

1 AN ACT relating to the insurance industry.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
4 CREATED TO READ AS FOLLOWS:

5 *As used in this Sections 1 to 9 of this Act, unless context requires otherwise:*

- 6 *(1) "Beta test" means the phase of testing of an insurance innovation in the*
7 *regulatory sandbox through the sale or license of the insurance innovation to*
8 *clients or consumers under the supervision of the department;*
- 9 *(2) "Client" means a person, other than a consumer, utilizing a company's*
10 *insurance innovation during a beta test to carry on some activity regulated by the*
11 *department;*
- 12 *(3) "Company" includes startup companies and companies that are currently*
13 *licensed by the department to carry on activities relating to the insurance*
14 *innovation that is the subject of the application for admission to the regulatory*
15 *sandbox;*
- 16 *(4) "Director" means the director of insurance innovation;*
- 17 *(5) "Exclusivity period" means the period commencing with the issuance of a limited*
18 *no-action letter in which a company has the right to exclusively sell or license the*
19 *insurance innovation in Kentucky;*
- 20 *(6) "Innovation's utility" means an evaluation by the department of the insurance*
21 *innovation's ability to adequately satisfy factors set forth in subsection (2)(a) of*
22 *Section 2 of this Act;*
- 23 *(7) "Insurance innovation" or "innovation" means any product, process, method, or*
24 *procedure relating to the sale, solicitation, negotiation, fulfilment, or*
25 *administration of any product or service regulated by the department that has not*
26 *been used, sold, or otherwise made available in this Commonwealth before the*
27 *effective filing date of the application, whether or not the product or service is*

1 marketed or sold directly to consumers;

2 (8) "Limited no-action letter" or "limited letter" means a letter setting forth the
 3 conditions of a beta test and establishing a safe harbor under which the
 4 department will not take any administrative action or regulatory action
 5 concerning the compliance of the insurance innovation with Kentucky law so
 6 long as the company and any clients of the company abide by the terms and
 7 conditions established in the limited no-action letter;

8 (9) "Permanent no-action letter" or "permanent letter" means a public notice
 9 setting forth the conditions for a permanent safe harbor under which the
 10 department will not take any administrative or regulatory action against any
 11 person using the insurance innovation described in the permanent no-action
 12 letter;

13 (10) "Regulatory sandbox" or "sandbox" means the process by which a company
 14 may beta test and obtain an exclusivity period for an innovation, potentially
 15 resulting in the issuance of a permanent no-action letter; and

16 (11) "Startup company" means a company that does not hold a valid certificate of
 17 authority or other license necessary for carrying on activities relating to the
 18 insurance innovation that is the subject of the application for admission to the
 19 regulatory sandbox.

20 ➔SECTION 2. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
 21 CREATED TO READ AS FOLLOWS:

22 A company may apply to the department for admission to the sandbox by submitting an
 23 application in the form prescribed by the commissioner, accompanied by the following:

24 (1) A filing fee of:

25 (a) If a start-up company, five hundred dollars (\$500); or

26 (b) Seven hundred fifty dollars (\$750);

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

- 1 (a) An explanation of how the innovation will:
- 2 1. Add value to customers;
- 3 2. Be economically viable for the company; and
- 4 3. Provide suitable consumer protection;
- 5 (b) If the innovation involves the use of software, hardware, or other
- 6 technology developed for the purpose of implementing or operating it, a
- 7 technical white paper setting forth a description of the operation and
- 8 general content of technology to be utilized, including:
- 9 1. The problem addressed by that technology; and
- 10 2. The interaction between that technology and its users; and
- 11 (c) A statement by an officer of the company certifying that no product,
- 12 process, method, or procedure substantially similar to the innovation has
- 13 been used, sold, or otherwise made available in this Commonwealth before
- 14 the effective filing date of the application;
- 15 (3) The name, contact information, and bar number of the company's insurance
- 16 regulatory counsel, which shall be a person:
- 17 (a) Admitted to practice law in this Commonwealth; and
- 18 (b) With experience in providing insurance regulatory compliance advice;
- 19 (4) A detailed description of the specific conduct that the company proposes should
- 20 be permitted by the limited no-action letter;
- 21 (5) Proposed terms and conditions to govern the company's beta test;
- 22 (6) Proposed metrics by which the office may reasonably test the innovation's utility
- 23 during the beta test;
- 24 (7) A proposed public notice to be published by the commissioner detailing the
- 25 innovation in sufficient detail to put the public on notice as to the company's
- 26 exclusive rights with respect to the innovation;
- 27 (8) Disclosure of all:

- 1 (a) Persons who are directors and executive officers of the company;
- 2 (b) General partners of the company if the company is a limited partnership;
- 3 (c) Members of the company if the company is a limited liability company;
- 4 (d) Persons who are beneficial owners of ten percent (10%) or more of the
5 voting securities of the company;
- 6 (e) Other persons with direct or indirect power to direct the management and
7 policies of the company by contract, other than a commercial contract for
8 goods or nonmanagement services; and
- 9 (f) Conflicts of interest with respect to any person listed in this subsection and
10 the department; and
- 11 (9) A statement that the company has funds of at least twenty-five thousand dollars
12 (\$25,000) available to guarantee its financial stability through one (1) or a
13 combination of any of the following:
- 14 (a) A contractual liability insurance policy;
- 15 (b) A surety bond issued by an authorized surety;
- 16 (c) Securities of the type eligible for deposit by authorized insurers in this
17 Commonwealth;
- 18 (d) Evidence that the company has established an account payable to the
19 commissioner in a federally insured financial institution in this state and
20 has deposited money of the United States in an amount equal to the amount
21 required by this subsection that is not available for withdrawal except by
22 direct order of the commissioner;
- 23 (e) A letter of credit issued by a qualified United States financial institution as
24 defined in KRS 304.9-700; or
- 25 (f) Another form of security authorized by the commissioner.

26 ➔SECTION 3. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
27 CREATED TO READ AS FOLLOWS:

- 1 (1) There shall be a director of insurance innovation within the department,
2 responsible for administering Sections 1 to 9 of this Act. The director shall be
3 appointed by the secretary of the Public Protection Cabinet with the approval of
4 the Governor in accordance with KRS 12.050.
- 5 (2) (a) The director shall review all applications for admission to the sandbox.
6 (b) Unless extended as provided in paragraph (c) of this subsection, the
7 commissioner shall determine whether the application satisfies the
8 requirements of Section 2 of this Act within thirty (30) days from the date
9 the application is received.
- 10 (c) The commissioner may extend by not more the thirty (30) days the period
11 provided in paragraph (b) of this subsection if he or she notifies the
12 company before expiration of the initial thirty (30) day period.
- 13 (d) An application that has not been accepted or rejected by a notice of
14 acceptance or rejection issued by the commissioner prior to expiration of
15 the initial thirty (30) day period, or if applicable, the period provided in
16 paragraph (c) of this subsection, shall be deemed approved.
- 17 (3) The commissioner may:
- 18 (a) Modify, increase, or change the form of the financial stability requirements
19 of subsection (9) of Section 2 of this Act if the commissioner determines
20 that additional or alternative financial security is necessary to protect
21 consumers that is reasonably commiserate with the risk of financial injury;
- 22 (b) Waive the requirements of subsection (9) of Section 2 of this Act if the
23 commissioner determines that the innovation being proposed does not place
24 consumers at risk of financial injury based on insolvency of the company;
25 and
- 26 (c) Request from the company any additional material to evaluate the
27 application, including but not limited to:

- 1 1. Proof of financial stability;
2 2. A proposed business plan;
3 3. Pro-forma financial statement; and
4 4. Executive profiles on the company and its leadership demonstrating
5 insurance or insurance-related industry experience and applicable
6 experience in the use of the technology.
- 7 (4) (a) If the commissioner determines that the application does not satisfy the
8 requirements of Section 2 of this Act, he or she shall:
- 9 1. Issue a notice rejecting the company's application; and
10 2. Describe in the notice of rejection the specific defects in the
11 application.
- 12 (b) 1. A company may file a petition for reconsideration with the department
13 in writing within ten (10) days of the issuance of a notice of rejection.
14 2. A petition for reconsideration may contain additional information
15 necessary to cure any defect in the original application.
16 3. If the commissioner accepts a company's application upon petition for
17 reconsideration, the filing date of the application shall be the date of
18 the original filing.
- 19 (c) If the commissioner rejects the company's application upon petition for
20 reconsideration, the commissioner shall issue a final notice of rejection
21 describing the specific reason for the rejection.
- 22 (d) A company may request a hearing on a final notice of rejection pursuant to
23 KRS 304.2-310.
- 24 (5) Upon determining that the company's application satisfies the requirements of
25 Section 2 of this Act, the commissioner shall issue a notice of acceptance to the
26 company. The notice of acceptance shall include:
- 27 (a) The terms and conditions that will govern the company's beta test;

1 (b) Duration of the beta test;

2 (c) Permitted conduct under the limited letter; and

3 (d) Metrics the commissioner intends to use to determine the innovation's
4 utility.

5 ➔SECTION 4. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
6 CREATED TO READ AS FOLLOWS:

7 (1) Notwithstanding any law to the contrary, within ten (10) days following issuance
8 of a notice of acceptance, the commissioner shall issue a limited no-action letter
9 to the company that:

10 (a) Sets forth terms and conditions that are the same as those set forth in the
11 notice of acceptance issued under subsection (5) of Section 3 of this Act;
12 and

13 (b) States that so long as the company abides by the terms and conditions set
14 forth in the letter, no administrative or regulatory action concerning
15 regulated conduct related to the use of the innovation will be taken by the
16 commissioner against the company or any clients during the term of the
17 beta test.

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

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

22 (a) The early termination of the beta test under Section 5 of this Act;

23 (b) For a startup company, the rejection of the company's application for a
24 certificate of authority or other license required to carry on regulated
25 activities related to the innovation;

26 (c) The issuance of a permanent no-action letter; or

27 (d) The issuance of a notice declining to issue a permanent no-action letter.

1 (4) A limited no-action letter issued by the commissioner under this section shall be
2 exempt from the application of KRS 13A.130.

3 ➔SECTION 5. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
4 CREATED TO READ AS FOLLOWS:

5 (1) The time period for a beta test shall be one (1) year. The time period may be
6 extended by the commissioner, but in no case may it be extended for longer than
7 one (1) year. Any extended time period for a beta test shall be set out in the
8 limited no-action letter.

9 (2) During the beta test, the company shall comply with all terms and conditions set
10 forth in the limited no-action letter and provide the department with all
11 documents, data, and information necessary to evaluate the innovation's utility.

12 (3) (a) The commissioner may issue an order terminating the beta test and the safe
13 harbor of the limited letter before the time period set forth in the limited
14 letter has expired if he or she determines that the company has violated any
15 of the terms or conditions set forth in the limited letter.

16 (b) If the commissioner intends to terminate the beta test, he or she shall send
17 the company an early termination notice which shall set forth the specific
18 nature of the violation.

19 (c) A company may request a hearing on an early termination notice pursuant
20 to KRS 304.2-310.

21 (4) The commissioner may issue an order requiring a client to cease and desist any
22 activity violating the terms and conditions set forth in the limited letter. The
23 issuance of a cease and desist order to one (1) client shall not otherwise impact
24 the ability of the company or any other clients to continue activities relating to the
25 innovation in a manner compliant with the requirements of the limited letter. A
26 person may request a hearing on a cease and desist order received under this
27 section pursuant to KRS 304.2-310.

1 ➔SECTION 6. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
2 CREATED TO READ AS FOLLOWS:

3 (1) Upon the issuance of a limited no-action letter, the company shall be entitled to
4 an exclusivity period with respect to the insurance innovation. The exclusivity
5 period shall persist from the issuance of the limited letter until the earlier of:

6 (a) The early termination of the beta test under Section 5 of this Act;

7 (b) The issuance of a notice declining to issue a permanent no-action letter; or

8 (c) The issuance of a permanent no-action letter.

9 (2) (a) The commissioner may issue an order terminating the exclusivity period for
10 any violation of the conditions set forth in a limited or permanent no-action
11 letter by the company. The termination shall be effective as of the date and
12 time of the violation.

13 (b) The department shall notify the company of the early termination of the
14 exclusivity period and shall set forth the specific nature of the violation.

15 (c) A company may request a hearing on a notice of early termination of the
16 exclusivity period pursuant to KRS 304.2-310.

17 (3) Immediately upon issuing a limited letter, the commissioner shall cause a public
18 notice to be published detailing the insurance innovation in sufficient detail to
19 put the public on notice as to the company's exclusive rights with respect to the
20 innovation.

21 (4) (a) If a company has reason to believe that any other person has infringed
22 upon the company's exclusivity period by marketing, selling, soliciting,
23 negotiating, or using any product, process, method, or procedure not
24 substantially different from the innovation for which a limited letter was
25 issued to the company, the company may file a petition for injunctive relief
26 in Franklin Circuit Court after becoming aware of the infringement.

27 (b) The company shall serve a courtesy copy of the petition for injunctive relief

1 upon the commissioner.

2 (c) A person alleged to have committed the infringement shall have an
3 affirmative defense if the person establishes, by clear and convincing
4 evidence, that the innovation was in public use, on sale, or otherwise
5 available to the public in this Commonwealth before the effective filing date
6 of the company's application for admission to the sandbox.

7 ➔SECTION 7. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
8 CREATED TO READ AS FOLLOWS:

9 (1) Within thirty (30) days of the completion of the beta test, the director shall deliver
10 a preliminary report to the commissioner of all data obtained during the beta test
11 and a recommendation of whether a permanent no-action letter should be issued.
12 The company may continue to employ the insurance innovation pursuant to the
13 terms and conditions of the limited letter during the period between the
14 completion of the beta test and the issuance of either a permanent letter or a
15 notice declining to issue a permanent letter.

16 (2) (a) Notwithstanding any other law to the contrary, within thirty (30) days of
17 receiving the report required under subsection (1) of this section, the
18 commissioner shall issue a permanent letter unless he or she determines
19 that the innovation's utility was not adequate, in which case the
20 commissioner shall issue a notice declining to issue a permanent letter, and
21 shall specify why the commissioner made that determination.

22 (b) Within thirty (30) days of receiving a notice declining to issue a permanent
23 letter, the company may submit a written petition to the commissioner
24 requesting a reconsideration of the declination.

25 (c) If the petition for reconsideration is rejected, the company may request a
26 hearing pursuant to KRS 304.2-310.

27 (3) A permanent no-action letter issued by the commissioner shall include a

1 description of the insurance innovation and the specific conduct permitted by the
2 permanent letter in sufficient detail to enable insurance and insurance-related
3 professionals to use the innovation or a product, process, method, or procedure
4 not substantially different from the innovation within the safe harbor of the
5 permanent letter.

6 (4) (a) Except as provided in paragraph (b) of this subsection, a permanent letter
7 issued by the commissioner pursuant to this section shall:

8 1. Be exempt from the application of KRS 13A.130; and

9 2. Not be subject to modification or rescission.

10 (b) A permanent letter issued by the commissioner may be modified or
11 rescinded through the promulgation of an administrative regulation.

12 (5) (a) Unless extended as provided in paragraph (b) of this subsection, the limited
13 letter shall be deemed a permanent letter if the commissioner has not issued
14 a permanent letter or a notice declining to issue a permanent letter within
15 sixty (60) days of completion of the beta test.

16 (b) The commissioner may extend by not more the thirty (30) days the period
17 provided in paragraph (a) of this subsection if he or she notifies the
18 company before expiration of the initial sixty (60) day period. The limited
19 letter shall be deemed a permanent letter if the commissioner has not issued
20 a permanent letter or a notice declining to issue a permanent letter within
21 the period as so extended.

22 (6) (a) If the company is a startup company, the permanent letter shall also
23 specify:

24 1. The licenses or permits the company must obtain in order to sell, offer,
25 or use the innovation in this Commonwealth; and

26 2. The date by which the startup company shall make an application for
27 the licenses or permits.

1 **(b) The startup company may continue to employ the insurance innovation**
2 **pursuant to the terms and conditions of the limited letter during the period**
3 **between the issuance of the permanent letter and obtaining the necessary**
4 **licenses or permits if the startup company files an application for the**
5 **licenses or permits by the deadline set forth in the permanent letter.**

6 ➔SECTION 8. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
7 CREATED TO READ AS FOLLOWS:

8 **(1) All documents, materials, or other information in the possession or control of the**
9 **department that are created, produced, obtained, or disclosed in relation to this**
10 **Act and that relate to the financial condition of the company or its officers,**
11 **directors, or affiliates shall be confidential and shall not subject to public**
12 **disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884.**

13 **(2) Notwithstanding any law to the contrary, the commissioner may disclose in the**
14 **notice of exclusivity period and permanent no-action letter any information**
15 **relating to the insurance innovation necessary to clearly establish the conditions**
16 **for enforcement of the exclusivity period or the safe harbor of the permanent**
17 **letter.**

18 ➔SECTION 9. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
19 CREATED TO READ AS FOLLOWS:

20 **(1) One hundred twenty days (120) days prior to the start of the 2021, 2022, 2023,**
21 **2024, and 2025 regular sessions of the General Assembly, the commissioner shall**
22 **submit a written report to the Interim Joint Committee on Banking and**
23 **Insurance that meets the requirements of subsection (2) of this section.**
24 **Thereafter, the commissioner shall submit the report annually, upon request.**

25 **(2) The report shall include the following:**

26 **(a) The number of:**

27 **1. Applications filed and accepted;**

- 1 2. Beta tests conducted; and
- 2 3. Permanent letters issued;
- 3 (b) A description of the innovations tested;
- 4 (c) The length of each beta test;
- 5 (d) The results of each beta test;
- 6 (e) A description of each permanent safe harbor created under Sections 1 to 9
- 7 of this Act;
- 8 (f) The number and types of orders or other actions taken by the commissioner
- 9 or any other interested party under Sections 1 to 9 of this Act; and
- 10 (g) Any other information or recommendations deemed relevant by the
- 11 commissioner.
- 12 (3) The commissioner shall also provide the Interim Joint Committee on Banking
- 13 and Insurance a detailed briefing, upon request, to discuss and explain any
- 14 report submitted under this section.