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National Council of Insurance Legislators (NCOIL)

Insurance Regulatory Sandbox Model Act

**Draft as of October 18, 2022. To be discussed and considered by the Financial Services & Multi-Lines Issues Committee on November 18, 2022.*

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

**Co-sponsored by Rep. Wendi Thomas (PA) and Rep. Tom Oliverson, M.D. (TX), NCOIL Treasurer*

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Section 1. Title

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

Section 2. Regulatory Sandbox and Innovation Waivers

(a) The Commissioner may grant a variance or waiver with respect to the specific requirements of any insurance law, regulation, or bulletin if a person subject to that law, regulation, or bulletin demonstrates to the Commissioner's satisfaction that:

(1) the application of the law, regulation, or bulletin would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;

(2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;

(3) the waiver will not substantially or unreasonably increase any risk to consumers; and

(4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

(1) the identity of the person applying for the waiver;

(2) the identity of the directors and executive officers of the applicant, any persons who are beneficial owners of ten percent or more of the voting securities of the applicant, and any individuals with power to direct the management and policies of the applicant;

(3) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;

(4) a description of the potential benefits to consumers of the product or service;

(5) a description of the potential risks to consumers posed by the product or service or the approval of the proposed waiver and how the applicant proposes to mitigate such risks;

(6) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service;

(7) a filing fee of \$_____; and

(8) any additional information required by the Commissioner.

(c) (1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.

(2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.

(d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be

written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 consumers.

(e) A product or service offered pursuant to an innovation waiver shall include the following written disclosures to consumers in clear and conspicuous form:

- (1) the name and contact information of the person providing the product or service;
- (2) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;
- (3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and
- (4) any additional disclosures required by the Commissioner.

(f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the [insert reference to the state administrative procedure act].

(g) (1) The Commissioner shall not grant a waiver with respect to any of the following:

- (A) any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under [insert reference to the title(s) that make up the insurance code];
- (B) any law, regulation, bulletin, or other provision concerning the assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;
- (C) the required participation in any assigned risk plan, residual market, or guaranty fund;
- (D) [insert references to the provisions of the insurance code related to insurance licensing requirements, insurance trade practices, particular lines of insurance or insurance products (e.g. health insurance, workers' compensation insurance), etc.];
- (E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless the law or regulation permits variances or waivers;

- (F) the application of any taxes or fees; and
- (G) any other law, regulation, or bulletin deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that would abridge the recovery rights of consumers.

(h) A person who receives a waiver under this section shall be required to possess or obtain one or a combination of the following in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers:

- (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 [insert reference to appropriate state law]; or
 - (6) Another form of security authorized by the Commissioner
- (i) (1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:
- (A) the specific statute, regulation, or bulletin to which the draft waiver applies;
 - (B) the proposed terms, conditions, and limitations of the draft waiver;
 - (C) the proposed duration of the draft waiver; and
 - (D) any additional information deemed appropriate by the Commissioner.
- (2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

- (j) (1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:
- (A) the specific statute, regulation, or bulletin to which the waiver applies;
 - (B) the name of the person who applied for and received the waiver;
 - (C) the duration of and any other terms, conditions, or limitations of the waiver; and
 - (D) any additional information deemed appropriate by the Commissioner.
- (2) The notice requirement of this subsection may be satisfied by publication on the Department's website.
- (k) (1) The Commissioner may revoke a waiver if the person who obtains the waiver fails to comply with any terms, conditions, or limitations established by the Commissioner or the requirements of this section or if the waiver is causing consumer harm.
- (2) In addition to any other sanctions and penalties permitted by the law, the Commissioner may impose a fine of not more than \$_____ on any person who obtains a waiver that fails to comply with any terms, conditions, or limitations established by the Commissioner or the requirements of this section.
- (l) The Commissioner, by regulation, shall adopt procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.
- (m) Upon expiration of an innovation waiver, the person who obtained the waiver shall cease all activities that were permitted only as a result of the waiver and comply with all generally applicable laws and regulations.
- (n) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation.

(o) The Commissioner shall submit a report annually to the [insert reference to state legislature] providing the following information:

(1) the total number of applications for waivers that have been received, granted, and denied by the Commissioner;

(2) for each waiver granted by the Commissioner, the information specified under paragraph (j)(1);

(3) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(4) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(5) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(p) No new waivers or extensions shall be granted after July 1, _____.

(q) This section shall be repealed on July 1, _____.

Section 3. Reciprocity

The Commissioner may enter into agreements with other States that have enacted laws that are substantially similar to this Act in order to advance the purposes of this Act and to facilitate the consideration of applications for innovation waivers from persons that have satisfied the requirements of this Act and received similar waivers in other States.

Section 4. Rules

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

Section 5. Effective Date

This Act shall take effect xxxxxx