



Governor's Office of Economic Opportunity

Spencer J. Cox
Governor

Deidre M. Henderson
Lt. Governor

Daniel Hemmert
Executive Director

Benjamin Hart
Deputy Director

To: Business and Labor Interim Committee;

Dan Hemmert, Executive Director, Governor's Office of Economic Opportunity

From: Dane Ishihara, Director, Office of Regulatory Relief

Date: 30 September 2022

Subject: Office of Regulatory Relief Annual Report

In the last year, the Office of Regulatory Relief received seven applications for the General Regulatory Sandbox, each representing a different industry in the state. From these applications, two applicants were approved and are currently participating in the Regulatory Sandbox, three applicants were denied entrance, one applicant withdrew their application, and one application is still pending. The following sections describe the applications received, why certain applicants were denied, and the consumer outcomes for participating applicants.

Participants

Homie Title is the first participant in the General Regulatory Sandbox, representing the title insurance industry. Homie Title requested a waiver of Utah Code Ann. § 31A-23a-1003(1)(b), which requires that title companies have at least 30% of their annual title insurance business come from an unaffiliated business as that term is defined in Utah Code Ann. § 31A-23a-1001(1). They proposed an offering to simplify and streamline buying and selling homes and reduce additional fees and commissions. On February 23, 2022, Homie Title began its demonstration period, which ends on February 22, 2023, with the option to extend for an additional 12 months. Since commencing their demonstration, they have completed 1,202 closings and estimate having saved customers approximately \$12 million. Our office is still gathering data as part of the ongoing Sandbox demonstration period, and as such, we do not have a policy recommendation at this time.

Representing the towing industry, the Regulatory Sandbox received an application from TowPro, a business operating a web-based application designed to innovate how public safety dispatchers and towing companies communicate and automate the dispatch process. By automatically rotating between towing companies until a tow is accepted, this platform reduces response times, clears crashes more quickly, and reduces the risk of secondary accidents. On July 5, 2022, TowPro began its demonstration period and received a waiver of Utah Code Ann. § 72-9-603 (16), which regulates a tow truck motor carrier's ability to charge a fee to a vehicle owner, or pass along a fee to a vehicle owner when that fee is charged in response to (A) a

peace officer dispatch call; (B) a motor vehicle division call; and (C) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal. Utah Code Ann. § 72-9-604 was also waived in relation to this offering, which prohibits political subdivisions from charging fees related to dispatch costs associated with a towing rotation. This business currently provides services to municipalities and political subdivisions within a given dispatch area, and as of September 13, 2022, 515 tows were completed using this application. Our office is still gathering data as part of the ongoing Sandbox demonstration period, and as such, we do not have a policy recommendation at this time.

Denied Entry

Coming from the finance industry, the Regulatory Sandbox received an application from a business that offers a mobile self-custody crypto wallet app. This applicant sought exemption from Utah Code Ann. § 7-25-101 et al., also known as the Money Transmitter Act, wherein blockchain tokens are specifically excluded from the definition of a money transmission, and, therefore entities operating on blockchain are exempt from needing to become licensed as a money transmitter. Unlike any other applicant to the Regulatory Sandbox, this peer-to-peer cryptocurrency exchange requested a waiver of existing state code to become regulated. Creating regulations is beyond the Office of Regulatory Relief's scope, and based on the Utah Department of Financial Institutions (UDFI) recommendation, this applicant was denied entrance into the sandbox. However, given the rise and prevalence of the crypto industry, our office drafted a cryptocurrency policy brief that explains what cryptocurrency is, how it works, and how neighboring states and other governments are approaching its regulation. The policy brief can be found on the office's landing page: <https://business.utah.gov/regulatory-relief/>

As described in the office's quarterly report, a personal injury law firm came to the Regulatory Sandbox seeking exemption from Utah Code §76-10-3201, which creates a prohibition on kickbacks and bribes. Kickbacks and bribes are defined as "any means of rebate, compensation or other form of remuneration that is direct or indirect; overt or covert; or in cash or in kind." The law firm that approached the Sandbox uses online search engines and ecommerce technology to enhance the type of legal services that can be provided to consumers. The law firm's business model and operations have been granted approval by the Utah Supreme Court, through participation in the Court's Office of Legal Services Innovation (the Court's Regulatory Sandbox). Based on the wording of Utah Code §76-10-3201, the firm's payment to its affiliated partners for services rendered could be interpreted as a kickback and could thus be considered a violation that may result in a criminal charge against the law firm's attorneys. The Office of Regulatory Relief denied the application. However, the General Regulatory Sandbox Program Advisory Committee recommended that the law firm communicate with the Attorney General's Office to consider either granting limited immunity from criminal prosecution under Utah Code § 76-10-3201, or a determination that the law firm's operations do not rise to the level of a violation under the code. That request is currently under consideration by the Attorney General's Office.

The Regulatory Sandbox has also received an application from a Nordic-style sauna and cold plunge bathhouse that requested a waiver of Utah Administrative Code §§ R392-302-3, R392-302-8, R392-302-21, & R392-302-7(1)(a). These sections establish the definition of public pools and their design, construction, and operation requirements. Based on the definition given therein, this bathhouse must comply with the same regulations prescribed to commercial pools in the state (e.g., submitting pool plans with an engineer certification of the structural stability and safety of the pool, requiring an automatic chemical feeder, etc.). The Utah Department of Health and Human Services (DHHS) recommended that the Office of Regulatory Relief deny this application but also provided two alternative solutions to sandbox participation: 1) work with DHHS's advisory committee to potentially revise Rule R392-302 and develop a special purpose section in the rule for cold plunge baths such as those used by this business, and 2) work with the local county health department to temporarily regulate their facility in variance of Rule R392-302 contingent on their ability to demonstrate to the local health department an adequate capability to meet water quality standards to stop the growth and spread of disease, and operate in a manner that does not constitute a safety or health hazard to bathers. Given the recommendation from DHHS, this application was denied. The applicant was provided with these alternatives and offered assistance from the Office of Regulatory Relief to facilitate a call with DHHS.

Withdrawn

In August of this year, the Regulatory Sandbox received an application from a business in the food industry that specializes in making small-batch bitters for cocktail connoisseurs and other food and drink artisans. This business was looking to expand its operations and, as such, would be required to comply with all regulations pertaining to a food production facility as found in the Food Establishment Requirements from the Utah Department of Agriculture and Food, and the Food Establishment Registration requirements listed in Utah Administrative Code § R70-540. Since the production of bitters does not require all of the features of a commercial kitchen, this applicant wanted to produce their bitters from a secondary home kitchen in line with the Microenterprise Home Kitchen Amendments bill (HB 94) passed in the 2021 General Session. When this office received this application, Salt Lake County had no information on obtaining a microenterprise home kitchen permit. Ultimately, the applicant chose to withdraw its Regulatory Sandbox application, and this office provided them with contact information for a Salt Lake County employee who could potentially help them determine the process for obtaining a microenterprise home kitchen permit.

Pending

Currently, the Regulatory Sandbox has one pending application from a health insurance company. This company aims to provide level-funded (partially self-funded), underwritten ERISA plans to small businesses with anywhere between two and 50 employees. To execute this goal, this business requested a waiver of Utah Code §§ 31A-23a and 31A-22-701, which include requirements and provisions for insurance marketing and prohibit offering underwritten

health insurance plans. Our office is waiting for additional information from the applicant before a conclusive decision is made regarding their participation in the sandbox. However, it is unlikely that their request will be granted in whole, and/or unlikely that an entire section of the code will be suspended or waived.