

## **INSURANCE INNOVATION WAIVER FAQs**

### **Why was the Innovation Waiver created?**

Governor Noem signed the legislation with the goal of attracting innovative products and services to South Dakota and South Dakota insurance consumers. Our enactment shows South Dakota is dedicated to safely reducing regulatory hurdles for innovators who want to introduce new concepts and products at the speed insurance technology develops. South Dakota is one of a small number of states with a similar program.

### **What is an Innovation Waiver?**

Innovation Waivers were established in Senate Bill 55, passed in the 2021 Legislative Session. Pursuant to new SDCL Chapter 58-48, insurance innovators are encouraged to offer products or services through limited testing in the South Dakota market without strictly complying with the Insurance Code. This includes licenses or other authorizations. Once granted, participants may use an Innovation Waiver to test subject to certain conditions depending on the innovative insurance product or service. A waiver is a legal document issued by the Division of Insurance (“Division”) granting regulatory relief.

### **Who can apply for an Innovation Waiver?**

The application is open to any person or entity provided the requirements in SDCL Ch. 58-48 are satisfied, including nonresidents. South Dakota law requires that Innovation Waiver participants be subject to South Dakota jurisdiction. However, the director may not grant a waiver to an applicant who has been convicted for a crime involving theft, fraud, or dishonesty that bears a substantial relationship to the applicant's or participant's ability to safely or competently administer an innovative insurance product or service.

### **How much does it cost to apply for an Innovation Waiver?**

The nonrefundable application fee is \$2,000, but this can be reduced for current licensees.

### **When can Innovation Waiver applications be submitted?**

The South Dakota Division of Insurance will begin accepting applications for an Innovation Waiver on July 1, 2021. The application is available at [dlr.sd.gov/insurance/innovation\\_waiver](http://dlr.sd.gov/insurance/innovation_waiver).

### **Will my application be kept confidential?**

Yes. All documents, materials, or other information in the possession of the division that are obtained by or disclosed to the director or any other person in the course of an application are confidential by law and privileged; are not subject to open records, freedom of information, sunshine, or other related laws; are not subject to subpoena; and are not subject to discovery or admissible in evidence in any private civil action.

### **If I apply for or am granted an Innovation Waiver, will the South Dakota Division of Insurance provide me legal advice?**

No. The Division cannot provide legal advice to the public and does not represent individuals or businesses applying for an Innovation Waiver nor does it provide legal advice or represent individuals or business after a waiver is granted. Applicants should seek competent private counsel.

**How long after I submit my application will I know if my Innovation Waiver has been granted?**

The Division must decide whether to grant a waiver within 90 days after a fully complete application has been submitted. The Division and applicant may mutually agree to extend the 90-day time period. Timely responses to Division inquiries are key to a successful application for an Innovation Waiver.

**How long do waivers last?**

An Innovation Waiver can be granted for up to 24 months.

**If my Innovation Waiver granted, am I exempt from complying with all state and federal laws?**

No. An Innovation Waiver only exempts the applicant from the specifically stated laws as listed on the waiver as determined by the Division on a case by case basis. The waiver does not exempt participants from federal laws and South Dakota criminal laws. Generally applicable state laws still apply to waiver participants. Innovation Waiver participants are responsible for compliance with all applicable federal and non-exempted state laws and should consult with legal counsel as necessary to ensure compliance.

**Are there any reporting requirements after an Innovation Waiver is granted?**

Yes. As a condition to approving a waiver, the Division will establish reporting requirements for participants on a case-by-case basis. Participants must make records, documents, and data available for inspection by the director immediately upon request. Participants must also submit a Final Report showing test results in a form and manner prescribed by the director within sixty days after the waiver expires.

**What laws may not be waived in the Innovation Waiver process?**

A waiver may not be granted with respect to:

- 1) Any law, regulation, bulletin, or other provision not subject to the director's jurisdiction;
- 2) Any requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any participant as determined by the director;
- 3) Chapter 58-12 concerning unfair claims practices;
- 4) Chapters 58-15, 58-16, 58-28, and 58-33A concerning life insurance;
- 5) Chapters 58-17, 58-18, and 58-18B concerning health insurance;
- 6) Chapter 58-17B concerning long-term care insurance;
- 7) Chapter 58-20 concerning workers' compensation insurance;
- 8) Chapter 58-25 concerning title insurance;
- 9) Chapter 58-30 concerning sales through licensed insurance producers;
- 10) Sections 58-33-1 to 58-33-47, inclusive and §§ 58-33-66 to 58-33-69, inclusive, concerning certain unfair trade practices;
- 11) Any laws, regulations, or bulletins directly relating to the innovation waiver as established in state statute; and
- 12) The application of any taxes or fees except as provided in subdivision 58-48-5(13).

**If my application for a waiver is denied, can appeal my denial?**

No. The director may deny a waiver application at the director's discretion based on the Division's analysis of the application. The director's discretionary decision to grant or deny a waiver is not appealable.

**If I have other general questions about the Innovation Waiver, who should I contact?**

Frank Marnell, Insurance Division Senior Legal Counsel, 605.773.3563.