

Client Alert

Kentucky Enacts First US Insurtech Sandbox

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On March 26, 2019, Kentucky governor Matt Bevin signed House Bill 386 into law, enacting the first InsurTech sandbox in the country. The law will allow companies to test and develop innovative InsurTech programs that are not yet subject to, or protected by, existing regulations.

An “[i]nsurance innovation” is “any product, process, method, or procedure relating to the sale, solicitation, negotiation, fulfillment, administration, or use of any product or service regulated by the department (a) [t]hat has not been used, sold, licensed or otherwise made available in [Kentucky] before the effective filing date of the application, whether or not the product or service is marketed or sold directly to consumers; and (b) [t]hat has regulatory and statutory barriers that prevent its use, sale license or availability within [Kentucky].”

The bill, introduced by Rep. Bart Rowland (R-Tompkinsville, House Banking & Insurance Chairman) creates a process for companies to submit applications for their insurance innovations to a “regulatory sandbox,” which will allow successful applicants to beta test their programs within a structured regulatory framework. The law defines “beta test” as “the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the department.”

If a company’s application is accepted, the state Department of Insurance will issue a “limited no-action letter” that sets forth the conditions for the beta testing and provides a temporary regulatory “safe harbor” for the innovation, so long as the applicant adheres to the terms of the letter. If the innovation complies with the terms of the letter during a one-year beta testing period and satisfies certain requirements, it will be offered an extended no-action letter. Among the requirements for an extended no-action letter are that the innovation benefits consumers and that regulatory and/or statutory barriers prevent its continued use.

The “regulatory sandbox” is not limited to licensed insurance companies; any company developing InsurTech innovations can submit an application to the state Department of Insurance, subject to specific exclusions. The application must include substantial details regarding the innovation, including the terms and conditions of the “beta test” and proof of at least \$25,000 in assets, as well as detailed financial disclosures. For example, applicants must provide explanations of how their innovations will “[a]dd value to customers and serve the public interest” and “[n]ot pose an unreasonable risk of consumer harm.”

The law carves out a new position for a “Director of Insurance Innovation” in the state’s Department of Insurance, who will review all sandbox applications, and establishes a process for reviewing and challenging application decisions.

This law marks a new advancement in states' efforts to expand opportunities for InsurTech innovation in the country's highly-regulated insurance market. Laura Foggan, Crowell & Moring's Insurance and Reinsurance Practice chair recently commented that "It will be interesting to see whether regulatory sandboxes for insurers finally gain traction in 2019 or state regulators find other ways to promote innovation." According to the National Association of Insurance Commissioners, "InsurTech activity has increased significantly over the years," and "there are currently more than 1,500 InsurTech startups." The NAIC's Innovation and Technology (EX) Task Force recently released a list of state government officials who have been designated as a "contact point" for those interested in discussing innovative insurance products, services or technologies and their regulatory implications.

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