

HB0378S01 compared with HB0378

~~{deleted text}~~ shows text that was in HB0378 but was deleted in HB0378S01.

Inserted text shows text that was not in HB0378 but was inserted into HB0378S01.

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Representative Marc K. Roberts proposes the following substitute bill:

REGULATORY SANDBOX

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the Governor's Office of Economic Development (GOED).

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a regulatory sandbox program in GOED, which allows a participant to temporarily test innovative financial products or services ~~{, or innovative peer-to-peer 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 GOED shall administer the program; and

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- ▶ describes reporting requirements for participants in the program and GOED.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63N-14-101, Utah Code Annotated 1953

63N-14-102, Utah Code Annotated 1953

63N-14-103, Utah Code Annotated 1953

63N-14-104, Utah Code Annotated 1953

63N-14-105, Utah Code Annotated 1953

63N-14-106, Utah Code Annotated 1953

63N-14-107, Utah Code Annotated 1953

63N-14-108, Utah Code Annotated 1953

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

Section 1. Section **63N-14-101** is enacted to read:

CHAPTER 14. REGULATORY SANDBOX PROGRAM

63N-14-101. Title.

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

Section 2. Section **63N-14-102** is enacted to read:

63N-14-102. Definitions.

As used in this chapter:

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

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

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

(~~3~~4) "Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an innovative product or service that is being tested by a sandbox participant.

(~~4~~5) (a) "Financial product or service" means:

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

(~~b~~ii) a product or service that includes a business model, delivery mechanism, or element that may require a license or other authorization to act as a financial institution, enterprise, or other entity that is regulated by Title 7, Financial Institutions Act, or other related provisions.

(b) "Financial product or service" does not include a product or service that is governed by Title 31A, Insurance Code.

(~~5~~6) "Innovation" means the use or incorporation of a new or emerging technology or a new use of existing technology, including blockchain technology, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the office to have a comparable widespread offering in the state.

(~~6~~7) "Innovative product or service" means:

~~— (a) a financial product or service that includes an innovation, or~~

~~— (b) a peer-to-peer product or service that includes an innovation.~~

~~— (7) "Peer-to-peer company" means an entity that uses a peer-to-peer platform to connect independent individuals who agree to exchange a product or service.~~

~~— (8) "Peer-to-peer platform" means an Internet-connected software service:~~

~~— (a) that a peer-to-peer company provides; and~~

~~— (b) through which independent individuals agree to exchange a product or service.~~

~~— (9) "Peer-to-peer product or service" means:~~

~~— (a) a product or service provided by a peer-to-peer company through a peer-to-peer platform that requires state licensure or registration; or~~

~~— (b) a product or service provided by a peer-to-peer company through a peer-to-peer~~

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~~platform that includes a business model, delivery mechanism, or element that may require a license or other authorization from the state}.~~

~~{10}8~~ "Regulatory sandbox" means the Regulatory Sandbox Program created by Section 63N-14-103, which allows a person to temporarily test innovative products or services on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

~~{11}9~~ "Sandbox participant" means a person whose application to participate in the regulatory sandbox is approved in accordance with the provisions of this chapter.

~~{12}10~~ "Test" means to provide products and services in accordance with the provisions of this chapter.

Section 3. Section **63N-14-103** is enacted to read:

63N-14-103. Regulatory Sandbox Program -- Application requirements.

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

(2) In administering the regulatory sandbox, the office:

(a) shall consult with each applicable agency;

(b) shall establish a program to enable a person to obtain limited access to the market in the state to test innovative products or services without obtaining a license or other authorization that might otherwise be required; and

(c) may enter into agreements with or follow the best practices of the Consumer Financial Protection Bureau or other states that are administering similar programs.

(3) An applicant for the regulatory sandbox shall provide to the office an application in a form prescribed by the office that:

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

(b) demonstrates the applicant has established a physical location in the state, from which testing will be developed and performed and where all required records, documents, and data will be maintained;

(c) contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the office;

(d) discloses criminal convictions of the applicant or other participating personnel, if any; ~~and~~

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(e) demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and developed plan to test, monitor, and assess the innovative product or service;

(f) contains a description of the innovative product or service to be tested, including statements regarding all of the following:

(i) how the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox;

(ii) how the innovative product or service would benefit consumers;

(iii) how the innovative product or service is different from other products or services available in the state;

(iv) what risks may confront consumers that use or purchase the innovative product or service;

(v) how participating in the regulatory sandbox would enable a successful test of the innovative product or service;

(vi) a description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(vii) a description of how the applicant will perform ongoing duties after the test; and

(viii) how the applicant will end the test and protect consumers if the test fails~~;~~; and

(g) provides any other required information as determined by the office.

(4) The office may collect an application fee from an applicant that is set in accordance with Section 63J-1-504.

(5) An applicant shall file a separate application for each innovative product or service that the applicant wants to test.

(6) After an application is filed, the office may seek additional information from the applicant that the office determines is necessary.

(7) Subject to Subsection (8), not later than 90 days after the day on which a complete application is received by the office, the office shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox.

(8) The office and an applicant may mutually agree to extend the 90-day time period described in Subsection (7) for the office to determine whether an application is approved for

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entry into the regulatory sandbox.

(9) (a) In reviewing an application under this section, the office shall consult with, ~~and get approval from,~~ each applicable agency before admitting an applicant into the regulatory sandbox.

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

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

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

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

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

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

(11) ~~{Notwithstanding the provisions of Subsection (9), the office has sole authority to make the final decision whether to admit}~~ ~~If the office and each applicable agency approve admitting~~ an applicant into the regulatory sandbox, ~~the office shall present information regarding the applicant to the board for the board's final approval before an applicant may become a sandbox participant.~~

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

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

Section 4. Section **63N-14-104** is enacted to read:

63N-14-104. Scope of the regulatory sandbox.

(1) If the office approves an application under Section 63N-14-103, the sandbox participant has 24 months after the day on which the application was approved to test the

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innovative product or service described in the sandbox participant's application.

(2) An innovative product or service that is tested within the regulatory sandbox is subject to the following:

(a) consumers shall be residents of the state;

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

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

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

(3) If applicable, each sandbox participant shall make, maintain, and preserve books and records in accordance with the requirements imposed on a federal covered adviser under 17 Code of Federal Regulations, Section 275.204-2.

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

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

(6) Except as otherwise provided in this chapter, including in ~~Subsections~~ Subsection (7) and (8), a sandbox participant that is testing:

~~(a) a financial product or service is not subject to state laws that regulate financial products or services; and~~

~~(b) a peer-to-peer product or service is not subject to state laws that regulate peer-to-peer products or services.~~

(7) (a) The office may only determine that certain state laws that regulate a financial

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product or service apply to a sandbox participant if the office, at the office's sole discretion, determines that:

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

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

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

~~{ (8) (a) The office may determine that certain state laws that regulate a peer-to-peer product or service apply to a sandbox participant.~~

~~— (b) If the office determines that certain state laws that regulate a peer-to-peer product or service apply to a sandbox participant, the office shall notify the sandbox participant of the specific regulatory provisions that apply to the sandbox participant.~~

~~‡ (9) (8) By written notice, the office may end a sandbox participant's participation in the regulatory sandbox at any time and for any reason, including if the office determines a sandbox participant is not operating in good faith to bring an innovative product or service to market.~~

Section 5. Section **63N-14-105** is enacted to read:

63N-14-105. Consumer protection for regulatory sandbox.

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

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

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

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

(d) that the provider of the innovative product or service is not immune from civil

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liability for any losses or damages caused by the innovative product or service;

(f)c)e that the state does not endorse or recommend the innovative product or service;

(f)d)f that the innovative product or service is a temporary test that may be discontinued at the end of the testing period;

(f)e)g the expected end date of the testing period; and

(f)f)h that a consumer may contact the office to file a complaint regarding the innovative product or service being tested and provide the office's telephone number and website address where a complaint may be filed.

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

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

Section 6. Section **63N-14-106** is enacted to read:

63N-14-106. Requirements for exiting regulatory sandbox.

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

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

(b) seek an extension in accordance with Section 63N-14-107.

(2) Subject to Subsection (3), if the office does not receive notification as required by Subsection (1), the regulatory sandbox testing period ends at the end of the 24-month testing period and the sandbox participant shall immediately stop offering all innovative products or services being tested.

(3) If a test includes offering ~~fa~~an innovative product or service that requires ongoing duties, such as servicing a loan, the sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the sandbox participant exits the regulatory sandbox.

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Section 7. Section **63N-14-107** is enacted to read:

63N-14-107. Extensions.

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

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

(3) The office may grant an extension in accordance with this section for not more than one year after the end of the regulatory sandbox testing period.

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

Section 8. Section **63N-14-108** is enacted to read:

63N-14-108. Record keeping and reporting requirements.

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

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

(3) The office may establish periodic reporting requirements for a sandbox participant.

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

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

(6) The office shall include in the annual report described in Section 63N-1-301, a

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report regarding each sandbox participant and the effectiveness of the Regulatory Sandbox Program.