

SENATE BILL 899

By Stevens

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

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. Short title.

This chapter is known and may be cited as the "Innovation FastTrack Act."

4-47-102. Chapter definitions.

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 a new or an emerging technology, or the re-imagining of uses for an existing technology, to provide a product, service, business model, or delivery mechanism to the public and that has no substantially comparable, widely available analogue in this state outside the regulatory innovation sandbox;
- (4) "Innovation participant" means a person whose application for a regulatory innovation FastTrack 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 an individual or legal entity;

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

(9) "Regulatory innovation sandbox" means the program created by this chapter that allows the commissioner to certify an innovation participant's innovation as not subject to certain statutory and regulatory requirements; and

(10) "Regulatory innovation FastTrack" means the license issued by the commissioner to a participant to participate in the regulatory innovation sandbox.

4-47-103. Regulator innovation sandbox program established—Application.

(a) There is created within the department the regulatory innovation sandbox program.

(b) In administering the program, the commissioner may issue a regulatory innovation FastTrack to license a person to pilot test an innovation.

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

(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) Individuals 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) Conflicts of interest between a person listed pursuant to this subdivision (a)(3) and the department; and
- (4) A description of the innovation, including:
- (A) The scope of the regulatory innovation FastTrack that the applicant seeks, including:
 - (i) Laws or rules the applicant believes the innovation should not be subject to as the innovation was not considered when the law or rule was created; and
 - (ii) Laws or rules that would otherwise apply to the innovation for which the applicant wishes to receive a regulatory innovation FastTrack in order to conduct a pilot test of the innovation;
 - (B) How the innovation would benefit consumers;
 - (C) How the innovation or use of 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 FastTrack 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 § 4-47-105.

(d) 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.

(e) 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.

(f) The commissioner may collect a regulatory innovation FastTrack application fee in an amount not to exceed the license fee that would otherwise be required to offer the innovation.

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

(h) The commissioner shall not issue a regulatory innovation FastTrack 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.

(i) 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.

(j) An innovation participant shall not pilot test more than three (3) innovations at the same time.

(k) The scope of an application for a regulatory innovation FastTrack shall not include:

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

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

(3) Licensing or certificate of authority requirements under title 56;

(4) The application of taxes or fees, other than those provided in this chapter;

(5) The application of federal requirements; or

(6) The application of requirements under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1.

(l) An applicant for a regulatory innovation FastTrack may contact the department for a consultation regarding the regulatory innovation sandbox prior to the submission of an application.

4-47-104. Approval of regulatory innovation FastTrack pilot.

(a) If the commissioner approves an application under this chapter, then the commissioner shall issue a regulatory innovation FastTrack.

(b) In reviewing an application for a regulatory innovation FastTrack, the commissioner shall consider whether a competitor to the applicant is or has been an innovation participant and, if so, weigh that as a factor in favor of allowing the applicant to also become an innovation participant.

(c) If the commissioner approves a person's application for a regulatory innovation FastTrack, then the person is deemed an innovation participant.

(d) When issuing a regulatory innovation FastTrack, the commissioner shall certify:

(1) What state laws and rules the innovation is not subject to as the innovation was not considered when the law or rule was created; and

(2) What state laws and rules the innovation would ordinarily be subject to but is not subject to while the applicant is a member of the regulatory innovation sandbox as an innovation participant.

(e) The commissioner may only certify that the participant is not subject to laws and rules under subsection (d) that are subject to the sole enforcement by the commissioner. Innovation participants are still subject to statutory and regulatory requirements not clearly addressed in the regulatory innovation FastTrack.

(f) Except as otherwise provided in this chapter, during the pilot test an innovation participant is not subject to the state laws that establish requirements pursuant to a license or authorization issued by the department that otherwise would, or may, regulate the innovation in this state.

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

(h) An innovation participant is deemed to possess an appropriate license under the laws of this state for the purposes of a provision of federal law requiring state licensure or authorization.

(i) In order to make reasonable effort to notify an innovation participant's competitors when a regulatory innovation FastTrack has been granted, the department shall provide on its website a list of innovation participants and the terms of the regulatory innovation FastTrack, subject to § 4-47-109(a).

4-47-105. Disclosures—Penalties.

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

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

(2) That this state will refrain from endorsing, warranting, or recommending 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 consumers with 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 subject to the civil penalty provisions that would otherwise have been applicable to the innovation participant under licensure laws and rules if the innovation participant had not received a regulatory innovation FastTrack under this chapter. An action to seek civil penalties must proceed under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) A regulatory innovation FastTrack does not affect the legal rights of a third party against the innovation participant.

(f) This chapter does not create a private cause of action against the state.

4-47-106. End of pilot test period.

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;

(2) Seek a regulatory innovation FastTrack pilot test period extension pursuant to § 4-47-107; or

(3) Pursue a license or other authorization required by law.

4-47-107. Extension of the regulatory innovation FastTrack pilot test period.

(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 must not exceed twenty-four (24) months from the end of the initial pilot test period. The commissioner may grant only one (1) extension per innovation.

(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 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 consumer complaints and a description of the process for addressing consumer complaints; and

(5) 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.

(e) Before the commissioner may issue an extension, the department shall hold a hearing where the innovation participant shall provide and present the information listed in subsection (c). The hearing must be open to the public and open to public comment.

4-47-108. Recordkeeping.

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

4-47-109. Confidentiality of records.

(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. 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 admission as evidence in a private civil action.

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

(c) Neither the commissioner nor a 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 a private civil action concerning materials, documents, or other records made confidential under subsection (a).

4-47-110. Reports to commissioner.

(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 innovation participant has been marketing the innovation to consumers;
- (2) The success of the innovation;
- (3) The challenges of the innovation;
- (4) How the innovation 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 FastTrack 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 those terms.

4-47-111. Termination of a regulatory innovation FastTrack.

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

(1) The innovation is endangering, or has the potential to endanger, public health or safety; or

(2) The innovation participant is violating the terms of the regulatory innovation FastTrack.

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

4-47-112. Reports to general assembly.

(a) No later than December 31, 2022, and by December 31 of each subsequent year, the commissioner shall provide to the chairs of the government operations committees of the senate and house of representatives, and to the legislative librarian, an annual report of all active and expired innovation participants. This report must include the name of each innovation participant and the terms of each innovation participant's regulatory innovation FastTrack.

(b) During a review of the report required by subsection (a), the government operations committees shall consider whether the state laws that would otherwise apply to the innovation participant should:

(1) Remain unchanged;

(2) Be repealed so as to avoid inhibiting the innovation participant's success or that of future similar innovations in the state; or

(3) Be amended to be more narrowly tailored and provide a less restrictive means to protect consumer health and safety.

(c) Upon making the determination pursuant to subsection (b), the government operations committee shall provide to the speakers of the senate and house of representatives a report of the committee's recommendation.

4-47-113. Rules.

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

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022, the public welfare requiring it.