

Utah Model Regulatory Sandbox

UTAH REGULATORY RELIEF ACT

2020 SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Senator Dan Hemmert

LONG TITLE

General Description:

This bill modifies provisions related to the Governor's Office of Economic Development and creates the General Regulatory Sandbox Program.

Highlighted Provisions:

This bill:

- defines terms;
- creates the Utah Office of Regulatory Relief within the Governor's Office of Economic Development
- creates a regulatory sandbox program in the Office of Regulatory Relief, which allows a participant to temporarily demonstrate offerings on a limited basis without otherwise being licensed or authorized to act under the laws of the state;
- describes who may participate in the program;
- describes how the Office of Regulatory Relief shall administer the program; and
- describes reporting requirements.

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

Section 1. Section **63N-15-101** is enacted to read:

CHAPTER 15. Utah Office of Regulatory Relief

63N-15-101. Title.

This chapter is known as the "Utah Office of Regulatory Relief."

Section 2. Section **63N-15-102** is enacted to read:

63N-15-102. Definitions.

As used in this chapter:

- (1) "Applicable agency" means a department or agency of the state that by law regulates a business activity 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 a person that applies to participate in the regulatory sandbox.
- (3) "Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an offering pursuant to a demonstration by a regulatory sandbox participant.
- (4) "Director" means the director of the Utah Office of Regulatory Relief as described in this chapter.
- (5) "Demonstration" or "demonstrate" means to provide an offering in accordance with the provisions of this chapter.

- (6) "Initial report" means the report provided by the applicable agency to the director in accordance with section 63N-15-202(9)(a).
- (7) "Offering" means a product, production method, or service.
- (8) "Office of Regulatory Relief" and "Office" mean the Utah Office of Regulatory Relief created in Section 63N-15-103.
- (9) "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.
- (10) "Production" means one or more methods of obtaining goods, including growing, raising, mining, fabricating, harvesting, fishing, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.
- (11) "Regulatory sandbox" means the General Regulatory Sandbox Program created by Section 63N-15-202, which allows a person to temporarily demonstrate an offering under a suspension of enforcement of a law or regulation.
- (12) "Sandbox participant" means a person whose application to participate in the regulatory sandbox is approved in accordance with the provisions of this chapter.
- (13) "Service" means any duty or labor performed for another person.

Section 3. Section **63N-15-103** is enacted to read:

63N-15-103. Creation of Office of Regulatory Relief [and appointment of director] – Responsibility of office of regulatory relief. [Note: Method of appointing a Director to be determined]

- (1) There is created within the Governor's Office of Economic Development the Utah Office of Regulatory Relief.
- (2) The Office shall:
 - (a) coordinate Office policy and management among state and federal agencies and local government entities;
 - (b) act as a liaison between private businesses and their applicable state regulatory jurisdictions to identify for temporary suspension a law that may be problematic for the business' ability to adapt to changing market circumstances or to innovate in ways not contemplated or allowed by the law;
 - (c) perform a "Barrier to Entry" study of regulations and laws that may inhibit the creation and success of new companies or industries;
 - (d) create a framework to analyze the risk level of consumer activities and the appropriate response of laws to protect health, safety, and financial well-being of consumers; and
 - (e) formulate a proposal for potential reciprocity agreements between states that have or wish to use similar regulatory sandbox programs as set forth in this chapter, Section 13-55-103, or Section 31A-47-101.
- (3) For purposes of administering this part, the Office may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 4. Section **63N-15-104** is enacted to read:

63N-15-104. Duties of director.

The director shall:

- (1) ensure that the responsibilities of the Office outlined in this chapter are fulfilled;
- (2) organize and provide administrative oversight to Office staff;

- (3) create an advisory committee, to evaluate applications and offer recommendations to the director, which shall be composed of seven volunteer business experts from across various industries and no more than two representatives from state regulatory agencies; and
- (4) create a process to consider applications made under this chapter.

Section 5. Section **63N-15-105** is enacted to read:

63N-15-105. Annual report.

The director shall include in the annual written report described in Section 63N-1-301 a report on the activities of the Office, including:

- (1) any proactive assessment of existing laws across industries that the director believes are excessive or unwarranted in light of their risk level pursuant to the framework analysis in Subsection 63N-15-103(1)(d);
- (2) a status update of the participants currently in the regulatory sandbox, and which industries the participants represent;
- (3) anticipated or actual cost savings that companies were able to experience; and
- (4) other benefits to consumers and the Utah economy.

Section 1. Section **63N-15-201** is enacted to read:

63N-15-201. Title.

This part is known as the "General Regulatory Sandbox Program."

Section 2. Section **63N-15-202** is enacted to read:

63N-15-202. General Regulatory Sandbox Program -- Application requirements.

- (1) There is created in the Office the General 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 legal protections and limited access to the market in the state to demonstrate an 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 Utah businesses about existing or potential proposals for the regulatory sandbox.
- (3)
 - (a) An applicant for the regulatory sandbox may contact the Office for a consultation regarding the regulatory sandbox prior to submission of an application.
 - (b) The Office shall provide legal information and assistance to the applicant in preparing an application for submission.
- (4) An applicant for the regulatory sandbox shall provide to the Office an application in a form prescribed by the 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 demonstration 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;
 - (e) contains a description of the 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) how the offering would benefit consumers;
 - (iii) how the offering is different from other offerings available in the state;
 - (iv) what risks might exist for consumers who use or purchase the offering;
 - (v) how participating in the regulatory sandbox would enable a successful demonstration of the offering;
 - (vi) a description of the proposed demonstration plan, including estimated time periods for beginning and ending the demonstration;
 - (vii) recognition that the applicant will be subject to all laws and regulations pertaining to the applicant's offering after conclusion of the demonstration; and
 - (viii) how the applicant will end the demonstration and protect consumers if the demonstration fails;
 - (f) lists which government agency, if any, the applicant knows regulates the applicant's business; and
 - (g) provides any other required information as determined by the Office.
- (5) The Office may collect an application fee from an applicant that is set in accordance with [Section 63J-1-504](#).
- (6) An applicant shall file a separate application for each offering that the applicant wishes to demonstrate.
- (7) After an application is filed, the Office may seek additional information from the applicant that the Office determines is necessary.
- (8) No later than 5 business days after the day on which a complete application is received by the Office, the Office shall:
- (a) review the application and refer the application to a relevant 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 any regulatory agency to which the application has been referred for review.
- (9)
- (a) No later than 25 business days after the day on which an applicable agency receives a complete application for review, the applicable agency shall deliver a written report to the director of its findings.
 - (b) The report shall:
 - (i) describe any identifiable, likely, and significant harm to the health, safety, and financial well-being of Utah consumers that the relevant law protects against; and
 - (ii) make a recommendation to the Office that the applicant either be admitted or denied entrance into the regulatory sandbox.
 - (c) The applicable agency may provide notice to the director of an extension of 5 business days to deliver the initial report, which shall be automatically granted. Only one extension shall be permitted per application.

- (d) If the applicable agency recommends an applicant under this section be denied entrance into the regulatory sandbox, the applicable agency shall provide to the Office a written description of the reasons for the denial recommendation and why a temporary suspension would significantly and irreparably harm consumers. The description shall include:
 - (i) the type of potential harm Utahns could face as a result of temporary suspension and its severity;
 - (ii) the probability of such a harm occurring; and
 - (iii) the permanence of the harm.
- (e) If the agency believes that the consumer's health, safety, and financial well-being can be protected through less restrictive means than the existing law or regulation, then the applicable agency shall articulate how that can be achieved.
- (f) Failure to deliver the report shall be treated by the director as a lack of objection to the temporary suspension of the applicable law under this chapter.

(10)

- (a) Upon receiving the initial report, the director shall provide the initial report to the advisory committee.
- (b) The director may call the advisory committee to meet as needed, but no less than once per quarter if applications are available for review. A majority of the advisory committee members must be in attendance in order to provide analysis and recommendations to the director.
- (c) Upon receiving the initial report, the advisory committee shall provide to the director their analysis and recommendation as to whether or not the applicant should be admitted as a sandbox participant under this part.
- (d) The advisory committee shall use the same criteria as the applicable agency under this section in their evaluation of each application and their recommendation to the director.

(11)

- (a) In reviewing an application and the applicable agency's initial report, the Office shall consult with each applicable agency and the advisory committee before admitting an applicant into the regulatory sandbox.
- (b) The consultation with an 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;
 - (ii) the applicable agency has previously investigated, sanctioned, or pursued legal action against the applicant;
 - (iii) whether certain laws should not be suspended even if the applicant is accepted into the regulatory sandbox.

(12) In reviewing an application under this section, the 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) An applicant becomes a sandbox participant if the Office approves the application for the regulatory sandbox.

(14)

- (a) The director may deny any application submitted under this section, in the director's sole discretion, if the director determines that there is clear and convincing evidence that suspending enforcement of a law would cause significant and irreparable harm to consumers.

- (b) If the director 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.
- (15) The regulatory sandbox shall not apply to any innovative product or service as defined in Section 13-55-102(8) or any innovative insurance product or service as defined in Section 31A-47-102(7).
- (16)
 - (a) A government agency that issues a cease and desist letter, citation, or other punitive action regarding commercial activity shall provide the person involved in the commercial activity with information for contacting the Office to request a suspension through the regulatory sandbox program.
 - (b) The agency in Subsection (16)(a) shall also notify the Office of the cease and desist letter, citation, or other punitive action.

Section 3. Section **63N-15-203** is enacted to read:

63N-15-203. Scope of the regulatory sandbox.

- (1) If the Office approves an application under section 63N-15-202:
 - (a) the Office shall provide to the sandbox participant the description in the initial report prepared in accordance with section 63N-15-202(9)(b)(i);
 - (b) the Office shall articulate specific laws or regulations to which the sandbox participant will not be subject during the demonstration; and
 - (c) 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; provided, however, if the sandbox participant submits an application following an alleged violation of law, the 12-month demonstration period may begin retroactively on the date of such cease and desist letter or the underlying alleged violation of law.
- (2) An offering that is demonstrated within the regulatory sandbox is subject to the following:
 - (a) consumers shall be residents of the state;
 - (b) a participant may not have been convicted, entered a plea of no contendere, entered a plea of guilty or nolo contendere held in abeyance, for any crime involving significant theft, fraud, or dishonesty; or that bears a significant relationship to the applicant or participant's ability to safely or competently participate in the regulatory sandbox; and
 - (c) a law cannot be suspended that would prevent a consumer from seeking restoration in the event the consumer has been 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 under the laws of the state for the purposes of any provision of federal law requiring state licensure or authorization.
- (5)
 - (a) Except as otherwise provided in Subsections (6) and (7), a sandbox participant is not subject to enforcement of state laws or regulations identified in the director's decision.
 - (b) A prosecutor may not file or pursue charges pertaining to a law or regulation identified in Subsection (5)(a) against an applicant that occurred during the demonstration period.
 - (c) A state agency may not file or pursue any punitive action, including a fine or license suspension or revocation, pertaining to a law or regulation identified in Subsection (5)(a) against an applicant that occurred during the demonstration period.
- (6)

- (a) In reviewing whether an application will be approved, and in consultation with the applicant, the director shall consider whether:
 - (i) an applicant's plan adequately protects consumers from potential harm identified by the applicable agency in the initial report; and
 - (ii) the benefits to consumers of not suspending the law or regulation outweigh the offering's potential benefits to consumers.
- (b) If the director determines that certain state laws that regulate an offering apply to a sandbox participant, the Office shall notify the sandbox participant of the specific regulatory provisions that apply to the sandbox participant.
- (7) Subject to Subsection (5), a sandbox participant does not have immunity related to any criminal or civil offense committed during the sandbox participant's demonstration.
- (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 director determines a sandbox participant is not operating in good faith to bring an offering to market.

Section 4. Section **63N-15-204** is enacted to read:

63N-15-204. Consumer protection for regulatory sandbox.

- (1) Before demonstrating an offering to a consumer that is protected by a regulatory sandbox, 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 the regulatory sandbox;
 - (c) that the offering is undergoing testing and may not function as intended and may expose the customer to certain risks as identified by the applicable agency's initial review;
 - (d) that the provider of the offering is not immune from potential civil liability caused by the offering;
 - (e) that the provider of the offering is not immune from criminal prosecution for violations of Utah law or regulations not suspended pursuant to the demonstration;
 - (f) that the state does not endorse or recommend the offering;
 - (g) that the offering is a temporary demonstration that may be discontinued at the end of the demonstration period;
 - (h) the expected end date of the demonstration period; and
 - (i) that a consumer may contact the Office to file a complaint regarding the offering being demonstrated 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 offering, a consumer shall acknowledge receipt of the disclosure before a transaction may be completed.
- (3) The Office may, by administrative rule, require that a sandbox participant make additional disclosures to a consumer.
- (4) The director shall make reasonable efforts to notify a sandbox participant's competitors when a law is suspended under this section so that other companies subject to such laws may also submit an application to the Office to participate in the regulatory sandbox.

Section 5. Section **63N-15-205** is enacted to read:

63N-15-205. 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 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 Section 63N-15-206.
- (2) Subject to Subsection (3), if the Office does not receive notification as required by Subsection (1), the regulatory sandbox demonstration period shall end at the conclusion of the 12-month demonstration period.
- (3) If a demonstration includes offering an offering that requires ongoing duties, such as servicing an offering, the sandbox participant may continue to do so but will be subject to enforcement of the laws or regulations that were suspended as part of the regulatory sandbox.

Section 6. Section **63N-15-206** is enacted to read:

63N-15-206. Extensions.

- (1) No 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 Office shall grant or deny a request for an extension in accordance with Subsection (1) by the end of the 12-month regulatory sandbox demonstration period.
- (3) The 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.
- (4)

Section 7. Section **63N-15-207** is enacted to read:

63N-15-207. 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 applicable agency and report on actions taken by the sandbox participant to ensure consumers have not been harmed as a result.
- (3) A sandbox participant shall provide the Office with a written report every three months that provides an update on the status of the demonstration.
- (4)
 - (a) The sandbox participant must notify the applicable agency of any incidents that result in harm to the health, safety, and financial well-being of Utah consumers that the relevant law protects against as set forth in the initial report.
 - (b) If the sandbox participant fails to notify the applicable agency of any incidents as required under Subsection (4)(a), or the applicable agency has evidence that significant and irreparable harm has occurred to consumers, the participant shall be removed from the regulatory sandbox immediately.
- (5)
 - (a) No later than 30 days following a sandbox participant exiting the regulatory sandbox, the participant shall submit a report of termination of the participant's demonstration to the Office and the applicable agency. Such report shall include any incident of an offering of the participants that harmed any consumers.

- (b) No later than 30 days following the submission of a report by a participant in accordance with Subsection (5)(a), the applicable agency shall provide the Office with a responsive report on the demonstration and describe any regulatory or legal reform the applicable agency believes should be made as a result of the demonstration.
- (6) 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 law for which suspension has not been granted, the Office may remove a sandbox participant from the regulatory sandbox.
- (7) By October 1, the Office 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.