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Insurance Regulatory Sandbox Model Act

**Draft as of October 19, 2021 and based on KY HB 386, signed into law on March 26, 2019.*

**To be introduced and discussed during the Financial Services & Multi-Lines Issues Committee on Thursday, November 19, 2021.*

**Sponsored by Rep. Bart Rowland (KY)*

**Rep. Wendi Thomas (PA) – Co-sponsor*

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Section 1. Title

This Act shall be known and cited as the “[State] Insurance Regulatory Sandbox Act.”

Section 2. Definitions

(1) "Applicant" means a person that has filed an application under Section 3 of this Act;

(2) "Beta test" means the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the department;

(3) "Client" means a person, other than a consumer, utilizing a participant's insurance innovation during a beta test to carry on some activity regulated by the department;

(4) "Director" means the director of insurance innovation;

(5) "Extended no-action letter" or "extended letter" means a public notice setting forth the conditions for an extended safe harbor beyond the beta test under which the department will not take any administrative or regulatory action against any person using the insurance innovation described in the extended no-action letter;

(6) "Innovation's utility" means an evaluation by the commissioner of the insurance innovation's ability to adequately satisfy factors set forth in subsection (1)(b)1. of Section 3 of this Act;

(7) "Insurance innovation" or "innovation" means any product, process, method, or procedure relating to the sale, solicitation, negotiation, fulfillment, administration, or use of any product or service regulated by the department:

(a) That has not been used, sold, licensed, or otherwise made available in this [State] before the effective filing date of the application, whether or not the product or service is marketed or sold directly to consumers; and

(b) That has regulatory and statutory barriers that prevent its use, sale, license, or availability within this [State];

(8) "Limited no-action letter" or "limited letter" means a letter setting forth the conditions of a beta test and establishing a safe harbor under which the department will not take any administrative or regulatory action against a participant or client of the participant concerning the compliance of the insurance innovation with [State] law so long as the participant or client abides by the terms and conditions established in the limited no-action letter;

(9) "Participant" means an applicant that has been issued a limited no-action letter under Section 5 of this Act; and

(10) "Regulatory sandbox" or "sandbox" means the process established under this Act by which a person may apply to beta test and obtain a limited no-action letter for an innovation, potentially resulting in the issuance of an extended no-action letter.

Section 3. Application Process

(1) Except as provided in subsection (2) of this section, on or before [date], a person may apply to the department for admission to the sandbox by submitting an application in the form prescribed by the commissioner, accompanied by the following:

(a) A filing fee of [xxxxx]);

(b) A detailed description of the innovation, which shall include:

1. An explanation of how the innovation will:

- a. Add value to customers and serve the public interest;
- b. Be economically viable for the applicant;
- c. Provide suitable consumer protection; and
- d. Not pose an unreasonable risk of consumer harm.

2. A detailed description of the statutory and regulatory issues that may prevent the innovation from being currently utilized, issued, sold, solicited, distributed, or advertised in the market;

3. A description of how the innovation functions and the manner in which it will be offered or provided;

4. If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a technical white paper setting forth a description of the operation and general content of technology to be utilized, including:

- a. The problem addressed by that technology; and
- b. The interaction between that technology and its users;

5. If the innovation involves the issuance of a policy of insurance, a statement that either:

- a. If the applicant will be the insurer on the policy, that the applicant holds a valid certificate of authority and is authorized to issue the insurance coverage in question; or
- b. If some other person will be the insurer on the policy, that the other person holds a valid certificate of authority and is authorized to issue the insurance coverage in question; and

6. A statement by an officer of the applicant certifying that no product, process, method, or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this [State] before the effective filing date of the application;

(c) The name, contact information, and bar number of the applicant's insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice;

(d) A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter;

(e) Proposed terms and conditions to govern the applicant's beta test, which shall include:

1. Citation to the provisions of [State] law that should be excepted in the notice of acceptance issued under subsection (6) of Section 4 of this Act; and

2. Any request for an extension of the time period for a beta test under subsection (1) of Section 6 of this Act and the grounds for the request;

(f) Proposed metrics by which the department may reasonably test the innovation's utility during the beta test;

(g) Disclosure of all:

1. Persons who are directors and executive officers of the applicant;

2. General partners of the applicant if the applicant is a limited partnership;

3. Members of the applicant if the applicant is a limited liability applicant;

4. Persons who are beneficial owners of ten percent (10%) or more of the voting securities of the applicant;

5. Other persons with direct or indirect power to direct the management and policies of the applicant by contract, other than a commercial contract for goods or nonmanagement services; and

6. Conflicts of interest with respect to any person listed in this paragraph and the department;

(h) A statement that the applicant has funds of at least [xxxxxx dollars] available to guarantee its financial stability through one (1) or a combination of any of the following:

1. A contractual liability insurance policy;
2. A surety bond issued by an authorized surety;
3. Securities of the type eligible for deposit by authorized insurers in this [State];
4. Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this [State] and has deposited money of the United States in an amount equal to the amount required by this paragraph that is not available for withdrawal except by direct order of the commissioner;
5. A letter of credit issued by a qualified United States financial institution as defined in [citation to appropriate State statute]; or
6. Another form of security authorized by the commissioner; and

(i) A statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application under subsection (2) of this section.

(2) (a) The following persons shall not be authorized to make an application to the department for admission to the sandbox:

1. Any person seeking to sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation;
2. Any person seeking to sell, license, or use an insurance innovation that is not in compliance with subsection (1)(b)5. of this section;
3. Any person seeking to make an application that would result in the person having more than five (5) active beta tests ongoing within the [State] at any one (1) time; and
4. Any person seeking a limited or extended no-action letter or exemption from any administrative regulation or statute concerning:
 - a. Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;

- b. Required participation in any assigned risk plan, residual market, or guaranty fund;
- c. Any licensing or certificate of authority requirements; or
- d. The application of any taxes or fees.

(b) For the purposes of this subsection, "federal, state, or local government entity, agency, or instrumentality" includes any county, city, municipal corporation, urban-county government, charter county government, consolidated local government, unified local government, special district, special purpose governmental entity, public school district, or public institution of education

Section 4. Director of Insurance Innovation

(1) There shall be a director of insurance innovation within the department, responsible for administering Sections 2 to 9 of this Act. The director shall be appointed by the [xxxxx] with the approval of the Governor in accordance with [citation to appropriate State law].

(2) The director shall review all applications for admission to the sandbox.

(3) (a) Unless extended as provided in paragraph (b) of this subsection, the commissioner shall issue a notice of acceptance or rejection in accordance with this section within sixty (60) days from the date an application is received.

(b) The commissioner may extend by not more than thirty (30) days the period provided in paragraph (a) of this subsection if he or she notifies the applicant before expiration of the initial sixty (60) day period.

(c) An application that has not been accepted or rejected by a notice of acceptance or rejection issued by the commissioner prior to expiration of the initial sixty (60) day period, or if applicable, the period provided in paragraph (b) of this subsection, shall be deemed accepted.

(4) The commissioner may request from the applicant any additional material or information necessary to evaluate the application, including but not limited to:

- (a) Proof of financial stability;
- (b) A proposed business plan;
- (c) Pro-forma financial statement; and

(d) Executive profiles on the applicant and its leadership demonstrating insurance or insurance-related industry experience and applicable experience in the use of the technology.

(5) The commissioner shall review the application to:

(a) Identify and assess:

1. The potential risks to consumers, if any, posed by the innovation; and
2. The manner in which the innovation would be offered or provided; and

(b) Determine whether it satisfies the following requirements:

1. The application satisfies the requirements of Section 3 of this Act;
2. The application proposes a product, process, method, or procedure that meets the definition of innovation under Section 2 of this Act;
3. Approval of the application does not pose an unreasonable risk of consumer harm;
4. The application identifies statutory or regulatory requirements that actually prevent the innovation from being utilized, issued, sold, solicited, distributed, or advertised in this [State]; and
5. The application proposes an innovation that is not substantially similar to an innovation:
 - a. That has been previously beta tested; or
 - b. Proposed in an application that is currently pending with the department.

(6) Upon review of the application, the commissioner shall, in his or her discretion, issue one (1) of the following:

(a) If the commissioner determines that the application fails to satisfy any of the requirements under subsection (5)(b) of this section, he or she shall:

1. Issue a notice of rejection to the applicant; and
2. Describe in the notice of rejection the specific defects in the application;
or

(b) If the commissioner determines that the application satisfies the requirements of subsection (5)(b) of this section, he or she shall issue a notice of acceptance to the applicant. The notice of acceptance shall:

1. Set forth the terms and conditions that will govern the applicant's beta test, which shall include, at a minimum:

a. Requiring the applicant to:

i. Abide by all [State] law, except where explicitly excepted;

ii. Utilize the insurance innovation within this [State]; and

iii. Report any change in the disclosures made pursuant to subsection (1)(g) of Section 3 of this Act;

b. Notice of the licenses required to be obtained prior to the commencement of the beta test;

c. Monthly reporting obligations structured to determine the progress of the beta test;

d. Consumer protection measures deemed necessary by the commissioner to be employed by the applicant;

e. The level of financial stability required to be in place for the beta test. The commissioner may increase, decrease, or waive the requirements for financial stability required under subsection (1)(h) of Section 3 of this Act, commensurate with the risk of consumer harm posed by the insurance innovation;

f. Duration of the beta test, including any extension authorized under Section 6 of this Act;

g. Permitted conduct under the limited letter;

h. Any limits established by the commissioner on the:

i. Financial exposure that may be assumed by an applicant during the beta test;

ii. Number of customers an applicant may accept; and

iii. Volume of transactions that an applicant or its clients may complete during the beta test; and

i. Metrics the commissioner intends to use to determine the innovation's utility; and

2. Provide that the notice of acceptance shall expire unless:

a. It is accepted by the applicant in writing; and

b. The acceptance is filed with the department within sixty (60) days of the issuance of the notice.

(7) An applicant may request a hearing pursuant to [citation to appropriate State statute] on:

(a) A notice of rejection; and

(b) A notice of acceptance, if the request is made prior to its expiration.

Section 5. Limited No-Action Letter

(1) Within ten (10) days following the timely receipt of an acceptance pursuant to subsection (6)(b)2. of Section 4 of this Act, the commissioner shall issue a limited no-action letter that:

(a) Sets forth terms and conditions for the participant that are the same as those set forth in the notice of acceptance issued under subsection (6) of Section 4 of this Act; and

(b) Provides that so long as the participant and any clients of the participant abide by the terms and conditions set forth in the letter, no administrative or regulatory action concerning the compliance of the insurance innovation with [State] law will be taken by the commissioner against the participant or any clients during the term of the beta test.

(2) If the application is deemed accepted under subsection (3)(c) of Section 4 of this Act, the proposed limited no-action letter included with the application shall be deemed to have the effect of a limited letter issued by the commissioner.

(3) The safe harbor of the limited letter shall persist until the earlier of:

(a) The early termination of the beta test under Section 6 of this Act;

(b) The issuance of an extended no-action letter; or

(c) The issuance of a notice declining to issue an extended no-action letter.

(4) A limited no-action letter issued by the commissioner under this section shall be exempt from the application of [inert citation to appropriate State statute] .

(5) The commissioner shall publish any limited letter issued pursuant to this section on the department's Web site.

Section 6. Beta Rest Requirements

(1) The time period for a beta test shall be one (1) year. The time period may be extended by the commissioner in the notice of acceptance for a period that is not longer than one (1) year if a request is made in accordance with subsection (1)(e) of Section 3 of this Act.

(2) During the beta test, the participant and any clients of the participant shall:

(a) Comply with all terms and conditions set forth in the limited no-action letter; and

(b) Provide the department with all documents, data, and information requested by the commissioner.

(3) (a) For any violation of the terms or conditions set forth in the limited letter, the commissioner may:

1. Issue an order terminating the beta test and the safe harbor of the limited letter before the time period set forth in the limited letter has expired; and

2. Impose a fine of not more than [xxxxx] dollars per violation.

(b) The commissioner may also issue an order under paragraph (a)1. of this subsection if, following receipt of information or complaints, the commissioner determines the beta test is causing consumer harm.

(4) (a) The commissioner may issue an order requiring a client to cease and desist any activity violating the terms or conditions set forth in the limited letter.

(b) The issuance of a cease and desist order to one (1) client shall not otherwise impact the ability of the participant or any other clients to continue activities relating to the innovation in a manner compliant with the requirements of the limited letter.

(5) A participant or client may request a hearing on any order issued under this section pursuant to [insert citation to appropriate State law].

Section 7. Beta Test Review

(1) (a) Within sixty (60) days of completion of the beta test, unless the time period is extended up to thirty (30) days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter.

(b) The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no action letter or a notice declining to issue an extended no-action letter.

(2) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:

(a) The data presented demonstrates that the innovation's utility was meritorious of an extension;

(b) Regulatory and statutory barriers prevent continued use of the innovation within this [State];

(c) The innovation provided a benefit to [State] consumers; and

(d) The issuance of an extended no-action letter:

1. Presents no risk of unreasonable harm to consumers or the marketplace;
and

2. Serves the public interest.

(3) Upon review of the results of the beta test, the commissioner shall, in his or her discretion, issue one (1) of the following:

(a) If the commissioner determines that the innovation fails to satisfy any of the requirements under subsection (2) of this section, he or she shall:

1. Issue a notice declining to issue an extended no-action letter;

2. Describe in the notice the reasons for the declination;

3. Notify the participant for the innovation of the notice; and

4. Publish the notice on the department's Web site; or

(b) If the commissioner determines that the innovation satisfies the requirements under subsection (2) of this section, he or she shall issue an extended no action letter. An extended no-action letter issued by the commissioner shall include:

1. A description of the insurance innovation and the specific conduct permitted by the extended letter in sufficient detail to enable any person to use the innovation or a product, process, method, or procedure not substantially different from the innovation within the safe harbor of the extended letter;

2. Notice of any certificate of authority, license, or permit the commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this [State];

3. An expiration date not greater than three (3) years following the date of issuance;

4. Notice that the extended no-action letter may:

a. Only be modified by:

i. Promulgation of an administrative regulation, if the safe harbor addresses a requirement established by administrative regulation; or

ii. An act of the General Assembly; and

b. Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;

5. Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and

6. Notice that, upon expiration, all persons relying on the extended no action letter shall cease and desist operations related to the innovation unless changes have been made to [State] law to permit the innovation by:

a. The promulgation of an administrative regulation, if the safe harbor address a requirement established by administrative regulation; or

b. An act of the General Assembly.

(4) A hearing on a notice of declination may be requested in accordance with [insert appropriate citation to State statute].

(5) An extended no-action letter issued by the commissioner pursuant to this section shall be:

(a) Exempt from the application of [insert citation to appropriate State statute];
and

(b) Published on the department's Web site.

Section 8 Confidentiality

(1) All documents, materials, or other information in the possession or control of the department that are created, produced, obtained, or disclosed in relation to this Act and that relate to the financial condition of any person shall be confidential and shall not be subject to public disclosure pursuant to the [State] Open Records Act, [citation].

(2) Notwithstanding any law to the contrary, the commissioner may disclose in an extended no-action letter any information relating to the insurance innovation necessary to clearly establish the safe harbor of the extended letter.

Section 9. Reports

(1) One hundred twenty days (120) days prior to the start of the 20xx, 20xx, 20xx, 20xx, and 20xx regular sessions of the General Assembly, the commissioner shall submit a written report to the Committees with jurisdiction over insurance issues in each Chamber that meets the requirements of subsection (2) of this section. Thereafter, the commissioner shall submit the report annually, upon request.

(2) The report shall include the following:

(a) The number of:

1. Applications filed and accepted;
2. Beta tests conducted; and
3. Extended letters issued;

(b) A description of the innovations tested;

(c) The length of each beta test;

(d) The results of each beta test;

(e) A description of each safe harbor created under Section 7 of this Act;

(f) The number and types of orders or other actions taken by the commissioner or any other interested party under this Act;

(g) Identification of any statutory barriers for consideration of amendment by the General Assembly following successful beta tests and the issuance of extended letters; and

(h) Any other information or recommendations deemed relevant by the commissioner.

(3) The commissioner shall also provide the Committees with jurisdiction over insurance issues in each Chamber a detailed briefing, upon request, to discuss and explain any report submitted under this section.

Section 10. Rules

The Commissioner is authorized to promulgate rules and regulations necessary to effectuate the purposes of this Act.

Section 11. Effective Date

This Act shall take effect [xxxxxxx].