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HOUSE BILL 2217

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 4; Title 56, Chapter 1; Title 62 and Title 63, relative to regulatory innovation waivers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following as a new chapter:

4-47-101.

This chapter shall be known and may be cited as the "Licensing Innovation Act."

4-47-102.

As used in this chapter:

(1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;

(2) "Department" means the department of commerce and insurance;

(3) "Innovation" means the use or incorporation of new or emerging technology or the re-imagination of uses for an existing technology to provide a product, service, business model, or delivery mechanism that has not been used, sold, licensed, or otherwise made available in this state before the effective date of the innovation participant's application;

(4) "Innovation participant" means a person whose application for a regulatory innovation waiver is approved pursuant to this chapter;

(5) "Market entry" means the date on which an innovation participant is licensed pursuant to this chapter;

(6) "Market exit" means the date on which an innovation participant's license pursuant to this chapter expires;

(7) "Person" means any natural or legal person, including, but not limited to, an individual, partnership, association, trust, or corporation;

(8) "Pilot test" means to use, sell, license, or otherwise make available an innovation pursuant to this chapter; and

(9) "Regulatory innovation waiver" means a license issued by the commissioner that authorizes a person to pilot test an innovation that waives certain statutory and regulatory requirements.

4-47-103.

(a) The commissioner may issue a regulatory innovation waiver to license a person to pilot test an innovation.

(b)

(1) A person shall not pilot test more than three (3) innovations at the same time.

(2) A regulatory innovation waiver cannot waive any statutory or regulatory requirements concerning:

(A) Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to individuals or companies licensed under title 56;

(B) Required participation in any assigned risk plan, residual market, or guaranty fund under title 56;

(C) Any licensing or certificate of authority requirements under title 56;

(D) The application of any taxes or fees;

(E) Any federal requirement; or

(F) Consumer protection.

4-47-104.

(a) Any person may apply for a regulatory innovation waiver by submitting an application to the department on a form prescribed by the commissioner. The application form must, at a minimum, contain the following information:

(1) An acknowledgement by the applicant that the applicant is subject to the commissioner's jurisdiction;

(2) Contact information for the applicant;

(3) If the applicant is an entity, information regarding the applicant's management and organizational structure, including, as applicable:

(A) Natural persons who are directors or executive officers of the applicant;

(B) Qualifying agents of the applicant;

(C) General partners of the applicant;

(D) Members, as defined in § 48-202-101, of the applicant;

(E) Persons who are beneficial owners of ten percent (10%) or more of the voting securities of the applicant;

(F) Persons with direct or indirect power by contract to direct the management and policies of the applicant, other than a commercial contract for goods or non-management services; and

(G) Any conflicts of interest between a person listed pursuant to this subdivision (a)(3) and the department;

(4) A description of the innovation, including:

(A) The scope of the regulatory innovation waiver that the applicant seeks;

(B) How the innovation would benefit consumers;

(C) How the innovation is different from other products, services, business models, or delivery mechanisms already in operation in this state;

(D) Increased risks to consumer health and safety resulting from the use or purchase of, or participation in, the innovation and plans to address those risks;

(E) How a regulatory innovation waiver would enable a successful pilot test;

(F) A description of the proposed pilot testing plan, including estimated time periods for market entry, market exit, and the pursuit of necessary licensure or authorization;

(G) A statement by the applicant certifying that no product, service, business model, or delivery mechanism substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this state before the effective application date;

(H) How the applicant will wind down the pilot test and protect consumers if the pilot test fails to comply with the terms of the regulatory innovation waiver; and

(I) The format in which the applicant intends to deliver the required disclosures to consumers under § 4-47-106.

(b) If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating the innovation, then the application must include a detailed description of the operation and general content of the software, hardware, or other technology.

(c) If the innovation involves the issuance of a policy of insurance governed by § 56-7-102, then the application must contain a statement that the insurer on the policy holds a valid certificate of authority and is authorized to issue the insurance coverage.

(d) The commissioner may collect a regulatory innovation waiver application fee in an amount equal to the license fee that would otherwise be required to offer the innovation.

(e) The commissioner may request any additional information the commissioner deems reasonably necessary to evaluate the application.

(f) The commissioner shall not issue a regulatory innovation waiver under this chapter unless the commissioner determines, in the commissioner's sole discretion, that the applicant has demonstrated that:

(1) The applicant has an adequate understanding of the innovation;

(2) The applicant has an adequate plan to pilot test, monitor, and assess the innovation; and

(3) The pilot test will adequately protect consumer health and safety.

(g) The commissioner has the sole discretion to grant or deny an application under this chapter, and the commissioner's decision is not subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-47-105.

(a) If the commissioner grants an application under this chapter, then the commissioner shall issue a regulatory innovation waiver. A regulatory innovation waiver must establish the terms of licensure, including the statutory and regulatory requirements that are waived with respect to the innovation. The commissioner shall also issue the innovation participant a license number.

(b) Once the commissioner approves a person's application for a regulatory innovation waiver, the person is deemed an innovation participant. An innovation

participant has twenty-four (24) months from the issuance of the regulatory innovation waiver to pilot test the innovation for which the waiver was granted. An innovation participant shall comply with the terms of the regulatory innovation waiver.

(c) When issuing a regulatory innovation waiver, the commissioner is only authorized to waive statutes and rules that are subject to enforcement by the commissioner. Innovation participants are exempt only from the statutory and regulatory requirements that are stated clearly in the regulatory innovation waiver.

4-47-106.

(a) Before marketing an innovation to consumers, an innovation participant shall disclose to consumers the following:

(1) That the innovation is authorized pursuant to the regulatory innovation waiver and may not be required to comply with all statutory and regulatory requirements;

(2) That this state does not endorse, warrant, or recommend the innovation;

(3) That the innovation is currently being pilot tested and may be discontinued at the end of the pilot testing period, listing the expected end date of the pilot testing period; and

(4) That a consumer may contact the department to file a complaint regarding the innovation. The innovation participant shall provide the telephone number and website where a complaint may be filed with the department.

(b) An innovation participant shall clearly and conspicuously provide the disclosures required pursuant to subsection (a).

(c) The commissioner may require an innovation participant to make additional disclosures to consumers and may require a specific format for disclosure.

(d) Innovation participants are not exempt from the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, or any federal law.

(e) Innovation participants are subject to the civil penalty provisions applicable to an innovation participant's license. Any action to seek civil penalties must proceed under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(f) A regulatory innovation waiver does not affect the legal rights of any third party against the innovation participant.

(g) This part does not create a private cause of action against the state.

4-47-107.

At least thirty (30) days before the end of the pilot test period, an innovation participant shall:

(1) Notify the commissioner that the innovation participant will exit the market at the end of the pilot test period. However, if the pilot test is for an insurance product, then the innovation participant shall cease selling the product at the end of the pilot test period, and shall mail or deliver to the named insured, at the address shown in the policy, not less than thirty-days' notice of the termination of the policy; or

(2) Seek a regulatory innovation waiver pilot test period extension pursuant to § 4-47-108 or pursue a license or other authorization required by law.

4-47-108.

(a) At least thirty (30) days before the end of the pilot test period, an innovation participant may request an extension of the pilot test period for the purpose of additional pilot testing or pursuing a license or other authorization required by law.

(b) The commissioner has sole discretion to grant or deny an extension. An extension may not exceed twenty-four (24) months from the end of the initial pilot test period. Only one (1) extension may be granted.

(c) When requesting an extension, the innovation participant shall submit a detailed description of the results of the initial pilot test, which must include the following:

(1) A description of how the innovation:

(A) Added value to consumers and served the public interest;

(B) Was economically viable for the applicant; and

(C) Did not pose an unreasonable risk of consumer harm and provided suitable consumer protection;

(2) A description of any statutory and regulatory issues that continue to limit the innovation from being utilized, issued, sold, solicited, distributed, or advertised in the market;

(3) A description of how the innovation is functioning in the market and the manner in which it is offered or provided;

(4) A log of any consumer complaints and a description of the process for addressing consumer complaints; and

(5) Any other information the commissioner reasonably requires.

(d) The request for an extension must be accompanied by a fee equal to the renewal fee for the license that would otherwise be required to offer the innovation.

4-47-109.

Innovation participants shall retain records in the ordinary course of business regarding the innovation and the pilot test to the extent the commissioner requires.

4-47-110.

(a) Application materials, documents, and other records submitted to the department pursuant to this chapter, other than information regularly submitted with an application for licensure, are recognized as being proprietary and containing trade secrets. All such records and internal departmental records regarding submissions made pursuant to this chapter are confidential and privileged, and are not subject to:

(1) Public inspection under § 10-7-503;

(2) Subpoena; or

(3) Discovery or admissible in evidence in any private civil action.

(b) However, the commissioner may use the materials, documents, or other records in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(c) Neither the commissioner nor any person acting under the authority of the commissioner who receives or views materials, documents, or other records under this chapter, other than information regularly submitted with an application for licensure, is permitted or required to testify in any private civil action concerning any materials, documents, or other records made confidential under subsection (a).

4-47-111.

(a) Innovation participants shall submit reports to the commissioner as frequently as the commissioner requires, but no less than annually. The reports must be submitted on a form prescribed by the commissioner and include the following information:

(1) How long the participant has been marketing the innovation to consumers;

(2) The success of the innovation;

(3) The challenges of the innovation;

(4) How the participant has worked to ensure that consumer health and safety are protected during the pilot test; and

(5) Any other information the commissioner reasonably requires.

(b) If an innovation fails to comply with the terms of the regulatory innovation waiver before the end of the pilot test period, then the innovation participant shall notify the commissioner and report on actions taken to ensure consumers have not been harmed as a result of the innovation's failure to comply with such terms.

4-47-112.

(a) The commissioner may terminate a regulatory innovation waiver at any time if the commissioner determines:

(1) The innovation is causing, or has the potential to cause, consumer harm;

(2) The innovation participant is violating the terms of the regulatory innovation waiver; or

(3) The termination serves the public interest.

(b) Termination of a regulatory innovation waiver is not subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-47-113.

The commissioner shall provide to the chairs of the government operations committees of the house of representatives and the senate an annual report of all active innovation participants. This report must include the name of each innovation participant and the statutory and regulatory requirements that have been waived with respect to each innovation participant.

4-47-114.

The commissioner may promulgate rules to effectuate this chapter. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-47-115.

The commissioner's authority to grant new regulatory innovation waivers pursuant to this chapter terminates on January 1, 2025, and this chapter is repealed on January 1, 2025.

SECTION 2. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2021, the public welfare requiring it.