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S.B. 249
134th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Wilson

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SUMMARY

- Requires the Superintendent of Financial Institutions to establish a regulatory sandbox program to enable a person to test novel financial products and services in Ohio on a temporary basis without obtaining a license or authorization that would otherwise be required.
- Authorizes novel financial products and services to be tested in the regulatory sandbox for up to two years, with a possible one-year extension if the sandbox participant is seeking licensure.
- Requires the Superintendent to consult with all applicable agencies, the agencies that would regulate the sandbox participant in Ohio if the person were not a sandbox participant, before admitting the participant into the sandbox.
- Requires the Superintendent and the sandbox participant to enter into an agreement regarding the scope of the participant's test, including any restrictions or limits on testing such as the number of consumers permitted to use the novel financial product or service and any dollar limits.
- Requires the sandbox participant to provide a consumer certain disclosures prior to providing a novel financial product or service to the consumer.
- Prohibits a sandbox participant to charge an interest rate on a loan, if it would otherwise be subject to Ohio consumer lending laws, that is greater than what is currently permitted under Ohio law.
- Requires the sandbox participant to retain records, documents, and data produced in the ordinary course of business regarding a novel financial product or service tested in the regulatory sandbox.
- Authorizes the Superintendent to enter into agreements with state, federal, or foreign regulators that allow sandbox participants to operate in other jurisdictions and allow

entities authorized to operate in other jurisdictions to be recognized as sandbox participants in Ohio.

- Requires the Superintendent to publish and make publicly available a report every two years on the performance of sandbox participants and their novel financial products and services.

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DETAILED ANALYSIS

General overview

The bill requires the Superintendent of Financial Institutions to establish a regulatory sandbox program in consultation with applicable agencies (see “**Applicable agencies**” below) to enable a person to obtain limited access to the Ohio market to test novel financial products or services without obtaining any other license or authorization that otherwise would be required under the law.¹ Applicable agencies are those that would regulate the sandbox

¹ R.C. 1355.02.

participant in Ohio if the person were not a sandbox participant. The bill applies only to novel financial products or services.

A “novel financial product or service” is defined in the bill as a financial product or service that would otherwise be regulated under various specified financial laws in Ohio and that make use of or incorporates new or emerging technology, or reimagines uses of existing technologies, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Superintendent to have a comparable widespread offering in Ohio.² The bill does not apply to any financial product or service that require licensure under the Ohio Securities Act, or that includes a business model, delivery mechanism, or element that requires a license under the Ohio Securities Act. These products or services are excluded from being tested in the regulatory sandbox under the bill.³ In general, participants under the regulatory sandbox created under the bill would not be required to be Ohio residents, but would be subject to Ohio’s jurisdiction, and would have 24 months to test the novel product or service. The bill requires participants to comply with consumer protections, such as providing disclosures to the consumer prior to testing the financial product or service.

Application

Requirement to apply

Under the bill, any person that does not have a license or other authorization or that does have a license or authorization but the novel product falls outside its scope, may apply to enter the regulatory sandbox to test a novel financial product. If a person has a license or authorization, the person may continue that business, but must file an application with the Superintendent to participate in the regulatory sandbox for the novel financial product. The bill’s provisions are restricted to the person participating in the regulatory sandbox and the corresponding novel financial product or service that is being tested in the sandbox. A person must file a separate application for each novel financial product or service the person seeks to test.⁴

Application contents

The Superintendent must develop and make publicly available the application form that requires the applicant to provide all of the following:

- Evidence that the applicant is subject to the Superintendent’s jurisdiction, which may be demonstrated through incorporation, residency, an agreement with the Superintendent by which the sandbox participant agrees to be subject to Ohio laws and courts relating

² R.C. 1355.01.

³ R.C. 1355.01(C) and (D).

⁴ R.C. 1355.03(A), 1355.05(D), and (E).

to any action arising out of the applicant's testing a novel financial product or service in the regulatory sandbox, or otherwise;

- Evidence that the applicant has established a location in the U.S., whether physical or virtual, that is adequately accessible to the Superintendent from which testing will be developed and performed and where all required records, documents, and data will be maintained;
- Payment of an application fee established by the Superintendent.

In addition, the application may require the applicant to provide relevant personal and contact information, disclosure of any criminal convictions of the applicant and key personnel, and a description of the novel financial product or service desired to be tested, including statements regarding all of the following:

- How a novel financial product or service is subject to regulation outside of the regulatory sandbox;
- How the novel financial product or service would benefit consumers;
- How the novel financial product or service is different from other products or services available in Ohio;
- What risks will confront consumers that use or purchase the novel financial product or service;
- How entering the regulatory sandbox would enable a successful test of the novel financial product or service;
- A description of the proposed testing plan, including estimated time periods for market entry, market exit, and the pursuit of necessary licensure or authorization;
- How the applicant would wind down the test and protect consumers if the test fails.

As part of its application, an applicant may request that in testing a novel financial product or service, the applicant be exempt from the operation of any state law other than the bill's Regulatory Sandbox Law, including the Consumer Sales Practices Act (CSPA). In requesting an exemption, an applicant must demonstrate why compliance would burden the applicant or hinder the test. The Superintendent may grant or deny the request at the Superintendent's discretion.⁵

Review, approval, and denial of application

Under the bill, the Superintendent will review each completed application on a rolling basis, and approve or deny the application within 90 days after it is submitted. For any denial, the Superintendent must inform the applicant of all reasons for the denial. A denial is not an

⁵ R.C. 1355.03(B).

appealable action for the purposes of the appeal provisions of the Ohio Administrative Procedure Act.

But, the Superintendent is not required to decide within the 90-day period if the Superintendent notifies the applicant within the 90-day period that additional information is required. If additional information is required, the applicant has 30 days to file the additional information with the Superintendent, and the Superintendent has an additional 90 days from receipt of the additional information to approve or deny the application.

The Superintendent may only approve an application if all of the following conditions are met:

- The applicant has provided to the Superintendent all of the information required by the application form and any additional information requested by the Superintendent.
- The applicant has paid the application fee.
- The Superintendent has consulted with all applicable agencies.
- The application contains sufficient information to demonstrate that the applicant has an adequate understanding of the novel financial product or service and a sufficient plan to test, monitor, and assess the novel financial product or service while ensuring consumers are protected from a test's failure.
- If the novel financial product or service is a type of loan that would otherwise be subject to the Ohio Small Loan Act, Ohio Short-Term Loan Act, Ohio General Loan Law, Ohio Consumer Installment Loan Act, or the Insurance Premium Finance Company Law, the applicant has proven that the consumer will not be charged interest and fees in connection with the loan that exceed the maximum otherwise permitted for that type of loan.
- The applicant has met any other condition imposed by the Superintendent.

Under the bill, the Superintendent is permitted to consider the number of an applicant's competitors already in the sandbox as a factor in approving the application for the purpose of maintaining an appropriate level of competition within the sandbox.⁶ The bill gives the Superintendent the sole authority to make the final decision whether to admit a person into the regulatory sandbox. If the Superintendent approves an application, the applicant is considered a sandbox participant and the Superintendent must issue that person a license number.⁷

The Superintendent may also require applicants and sandbox participants utilize a multistate licensing system in complying with the bill. The bill expresses the General Assembly's intent that a sandbox participant is deemed to possess an appropriate license under Ohio law

⁶ R.C. 1355.03(C); R.C. 119.12, not in the bill.

⁷ R.C. 1355.03(D) and 1355.05(A).

for purposes of any provision of federal law requiring state licensure or authorization such as the federal prohibition on unlicensed money transmitting.⁸

Applicable agencies

The Superintendent is required to consult with all applicable agencies before admitting a person into the regulatory sandbox. An applicable agency is a state department or agency that is authorized to regulate certain types of business activity in Ohio and that the Superintendent determines the department or agency would regulate a sandbox participant if the person were not a sandbox participant. The Superintendent's consultation with applicable agencies may include seeking information about whether the applicable agency previously has either issued a license or other authorization to the applicant or investigated, sanctioned, or pursued legal action against the applicant. The consultation also may include seeking information about whether the applicant could obtain a license or other authorization from an applicable agency after exiting the regulatory sandbox.⁹

Sandbox operation

General

The Superintendent and the sandbox participant must enter into an agreement regarding the scope of the participant's test including any restrictions or limits on testing such as the number of consumers permitted to use the novel financial product or service and any dollar limits. The sandbox participant may test the novel financial product or service for a period of 24 months following the date of approval, unless the participant and Superintendent agree to a shorter time period. And a sandbox participant may opt out of the sandbox prior to the expiration of the testing period. If a sandbox participant opts out early, it must comply with the requirements described in "**Expiration of testing period**" below.¹⁰

Expiration of testing period

The bill requires a sandbox participant to do either of the following at least 30 days before the end of the testing period:

- Notify the Superintendent that the sandbox participant will exit the regulatory sandbox, wind down its test, and cease offering the novel financial product or service in the regulatory sandbox within 60 days of the end of the testing period;
- Seek an extension pursuant to "**Extension of testing period**" below to pursue a license or other authorization required by law.

If the Superintendent does not receive the above notification, the regulatory sandbox testing period ends at the expiration of the time period designated by the Superintendent

⁸ R.C. 1355.05(G) and (H) and 18 United States Code 1960.

⁹ R.C. 1355.01 and 1355.04(A).

¹⁰ R.C. 1355.05(B) and (C).

under “**General**” above (24 months or shorter by agreement), and the sandbox participant must immediately cease offering novel financial products or services.

If a test includes offering products or services that require ongoing duties, such as servicing a loan, the sandbox participant must continue to fulfill those duties or arrange for another person to fulfill those duties after the date the sandbox participant exits the regulatory sandbox.¹¹

Extension of testing period

The bill allows a sandbox participant to request a testing period extension for the purpose of pursuing a license or other authorization required by law. The Superintendent may grant or deny the request by the end of the testing period, and the extension may be for up to one year following the end of the initial testing period.

A sandbox participant that obtains an extension must provide the Superintendent a written report every three months that gives an update on the sandbox participant’s efforts to obtain a license or other authorization, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorizations.¹²

Consumer protections

Disclosures

Prior to providing a novel financial product or service to a consumer, a sandbox participant must disclose, in a clear and conspicuous form, to the consumer all of the following, and must, for internet- or application-based products or services, require consumers to acknowledge receipt of following before completion of a transaction:

- The sandbox participant’s name, contact information, and license number;
- That the novel financial 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 generally provide products or services under state laws that regulate a financial product or service that is outside the regulatory sandbox;
- That the state of Ohio does not endorse or recommend the novel financial product or service;
- That the novel financial product or service is a temporary test that may be discontinued at the end of the testing period, along with the expected end date of the testing period;
- That consumers may contact the Superintendent to file complaints regarding the novel financial product or service being tested and provide the Superintendent’s telephone number and website address where complaints may be filed.

¹¹ R.C. 1355.07.

¹² R.C. 1355.08.

The Superintendent may require a sandbox participant to make additional disclosures to consumers. When the Superintendent approves an application for entry into the regulatory sandbox, the Superintendent must notify the sandbox participant of any additional required disclosures.¹³

Ohio Consumer Sales Practices Act (CSPA)

The Ohio Consumer Sales Practices Act (CSPA) is a set of laws that aim to protect consumers from sales practices that are deceptive, unfair, or unconscionable. The law outlines the legal remedies available to consumers and the Attorney General when a business violates the CSPA. Under the bill sandbox participants are subject to the CSPA, unless during the application process, the applicant asks the Superintendent to be exempt from the CSPA and the Superintendent agrees. However, under the bill, neither a new motor vehicle dealer nor any other third party who assists a consumer in financing a good or service with a novel financial product or service offered by a sandbox participant is subject to the CSPA with respect to such assistance.¹⁴

Interest rate

Under the bill, if a novel financial product or service is a type of loan that would otherwise be subject to the Ohio Small Loan Act, Ohio Short-Term Loan Act, Ohio General Loan Law, Ohio Consumer Installment Loan Act, or the Insurance Premium Finance Company Law, the sandbox participant offering that product or service is prohibited from charging interest and fees in connection with the loan that exceed the maximum otherwise permitted for that type of loan under those laws. In other words, a sandbox participant cannot charge an interest rate on a loan that is more than what is currently permitted under the various consumer lending laws in Ohio.

Superintendent's powers

The bill gives the Superintendent discretion to determine if certain state laws that regulate a financial product or service will apply to a sandbox participant. If the Superintendent makes this determination and approves an application for entry into the regulatory sandbox, the Superintendent must notify the sandbox participant of the specific state regulatory laws that will apply to the sandbox participant.¹⁵

If the Superintendent has reasonable cause to believe 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 the bill, that constitutes an unfair act or practice or an unconscionable act or practice under the CSPA, or that constitutes a violation of a state or federal criminal law, the Superintendent may revoke the person's license to test one or more novel financial products or

¹³ R.C. 1355.06.

¹⁴ R.C. 1355.11(F).

¹⁵ R.C. 1355.05(F) and 1355.11 (E) and (F).

services or order the sandbox participant to immediately discontinue a novel financial product or service in the regulatory sandbox. If, following revocation or discontinuance, the person has any ongoing duties with respect to a novel financial product or service, the Superintendent must, in the order, provide for the fulfillment of those duties. A revocation of a license or discontinuance of a novel financial product or service is not an appealable action for the purposes of the appeal provisions of the Ohio Administrative Procedure Act.¹⁶

It seems that the bill may allow the Superintendent to maintain the authority to bring an action under the CSPA under this provision of the bill, even if the participant and the Superintendent agree that participant is generally exempt from the CSPA during the application process.

Recordkeeping, test failure, security breach

The bill requires a sandbox participant to retain records, documents, and data produced in the ordinary course of business regarding a novel financial product or service tested in the regulatory sandbox. Upon the Superintendent's request, a sandbox participant must make such records, documents, and data available for inspection. The Superintendent also may establish periodic reporting requirements for sandbox participants.

If a novel financial product or service fails before the end of the testing period, the sandbox participant must notify the Superintendent and report on actions taken to ensure consumers have not been harmed as a result of the failure of the novel financial product or service.

A sandbox participant is subject to the continuing requirement that any person that owns or licenses computerized data that includes personal information disclose, to each affected person, any security breach that compromises the security or confidentiality of that information and reasonably is believed will cause a material risk of identity theft or fraud. The sandbox participant must also notify the Superintendent of each such breach.¹⁷

Confidentiality and disclosure of information

Except for the name of a sandbox participant and overview of a participant's novel financial product or service, records that are submitted to or obtained by the Superintendent or an applicable agency pursuant to the bill are not public records for the purposes of the Ohio Public Records Act and must not be disclosed except as described below. The name of a sandbox participant and an overview of a sandbox participant's novel financial product or service are public records and may be disclosed.

The Superintendent or applicable agency may disclose records and information that are submitted or obtained pursuant to the bill to any of the following:

- State and federal agencies;

¹⁶ R.C. 1355.11(C) and (D).

¹⁷ R.C. 1355.09 and 1355.11(A) and (B); R.C. 1349.19, not in the bill.

- Representatives of foreign countries that have regulatory or supervisory authority over the activities of the sandbox participant;
- A federal, state, or county grand jury in response to a lawful subpoena;
- The Auditor of State for the purpose of conducting an audit authorized by law.

Disclosure of a complaint or the results of an examination, inquiry, or investigation of a sandbox participant does not make that information a public record, and the Superintendent or appropriate agency must not disclose that information unless otherwise permitted to do so by state law.¹⁸

If a sandbox participant or the participant's holding company obtains information as a result of an examination, inquiry, or investigation, the participant or participant's holding company must not disclose that information to the general public unless the disclosure is required by law. A sandbox participant or the participant's holding company must not disclose, use, or reference in any form comments, conclusions, or results of an examination, inquiry, or investigation in any type of communication to a consumer or potential consumer. A violation is an unconscionable act or practice for the purposes of the CSPA. Under continuing law, unconscionable acts under the CSPA are subject to investigation and lawsuits brought by the Attorney General. If a supplier is found to have violated the bill's requirements, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice. Suppliers that fail to comply with such an order could be subject to a penalty of up to \$5,000 per day. Furthermore, suppliers that commit an action that has already been determined to be an unconscionable act, either through adopted rule or court decision, are subject to a penalty of up to \$25,000. Lastly, the CSPA allows for consumers to bring a private cause of action, i.e., a consumer can directly sue the supplier.¹⁹

The Superintendent and any applicable agency consulted by the Superintendent are not liable for the disclosure of records, information, or data received or obtained pursuant to the bill.²⁰

The above provisions are not to be construed to prohibit the disclosure of information that is admissible in evidence in a civil or criminal proceeding brought by a state or federal law enforcement agency to enforce or prosecute civil or criminal violations of law.²¹

Coordination with other jurisdictions

Under the bill, the Superintendent may enter into agreements with state, federal, or foreign regulators that allow sandbox participants to operate in other jurisdictions and allow

¹⁸ R.C. 1355.10(A), (B), and (D)(1).

¹⁹ R.C. 1355.10(D)(2); R.C. 1345.06, 1345.07, and 1345.09, not in the bill.

²⁰ R.C. 1355.10(C).

²¹ R.C. 1355.10(E).

entities authorized to operate in other jurisdictions to be recognized as sandbox participants in Ohio.

The Superintendent may work with any other state or federal agency to implement the regulatory sandbox program, including InnovateOhio and the Office of the Attorney General.²²

Biennial report

Lastly, the bill requires the Superintendent to publish and make publicly available a report every two years on the performance of sandbox participants and their novel financial products and services. The report must include an assessment of how the ability of sandbox participants to operate without being subject to regulations to which the sandbox participants otherwise would have been subject affected the development and performance of the novel financial products and services. The report must not disclose any proprietary information nor any information the disclosure of which is prohibited under “**Confidentiality and disclosure of information**” above.²³

HISTORY

| Action | Date |
|--|----------|
| Introduced | 10-05-21 |
| Reported, S. Financial Institutions & Technology | 12-15-21 |
| Passed Senate (33-0) | 03-02-22 |

ANSB0249PS-134/ts

²² R.C. 1355.11(G) and (H).

²³ R.C. 1355.11(I).