

REGULATORY SANDBOX

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill modifies provisions related to the Department of Commerce.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a regulatory sandbox program in the Department of Commerce, which allows a participant to temporarily test innovative financial products or services on a limited basis without otherwise being licensed or authorized to act under the laws of the state;
- ▶ describes who may participate in the program;
- ▶ describes how the Department of Commerce shall administer the program; and
- ▶ describes reporting requirements for participants in the program and for the

Department of Commerce.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-55-101, Utah Code Annotated 1953

13-55-102, Utah Code Annotated 1953

- 29 **13-55-103**, Utah Code Annotated 1953
- 30 **13-55-104**, Utah Code Annotated 1953
- 31 **13-55-105**, Utah Code Annotated 1953
- 32 **13-55-106**, Utah Code Annotated 1953
- 33 **13-55-107**, Utah Code Annotated 1953
- 34 **13-55-108**, Utah Code Annotated 1953

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **13-55-101** is enacted to read:

38 **CHAPTER 55. REGULATORY SANDBOX PROGRAM**

39 **13-55-101. Title.**

40 This chapter is known as the "Regulatory Sandbox Program."

41 Section 2. Section **13-55-102** is enacted to read:

42 **13-55-102. Definitions.**

43 As used in this chapter:

44 (1) "Applicable agency" means a department or agency of the state, including the
45 department and the Department of Financial Institutions, that by law regulates certain types of
46 business activity in the state and persons engaged in such business activity, including the
47 issuance of licenses or other types of authorization, which the department determines would
48 otherwise regulate a sandbox participant.

49 (2) "Applicant" means an individual or entity that is applying to participate in the
50 regulatory sandbox.

51 (3) "Blockchain technology" means the use of a digital database containing records of
52 financial transactions, which can be simultaneously used and shared within a decentralized,
53 publicly accessible network and can record transactions between two parties in a verifiable and
54 permanent way.

55 (4) "Consumer" means a person that purchases or otherwise enters into a transaction or

56 agreement to receive an innovative product or service that is being tested by a sandbox
57 participant.

58 (5) "Department" means the Department of Commerce.

59 (6) (a) "Financial product or service" means:

60 (i) a financial product or financial service that requires state licensure or registration; or

61 (ii) a financial product or financial service that includes a business model, delivery

62 mechanism, or element that may require a license or other authorization to act as a financial

63 institution, enterprise, or other entity that is regulated by Title 7, Financial Institutions Act, or

64 other related provisions.

65 (b) "Financial product or service" does not include a product or service that is governed

66 by:

67 (i) Title 31A, Insurance Code; or

68 (ii) Title 61, Chapter 1, Utah Uniform Securities Act.

69 (7) "Innovation" means the use or incorporation of a new or emerging technology or a

70 new use of existing technology, including blockchain technology, to address a problem,

71 provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism

72 that is not known by the department to have a comparable widespread offering in the state.

73 (8) "Innovative product or service" means a financial product or service that includes

74 an innovation.

75 (9) "Regulatory sandbox" means the Regulatory Sandbox Program created by Section

76 13-55-103, which allows a person to temporarily test an innovative product or service on a

77 limited basis without otherwise being licensed or authorized to act under the laws of the state.

78 (10) "Sandbox participant" means a person whose application to participate in the

79 regulatory sandbox is approved in accordance with the provisions of this chapter.

80 (11) "Test" means to provide an innovative product or service in accordance with the

81 provisions of this chapter.

82 Section 3. Section **13-55-103** is enacted to read:

83 **13-55-103. Regulatory Sandbox Program -- Application requirements.**

84 (1) There is created in the department the Regulatory Sandbox Program.

85 (2) In administering the regulatory sandbox, the department:

86 (a) shall consult with each applicable agency;

87 (b) shall establish a program to enable a person to obtain limited access to the market

88 in the state to test an innovative product or service without obtaining a license or other

89 authorization that might otherwise be required; and

90 (c) may enter into agreements with or follow the best practices of the Consumer

91 Financial Protection Bureau or other states that are administering similar programs.

92 (3) An applicant for the regulatory sandbox shall provide to the department an

93 application in a form prescribed by the department that:

94 (a) demonstrates the applicant is subject to the jurisdiction of the state;

95 (b) demonstrates the applicant has established a physical location in the state, from

96 which testing will be developed and performed and where all required records, documents, and

97 data will be maintained;

98 (c) contains relevant personal and contact information for the applicant, including legal

99 names, addresses, telephone numbers, email addresses, website addresses, and other

100 information required by the department;

101 (d) discloses criminal convictions of the applicant or other participating personnel, if

102 any;

103 (e) demonstrates that the applicant has the necessary personnel, financial and technical

104 expertise, access to capital, and developed plan to test, monitor, and assess the innovative

105 product or service;

106 (f) contains a description of the innovative product or service to be tested, including

107 statements regarding all of the following:

108 (i) how the innovative product or service is subject to licensing or other authorization

109 requirements outside of the regulatory sandbox;

- 110 (ii) how the innovative product or service would benefit consumers;
- 111 (iii) how the innovative product or service is different from other products or services
- 112 available in the state;
- 113 (iv) what risks may confront consumers that use or purchase the innovative product or
- 114 service;
- 115 (v) how participating in the regulatory sandbox would enable a successful test of the
- 116 innovative product or service;
- 117 (vi) a description of the proposed testing plan, including estimated time periods for
- 118 beginning the test, ending the test, and obtaining necessary licensure or authorizations after the
- 119 testing is complete;
- 120 (vii) a description of how the applicant will perform ongoing duties after the test; and
- 121 (viii) how the applicant will end the test and protect consumers if the test fails; and
- 122 (g) provides any other required information as determined by the department.
- 123 (4) The department may collect an application fee from an applicant that is set in
- 124 accordance with Section [63J-1-504](#).
- 125 (5) An applicant shall file a separate application for each innovative product or service
- 126 that the applicant wants to test.
- 127 (6) After an application is filed, the department may seek additional information from
- 128 the applicant that the department determines is necessary.
- 129 (7) Subject to Subsection (8), not later than 90 days after the day on which a complete
- 130 application is received by the department, the department shall inform the applicant as to
- 131 whether the application is approved for entry into the regulatory sandbox.
- 132 (8) The department and an applicant may mutually agree to extend the 90-day time
- 133 period described in Subsection (7) for the department to determine whether an application is
- 134 approved for entry into the regulatory sandbox.
- 135 (9) (a) In reviewing an application under this section, the department shall consult
- 136 with, and get approval from, each applicable agency before admitting an applicant into the

137 regulatory sandbox.

138 (b) The consultation with an applicable agency may include seeking information about
139 whether:

140 (i) the applicable agency has previously issued a license or other authorization to the
141 applicant;

142 (ii) the applicable agency has previously investigated, sanctioned, or pursued legal
143 action against the applicant;

144 (iii) whether the applicant could obtain a license or other authorization from the
145 applicable agency after exiting the regulatory sandbox; and

146 (iv) whether certain licensure or other regulations should not be waived even if the
147 applicant is accepted into the regulatory sandbox.

148 (10) In reviewing an application under this section, the department shall consider
149 whether a competitor to the applicant is or has been a sandbox participant and, if so, weigh that
150 as a factor in favor of allowing the applicant to also become a sandbox participant.

151 (11) If the department and each applicable agency approve admitting an applicant into
152 the regulatory sandbox an applicant may become a sandbox participant.

153 (12) (a) The department may deny any application submitted under this section, for any
154 reason, at the department's discretion.

155 (b) If the department denies an application submitted under this section, the department
156 shall provide to the applicant a written description of the reasons for the denial as a sandbox
157 participant.

158 Section 4. Section **13-55-104** is enacted to read:

159 **13-55-104. Scope of the regulatory sandbox.**

160 (1) If the department approves an application under Section [13-55-103](#), the sandbox
161 participant has 24 months after the day on which the application was approved to test the
162 innovative product or service described in the sandbox participant's application.

163 (2) An innovative product or service that is tested within the regulatory sandbox is

164 subject to the following:

165 (a) consumers shall be residents of the state;

166 (b) the department may, on a case by case basis, specify the maximum number of
167 consumers that may transact through or enter into an agreement to use the innovative product
168 or service;

169 (c) for a sandbox participant testing a consumer loan the department may, on a case by
170 case basis, specify the maximum amount of an individual loan that may be issued to an
171 individual consumer and the maximum amount of aggregate loans that may be issued to an
172 individual consumer; and

173 (d) for a sandbox participant testing an innovative product or service that would
174 normally require a money transmission license under Section [7-25-201](#), the department may, on
175 a case by case basis, specify the maximum amount of a single transaction for an individual
176 consumer and the maximum aggregate amount of transactions for an individual consumer.

177 (3) This section does not restrict a sandbox participant who holds a license or other
178 authorization in another jurisdiction from acting in accordance with that license or other
179 authorization.

180 (4) A sandbox participant is deemed to possess an appropriate license under the laws of
181 the state for the purposes of any provision of federal law requiring state licensure or
182 authorization.

183 (5) Except as otherwise provided in this chapter, including in Subsections (6) and (7), a
184 sandbox participant that is testing an innovative product or service is not subject to state laws
185 that regulate financial products or services.

186 (6) (a) The department may only determine that certain state laws that regulate a
187 financial product or service apply to a sandbox participant if the department, at the
188 department's sole discretion, determines that:

189 (i) an applicant's plan to protect consumers will not adequately protect consumers from
190 the harm the state law addresses; and

191 (ii) the benefits to consumers of applying the law outweigh the potential benefits to
192 consumers from increased competition, innovation, and consumer access that waiving the law,
193 in conjunction with the applicant's ability to compensate consumers who may be harmed,
194 would provide.

195 (b) If the department determines that certain state laws that regulate a financial product
196 or service apply to a sandbox participant, the department shall notify the sandbox participant of
197 the specific regulatory provisions that apply to the sandbox participant.

198 (7) Notwithstanding any other provision of this chapter, a sandbox participant does not
199 have immunity related to any criminal offense committed during the sandbox participant's
200 participation in the regulatory sandbox.

201 (8) By written notice, the department may end a sandbox participant's participation in
202 the regulatory sandbox at any time and for any reason, including if the department determines a
203 sandbox participant is not operating in good faith to bring an innovative product or service to
204 market.

205 Section 5. Section **13-55-105** is enacted to read:

206 **13-55-105. Consumer protection for regulatory sandbox.**

207 (1) Before providing an innovative product or service to a consumer, a sandbox
208 participant shall disclose the following to the consumer:

209 (a) the name and contact information of the sandbox participant;

210 (b) that the innovative product or service is authorized pursuant to the regulatory
211 sandbox and, if applicable, that the sandbox participant does not have a license or other
212 authorization to provide a product or service under state laws that regulate products or services
213 outside the regulatory sandbox;

214 (c) that the innovative product or service is undergoing testing and may not function as
215 intended and may expose the customer to financial risk;

216 (d) that the provider of the innovative product or service is not immune from civil
217 liability for any losses or damages caused by the innovative product or service;

218 (e) that the state does not endorse or recommend the innovative product or service;
219 (f) that the innovative product or service is a temporary test that may be discontinued at
220 the end of the testing period;

221 (g) the expected end date of the testing period; and
222 (h) that a consumer may contact the department to file a complaint regarding the
223 innovative product or service being tested and provide the department's telephone number and
224 website address where a complaint may be filed.

225 (2) The disclosures required by Subsection (1) shall be provided to a consumer in a
226 clear and conspicuous form and, for an internet or application-based innovative product or
227 service, a consumer shall acknowledge receipt of the disclosure before a transaction may be
228 completed.

229 (3) The department may require that a sandbox participant make additional disclosures
230 to a consumer.

231 Section 6. Section **13-55-106** is enacted to read:

232 **13-55-106. Requirements for exiting regulatory sandbox.**

233 (1) At least 30 days before the end of the 24-month regulatory sandbox testing period,
234 a sandbox participant shall:

235 (a) notify the department that the sandbox participant will exit the regulatory sandbox,
236 discontinue the sandbox participant's test, and will stop offering any innovative product or
237 service in the regulatory sandbox within 60 days after the day on which the 24-month testing
238 period ends; or

239 (b) seek an extension in accordance with Section [13-55-107](#).

240 (2) Subject to Subsection (3), if the department does not receive notification as
241 required by Subsection (1), the regulatory sandbox testing period ends at the end of the
242 24-month testing period and the sandbox participant shall immediately stop offering each
243 innovative product or service being tested.

244 (3) If a test includes offering an innovative product or service that requires ongoing

245 duties, such as servicing a loan, the sandbox participant shall continue to fulfill those duties or
246 arrange for another person to fulfill those duties after the date on which the sandbox participant
247 exits the regulatory sandbox.

248 Section 7. Section 13-55-107 is enacted to read:

249 **13-55-107. Extensions.**

250 (1) Not later than 30-days before the end of the 24-month regulatory sandbox testing
251 period, a sandbox participant may request an extension of the regulatory sandbox testing period
252 for the purpose of obtaining a license or other authorization required by law.

253 (2) The department shall grant or deny a request for an extension in accordance with
254 Subsection (1) by the end of the 24-month regulatory sandbox testing period.

255 (3) The department may grant an extension in accordance with this section for not
256 more than six months after the end of the regulatory sandbox testing period.

257 (4) A sandbox participant that obtains an extension in accordance with this section
258 shall provide the department with a written report every three months that provides an update
259 on efforts to obtain a license or other authorization required by law, including any submitted
260 applications for licensure or other authorization, rejected applications, or issued licenses or
261 other authorization.

262 Section 8. Section 13-55-108 is enacted to read:

263 **13-55-108. Record keeping and reporting requirements.**

264 (1) A sandbox participant shall retain records, documents, and data produced in the
265 ordinary course of business regarding an innovative product or service tested in the regulatory
266 sandbox.

267 (2) If an innovative product or service fails before the end of a testing period, the
268 sandbox participant shall notify the department and report on actions taken by the sandbox
269 participant to ensure consumers have not been harmed as a result of the failure.

270 (3) The department may establish periodic reporting requirements for a sandbox
271 participant.

272 (4) The department may request records, documents, and data from a sandbox
273 participant and, upon the department's request, a sandbox participant shall make such records,
274 documents, and data available for inspection by the department.

275 (5) If the department determines that a sandbox participant has engaged in, is engaging
276 in, or is about to engage in any practice or transaction that is in violation of this chapter or that
277 constitutes a violation of a state or federal criminal law, the department may remove a sandbox
278 participant from the regulatory sandbox.

279 (6) By October 1, the department shall provide an annual written report to the Business
280 and Labor Interim Committee that provides information regarding each sandbox participant
281 and that provides recommendations regarding the effectiveness of the Regulatory Sandbox
282 Program.