

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2221

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BARNHART AND REED

[Introduced February 10, 2021; Referred to the
Committee on Banking and Insurance then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §33-53-1, §33-53-2, §33-53-3, §33-53-4, §33-53-5, §33-53-6, §33-53-7 and
 3 §33-53-8, all relating to the establishment of an insurance innovation process; defining
 4 terms; setting forth application requirements; prohibiting certain persons from applying;
 5 providing for the acceptance or rejection of the application by the Insurance
 6 Commissioner; requiring that the Insurance Commissioner set forth certain terms and
 7 conditions that will govern a proposed insurance innovation; providing that the Insurance
 8 Commissioner issue a limited no-action letter that establishes a safe harbor under which
 9 the commissioner will not take administrative or regulatory action against a participant or
 10 client of the participant; establishing the time period of the safe harbor and for the
 11 extension thereof; setting forth the requirements that a participant must adhere to during
 12 the safe harbor period; providing for penalties regarding violations of the terms contained
 13 in a limited no-action letter; providing the right to an administrative hearing; setting forth
 14 the criteria for the Insurance Commissioner to issue an extended no-action letter;
 15 providing for what the extended no-action letter must contain; requiring that documents
 16 and other information submitted to the Insurance Commissioner in relation to the
 17 insurance innovation be confidential and privileged; allowing the Insurance Commissioner
 18 to disclose in the extended no-action letter any information necessary to clearly establish
 19 the safe harbor; and requiring the Insurance Commissioner to provide reports to the Joint
 20 Committee on Banking and Insurance regarding the activities pertaining to insurance
 21 innovation applications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 53. INSURANCE INNOVATION.

§33-53-1. Definitions.

1 For the purposes of this article, unless the context otherwise indicates:
 2 “Applicant” means a person or entity that has filed an application under §33-53-2 of this

3 code.

4 “Beta test” means the phase of testing of an insurance innovation in the regulatory
5 sandbox through the use, sale, license, or availability of the insurance innovation by or to clients
6 or consumers under the supervision of the commissioner.

7 “Client” means a person, other than a consumer, utilizing a participant’s insurance
8 innovation during a beta test to carry on some activity regulated by the commissioner.

9 “Commissioner” means the West Virginia Insurance Commissioner, his or her deputies or
10 the West Virginia offices of the Insurance Commissioner, as appropriate.

11 “Extended no-action letter” means a public notice setting forth the conditions for an
12 extended safe harbor beyond the beta test under which the commissioner will not take any
13 administrative or regulatory action against any person using the insurance innovation described
14 in the extended no-action letter.

15 “Innovation’s utility” means an evaluation by the commissioner of the insurance
16 innovation’s ability to adequately satisfy factors set forth in §33-53-2(a)(2)(A) of this code.

17 “Insurance innovation” or “innovation” means any product, process, method, or procedure
18 relating to the sale, solicitation, negotiation, fulfillment, administration, or use of any product or
19 service regulated by the commissioner:

20 (A) That has not been used, sold, licensed, or otherwise made available in this state before
21 the effective filing date of the application, whether or not the product or service is marketed or
22 sold directly to consumers; and

23 (B) That has regulatory and statutory barriers that prevent its use, sale, license, or
24 availability within this state.

25 “Limited no-action letter” or “limited letter” means a letter setting forth the conditions of a
26 beta test and establishing a safe harbor under which the commissioner will not take any
27 administrative or regulatory action against a participant or client of the participant concerning the
28 compliance of the insurance innovation with West Virginia law so long as the participant or client

29 abides by the terms and conditions established in the limited no-action letter.

30 “Participant” means an applicant that has been issued a limited no-action letter under §33-
31 53-4 of this code.

32 A “qualified United States financial institution” means an institution that:

33 (A) Is organized or, in the case of a United States office of a foreign banking organization,
34 licensed under the laws of the United States or any state thereof;

35 (B) Is regulated, supervised and examined by federal or state authorities having regulatory
36 authority over banks and trust companies; and

37 (C) Has been determined by either the commissioner or the Securities Valuation Office of
38 the National Association of Insurance Commissioners to meet such standards of financial
39 condition and standing as are considered necessary and appropriate to regulate the quality of
40 financial institutions whose letters of credit will be acceptable to the commissioner.

41 “Regulatory sandbox” means the process established under this article by which a person
42 may apply to beta test and obtain a limited no-action letter for an innovation, potentially resulting
43 in the issuance of an extended no-action letter.

§33-53-2. Application for admission to regulatory sandbox.

1 (a) Except as provided in subsection (b) of this section, on or before December 31, 2025,
2 a person may apply to the commissioner for admission to the regulatory sandbox by submitting
3 an application in the form prescribed by the commissioner, accompanied by the following:

4 (1) A filing fee of \$750;

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

6 (A) An explanation of how the innovation will:

7 (i) Add value to customers and serve the public interest;

8 (ii) Be economically viable for the applicant;

9 (iii) Provide suitable consumer protection; and

10 (iv) Not pose an unreasonable risk of consumer harm.

11 (B) A detailed description of the statutory and regulatory issues that may prevent the
12 innovation from being currently utilized, issued, sold, solicited, distributed, or advertised in the
13 market;

14 (C) A description of how the innovation functions and the manner in which it will be offered
15 or provided;

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

19 (i) The problem addressed by that technology; and

20 (ii) The interaction between that technology and its users;

21 (E) If the innovation involves the issuance of a policy of insurance, a statement that either:

22 (i) If the applicant will be the insurer on the policy, that the applicant holds a valid license
23 or certificate of authority and is authorized to issue the insurance coverage in question; or

24 (ii) If some other person will be the insurer on the policy, that the other person holds a
25 valid license or certificate of authority and is authorized to issue the insurance coverage in
26 question; and

27 (F) A statement by an officer of the applicant certifying that no product, process, method,
28 or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise
29 made available in this state before the effective filing date of the application;

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

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

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

36 (A) Citation to the provisions of West Virginia law that should be excepted in the notice of

37 acceptance issued under §33-53-3(d)(2) of this code; and

38 (B) Any request for an extension of the time period for a beta test under §33-53-5(a) of
39 this code and the grounds for the request;

40 (6) Proposed metrics by which the commissioner may reasonably test the innovation's
41 utility during the beta test;

42 (7) Disclosure of all:

43 (A) Persons who are directors and executive officers of the applicant;

44 (B) General partners of the applicant if the applicant is a limited partnership;

45 (C) Members of the applicant if the applicant is a limited liability applicant;

46 (D) Persons who are beneficial owners owning 10 percent or more of the voting securities
47 of the applicant;

48 (E) Other persons with direct or indirect authority to direct the management and policies
49 of the applicant by contract, other than a commercial contract for goods or nonmanagement
50 services; and

51 (F) Conflicts of interest with respect to any person listed in this subdivision and the
52 commissioner;

53 (8) A statement that the applicant has funds of at least \$25,000 available to guarantee its
54 financial stability through one or a combination of any of the following:

55 (A) A contractual liability insurance policy;

56 (B) A surety bond issued by an authorized surety;

57 (C) Securities of the type eligible for deposit by authorized insurers in this state;

58 (D) Evidence that the applicant has established an account payable to the commissioner
59 in a federally insured financial institution in this state and has deposited money of the United
60 States in an amount equal to the amount required by this subdivision that is not available for
61 withdrawal except by direct order of the commissioner;

62 (E) A letter of credit issued by a qualified United States financial institution; or

63 (F) Another form of security authorized by the commissioner; and

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

67 (b)(1)The following persons shall not be authorized to make an application to the
68 commissioner for admission to the regulatory sandbox:

69 (A) Any person seeking to sell or license an insurance innovation directly to any federal,
70 state, or local government entity, agency, or instrumentality as the insured person or end user of
71 the innovation;

72 (B) Any person seeking to sell, license, or use an insurance innovation that is not in
73 compliance with paragraph (E), subdivision (2), subsection (a) of this section;

74 (C) Any person seeking to make an application that would result in the person having more
75 than five active beta tests ongoing within the state at any one time; and

76 (D) Any person seeking a limited or extended no-action letter or exemption from any
77 administrative regulation or statute concerning:

78 (i) Assets, deposits, investments, capital, surplus, or other solvency requirements
79 applicable to insurers;

80 (ii) Required participation in any assigned risk plan, residual market, or guaranty fund;

81 (iii) Any licensing or certificate of authority requirements; or

82 (iv) The application of any taxes or fees.

83 (2) For the purposes of this subsection, “federal, state, or local government entity, agency,
84 or instrumentality” includes any county, city, municipal corporation, local government, special
85 district, public school district, or public institution of education.

§33-53-3. Acceptance or rejection of application.

1 (a)(1) Unless extended as provided in subdivision (2) of this subsection, the commissioner
2 shall issue a notice of acceptance or rejection in accordance with this section within 60 days from

3 the date an application is received.

4 (2) The commissioner may extend by not more than 30 days the period provided in
5 subdivision (1) of this subsection if he or she notifies the applicant before expiration of the initial
6 60-day period.

7 (3) An application that has not been accepted or rejected by a notice of acceptance or
8 rejection issued by the commissioner prior to expiration of the initial 60-day period, or if applicable,
9 the period provided in subdivision (2) of this subsection, shall be deemed accepted.

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

12 (1) Proof of financial stability;

13 (2) A proposed business plan;

14 (3) Pro-forma financial statement; and

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

17 (c) The commissioner shall review the application to:

18 (1) Identify and assess:

19 (A) The potential risks to consumers, if any, posed by the innovation; and

20 (B) The manner in which the innovation would be offered or provided; and

21 (2) Determine whether it satisfies the following requirements:

22 (A) The application satisfies the requirements of §33-53-2 of this code;

23 (B) The application proposes a product, process, method, or procedure that meets the
24 definition of innovation under §33-53-1 of this code;

25 (C) Approval of the application does not pose an unreasonable risk of consumer harm;

26 (D) The application identifies statutory or regulatory requirements that actually prevent the
27 innovation from being utilized, issued, sold, solicited, distributed, or advertised in this state; and

28 (E) The application proposes an innovation that is not substantially similar to an

29 innovation:

30 (i) That has been previously beta tested; or

31 (ii) Proposed in an application that is currently pending with the commissioner.

32 (d) Upon review of the application, the commissioner shall, in his or her discretion, issue

33 one of the following:

34 (1) If the commissioner determines that the application fails to satisfy any of the
35 requirements under subdivision (2), subsection (c) of this section, he or she shall:

36 (A) Issue a notice of rejection to the applicant; and

37 (B) Describe in the notice of rejection the specific defects in the application; or

38 (2) If the commissioner determines that the application satisfies the requirements of
39 subdivision (2), subsection (c) of this section, he or she shall issue a notice of acceptance to the
40 applicant. The notice of acceptance shall:

41 (A) Set forth the terms and conditions that will govern the applicant's beta test, which shall
42 include, at a minimum:

43 (i) Require the applicant to:

44 (I) Abide by all West Virginia law, except where explicitly excepted;

45 (II) Utilize the insurance innovation within this state; and

46 (III) Report any change in the disclosures made pursuant to §33-53-2(a)(7) of this code;

47 (ii) Notice of the licenses required to be obtained prior to the commencement of the beta
48 test;

49 (iii) Monthly reporting obligations structured to determine the progress of the beta test;

50 (iv) Consumer protection measures deemed necessary by the commissioner to be
51 employed by the applicant;

52 (v) The level of financial stability required to be in place for the beta test. The commissioner
53 may increase, decrease, or waive the requirements for financial stability required under §33-53-
54 2(a)(8) of this code, commensurate with the risk of consumer harm posed by the insurance

55 innovation;

56 (vi) Duration of the beta test, including any extension authorized under §33-53-5 of this
57 code;

58 (vii) Permitted conduct under the limited letter;

59 (viii) Any limits established by the commissioner on the:

60 (I) Financial exposure that may be assumed by an applicant during the beta test;

61 (II) Number of customers an applicant may accept; and

62 (III) Volume of transactions that an applicant or its clients may complete during the beta
63 test; and

64 (ix) Metrics the commissioner intends to use to determine the innovation's utility; and

65 (B) Provide that the notice of acceptance shall expire unless:

66 (i) It is accepted by the applicant in writing; and

67 (ii) The acceptance is filed with the commissioner within 60 days of the issuance of the
68 notice.

69 (e) An applicant may request a hearing pursuant to §33-2-13 of this code on:

70 (1) A notice of rejection; and

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

§33-53-4. Limited no-action letter.

1 (a) Within 10 days following the timely receipt of an acceptance pursuant to §33-53-
2 3(d)(2)(B) of this code, the commissioner shall issue a limited no-action letter that:

3 (1) Sets forth terms and conditions for the participant that are the same as those set forth
4 in the notice of acceptance issued under §33-53-3(d)(2) of this code; and

5 (2) Provides that so long as the participant and any clients of the participant abide by the
6 terms and conditions set forth in the letter, no administrative or regulatory action concerning the
7 compliance of the insurance innovation with West Virginia law will be taken by the commissioner
8 against the participant or any clients during the term of the beta test.

9 (b) If the application is deemed accepted under §33-53-3(a)(3) of this code, the proposed
10 limited no-action letter included with the application shall be deemed to have the effect of a limited
11 letter issued by the commissioner.

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

13 (1) The early termination of the beta test under §33-53-5 of this code;

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

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

16 (d) The commissioner shall publish any limited letter issued pursuant to this section on the
17 commissioner's publicly accessible internet website.

§33-53-5. Time period of beta test; extension of time period; penalties for violation of
limited no-action letter.

1 (a) The time period for a beta test shall be one year. The time period may be extended by
2 the commissioner in the notice of acceptance for a period that is not longer than one year if a
3 request is made in accordance with §33-53-2(a)(5)(B) of this code.

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

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

6 (2) Provide the commissioner with all documents, data, and information requested by the
7 commissioner.

8 (c) For any violation of the terms or conditions set forth in the limited letter, the
9 commissioner may:

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

12 (2) Impose a fine of not more than \$2,000 per violation.

13 (d) The commissioner may issue an order under subsection (c) of this section if, following
14 receipt of information or complaints, the commissioner determines the beta test is causing
15 consumer harm.

16 (e) The commissioner may issue an order requiring a client to cease and desist any activity
17 violating the terms or conditions set forth in the limited letter. The issuance of a cease and desist
18 order to one client shall not otherwise impact the ability of the participant or any other clients to
19 continue activities relating to the innovation in a manner compliant with the requirements of the
20 limited letter.

21 (f) A participant or client may request a hearing on any order issued under this section
22 pursuant to §33-2-13 of this code.

§33-53-6. Extended no-action letter; review of beta test.

1 (a) Within 60 days of completion of the beta test, unless the time period is extended up to
2 30 days upon notice from the commissioner, the commissioner shall issue an extended no-action
3 letter or a notice declining to issue an extended no-action letter. The participant may continue to
4 employ the insurance innovation pursuant to the terms and conditions of the limited letter during
5 the period between the completion of the beta test and the issuance of either an extended no-
6 action letter or a notice declining to issue an extended no-action letter.

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

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

11 (2) Regulatory and statutory barriers prevent continued use of the innovation within this
12 state;

13 (3) The innovation provided a benefit to West Virginia consumers; and

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

15 (A) Presents no risk of unreasonable harm to consumers or the marketplace; and

16 (B) Serves the public interest.

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

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

21 (A) Issue a notice declining to issue an extended no-action letter;

22 (B) Describe in the notice the reasons for the declination;

23 (C) Notify the participant for the innovation of the notice; and

24 (D) Publish the notice on the commissioner's publicly accessible Internet website; or

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

28 (A) A description of the insurance innovation and the specific conduct permitted by the
29 extended no-action letter in sufficient detail to enable any person to use the innovation or a
30 product, process, method, or procedure not substantially different from the innovation within the
31 safe harbor of the extended no-action letter;

32 (B) Notice of any certificate of authority, license, or permit the commissioner determines
33 is necessary to use, sell, or license the innovation, or make the innovation available, in this state;

34 (C) An expiration date not greater than three years following the date of issuance;

35 (D) Notice that the extended no-action letter may:

36 (i) Only be modified by:

37 (I) Promulgation of a legislative rule by the commissioner, if the safe harbor addresses a
38 requirement established by rule; or

39 (II) An act of the Legislature; and

40 (ii) Be rescinded prior to its expiration if the commissioner receives complaints and
41 determines continued activity poses a risk of harm to consumers;

42 (E) Clarification of required procedures related to the issuance and cancellation of any
43 policies of insurance, if applicable, due to the expiration period; and

44 (F) Notice that, upon expiration, all persons relying on the extended no-action letter shall

45 cease and desist operations related to the innovation unless changes have been made to West
46 Virginia law to permit the innovation by:

47 (i) The promulgation of a legislative rule by the commissioner, if the safe harbor addresses
48 a requirement established by rule; or

49 (ii) An act of the Legislature.

50 (d) A hearing on a notice of declination may be requested in accordance with §33-2-13 of
51 this code.

52 (e) An extended no-action letter issued by the commissioner pursuant to this section shall
53 be published on the commissioner's publicly accessible internet website.

§33-53-7. Confidentiality of information.

1 (a) All documents, materials, or other information in the possession or control of the
2 commissioner that are created, produced, obtained, or disclosed in relation to this article and that
3 relate to the financial condition of any person or entity shall be confidential by law and privileged,
4 are not subject to the provisions of chapter 29B of this code, are not subject to subpoena, and are
5 not subject to discovery or admissible in evidence in any private civil action.

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

§33-53-8. Reports to the Legislature.

1 (a) On or before 120 days prior to the start of the 2022, 2023, 2024, and 2025 regular
2 sessions of the Legislature, the commissioner shall submit a written report to the joint committee
3 on banking and insurance that meets the requirements of subsection (b) of this section.
4 Thereafter, the commissioner shall submit the report annually, upon request.

5 (b) The report shall include the following:

6 (1) The number of:

7 (A) Applications filed and accepted;

- 8 (B) Beta tests conducted; and
- 9 (C) Extended no-action letters issued;
- 10 (2) A description of the innovations tested;
- 11 (3) The length of each beta test;
- 12 (4) The results of each beta test;
- 13 (5) A description of each safe harbor created under §33-53-6 of this code;
- 14 (6) The number and types of orders or other actions taken by the commissioner or any
- 15 other interested party under this article;
- 16 (7) Identification of any statutory barriers for consideration of amendment by the
- 17 Legislature following successful beta tests and the issuance of extended no-action letters; and
- 18 (8) Any other information or recommendations deemed relevant by the commissioner.
- 19 (c) The commissioner shall also provide the Joint Committee on Banking and Insurance a
- 20 detailed briefing, upon request, to discuss and explain any report submitted under this section.

NOTE: The purpose of this bill is to establish a process in which a person or entity may apply to the Insurance Commissioner for the introduction and utilization of an insurance innovation in this state that would otherwise be in conflict with West Virginia law.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.