

HB0402S01 compared with HB0402

~~{deleted text}~~ shows text that was in HB0402 but was deleted in HB0402S01.

inserted text shows text that was not in HB0402 but was inserted into HB0402S01.

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Representative Adam Robertson proposes the following substitute bill:

REGULATORY WAIVER PROCESS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Adam Robertson

Senate Sponsor: _____

Cosponsors:

Marc K. Roberts

Jon Hawkins

LONG TITLE

General Description:

This bill modifies provisions related to the Department of Insurance.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates an insurance regulatory sandbox program in the Department of Insurance, which allows a participant to temporarily test innovative insurance products or services on a limited basis without otherwise being licensed or authorized to act under the laws of the state;

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- ▶ describes the application process and the conditions of participating in the program;
- ▶ describes the responsibilities of the Department of Insurance in administering the program; and
- ▶ describes reporting requirements for participants in the program and for the Department of Insurance.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

31A-47-101, Utah Code Annotated 1953

31A-47-102, Utah Code Annotated 1953

31A-47-103, Utah Code Annotated 1953

31A-47-104, Utah Code Annotated 1953

31A-47-105, Utah Code Annotated 1953

31A-47-106, Utah Code Annotated 1953

31A-47-107, Utah Code Annotated 1953

31A-47-108, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-47-101** is enacted to read:

CHAPTER 47. INSURANCE REGULATORY SANDBOX PROGRAM

31A-47-101. Title.

This chapter is known as the "Insurance Regulatory Sandbox Program."

Section 2. Section **31A-47-102** is enacted to read:

31A-47-102. Definitions.

As used in this chapter:

(1) "Applicable agency" means a department or agency of the state, including the department and the Department of Commerce, that by law regulates certain types of insurance-related business activity in the state and persons engaged in such insurance-related

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business activity, including the issuance of licenses or other types of authorization, which the department determines would otherwise regulate an insurance sandbox participant.

(2) "Applicant" means an individual or entity that is applying to participate in the insurance regulatory sandbox.

(3) "Blockchain technology" means the use of a digital database containing records of financial transactions, which can be simultaneously used and shared within a decentralized, publicly accessible network and can record transactions between two parties in a verifiable and permanent way.

(4) "Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an innovative insurance product or service that is being tested by an insurance sandbox participant.

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

(6) "Innovation" means the use or incorporation of a new or emerging technology or a new use of existing technology, including blockchain technology, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the department to have a comparable widespread offering in the state.

(7) "Innovative insurance product or service" means an insurance product or service that includes an innovation.

(8) (a) "Insurance product or service" means an insurance product or insurance service that requires state licensure, registration, or other authorization as regulated by Title 31A, Insurance Code, including an insurance product or insurance service that includes a business model, delivery mechanism, or element that requires a license, registration, or other authorization to do an insurance business, act as an insurance producer or consultant, or engage in insurance adjusting as regulated by Title 31A, Insurance Code.

(b) "Insurance product or service" does not include a product or service that is governed by Title 61, Chapter 1, Utah Uniform Securities Act.

(9) "Insurance regulatory sandbox" means the Insurance Regulatory Sandbox Program created by Section 31A-47-103, which allows a person to temporarily test an innovative insurance product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

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

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

(11) "Test" means to provide an innovative insurance product or service in accordance with the provisions of this chapter.

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

31A-47-103. Insurance Regulatory Sandbox Program -- Application requirements.

(1) There is created in the department the Insurance Regulatory Sandbox Program.

(2) In administering the insurance regulatory sandbox, the department:

(a) shall consult with each applicable agency;

(b) shall establish a program to enable a person to obtain limited access to the market in the state to test an innovative insurance product or service without obtaining a license or other authorization that might otherwise be required; and

(c) may enter into agreements with or follow the best practices of the Consumer Financial Protection Bureau or other states that are administering similar programs.

(3) An applicant for the insurance regulatory sandbox shall provide to the department an application in a form prescribed by the department that:

(a) includes a nonrefundable application fee of \$4,500;

(~~f~~~~a~~~~b~~) demonstrates the applicant is subject to the jurisdiction of the state;

(~~f~~~~b~~~~c~~) demonstrates the applicant has established a physical location in the state, from which testing will be developed and performed and where all required records, documents, and data will be maintained;

(~~f~~~~e~~~~d~~) contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the department;

(~~f~~~~d~~~~e~~) discloses criminal convictions of the applicant or other participating personnel, if any;

(~~f~~~~e~~~~f~~) demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and developed plan to test, monitor, and assess the innovative insurance product or service;

(~~f~~~~f~~~~g~~) contains a description of the innovative insurance product or service to be

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tested, including statements regarding all of the following:

(i) how the innovative insurance product or service is subject to licensing or other authorization requirements outside of the insurance regulatory sandbox, including a specific list of all state laws, regulations, and licensing or other requirements that the applicant is seeking to have waived during the testing period;

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

(iii) how the innovative insurance product or service is different from other insurance products or services available in the state;

(iv) what risks may confront consumers that use or purchase the innovative insurance product or service;

(v) how participating in the insurance regulatory sandbox would enable a successful test of the innovative insurance product or service;

(vi) a description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(vii) a description of how the applicant will perform ongoing duties after the test; and

(viii) how the applicant will end the test and protect consumers if the test fails, including providing evidence of sufficient liability coverage and financial reserves to protect consumers and to protect against insolvency by the applicant; and

(f)h) provides any other required information as determined by the department.

~~{~~ (4) The department may collect an application fee from an applicant that is set in accordance with Section 63J-1-504.

~~†~~ (f)4) An applicant shall file a separate application for each innovative insurance product or service that the applicant wants to test.

(f)5) After an application is filed ~~and before approving an application~~, the department may seek ~~any~~ additional information from the applicant ~~and from the department's own research~~ that the department determines is necessary, including:

(a) proof of sufficient assets, accounts, and liability coverage by the applicant to ensure that consumers are protected and that the applicant will be able to cover ongoing duties when the test ends or if the test ends early; and

(b) industry ratings and past performance of the applicant.

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(~~f7~~6) Subject to Subsection ((~~f8~~7)), not later than 90 days after the day on which a complete application is received by the department, the department shall inform the applicant as to whether the application is approved for entry into the insurance regulatory sandbox.

(~~f8~~7) The department and an applicant may mutually agree to extend the 90-day time period described in Subsection ((~~f7~~6)) for the department to determine whether an application is approved for entry into the insurance regulatory sandbox.

(~~f9~~8) (a) In reviewing an application under this section, the department shall consult with, and get approval from, each applicable agency before admitting an applicant into the insurance regulatory sandbox.

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

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

(ii) the applicable agency has previously investigated, sanctioned, or pursued legal action against the applicant;

(iii) whether the applicant could obtain a license or other authorization from the applicable agency after exiting the insurance regulatory sandbox; and

(iv) whether certain licensure or other regulations should not be waived even if the applicant is accepted into the insurance regulatory sandbox.

(~~f10~~9) In reviewing an application under this section, the department shall consider whether a competitor to the applicant is or has been an insurance sandbox participant and, if so, weigh that as a factor in favor of allowing the applicant to also become an insurance sandbox participant.

(~~f11~~10) If the department and each applicable agency approve admitting an applicant into the insurance regulatory sandbox an applicant may become an insurance sandbox participant.

(~~f12~~11) The department may deny any application submitted under this section, for any reason, at the department's discretion.

(~~f13~~12) If the department denies an application submitted under this section, the department shall provide to the applicant a written description of the reasons for the denial as an insurance sandbox participant.

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

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

(1) If the department approves an application under Section 31A-47-103, the insurance sandbox participant has 12 months after the day on which the application was approved to test the innovative insurance product or service described in the insurance sandbox participant's application.

(2) An insurance sandbox participant testing an innovative insurance product or service within the insurance regulatory sandbox is subject to the following:

(a) consumers shall be residents of the state;

(b) the department may, on a case by case basis, specify the maximum number of consumers that may enter into an agreement with the insurance sandbox participant to use the innovative insurance product or service;

(c) the department may, if applicable and on a case by case basis, specify the maximum number of items and the maximum coverage amount for each item that may be offered by an insurance sandbox participant during the testing of the innovative insurance product or service; and

(d) the department may, on a case by case basis, specify liability coverage requirements and minimum financial reserves requirements that the insurance sandbox participant shall meet during the testing of the innovative insurance product or service.

(3) This section does not restrict an insurance sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(4) An insurance sandbox participant is deemed to possess an appropriate license under the laws of the state for the purposes of any provision of federal law requiring state licensure or authorization.

(5) An insurance sandbox participant that is testing an innovative insurance product or service is not subject to state laws, regulations, licensing requirements, or authorization requirements that were identified by the insurance sandbox participant in the insurance sandbox participant's application and have been waived in writing by the department.

(6) Notwithstanding any other provision of this chapter, an insurance sandbox participant does not have immunity related to any criminal offense committed during the

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insurance sandbox participant's participation in the insurance regulatory sandbox.

(7) By written notice, the department may end an insurance sandbox participant's participation in the insurance regulatory sandbox at any time and for any reason, including if the department determines an insurance sandbox participant is not operating in good faith to bring an innovative insurance product or service to market.

(8) The department and the department's employees are not liable for any business losses or the recouping of application expenses related to the insurance regulatory sandbox, including for:

(a) denying an applicant's application to participate in the insurance regulatory sandbox for any reason; or

(b) ending an insurance sandbox participant's participation in the insurance regulatory sandbox at any time and for any reason.

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

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

(1) Before providing an innovative insurance product or service to a consumer, an insurance sandbox participant shall disclose the following to the consumer:

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

(b) that the innovative insurance product or service is authorized pursuant to the insurance regulatory sandbox and, if applicable, that the insurance sandbox participant does not have a license or other authorization to provide an insurance product or service under state laws that regulate insurance products or services outside the insurance regulatory sandbox;

(c) that the innovative insurance product or service is undergoing testing and may not function as intended and may expose the customer to financial risk;

(d) that the provider of the innovative insurance product or service is not immune from civil liability for any losses or damages caused by the innovative insurance product or service;

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

(f) that the innovative insurance product or service is a temporary test that may be discontinued at the end of the testing period;

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

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

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innovative insurance product or service being tested and provide the department's telephone number and website address where a complaint may be filed.

(2) The disclosures required by Subsection (1) shall be provided to a consumer in a clear and conspicuous form and, for an Internet or application-based innovative insurance product or service, a consumer shall acknowledge receipt of the disclosure before a transaction may be completed.

(3) The department may require that an insurance sandbox participant make additional disclosures to a consumer.

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

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

(1) At least 30 days before the end of the 12-month insurance regulatory sandbox testing period, an insurance sandbox participant shall:

(a) notify the department that the insurance sandbox participant will exit the insurance regulatory sandbox, discontinue the insurance sandbox participant's test, and will stop offering any innovative insurance product or service in the insurance regulatory sandbox within 60 days after the day on which the 12-month testing period ends; or

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

(2) Subject to Subsection (3), if the department does not receive notification as required by Subsection (1), the insurance regulatory sandbox testing period ends at the end of the 12-month testing period and the insurance sandbox participant shall immediately stop offering each innovative insurance product or service being tested.

(3) If a test includes offering an innovative insurance product or service that requires ongoing duties, the insurance sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the insurance sandbox participant exits the insurance regulatory sandbox.

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

31A-47-107. Extensions.

(1) Not later than 30-days before the end of the 12-month regulatory insurance sandbox testing period, an insurance sandbox participant may request an extension of the insurance regulatory sandbox testing period for the purpose of obtaining a license or other authorization required by law.

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(2) The department shall grant or deny a request for an extension in accordance with Subsection (1) by the end of the 12-month insurance regulatory sandbox testing period.

(3) The department may grant an extension in accordance with this section for not more than six months after the end of the insurance regulatory sandbox testing period.

(4) An insurance sandbox participant that obtains an extension in accordance with this section shall provide the department with a written report every three months that provides an update on efforts to obtain a license or other authorization required by law, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorization.

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

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

(1) An insurance sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an innovative insurance product or service tested in the insurance regulatory sandbox.

(2) If an innovative insurance product or service fails before the end of a testing period, the insurance sandbox participant shall notify the department and report on actions taken by the insurance sandbox participant to ensure consumers have not been harmed as a result of the failure.

(3) The department ~~may~~shall establish ~~periodic~~quarterly reporting requirements for an insurance sandbox participant, ~~including information about any customer complaints.~~

(4) The department may request records, documents, and data from an insurance sandbox participant and, upon the department's request, an insurance sandbox participant shall make such records, documents, and data available for inspection by the department.

(5) If the department determines that an insurance sandbox participant has engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation of this chapter or that constitutes a violation of a state or federal criminal law, the department may remove an insurance sandbox participant from the insurance regulatory sandbox.

(6) By October 1, the department shall provide an annual written report to the Business and Labor Interim Committee that provides information regarding each insurance sandbox participant and that provides recommendations regarding the effectiveness of the Insurance Regulatory Sandbox Program.

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