Representative Adam Robertson proposes the following substitute bill:

1   # REGULATORY WAIVER PROCESS
2   ## 2020 GENERAL SESSION
3   ## STATE OF UTAH
4   **Chief Sponsor: Adam Robertson**
5   Senate Sponsor: Lincoln Fillmore
6   Cosponsors: Marc K. Roberts
7   Jon Hawkins

8
9   **LONG TITLE**
10 **General Description:**
11   This bill modifies provisions related to the Department of Insurance.
12 **Highlighted Provisions:**
13   This bill:
14   ‣   defines terms;
15   ‣   creates an insurance regulatory sandbox program in the Department of Insurance,
16 which allows a participant to temporarily test innovative insurance products or
17 services on a limited basis without otherwise being licensed or authorized to act
18 under the laws of the state;
19   ‣   describes the application process and the conditions of participating in the program;
20   ‣   describes the responsibilities of the Department of Insurance in administering the
21 program; and
22   ‣   describes reporting requirements for participants in the program and for the
23 Department of Insurance.
24 **Money Appropriated in this Bill:**

25   None
26   **Other Special Clauses:**
27   None
28   **Utah Code Sections Affected:**
29   ENACTS:
30   **31A-47-101**, Utah Code Annotated 1953
31   **31A-47-102**, Utah Code Annotated 1953
32   **31A-47-103**, Utah Code Annotated 1953
33   **31A-47-104**, Utah Code Annotated 1953
34   **31A-47-105**, Utah Code Annotated 1953
35   **31A-47-106**, Utah Code Annotated 1953
36   **31A-47-107**, Utah Code Annotated 1953
37   **31A-47-108**, Utah Code Annotated 1953
38   ═══
39   *Be it enacted by the Legislature of the state of Utah:*
40   Section 1. Section **31A-47-101** is enacted to read:
41   **CHAPTER 47. INSURANCE REGULATORY SANDBOX PROGRAM**
42   **31A-47-101. Title.**
43   This chapter is known as the "Insurance Regulatory Sandbox Program."
44   Section 2. Section **31A-47-102** is enacted to read:
45   **31A-47-102. Definitions.**
46   As used in this chapter:
47   (1) "Applicable agency" means a department or agency of the state, including the
48   department and the Department of Commerce, that by law regulates certain types of
49   insurance-related business activity in the state and persons engaged in such insurance-related
50   business activity, including the issuance of licenses or other types of authorization, which the
51   department determines would otherwise regulate an insurance sandbox participant.
52   (2) "Applicant" means an individual or entity that is applying to participate in the
53   insurance regulatory sandbox.
54   (3) "Blockchain technology" means the use of a digital database containing records of
55   financial transactions, which can be simultaneously used and shared within a decentralized,

56   publicly accessible network and can record transactions between two parties in a verifiable and

57   permanent way.

58   (4) "Consumer" means a person that purchases or otherwise enters into a transaction or

59   agreement to receive an innovative insurance product or service that is being tested by an

60   insurance sandbox participant.

61   (5) "Department" means the Department of Insurance.

62   (6) "Innovation" means the use or incorporation of a new or emerging technology or a

63   new use of existing technology, including blockchain technology, to address a problem,

64   provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism

65   that is not known by the department to have a comparable widespread offering in the state.

66   (7) "Innovative insurance product or service" means an insurance product or service

67   that includes an innovation.

68   (8) (a) "Insurance product or service" means an insurance product or insurance service

69   that requires state licensure, registration, or other authorization as regulated by Title 31A,

70   Insurance Code, including an insurance product or insurance service that includes a business

71   model, delivery mechanism, or element that requires a license, registration, or other

72   authorization to do an insurance business, act as an insurance producer or consultant, or engage

73   in insurance adjusting as regulated by Title 31A, Insurance Code.

74   (b) "Insurance product or service" does not include a product or service that is

75   governed by Title 61, Chapter 1, Utah Uniform Securities Act.

76   (9) "Insurance regulatory sandbox" means the Insurance Regulatory Sandbox Program

77   created by Section 31A-47-103, which allows a person to temporarily test an innovative

78   insurance product or service on a limited basis without otherwise being licensed or authorized

79   to act under the laws of the state.

80   (10) "Insurance sandbox participant" means a person whose application to participate

81   in the insurance regulatory sandbox is approved in accordance with the provisions of this

82   chapter.

83   (11) "Test" means to provide an innovative insurance product or service in accordance

84   with the provisions of this chapter.

85   Section 3. Section **31A-47-103** is enacted to read:

86   **31A-47-103. Insurance Regulatory Sandbox Program -- Application**

87   **requirements.**
88   (1) There is created in the department the Insurance Regulatory Sandbox Program.
89   (2) In administering the insurance regulatory sandbox, the department:
90   (a) shall consult with each applicable agency;
91   (b) shall establish a program to enable a person to obtain limited access to the market
92   in the state to test an innovative insurance product or service without obtaining a license or
93   other authorization that might otherwise be required; Ĥ→ **[and]** ←Ĥ
94   (c) may enter into agreements with or follow the best practices of the Consumer
95   Financial Protection Bureau or other states that are administering similar programs Ĥ→ **[.]** **; and**
95a   **(d) may not approve participation in the insurance regulatory sandbox program by an**
95b   **applicant or any other participant who has been convicted, entered a plea of nolo contendere,**
95c   **or entered a plea of guilty or nolo contendere held in abeyance, for a crime:**
95d   **(i) involving theft, fraud, or dishonesty, or**
95e   **(ii) that bears a substantial relationship to the applicant's or participant's ability to**
95f   **safely or**
95g   **competently participate in the insurance regulatory sandbox program.** ←Ĥ
96   (3) An applicant for the insurance regulatory sandbox shall provide to the department
97   an application in a form prescribed by the department that:
98   (a) includes a nonrefundable application fee of $4,500 Ŝ→ **, which fee may be waived or**
98a   **reduced by the department if the applicant holds a license issued by the department under the**
98b   **provisions of Title 31A, Insurance Code** ←Ŝ :
99   (b) demonstrates the applicant is subject to the jurisdiction of the state;
100   Ĥ→ **[(c) demonstrates the applicant has established a physical location in the state, from**
101   **which testing will be developed and performed and where all required records, documents, and**
102   **data will be maintained;]**
102a   **(c) demonstrates the applicant has established a physical or virtual location that is**
102b   **adequately accessible to the department, from which testing will be developed and performed**
102c   **and where all required records, documents, and data will be maintained;** ←Ĥ
103   (d) contains relevant personal and contact information for the applicant, including legal
104   names, addresses, telephone numbers, email addresses, website addresses, and other
105   information required by the department;
106   (e) discloses criminal convictions of the applicant or other participating personnel, if
107   any;
108   (f) demonstrates that the applicant has the necessary personnel, financial and technical
109   expertise, access to capital, and developed plan to test, monitor, and assess the innovative
110   insurance product or service;
111   (g) contains a description of the innovative insurance product or service to be tested,✪

112   ✪including statements regarding all of the following:

113   (i) how the innovative insurance product or service is subject to licensing or other

114   authorization requirements outside of the insurance regulatory sandbox, including a specific list

115   of all state laws, regulations, and licensing or other requirements that the applicant is seeking to

116   have waived during the testing period;

117   (ii) how the innovative insurance product or service would benefit consumers;

118   (iii) how the innovative insurance product or service is different from other insurance
119   products or services available in the state;
120   (iv) what risks may confront consumers that use or purchase the innovative insurance
121   product or service;
122   (v) how participating in the insurance regulatory sandbox would enable a successful
123   test of the innovative insurance product or service;
124   (vi) a description of the proposed testing plan, including estimated time periods for
125   beginning the test, ending the test, and obtaining necessary licensure or authorizations after the
126   testing is complete;
127   (vii) a description of how the applicant will perform ongoing duties after the test; and
128   (viii) how the applicant will end the test and protect consumers if the test fails,
129   including providing evidence of sufficient liability coverage and financial reserves to protect
130   consumers and to protect against insolvency by the applicant; and
131   (h) provides any other required information as determined by the department.
132   (4) An applicant shall file a separate application for each innovative insurance product
133   or service that the applicant wants to test.
134   (5) After an application is filed and before approving an application, the department
135   may seek any additional information from the applicant and from the department's own
136   research that the department determines is necessary, including:
137   (a) proof of sufficient assets, accounts, Ĥ→ **[and]** ←Ĥ liability coverage Ĥ→ **, surety bond**
137a   **coverage, or other preparation** ←Ĥ by the applicant to ensure
138   that consumers are protected and that the applicant will be able to cover ongoing duties when
139   the test ends or if the test ends early; and
140   (b) industry ratings and past performance of the applicant.
141   (6) Subject to Subsection (7), not later than 90 days after the day on which a complete
142   application is received by the department, the department shall inform the applicant as to
143   whether the application is approved for entry into the insurance regulatory sandbox.
144   (7) The department and an applicant may mutually agree to extend the 90-day time
145   period described in Subsection (6) for the department to determine whether an application is
146   approved for entry into the insurance regulatory sandbox.
147   (8) (a) In reviewing an application under this section, the department shall consult
148   with, and get approval from, each applicable agency before admitting an applicant into the

149   insurance regulatory sandbox.

150   (b) The consultation with an applicable agency may include seeking information about

151   whether:

152   (i) the applicable agency has previously issued a license or other authorization to the

153   applicant;

154   (ii) the applicable agency has previously investigated, sanctioned, or pursued legal

155   action against the applicant;

156   (iii) whether the applicant could obtain a license or other authorization from the

157   applicable agency after exiting the insurance regulatory sandbox; and

158   (iv) whether certain licensure or other regulations should not be waived even if the

159   applicant is accepted into the insurance regulatory sandbox.

160   (9) In reviewing an application under this section, the department shall consider

161   whether a competitor to the applicant is or has been an insurance sandbox participant and, if so,

162   weigh that as a factor in favor of allowing the applicant to also become an insurance sandbox

163   participant.

164   (10) If the department and each applicable agency approve admitting an applicant into

165   the insurance regulatory sandbox an applicant may become an insurance sandbox participant.

166   (11) The department may deny any application submitted under this section, for any

167   reason, at the department's discretion.

168   (12) If the department denies an application submitted under this section, the

169   department shall provide to the applicant a written description of the reasons for the denial as

170   an insurance sandbox participant.

170a   Ŝ➙ [Ĥ➙ (13) Nothing in this chapter prohibits a person or entity from introducing or testing an

170b   ~~innovative insurance product or service without applying for participation in the insurance~~

170c   ~~sandbox, if the person or entity is currently licensed and authorized under other provisions of~~

170d   ~~state law to introduce or test the innovative insurance product or service.~~ ←Ĥ] ←Ŝ

171   Section 4. Section **31A-47-104** is enacted to read:

172   **31A-47-104. Scope of the insurance regulatory sandbox.**

173   (1) If the department approves an application under Section 31A-47-103, the insurance

174   sandbox participant has 12 months after the day on which the application was approved to test

175   the innovative insurance product or service described in the insurance sandbox participant's

176   application.

177   (2) An insurance sandbox participant testing an innovative insurance product or service

178   within the insurance regulatory sandbox is subject to the following:

179   (a) consumers shall be residents of the state;

180   (b) the department may, on a case by case basis, specify the maximum number of
181   consumers that may enter into an agreement with the insurance sandbox participant to use the
182   innovative insurance product or service;
183   (c) the department may, if applicable and on a case by case basis, specify the maximum
184   number of items and the maximum coverage amount for each item that may be offered by an
185   insurance sandbox participant during the testing of the innovative insurance product or service;
186   and
187   (d) the department may, on a case by case basis, specify liability coverage requirements
188   and minimum financial reserves requirements that the insurance sandbox participant shall meet
189   during the testing of the innovative insurance product or service.
190   (3) This section does not restrict an insurance sandbox participant who holds a license
191   or other authorization in another jurisdiction from acting in accordance with that license or
192   other authorization.
193   (4) An insurance sandbox participant is deemed to possess an appropriate license under
194   the laws of the state for the purposes of any provision of federal law requiring state licensure or
195   authorization.
196   (5) An insurance sandbox participant that is testing an innovative insurance product or
197   service is not subject to state laws, regulations, licensing requirements, or authorization
198   requirements that were identified by the insurance sandbox participant in the insurance
199   sandbox participant's application and have been waived in writing by the department.
200   (6) Notwithstanding any other provision of this chapter, an insurance sandbox
201   participant does not have immunity related to any criminal offense committed during the
202   insurance sandbox participant's participation in the insurance regulatory sandbox.
203   (7) By written notice, the department may end an insurance sandbox participant's
204   participation in the insurance regulatory sandbox at any time and for any reason, including if
205   the department determines an insurance sandbox participant is not operating in good faith to
206   bring an innovative insurance product or service to market.
207   (8) The department and the department's employees are not liable for any business
208   losses or the recouping of application expenses related to the insurance regulatory sandbox,
209   including for:
210   (a) denying an applicant's application to participate in the insurance regulatory sandbox

211   for any reason; or

212   (b) ending an insurance sandbox participant's participation in the insurance regulatory

213   sandbox at any time and for any reason.

213a   Ĥ→ **(9) No guaranty association in the state may be held liable for business losses or liabilities**

213b   **incurred as a result of activities undertaken by a participant in the insurance sandbox.** ←Ĥ

214   Section 5. Section **31A-47-105** is enacted to read:

215   **31A-47-105. Consumer protection for insurance regulatory sandbox.**

216   (1) Before providing an innovative insurance product or service to a consumer, an

217   insurance sandbox participant shall disclose the following to the consumer:

218   (a) the name and contact information of the insurance sandbox participant;

219   (b) that the innovative insurance product or service is authorized pursuant to the

220   insurance regulatory sandbox and, if applicable, that the insurance sandbox participant does not

221   have a license or other authorization to provide an insurance product or service under state laws

222   that regulate insurance products or services outside the insurance regulatory sandbox;

223   (c) that the innovative insurance product or service is undergoing testing and may not

224   function as intended and may expose the customer to financial risk;

225   (d) that the provider of the innovative insurance product or service is not immune from

226   civil liability for any losses or damages caused by the innovative insurance product or service;

227   (e) that the state does not endorse or recommend the innovative insurance product or

228   service;

229   (f) that the innovative insurance product or service is a temporary test that may be

230   discontinued at the end of the testing period;

231   (g) the expected end date of the testing period; and

232   (h) that a consumer may contact the department to file a complaint regarding the

233   innovative insurance product or service being tested and provide the department's telephone

234   number and website address where a complaint may be filed.

235   (2) The disclosures required by Subsection (1) shall be provided to a consumer in a

236   clear and conspicuous form and, for an Internet or application-based innovative insurance

237   product or service, a consumer shall acknowledge receipt of the disclosure before a transaction

238   may be completed.

239   (3) The department may require that an insurance sandbox participant make additional

240   disclosures to a consumer.

241   Section 6. Section **31A-47-106** is enacted to read:

242 **31A-47-106. Requirements for exiting insurance regulatory sandbox.**

243 (1) At least 30 days before the end of the 12-month insurance regulatory sandbox

244 testing period, an insurance sandbox participant shall:

245 (a) notify the department that the insurance sandbox participant will exit the insurance

246 regulatory sandbox, discontinue the insurance sandbox participant's test, and will stop offering

247 any innovative insurance product or service in the insurance regulatory sandbox within 60 days

248 after the day on which the 12-month testing period ends; or

249 (b) seek an extension in accordance with Section 31A-47-107.

250 (2) Subject to Subsection (3), if the department does not receive notification as

251 required by Subsection (1), the insurance regulatory sandbox testing period ends at the end of

252 the 12-month testing period and the insurance sandbox participant shall immediately stop

253 offering each innovative insurance product or service being tested.

254 (3) If a test includes offering an innovative insurance product or service that requires

255 ongoing duties, the insurance sandbox participant shall continue to fulfill those duties or

256 arrange for another person to fulfill those duties after the date on which the insurance sandbox

257 participant exits the insurance regulatory sandbox.

258 Section 7. Section **31A-47-107** is enacted to read:

259 **31A-47-107. Extensions.**

260 (1) Not later than 30-days before the end of the 12-month regulatory insurance sandbox

261 testing period, an insurance sandbox participant may request an extension of the insurance

262 regulatory sandbox testing period for the purpose of obtaining a license or other authorization

263 required by law.

264 (2) The department shall grant or deny a request for an extension in accordance with

265 Subsection (1) by the end of the 12-month insurance regulatory sandbox testing period.

266 (3) The department may grant an extension in accordance with this section for not

267 more than six months after the end of the insurance regulatory sandbox testing period.

268 (4) An insurance sandbox participant that obtains an extension in accordance with this

269 section shall provide the department with a written report every three months that provides an

270 update on efforts to obtain a license or other authorization required by law, including any

271 submitted applications for licensure or other authorization, rejected applications, or issued

272 licenses or other authorization.

273   Section 8. Section **31A-47-108** is enacted to read:

274   **31A-47-108. Record keeping and reporting requirements.**

275   (1) An insurance sandbox participant shall retain records, documents, and data

276   produced in the ordinary course of business regarding an innovative insurance product or

277   service tested in the insurance regulatory sandbox.

278   (2) If an innovative insurance product or service fails before the end of a testing period,

279   the insurance sandbox participant shall notify the department and report on actions taken by the

280   insurance sandbox participant to ensure consumers have not been harmed as a result of the

281   failure.

282   (3) The department shall establish quarterly reporting requirements for an insurance

283   sandbox participant, including information about any customer complaints.

284   (4) The department may request records, documents, and data from an insurance

285   sandbox participant and, upon the department's request, an insurance sandbox participant shall

286   make such records, documents, and data available for inspection by the department.

287   (5) If the department determines that an insurance sandbox participant has engaged in,

288   is engaging in, or is about to engage in any practice or transaction that is in violation of this

289   chapter or that constitutes a violation of a state or federal criminal law, the department may

290   remove an insurance sandbox participant from the insurance regulatory sandbox.

291   (6) By October 1, the department shall provide an annual written report to the Business

292   and Labor Interim Committee that provides information regarding each insurance sandbox

293   participant and that provides recommendations regarding the effectiveness of the Insurance

294   Regulatory Sandbox Program.