

RE: DFS CIRCULAR LETTER ON CANNABIS-RELATED CRIMINAL CONVICTIONS AND INSURANCE UNDERWRITING

The New York State Department of Financial Services has published [Circular Letter No. 13 \(2022\)](#) regarding cannabis-related criminal convictions and insurance underwriting. The circular letter's requirements apply to, among others, licensed insurance producers, which includes excess line brokers.

The DFS advises brokers that they may not inquire about, or act adversely based upon:

- a New York cannabis-related expunged conviction
- an arrest or criminal accusation not pending against a person that has been terminated in the person's favor
- a criminal action that has been adjourned in contemplation of dismissal and has not been restored to the calendar for further prosecution
- a youthful offender adjudication
- a conviction for a violation sealed pursuant to [CPL § 160.55](#)
- a conviction sealed pursuant to [CPL § 160.59](#) or [160.58](#)

Excess line brokers are therefore advised not to inquire about any of these data points during the insurance application process or other interactions with insureds or applicants. In the event that brokers become aware of any of these data points, they should not act in any way that is averse to the insured or applicant based on the information.

Brokers must implement and maintain procedures and controls to ensure that they do not inquire about or take adverse action based upon these data elements. Brokers must review their procedures and controls and update them as needed to ensure they address recently expunged cannabis-related convictions, as well as other arrests or convictions specified in [Executive Law §296\(16\)](#). If applications for insurance include a general question about past criminal convictions, brokers must have procedures or controls in place to ensure that they are not inquiring about or acting adversely based upon any convictions specified in Executive Law § 296(16) during the underwriting process. Procedures or controls may include instructing applicants at the time of application that an applicant may respond to questions about convictions specified in Executive Law § 296(16) as if the convictions did not occur. Brokers must also have procedures and controls in place to ensure that they do not act adversely based upon any arrests or criminal convictions specified in Executive Law § 296(16) that may appear in third-party data sources that brokers use to obtain criminal record information.

Should you have any questions regarding the content of this bulletin, please direct them to Howard Greene at hgreene@elany.org or (646) 292-5591.

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