioned and regulated canna-

### This Just In

- 1 Crime insurance**, covering theft, internal collusion, hacks. Useful when your cryptocurrency gets stolen. In 2014, Mt. Gox lost \$460 million in cryptocurrencies to data thieves. Coincheck shed \$530 million worth of customer cryptocurrencies in 2018.
- 2 Custody insurance**, including key storage, key recovery, disaster recovery, and cold storage. This kicks in when you lose access to your crypto keys or the business holding your crypto goes out of business. Between 17 percent and 23 percent of all bitcoins have keys that have been lost, likely forever.
- 3 Business insurance**, including professional indemnity insurance (PII) and directors and officers liability (D&O) insurance. Regulations in this new industry are loose and volatility high, and there's a higher probability of cyberbreaches compared to traditional investment markets.
- 4 Decentralized Finance (DeFi) insurance**. "Also called smart contract insurance, this insurance seeks to ensure a cryptocurrency's software is hack proof and that it's delivering on the promise of the transaction execution," says Sharon Henley, Chief Product Officer at Coincover, an insurance specialist in cryptocurrency risk located in Cardiff, Wales, United Kingdom.

bis business, or an associated business (such as a cleaning service or landlord providing services to a legal cannabis business).

- ✱ Prohibit the termination or limitation of an insurer's policies solely because the insurer has engaged in the business of insurance in connection with a cannabis-related business.
  - ✱ Prohibit recommending, incentivizing, or encouraging an insurer not to engage in the business of insurance in connection with a policyholder, or downgrade or cancel the insurance offered to a cannabis or cannabis-related business.
  - ✱ Prohibit the federal government from taking any adverse or corrective supervisory action on a policy to an owner or operator of a cannabis-related business or real estate or equipment that is leased to a cannabis-related business, solely because the owner or operator is engaged with a cannabis or cannabis-related business; and
  - ✱ Protect employees of an insurer from any liability solely for engaging in the business of insurance with a cannabis or cannabis-related business.
- Sens. Menendez and Paul also

cosponsored the Secure and Fair Enforcement (SAFE) Banking Act of 2019, which was introduced by Sen. Merkley in the last Congress, to ensure that legal marijuana businesses can access banking services, such as lines of credit, savings and checking accounts, processing customers' credit cards and employee payrolls.

Congresswoman Nydia M. Velazquez (D-N.Y.) plans to introduce companion legislation in the House of Representatives.

### Cautiously Optimistic

Morgan Fox, media relations director for the National Cannabis Industry Association, says that although conservative members of Congress have traditionally rejected comprehensive cannabis reform, many have been open to more incremental changes in the past. Plus, according to Fox, "a growing number of polls [in red states show] increasing support for legalization among conservative voters, particularly in younger demographics. ... It is tough to tell at this point how much momentum this bill will have in the coming weeks and months, but we are cautiously optimistic that it will be approved as a stand-alone." ■

## How to Spot a Fake PPE Mask

Millions of counterfeit masks have been seized by federal agents and millions more are likely still in use.

**L**iability and health risks from counterfeit PPE (personal protective equipment) masks is a growing problem. Federal agents and others have seized more than 11 million counterfeit masks, including the N95 masks used in hospitals.

According to the CDC, counterfeit respirators are products that are falsely marketed and sold as being approved by National Institute for Occupational Safety and Health (NIOSH) and may not be capable of providing appropriate respiratory protection to workers.

Signs that a respirator may be counterfeit:

- ✱ No markings at all on the filtering facepiece respirator
- ✱ No approval (TC) number on filtering facepiece respirator or headband
- ✱ No NIOSH markings
- ✱ NIOSH is spelled incorrectly
- ✱ Presence of decorative fabric or other decorative additions (e.g., sequins)
- ✱ Claims for the of approval for children (NIOSH does not approve any type of respiratory protection for children)
- ✱ Filtering facepiece respirator has ear loops instead of headbands.

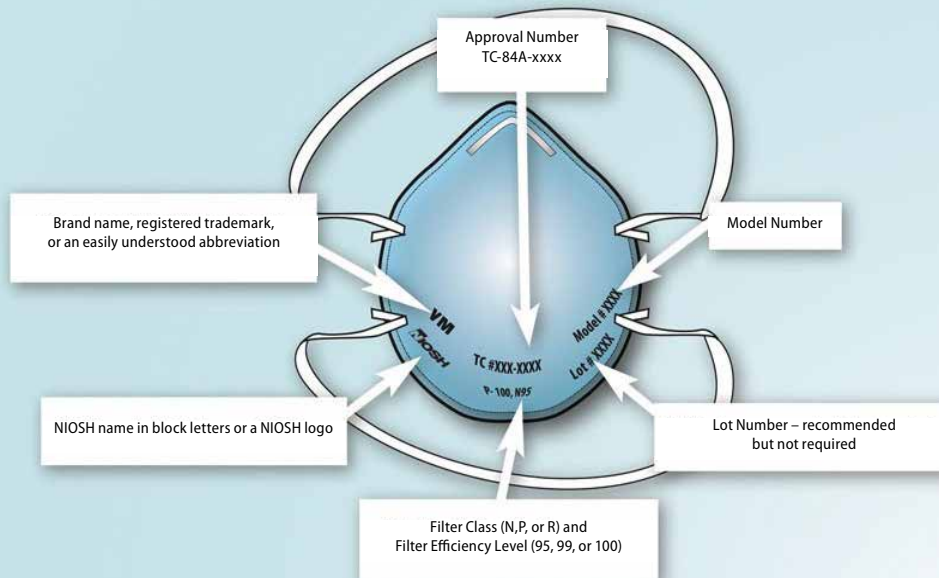
## How to identify a NIOSH-Approved Respirator:

First, check the respirator approval markings using the Example of Correct Exterior Markings on a NIOSH-Approved Filtering Facepiece Respirator graphic on this page.

NIOSH-approved respirators have an approval label on or within the packaging of the respirator (i.e., on the box itself and/or within the users' instructions). Ad-

ditionally, an abbreviated approval is on the FFR (filtering facepiece respirator) itself. You can verify the approval number on the NIOSH Certified Equipment List (CEL) (<https://www.cdc.gov/niosh/nppt/topics/respirators/cel/default.html>) to determine if the respirator has been approved by NIOSH. NIOSH-approved FFRs will always have one the following designations: N95, N99, N100, R95, R99, R100, P95, P99, P100. ■

Example of Exterior Markings on a NIOSH approved Filtering Facepiece Respirator



# COVID-19 Related Employment Liability Claims Update

A majority of the claims involve an allegation of wrongful termination

Since the beginning of the pandemic, well over two thousand employment complaints have been filed as of April 7, 2021. Most claims involve disability leave, accommodation, discrimination/harassment, retaliation/whistleblowing, and wage and hour claims, according to the COVID-19 Employment LitWatch from Jackson Lewis, P.C.

LitWatch also points out that, “based on our review of COVID-19-related labor and employment complaints ..., an overwhelming majority (approximately two-thirds) of complaints involve an allegation of wrongful termination. Typically, each of these complaints contains an underlying claim that led to the employee’s termination, such as, for example, an employee requesting an accommodation.”

“Initially, COVID-19 presented little that was different from a typical employment practice liability (EPL) claim. One of the first claims was a woman whose coworkers were accusing her of having COVID-19 when that was not the case and that she was being treated differently based upon this perceived disability,” said LitWatch’s Martin Aron and Karl Weisheit of Lowers Forensics International in an article that appeared in Property-Casualty 360.

That claim did not mature but subsequently, according to the authors, COVID-19 claims have become more troublesome. For instance:

- ✱ A physician at a chain of pediatric clinics was allegedly terminated in retaliation for complaining that the personal protective equipment (PPE) the clinic was providing was insufficient.
- ✱ A hospital psychiatrist with several COVID-19 risk factors was terminated after his request to “tele-doc” his hospital patients was denied, and he refused to go onsite.
- ✱ Several nursing home employees had similar claims, refusing to come into work for lack of adequate protection and then were terminated.”

There have also been allegations of discrimination based on COVID-19-related risks, such as a claimant who lived with an immunocompromised parent. To prevent putting the parent at risk, the claimant re-

quested to work from home. The request was denied, and the employee terminated for not coming into work.

### HR Department: Your Best Line of Defense

Issues related to accommodations, paid and unpaid leave, as well as retaliation and whistleblower issues, all present the potential for claims arising from COVID-19. It’s important for Human Resources departments to keep up to date and trained to deal with these kinds of issues.

For example, even though accommodations for workers such as the caretaker who lived with an immunocompromised parent are not always required by law, most companies largely want to “do the right thing.” This approach can “go a long way to avoid potential workplace issues.

Also, recent amendments to the Family Medical Leave Act, the Families First Coronavirus Act, and a myriad of state executive orders have imposed new requirements for how companies operate during a pandemic. These changes significantly expanded paid leave, enhanced protections against workplace retaliation, and provided other mechanisms designed to support employees. It’s important for HR departments to keep up to date. “Failure to understand the impact of COVID-19-related laws and regulations and their interplay with one another can create internal disputes that tend to mature into claims,” according to Aron and Weisheit.



### Some Good News Anyway

In an interesting footnote to the rise in COVID-19-related claims, there has been a reduction in other types of employment liability claims. The “Special Report: Impacts of COVID-19 on Employment Litigation in Federal Court” (October 2020) by Lex Machina reports significant decreases where mass layoffs and the shift to work at home have reduced workplace contact. The authors report a 12% decrease in federal employment cases from 2019, which is a 16% decrease compared to the average number of filings from 2010-2019.

- ✱ Significant decreases in harassment (-22%), Americans with Disabilities Act (-20%), and discrimination (-17%) from 2019.
- ✱ Approximately 2,000 fewer cases were closed in 2020 than 2019, reflecting the dramatic slowdown in court activity during the pandemic. ■



# Drivers Say They Fear Cyber Hi-Jackers

**M**ore U.S. motorists are getting worried about possible cyber-attacks on their connected vehicles, a survey by HSB, part of Munich Re, reported recently. Some even believe a hacker could confront them over their car audio systems or disable automotive safety features.

The HSB poll by Zogby Analytics found that 37 percent of consumers who responded were somewhat or very concerned about the cyber security and safety of connected and automated vehicles.

A similar number (35 percent) feared that a virus, hacking incident or other cyber-attack could damage or destroy their vehicle's data, software or operating systems.

In a similar finding, half of the 11 percent of survey respondents who drive electric vehicles said they were concerned that charging stations could be a point of entry for a cyber-attack.

Of the 55 percent of consumers who sync smartphones or other devices, 51 percent don't know or aren't sure what personal information is stored in their vehicle's entertainment system.

"Our cars are more connected than ever," said Timothy Zeilman, vice president for HSB, a provider of cyber insurance and services. "It's hard for consumers to keep up with rapidly evolving vehicle technology and they wonder if their privacy and personal information is protected."



## Hackers on the Radio?

One in ten consumers reported a hacking incident or other cyber-attack had affected their vehicle, up three percent from a similar HSB poll the year before.

As connected technology continues to advance, some are concerned not only that their vehicle could be hacked, but also controlled by others remotely.

When asked what worried them most about a possible cyber-attack on their vehicle, 46 percent of consumers were very concerned a hacker might communicate with them over their audio system, perhaps to coerce them or demand a ransom payment.

Other top concerns were their vehicle being immobilized (25 percent very concerned), safety systems compromised (23 percent) and being locked out of their vehicle (14 percent).

The most common technologies installed in vehicles included Bluetooth (53 percent), navigation systems (42 percent) and vehicle safety sensors (39 percent). ■