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S.B. 249
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Wilson

Local Impact Statement Procedure Required: No

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Highlights

- The Department of Commerce's Division of Financial Institutions will oversee the regulatory sandbox program created by the bill. The Division will likely use existing staff and resources to do so based on the small number of participants in other states with similar regulatory sandbox programs.
- Any administrative costs the Division incurs to review applications and regulate sandbox participants will be offset by an application fee to be determined by the Division. The application fee will be deposited into the Banks Fund (Fund 5440), Credit Unions Fund (Fund 5520), or Consumer Finance Fund (Fund 5530) used by the Division to regulate various financial industries.
- The bill will not generate significant ongoing work for the Attorney General's Consumer Protection Section to investigate and enforce violations of the bill's information disclosure prohibitions if, as expected, the number of participants in the program is small. Civil penalties deposited into the Consumer Protection Enforcement Fund (Fund 6310) may, to some degree, offset related costs.

Detailed Analysis

Department of Commerce

The bill requires the Department of Commerce's Division of Financial Institutions to establish a regulatory sandbox program for individuals and companies to test novel financial products and services on a temporary basis without a license that would otherwise be required. Based on data from other states with similar laws to this bill, the number of sandbox participants will likely be small. Consequently, the Department estimates that existing staff and resources can be utilized to oversee the program. According to The Pew Charitable Trust, there were no

companies enrolled in sandbox programs in Arizona, Florida, Utah, and Wyoming as of June 2021. Ten companies have participated in Arizona's sandbox program since it was launched in 2018.¹ Additionally, as of October 2021, there have been no participants in the Nevada Sandbox Program since its program launched in January 2020.²

Under the bill, the Division is required to develop an application form, review and approve applications on a rolling basis, consult with applicable state agencies before admitting a person into the regulatory sandbox, and develop an agreement with the participant regarding the scope of testing the product. Any administrative costs incurred by the Division to oversee this new program will be offset by an application fee that is to be established by the Division. The fee will be deposited into the Banks Fund (Fund 5440), Credit Unions Fund (Fund 5520), or Consumer Finance Fund (Fund 5530) depending on the type of sandbox financial product or service. These funds are used by the Division to regulate various financial industries.

Attorney General

Under the bill, a sandbox participant or their holding company is prohibited from (1) disclosing information obtained as a result of an examination, inquiry, or investigation (the test of a financial product or service under the program) unless the disclosure is required by law, and (2) disclosing, using, or referencing any comments, conclusions, or results of an examination, inquiry, or investigation to a consumer or potential consumer.

A violation of these disclosure prohibitions are deemed an unconscionable act or practice under the Consumer Sales Practices Act (CSPA). The Attorney General has broad authority to enforce the CSPA, including suing for injunctive relief and civil penalties. Depending upon the nature of the violation, the court is permitted to impose a civil penalty of up to between \$5,000 and \$25,000, some of which could be levied daily. Pursuant to current law, the civil penalties are distributed as follows: three-fourths, or 75%, to the state's Consumer Protection Enforcement Fund (Fund 6310) and one-fourth, or 25%, to the treasury of the county where the Attorney General's action is brought. The timing and magnitude of this potential revenue stream is uncertain. Typically, the Attorney General will try to negotiate a settlement and take a matter to trial as a last resort.

Additionally, under the bill and the CSPA, a consumer has a private right of action and can sue the supplier to rescind the transaction or to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the supplier's violation is an act or practice that has already been declared unconscionable by the Attorney General or by a court, then the consumer may sue to rescind the transaction or recover three times the amount of the consumer's actual economic damages.

As mentioned, the number of sandbox participants will likely be small based on the number of participants in other states with similar programs. Common pleas, municipal, and county courts in Ohio will use existing staff and resources to adjudicate the relatively small number of additional CSPA lawsuits that may stem from violations of the bill.

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¹ <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/06/15/relaxed-rules-attract-entrepreneurs-to-state-sandboxes> (accessed November 8, 2021).

² Email conversation with Chris Weiss, Management Analyst in Nevada's Department of Business and Industry, October 6, 2021.