

Model Language: All-Inclusive Regulatory Sandbox

Purpose:

This proposal modifies provisions related to the (insert relevant state agency) and allows businesses, under the observation of regulators, to trial innovative products, services, and business models while temporarily bypassing laws or regulations that may conflict.

Section 1. State's Open Records Provisions:

- Insert relevant state open records laws.
- Applications for a sandbox are subject to open record laws, with redacting of any material allowed that the agency reasonably believes could result in economic harm to the applicant.
- Meetings to review applications are not subject to open meetings laws due to the review and discussion of proprietary information and/or economic harm that could come to an applicant in an open setting.

Section 2. Definitions.

1. "Advisory committee" means the General Regulatory Sandbox Program Advisory Committee created in (INSERT RELEVANT STATE CODE).
2. "Applicable Agency" means a person that applies to participate in the regulatory sandbox.
3. "Applicant" means a person that applies to participate in the regulatory sandbox.
4. "Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an offering pursuant to a demonstration by a sandbox participant.
5. "Demonstrate" or "demonstration" means to temporarily provide an offering in accordance with the provisions of the regulatory sandbox program described in this chapter.
6. "Director" means the director of the (INSERT CREATED/EXISTING OFFICE) created in (INSERT RELEVANT STATE CODE).
7. "Executive director" means the executive director of the (INSERT RELEVANT OVERSEEING AGENCY).
8. "Innovation" means the use or incorporation of a new idea, a new or emerging technology, or a new use of existing technology to address a problem, provide a benefit, or otherwise offer a product, production method, or service.

9. “Innovative offering” means an offering that includes an innovation.
10. “Product” means a commercially distributed good that is:
 - a. tangible personal property;
 - b. the result of a production process; and
 - c. passed through the distribution channel before consumption.
11. “Production” means the method or process of creating or obtaining a good, which may include assembling, breeding, capturing, collecting, extracting, fabricating, farming, fishing, gathering, growing, harvesting, hunting, manufacturing, mining, processing, raising, or trapping a good.
12. “Regulatory relief office” means the (OFFICIAL TITLE OF OVERSEEING OFFICE) created in (INSERT RELEVANT STATE CODE).
13. “Regulatory sandbox” means the General Regulatory Sandbox Program created in (INSERT RELEVANT STATE CODE), which allows a person to temporarily demonstrate an offering under a waiver or suspension of one or more state laws or regulations.
14. “Sandbox participant” means a person whose application to participate in the regulatory sandbox is approved in accordance with the provisions of this chapter.
15. “Service” means any commercial activity, duty, or labor performed for another person.

Section 3. Creation of Regulatory Relief Office and appointment of Director.

- 1) There is created within the (INSERT RELEVANT OFFICE WITHIN THE EXECUTIVE) the (INSERT PLACE WHERE SANDBOX WILL BE MANAGED).
- 2) (a) The regulatory relief office shall be administered by a director.
(b) The director shall report to the executive director and may appoint staff subject to the approval of the executive director.
- 3) The regulatory relief office shall:
 - a) administer the provisions of this chapter;
 - b) administer the regulatory sandbox program; and
 - c) act as a liaison between private businesses and applicable agencies to identify state laws or regulations that could potentially be waived or suspended under the regulatory sandbox program.
- 4) The regulatory relief office may:
 - a) review state laws and regulations that may unnecessarily inhibit the creation and success of new companies or industries and provide recommendations to the governor and the Legislature on modifying such state laws and regulations;

- b) create a framework for analyzing the risk level to the health, safety, and financial well-being of consumers related to permanently removing or temporarily waiving laws and regulations inhibiting the creation or success of new and existing companies or industries;
- c) propose potential reciprocity agreements between states that use or are proposing to use similar regulatory sandbox programs as described in this chapter, or (INSERT OTHER INDUSTRY-TARGETED SANDBOXES), and
- d) in accordance with (INSERT RELEVANT STATE ADMINISTRATIVE RULEMAKING ACT), and the provisions of this chapter, make rules regarding:
 - i) administering the regulatory sandbox, including making rules regarding the application process and the reporting requirements of sandbox participants; and
 - ii) cooperating and consulting with other agencies in the state that administer sandbox programs.

Section 4. Creation and Duties of Advisory Committee.

- 1) There is created the General Regulatory Sandbox Program Advisory Committee.
- 2) The advisory committee shall have 11 members as follows:
 - a) six members appointed by the director who represent businesses interests and are selected from a variety of industry clusters;
 - b) three members appointed by the director who represent state agencies that regulate businesses;
 - c) one member of the Senate, appointed by the President of the Senate; and
 - d) one member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- 3) (a) Subject to Subsection (3)(b), members of the advisory committee who are not legislators shall be appointed to a four-year term.
(b) Notwithstanding the requirements of Subsection (3)(a), the director may adjust the length of terms of appointments and reappointments to the advisory committee so that approximately half of the advisory committee is appointed every two years.
- 4) The director shall select a chair of the advisory committee on an annual basis.
- 5) A majority of the advisory committee constitutes a quorum for the purpose of conducting advisory committee business, and the action of the majority of a quorum constitutes the action of the advisory committee.
- 6) The advisory committee shall advise and make recommendations to the regulatory relief office as described in this chapter.

- 7) The regulatory relief office shall provide administrative staff support for the advisory committee.
- 8) (a) A member may not receive compensation or benefits for the member's service, but a member appointed under Subsection 2(a) may receive per diem and travel expenses in accordance with:
 - i) (INSERT RELEVANT STATE CODE); and
 - ii) rules made by the Division of Finance pursuant to (INSERT RELEVANT STATE CODE) and (INSERT RELEVANT STATE CODE).b) Compensation and expenses of a member who is a legislator are governed by (INSERT RELEVANT STATE CODE).
- 9) Meetings of the advisory committee who are not subject to (INSERT RELEVANT STATE CODE) on (INSERT RELEVANT CODE ON PUBLIC MEETINGS).

Section 5. Annual Report.

- 1) The executive director shall include in the annual report described in Section 5 a written report from the director on the activities of the regulatory relief office, which report shall include:
 - a) information regarding each participant in the regulatory sandbox created in (INSERT RELEVANT STATE CODE), including which industries each participant represents and the anticipated or actual cost savings that each participant experienced;
 - b) recommendations regarding any laws or regulations that should be permanently modified;
 - c) information regarding outcomes for consumers; and
 - d) recommendations for changes to the regulatory sandbox program or other duties of the regulatory relief office.
- 2) By October 1 of each year, the executive director shall provide the written report from the director on the activities of the regulatory relief office described in Subsection (1) to the (INSERT RELEVANT STANDING COMMITTEE OR INTERIM SUBCOMMITTEE).

Section 6. General Regulatory Sandbox Program and Application Requirements.

- 1) There is created in the regulatory relief office the General Regulatory Sandbox Program.
- 2) In administering the regulatory sandbox, the regulatory relief office:
 - a) shall consult with each applicable agency;
 - b) shall establish a program to enable a person to obtain legal protections and limited access to the market in the state to demonstrate an

- innovative offering without obtaining a license or other authorization that might otherwise be required;
- c) may enter into agreements with or adopt the best practices of corresponding federal regulatory agencies or other states that are administering similar programs; and
 - d) may consult with businesses in the state about existing or potential proposals for the regulatory sandbox.
- 3) (a) An applicant for the regulatory sandbox may contact the regulatory relief office to request a consultation regarding the regulatory sandbox before submitting an application.
- (b) The regulatory relief office may provide assistance to an applicant in preparing an application for submission.
- 4) An applicant for the regulatory sandbox shall provide to the regulatory relief office an application in a form prescribed by the Regulatory Relief Office that:
- a) confirms the applicant is subject to the jurisdiction of the state;
 - b) confirms the applicant has established a physical or virtual location in the state, from which the demonstration of an innovative offering 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 Regulatory Relief Office;
 - d) discloses criminal convictions of the applicant or other participating personnel, if any;
 - e) contains a description of the innovative offering to be demonstrated, including statements regarding:
 - i) how the offering is subject to licensing, legal prohibition, or other authorization requirements outside of the regulatory sandbox;
 - ii) each law or regulation that the applicant seeks to have waived or suspended while participating in the regulatory sandbox program;
 - iii) how the offering would benefit consumers;
 - iv) how the offering is different from other offerings available in the state;
 - v) what risks might exist for consumers who use or purchase the offering;
 - vi) how participating in the regulatory sandbox would enable a successful demonstration of the offering;

- vii) a description of the proposed demonstration plan, including estimated time periods for beginning and ending the demonstration;
 - viii) recognition that the applicant will be subject to all laws and regulations pertaining to the applicant's offering after conclusion of the demonstration; and
 - ix) how the applicant will end the demonstration and protect consumers if the demonstration fails;
 - f) lists each government agency, if any, that the applicant knows regulates the applicant's business; and
 - g) provides any other required information as determined by the regulatory relief office.
- 5) The regulatory relief office may collect an application fee from an applicant that is set in accordance with (INSERT RELEVANT STATE CODE).
- 6) An applicant shall file a separate application for each innovative offering that the applicant wishes to demonstrate.
- 7) After an application is filed, the regulatory relief office:
- a) shall classify the application and any related information provided by the applicant as a protected record in accordance with (INSERT RELEVANT STATE CODE);
 - b) consult with each applicable government agency that regulates the applicant's business regarding whether more information is needed from the applicant; and
 - c) seek additional information from the applicant that the regulatory relief office determines is necessary.
- 8) No later than five business days after the day on which a complete application is received by the regulatory relief office, the regulatory relief office shall:
- a) review the application and refer the application to each applicable government agency that regulates the applicant's business; and
 - b) provide to the applicant:
 - i) an acknowledgment of receipt of the application; and
 - ii) the identity and contact information of each regulatory agency to which the application has been referred for review.
- 9) (a) Subject to Subsections (9)(c) and (9)(g), no later than 30 days after the day on which an applicable agency receives a complete application for review, the applicable agency shall provide a written report to the director of the applicable agency's findings.
- b) The report shall:

- i) describe any identifiable, likely, and significant harm to the health, safety, or financial well-being of consumers that the relevant law or regulation protects against; and
 - ii) Make a recommendation to the regulatory relief office that the applicant either be admitted or denied entrance into the regulatory sandbox.
- c) (i) The applicable agency may request an additional five business days to deliver the written report by providing notice to the director, which request shall automatically be granted.
 - ii) The applicable agency may only request one extension per application.
- d) if the applicable agency recommends an applicant under this section be denied entrance into the regulatory sandbox, the written report shall include a description of the reasons for the recommendation, including why a temporary waiver or suspension of the relevant laws or regulations would potentially significantly harm the health, safety, or financial well-being of consumers or the public and the likelihood of such harm occurring.
- e) If the agency determines that the consumer's or public's health, safety, or financial well-being can be protected through less restrictive means than the existing relevant laws or regulations, then the applicable agency shall provide a recommendation of how that can be achieved.
- f) If an applicable agency fails to deliver a written report as described in this Subsection (9), the director shall assume that the applicable agency does not object to the temporary waiver or suspension of the relevant laws or regulations for an applicant seeking to participate in the regulatory sandbox.
- g) Notwithstanding any other provision of this section, an applicable agency may by written notice to the regulatory relief office:
 - i) within the 30 days after the day on which the applicable agency receives a complete application for review, or within 35 days if an extension has been requested by the applicable agency, reject an application if the applicable agency determines, in the applicable agency's sole discretion, that the applicant's offering fails to comply with standards or specifications:
 - A) required by federal law or regulation; or
 - B) previously approved for use by a federal agency; or
 - ii) reject an application preliminarily approved by the regulatory relief office, if the applicable agency:
 - A) recommended rejection of the application in accordance with Subsection (9)(d) in the agency's written report; and

- B) Provides in the written notice under this Subsection (9)(g), a description of the applicable agency's reasons why approval of the application would create a substantial risk of harm to the health or safety of the public, or create unreasonable expenses for taxpayers in the state.
 - h) If an applicable agency rejects an application under Subsection (9)(g), the regulatory relief office may not approve the application.
- 10) (a) Upon receiving a written report described in Subsection (9), the director shall provide the application and the written report to the advisory committee.
- b) The director may call the advisory committee to meet as needed, but not less than once per quarter if applications are available for review.
 - c) After receiving and reviewing the application and each written report, the advisory committee shall provide to the director of the advisory committee's recommendation as to whether or not the applicant should be admitted as a sandbox participant under this chapter.
 - d) As part of the advisory committee's review of each written report, the advisory committee shall use the criteria required for an applicable agency as described in Subsection (9).
- 11) (a) In reviewing an application and each applicable agency's written report, the regulatory relief office shall consult with each applicable agency and the advisory committee before admitting an applicant into the regulatory sandbox.
- b) The consultation with each applicable agency and the consultation with the advisory committee may include seeking information about whether:
 - i) the applicable agency has previously issued a license or other authorization to the applicant; and
 - ii) the applicable agency has previously investigated, sanctioned, or pursued legal action against the applicant.
- 12) In reviewing an application under this section, the regulatory relief office and applicable agency 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.
- 13) In reviewing an application under this section, the regulatory relief office shall consider whether:
- a) the applicant's plan will adequately protect consumers from potential harm identified by an applicable agency in the applicable agency's written report;
 - b) the risk of harm to consumers is outweighed by the potential benefits to consumers from the applicant's participation in the regulatory sandbox; and

- c) certain state laws or regulations that regulate an offering should not be waived or suspended even if the applicant is approved as a sandbox participant, including applicable antifraud or disclosure provisions.
- 14) (a) An applicant becomes a sandbox participant if the regulatory relief office approves the application for the regulatory sandbox and enters into a written agreement with the applicant describing the specific laws and regulations that are waived or suspended as part of participation in the regulatory sandbox.
- b) Notwithstanding any other provision of this chapter, the regulatory relief office may not enter into a written agreement with an applicant that waives or suspends a tax, fee, or charge that is administered by the State Tax Commission or that is described in (INSERT RELEVANT STATE CODE).
- 15) a) The director may deny at the director's sole discretion any application submitted under this section for any reason, including if the director determines that the preponderance of evidence demonstrates that suspending or waiving enforcement of a law or regulation would cause a significant risk of harm to consumers or residents of the state.
- b) If the director denies an application submitted under this section, the regulatory relief office shall provide to the applicant a written description of the reasons for not allowing the applicant to be a sandbox participant.
 - c) The denial of an application submitted under this section is not subject to:
 - i) agency or judicial review; or
 - ii) the provisions of (INSERT RELEVANT STATE CODE FOR ADMINISTRATIVE PROCEDURES ACT).
- 16) The director shall deny an application for participation in the regulatory sandbox described by this section if:
- a) **OPTIONAL:** the director determines that the applicant should instead apply for the Regulatory Sandbox Program(s) created in (INSERT RELEVANT STATE CODE FOR EXISTING SANDBOX PROGRAMS);
 - b) the applicant or any person who seeks to participate with the applicant in demonstrating an offering has been convicted, entered a plea of nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance, for any crime involving significant theft, fraud, or dishonesty if the crime bears a significant relationship to the applicant's or other participant's ability to safely and competently participate in the regulatory sandbox program.
- 17) When an applicant is approved for participation in the regulatory sandbox, the director may provide notice of the approval to competitors of the applicant and to the public.

Section 7. Scope of the Regulatory Sandbox.

- 1) If the regulatory relief office approves an application under this part, the sandbox participant has 12 months after the day on which the application was approved to demonstrate the offering described in the sandbox participant's application.
- 2) An offering that is demonstrated within the regulatory sandbox is subject to the following:
 - a) each consumer shall be a resident of the state; and
 - b) no law or regulation may be waived or suspended if waiving or suspending the law or regulation would prevent a consumer from seeking restitution in the event that the consumer is harmed.
- 3) This part 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.
- 4) A sandbox participant is deemed to possess an appropriate license or other authorization under the laws of the state for the purposes of any provision of federal law requiring licensure or other authorization by the state.
- 5) Subject to Subsection (6):
 - a) during the demonstration period, a sandbox participant is not subject to the enforcement of state laws or regulations identified in the written agreement between the regulatory relief office and the sandbox participant described in (INSERT RELEVANT STATE CODE REFERENCING BILL (14));
 - b) a prosecutor may not file or pursue charges pertaining to a law or regulation identified in the written agreement between the regulatory relief office and the sandbox participant described in (INSERT RELEVANT STATE CODE REFERENCING BILL); that occurs during the demonstration period; and
 - c) a state agency may not file or pursue any punitive action against a sandbox participant, including a fine or license suspension or revocation, for the violation of a law or regulation that;
 - i) is identified as being waived or suspended in the written agreement between the regulatory relief office and the sandbox participant described in (INSERT RELEVANT STATE CODE REFERENCING BILL (14)); and
 - ii) occurs during the demonstration period.
- 6) Notwithstanding any other provision of this part, a sandbox participant does not have immunity related to any criminal offense committed during the sandbox participant's participation in the regulatory sandbox.
- 7) By written notice, the regulatory relief office may end a sandbox participant's participation in the regulatory sandbox at any time and for any reason,

including if the director determines that a sandbox participant is not operating in good faith to bring an innovative offering to market.

- 8) The regulatory relief office and the regulatory relief office's employees are not liable for any business losses or the recouping of application expenses or other expenses related to the regulatory sandbox, including for:
 - a) denying an applicant's application to participate in the regulatory sandbox for any reason; or
 - b) ending a sandbox participant's participation in the regulatory sandbox at any time and for any reason.

Section 8. Consumer Protection for Regulatory Sandbox.

- 1) Before demonstrating an offering 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 offering is authorized pursuant to the regulatory sandbox and, if applicable, that the sandbox participant does not have a license or other authorization to provide an offering under state laws that regulate offerings outside of the regulatory sandbox;
 - c) that the offering is undergoing testing and may not function as intended and may expose the consumer to certain risks as identified by the applicable agency's written report;
 - d) that the provider of the offering is not immune from civil liability for any losses or damages caused by the offering;
 - e) that the provider of the offering is not immune from criminal prosecution for violations of state law or regulations that are not suspended or waived as allowed by the regulatory sandbox;
 - f) that the offering is a temporary demonstration that may be discounted at the end of the demonstration period;
 - g) the expected end date of the demonstration period; and
 - h) that a consumer may contact the regulatory relief office and file a complaint regarding the offering being demonstrated and provide the regulatory relief 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 offering, a consumer shall acknowledge receipt of the disclosure before any transaction may be completed.
- 3) The regulatory relief office may require that a sandbox participant make additional disclosures to a consumer.

Section 9. Requirements for Exiting Regulatory Sandbox.

- 1) At least 30 days before the end of the 12-month regulatory sandbox demonstration period, a sandbox participant shall:
 - a) notify the regulatory relief office that the sandbox participant will exit the regulatory sandbox and discontinue the sandbox participant's demonstration after the day on which the 12-month demonstration period ends; or
 - b) seek an extension in accordance with (INSERT RELEVANT STATE CODE REFERENCING BILL).
- 2) Subject to Subsection (3), if the regulatory relief office does not receive notification as required by Subsection (1), the regulatory sandbox demonstration period ends at the end of the 12-month testing period.
- 3) If a demonstration includes an offering that requires ongoing duties, the sandbox participant may continue to do so but will be subject to enforcement of the laws or regulations that were waived or suspended as part of the regulatory sandbox.

Section 10. Extensions.

- 1) Not later than 30 days before the end of the 12-month regulatory sandbox demonstration period, a sandbox participant may request an extension of the regulatory sandbox demonstration period.
- 2) The regulatory relief office shall grant or deny a request for an extension in accordance with Subsection (1) by the end of the 12-month regulatory sandbox testing period.
- 3) The regulatory relief office may grant an extension in accordance with this section for not more than 12 months after the end of the regulatory sandbox demonstration period.

Section 11. Record Keeping and Reporting Requirements.

- 1) A sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an offering demonstrated in the regulatory sandbox.
- 2) If a sandbox participant ceases to provide an offering before the end of a demonstration period, the sandbox participant shall notify the regulatory relief office and each applicable agency and report on actions taken by the sandbox participant to ensure consumers have not been harmed as a result.

- 3) The regulatory relief office shall establish quarterly reporting requirements for a sandbox participant, including information about any consumer complaints.
- 4) The regulatory relief office may request records, documents, and data from a sandbox participant and, upon the regulatory relief office's request, the sandbox participant shall make such records, documents, and data available for inspection by the regulatory relief office.
- 5) (a) The sandbox participant shall notify the regulatory relief office and each applicable agency of any incidents that result in harm to the health, safety, or financial well-being of a consumer.
 - b) If a sandbox participant fails to notify the regulatory relief office and each applicable agency of any incidents as described in Subsection (5)(a), or the regulatory relief office or an applicable agency has evidence that significant harm to a consumer has occurred, the regulatory relief office may immediately remove the sandbox participant from the regulatory sandbox.
- 6) (a) No later than 30 days after the day on which a sandbox participant exits the regulatory sandbox, the sandbox participant shall submit a written report to the regulatory relief office and each applicable agency describing an overview of the sandbox participant's demonstration, including any:
 - i) incidents of harm to consumers;
 - ii) legal action filed against the participant as a result of the participant's demonstration; and
 - iii) complaints filed with an applicable agency as a result of the participant's demonstration.
 - b) No later than 30 days after the day on which an applicable agency receives the quarterly reporting described in Subsection (3) or a written report from a sandbox participant as described in Subsection (5)(a), the applicable agency shall provide a written report to the regulatory relief office on the demonstration that describes any statutory or regulatory reform the applicable agency recommends as a result of the demonstration.
- 7) The regulatory relief office may remove a sandbox participant from the regulatory sandbox at any time if the regulatory relief 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 law or regulation for which suspension or waiver has not been granted.

Section 12. Optional: Regulatory Relief Webpage.

- 1) The regulatory relief office shall create and maintain on (INSERT RELEVANT STATE DEVELOPMENT AGENCY) website a web page that invites residents and businesses in the state to make suggestions regarding laws and regulations that could be modified or eliminated to reduce the regulatory burden of residents and businesses in the state.
- 2) On at least a quarterly basis, the regulatory relief office shall compile the results of suggestions from the web page and provide a written report to the governor, the (INSERT RELEVANT STANDING COMMITTEE(S) / SUBCOMMITTEE(S)) that describes the most common suggestions.
- 3) In creating the report described in Subsection (2), the regulatory relief office and the advisory committee:
 - a) shall ensure that private information of residents and businesses that make suggestions on the web page is not made public; and
 - b) may evaluate the suggestions and provide analysis and suggestions regarding which state laws and regulations could be modified or eliminated to reduce the regulatory burden of residents and businesses in the state while still protecting consumers.

To learn more about this model language, please contact Rees Empey at rees@libertas.org