

Model Language: Industry-Targeted Regulatory Sandbox

Purpose:

This proposal modifies provisions related to the (insert relevant state agency) and allows businesses, under the observation of regulators, to trial new products, services, and business models while bypassing regulations unsuited for their innovative idea.

Text:

Section 1. Highlighted Provisions.

This bill:

- defines terms;
- creates an _____ regulatory sandbox program in the Department of _____,

which allows a participant 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;

- describes the application process and the conditions of participating in the program;
- describes the responsibilities of the Department of _____ in administering the program; and
- describes reporting requirements for participants in the program and for the Department of _____.

Section 2. Definitions.

1. “Applicable agency” means a department or agency of the state that by law regulates certain types of _____ - related business activity in the state and persons engaged in such _____ related business activity. This includes the issuance of licenses or any other types of authorization, which the department determines would otherwise regulate an _____ specific sandbox participant.
2. “Applicant” means an individual or entity that is applying to participate in the _____ specific regulatory sandbox.
3. “Consumer” means a person that purchases or otherwise enters into a transaction agreement to receive an innovative _____ specific product or service that is being tested by an _____ specific regulatory sandbox participant.
4. “Department” means the (INSERT RELEVANT DEPARTMENT) that is responsible for overseeing the _____ specific sandbox program (i.e. Insurance Department oversees Insurance Sandbox).

5. “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 department to have a comparable widespread offering in the state.
6. “Innovative _____ product or service” means an _____ product or _____ service that includes an innovation.
7. “_____ product or service” means an _____ product or service that requires state licensure, registration, or other authorization as regulated by state code, _____ code, including an _____ specific product or _____ service that includes a business model, delivery mechanism, or element that requires a license, registration, or other authorization to do an _____ specific business, act as an _____ producer or consultant.
8. “_____ Regulatory Sandbox “ means the _____ Regulatory Sandbox Program created by (INSERT RELEVANT STATE CODE), which allows a person to temporarily test an innovative _____ product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state.
9. “_____ sandbox participant” means a person whose application to participate in the _____ regulatory sandbox is approved in accordance with the provisions of this chapter.
10. “Test” means to provide an innovative _____ product or service in accordance with the provisions of this chapter.

Section 3. Application Process.

1. The Department of _____ creates the _____ Regulatory Sandbox program
2. In administering the _____ regulatory sandbox, the department:
 - a. Shall consult with each applicable agency;
 - b. Establish a program to enable a person to obtain limited access to the market in the state to test an innovative _____ product or service without obtaining a license or other authorization that might otherwise be required;
 - 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; and
 - d. May not approve participation in the _____ regulatory sandbox by an applicant or any other participant who has been convicted, entered a plea of nolo contendere, or

- e. Entered a plea of guilty or nolo contendere held in abeyance, for a serious crime:
 - i. Involving theft, fraud, or dishonesty; or
 - ii. That bears a substantial relationship to the applicant's or participant's ability to safely or competently participate in the _____ regulatory sandbox program.
3. An applicant for the _____ regulatory sandbox shall provide to the department an application in a form prescribed by the department that:
- a. Includes a nonrefundable application fee of \$_____.
 - b. Demonstrates the applicant is subject to the jurisdiction of the state.
 - c. Demonstrates the applicant has established a physical or virtual location that is adequately accessible to the department, from which testing will be developed and performed and where all required records, documents, and data will be maintained.
 - d. Contains relevant personal and contact information for the application, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the department;
 - e. Discloses criminal conviction of the applicant or other participating personnel, if any;
 - f. 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.
 - g. Contains a description of the innovative _____ product or service to be tested, including statements regarding the following:
 - i. How the innovative _____ product or service is subject to licensing or other authorization requirements outside of the _____ regulatory sandbox, including a specific list of all state laws, regulations, and licensing or other requirements that the applicant is seeking to have waived during the testing period.
 - 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 how the applicant will perform ongoing duties after the test; and

- vii. How the applicant will end the test and protect consumers if the test fails, including providing evidence of sufficient liability coverage and financial reserves to protect consumers and to protect against insolvency by the applicant; and
1. Provides any other required information as determined by the department.
 2. An applicant shall file a separate application for each innovative _____ product or service the applicant wants to test.
 3. An application is filed and before approving the application, the department may seek any additional information from the applicant that the department determines is necessary,
 4. Subject to subsection (7), not later than 90 days after the day on which a complete application is received by the department, the department shall inform the applicant as to whether the application is approved for entry into the _____ regulatory sandbox.
 5. The department and an applicant may mutually agree to extend the 90-day timeline as described in Subsection (6) for the department to determine whether an application is approved for entry into the _____ regulatory sandbox.
 6. (a) in reviewing an application under this section:
 - a. the department 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 licensed 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.

7. In reviewing an application under this section, the department shall consider whether a competitor to the applicant is or has been an _____ sandbox participant and weigh that as a factor in allowing the applicant to also become an _____ sandbox participant.
8. If the department and each applicable agency approve admitting an applicant into the _____ regulatory sandbox, an applicant may become an _____ sandbox participant.
9. The department may deny any application submitted under this section, for any reason, at the department's discretion.
10. If the department denies an application submitted under this section, the department shall provide to the applicant a written description of the reasons for the denial as a _____ sandbox participant.

Section 4. Test Period.

1. If the department approves an application under _____, the _____ sandbox participant has 12 months after the day on which the application was approved to test the innovative _____ product or service described in the _____ sandbox participant's application.
2. An _____ sandbox participant testing an innovative _____ product or service within the _____ regulatory sandbox is subject to the following:
 - a. Consumers shall be residents of the state;
 - b. The department may, on a case by case basis, specify the maximum number of consumers that may enter into an agreement with the _____ sandbox participant to use the innovative _____ product or service;
 - c. The department may, if applicable on a case by case basis, specify the maximum number of items for each item that may be offered by an _____ sandbox participant during the test of the innovative _____ product or service; and
 - d. If a sandbox participant is accepted into the program, the department shall notify other businesses in the industry that a waiver was granted to afford other companies the opportunity to apply for the same waiver if they so choose.

3. This section does not restrict an _____ sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.
4. An _____ 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.
5. An _____ sandbox participant that is testing and innovative _____ product or service is not subject to state laws, regulations, licensing requirements, or authorization requirements that were identified by the _____ sandbox participant's application and have been waived in writing by the department.
6. Notwithstanding any other provision of this chapter, an _____ sandbox participant does not have immunity related to any criminal offense committed during the _____ sandbox participant's in the _____ regulatory sandbox
7. By written notice, the department may end an _____ sandbox participant's participation in the regulatory sandbox at any time and for any reason, including if, the department determines an _____ sandbox participant is not operating in good faith to bring an innovative _____ product to market.
8. The department and the department's employees are not liable for any business losses or the recouping of application 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 an _____ sandbox participant's participation in the _____ regulatory sandbox at any time and for any reason.
9. No guaranty association in the state may be held liable for business losses or liabilities incurred as a result of activities undertaken by a participant in the _____ sandbox.

Section 5. Consumer Protection.

1. Before providing an innovative _____ product or service to a consumer, an _____ 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 an _____ product or

- service under state laws that regulate _____ products outside the _____ 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 is not immune from civil liability for any losses or damages caused by the innovative _____ product or service.
 - e. That the state does not endorse or recommend the innovative _____ product or service;
 - f. That the innovative _____ product or service is a temporary test that may be discontinued at the end of the testing period;
 - g. The expected end date of the testing period; and
 - h. That a consumer may contact the department to file a complaint regarding the innovative _____ product or service being tested and provide the department'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 department may require that an _____ sandbox participant make additional disclosure to a consumer.

Section 6. Exiting the _____ Regulatory Sandbox.

1. At least 30 days before the end of the 12-month _____ regulatory sandbox testing period, an _____ sandbox participant shall:
 - a. Notify the department 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 12-month testing period ends; or
 - b. Seek an extension in accordance with the section below.
2. Subject to Subsection (3), if the department does not receive notification as required by Subsection (1), the _____ regulatory sandbox testing period ends at the end of the 12-month testing period and the _____ sandbox participant shall immediately stop offering each innovative _____ product or service being tested.
3. If a test includes offering an innovative _____ product or service that requires ongoing duties, the _____ sandbox participant shall

continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the _____ product or service on which the _____ sandbox participant exits the _____ regulatory sandbox.

Section 7. Extension.

1. Not later than 30 days before the end of the 12-month regulatory _____ sandbox testing period, an _____ sandbox participant may request an extension of the _____ regulatory sandbox testing period for the purpose of obtaining a license or other authorization.
2. The department 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 department may grant an extension in accordance with this section for not more than 12 months after the end of the _____ regulatory sandbox testing period.
4. An _____ sandbox participant that obtains an extension in accordance with this section shall provide the department 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 for licensure or other authorization, rejected applications, or issued licenses or other authorizations.

Section 8. Record Keeping.

1. An _____ 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 department and report on actions taken by the _____ sandbox participant to ensure consumers have not been harmed as a result of the failure.
3. The department shall establish quarterly reporting requirements for an _____ sandbox participant, including information about any customer complaints.
4. The department may request records, documents, and data from an _____ sandbox participant and, upon the department's request, an _____ sandbox participant shall make such records, documents, and data available for inspection by the department.

5. If the department determines that an _____ sandbox participant has engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation of chapter or that constitutes a violation of state or federal criminal law, the department may remove an _____ sandbox participant from the _____ regulatory sandbox.
6. By October 1, the department shall provide an annual written report to the Business and Labor Interim Committee that provides information regarding each _____ sandbox participant and that provides recommendations regarding the effectiveness of the _____ Regulatory Sandbox Program.

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