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Final Analysis

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SUMMARY

- Requires the Superintendent of Financial Institutions to establish a regulatory sandbox program to enable persons to test novel financial products and services in Ohio on a temporary basis without obtaining additional licenses or authorizations that would otherwise be required.
- Authorizes participants to test novel financial products and services 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 state agencies that would otherwise regulate the sandbox participant (“applicable agencies”) before admitting the participant into the program.
- Requires the Superintendent to enter into an agreement with each sandbox participant regarding the scope of the participant’s test and any restrictions or limits on the number of consumers or dollar amounts involved.
- Requires the sandbox participant to make certain disclosures prior to providing a novel financial product or service to the consumer.
- Prohibits a sandbox participant from charging interest rates or fees on a loan that are greater than those currently permitted under Ohio consumer lending laws.
- Requires a sandbox participant to retain records, documents, and data produced in the ordinary course of business regarding the novel financial product or service during the testing period.
- 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 every two years to publish and make publicly available a report on the performance of sandbox participants and their novel financial products and services.

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DETAILED ANALYSIS

General overview

The act requires the Superintendent of Financial Institutions, in consultation with applicable agencies, to establish a regulatory sandbox program to enable persons to obtain limited access to the Ohio market to test novel financial products or services without obtaining other licenses or authorizations that are otherwise required by law. Applicable agencies are state agencies that would regulate the Ohio business activities of a sandbox participant if those activities were not within the regulatory sandbox.

The act applies only to financial products or services that would otherwise be regulated under state law and that make use of, or incorporate, new or emerging technology, or reimagine 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 (“novel financial products or services”). Financial products or services that require licensure under the Ohio Securities Act, or that include a business model, delivery mechanism, or element that requires a license under the Ohio Securities Act are explicitly excluded from the regulatory sandbox program.

Regulatory sandbox participants are not required to be Ohio residents but must agree to be subject to Ohio laws and court jurisdiction for the duration of the testing period. The act requires participants to comply with certain procedures that address consumer protection, such as providing disclosures to consumers prior to testing the financial product or service.¹

Application

Who may apply

Under the act, any person may apply to enter the regulatory sandbox to test a novel financial product. If the person is licensed or authorized to conduct business in Ohio (for example, as a bank, savings and loan association, money transmitter, check casher, consumer loan company, mortgage lender, credit union, credit services organization, pawnbroker, or precious metals dealer), the person may continue that business irrespective of the person’s participation in the regulatory sandbox program. However, a licensed or authorized person must apply separately to the Superintendent if the person wishes to participate in the regulatory sandbox, even if the novel financial product or service would otherwise be within the scope of the person’s other license or authorization. The act’s procedures, authorizations, and requirements are limited to the regulatory sandbox participant and the novel financial product or service approved for testing in the sandbox. A separate application is required for each novel financial product or service the person seeks to test.²

Application contents

The Superintendent must develop and make publicly available the application form. At minimum, the form must require the applicant to provide the following:

- Evidence that the applicant is subject to the Superintendent’s jurisdiction through incorporation, residency, an agreement to be subject to Ohio laws and courts relating to any action arising out of the novel financial product or service, or other means acceptable to the Superintendent;
- Evidence that the applicant has a physical or virtual location in the United States from which testing will be developed and performed, where all required records, documents, and data will be maintained, and that is adequately accessible to the Superintendent;
- Payment of an application fee established by the Superintendent.

¹ R.C. 1355.01 to 1355.06.

² R.C. 1355.03(A) and 1355.05(D) and (E).

In addition, the application may require the applicant to provide relevant personal and contact information, disclose criminal convictions of the applicant and key personnel, and describe the novel financial product or service the applicant seeks to test. The description of the novel financial product or service may include any of the following:

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

An applicant may request exemption from the Consumer Sales Practices Act (CSPA) or any state law other than the act's Regulatory Sandbox Law, as applied to the novel financial product or service within the regulatory sandbox. In requesting an exemption, the applicant must demonstrate that compliance would burden the applicant or hinder the test. The Superintendent may grant or deny the request at the Superintendent's discretion.³

Review, approval, and denial of application

The Superintendent must review applications on a rolling basis, and approve or deny each completed application within 90 days after it is submitted. If an application is denied, the Superintendent must inform the applicant of all reasons for the denial. The Superintendent is not required to make a determination within the 90-day period if the Superintendent notifies the applicant within that period that additional information is required. Upon receiving a notification, the applicant has 30 days to file the additional information with the Superintendent, and the Superintendent has 90 days after receiving 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 provided all information required by law or requested by the Superintendent;
- The applicant paid the application fee;
- The Superintendent consulted with all applicable agencies;

³ R.C. 1355.03(B).

- The applicant has an adequate understanding of the novel financial product or service and a sufficient plan to test, monitor, and assess it while protecting consumers;
- If the novel financial product or service is a consumer loan, the applicant proved that the consumer will not be charged interest or fees that exceed the maximum amounts otherwise permitted for that type of loan under continuing law (see “**Interest rate**” below);
- The applicant met any other condition imposed by the Superintendent.

The Superintendent may 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.

The act gives the Superintendent sole authority to determine whether to admit a person into the regulatory sandbox. A denial is not an appealable action for the purposes of the Administrative Procedure Act, which generally allows persons adversely affected by an order of a state agency to appeal the order to a court of common pleas. If the Superintendent approves an application, the applicant is considered a sandbox participant and the Superintendent must issue that applicant a license number. The act expresses the General Assembly’s intent that a sandbox participant be deemed to possess an appropriate license under Ohio law for purposes of any provision of federal law requiring state licensure or authorization, such as the federal prohibition on unlicensed money transmitting.⁴

Applicable agencies

The Superintendent is required to consult with all applicable agencies in establishing the regulatory sandbox program and before admitting a person into the program. The act defines “applicable agency” as a state department or agency that is authorized to regulate certain business activities and that the Superintendent determines would regulate the business activities of a sandbox participant if those activities were not within the regulatory sandbox. The consultation between the Superintendent and applicable agencies may include sharing information about whether the agency previously licensed, authorized, investigated, sanctioned, or pursued legal action against the applicant. The consultation also may include sharing information about whether the applicant could obtain a license or other authorization from an applicable agency after exiting the regulatory sandbox.⁵

Sandbox operation

General

The Superintendent must enter into an agreement with each sandbox participant regarding the scope of the participant’s test. The agreement may include restrictions or limits

⁴ R.C. 1355.03(C) and (D) and 1355.05(A) and (H); R.C. 119.12, not in the act; and 18 United States Code 1960.

⁵ R.C. 1355.01(A) and 1355.04.

on the number of consumers or the amount of money involved with the novel financial product or service. Generally, the sandbox participant may test a novel financial product or service for 24 months following the date of approval, unless the participant and Superintendent agree to a shorter time period. A sandbox participant may opt out of the sandbox early, but must comply with the requirements described in “**Expiration of testing period**” below.⁶

Expiration of testing period

The act requires a sandbox participant to do one of the following not later than 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 after 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 either notification, the regulatory sandbox testing period ends on the date designated by the agreement, and the sandbox participant must cease offering novel financial products or services on or before that date.

If the novel financial product or service offered by the sandbox participant involves 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 program.⁷

Extension of testing period

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

A sandbox participant that is granted an extension must provide a written report every three months that updates the Superintendent on the participant’s efforts to obtain a license or other authorization. The report must include any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorizations.⁸

⁶ R.C. 1355.05(B) and (C).

⁷ R.C. 1355.07.

⁸ R.C. 1355.08.

Consumer protections

Disclosures

Before providing a novel financial product or service, a sandbox participant must clearly disclose certain information to the consumer and, for internet- or application-based products or services, require the consumer to acknowledge receipt of the information before completing the transaction. The required disclosures are:

- The sandbox participant's name, contact information, and regulatory sandbox license number;
- That the novel financial product or service is authorized pursuant to the regulatory sandbox;
- If applicable, that the sandbox participant does not have a license or other authorization generally required for providers of such products or services under state law;
- That the state does not endorse or recommend the novel financial product or service;
- That the product or service is part of a temporary test that may be discontinued at the end of the testing period;
- The expected end date of the testing period;
- That consumers may contact the Superintendent to file complaints regarding product or service;
- The Superintendent's telephone number and website address where complaints may be filed.

The Superintendent may require a sandbox participant to make additional disclosures to consumers, but those additional disclosures must be conveyed to the participant when the Superintendent approves the participant's application to enter the regulatory sandbox.⁹

Ohio Consumer Sales Practices Act (CSPA)

The 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 act, sandbox participants are generally 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, the act expressly exempts new motor vehicle dealers and other third parties that assist a consumer in financing a good or service with a novel financial product or service offered by a sandbox participant from the CSPA with respect to such assistance.¹⁰

⁹ R.C. 1355.06.

¹⁰ R.C. 1355.11(F).

Interest rate

Under the act, 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 or fees in connection with the loan that exceed the maximum interest or fees 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 state consumer lending laws.¹¹

Superintendent's powers

The act gives the Superintendent discretion to determine which, if any, state laws that regulate analogous financial products or services apply to a sandbox participant during the testing period. By default, general state laws (other than the CSPA) do not apply. If the Superintendent determines to apply certain laws during the testing period, the Superintendent must notify the sandbox participant upon approving the participant's application to enter the regulatory sandbox.¹²

The Superintendent may require a sandbox applicant or participant to use a multistate licensing system for the purpose of monitoring compliance with the Regulatory Sandbox Law.¹³

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 act's Regulatory Sandbox Law, 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 participant's regulatory sandbox license or order the participant to immediately discontinue the novel financial product or service. If, following revocation or discontinuance, the former participant has ongoing duties with respect to a novel financial product or service, the Superintendent must provide for the fulfillment of those duties. Revocation of a license or discontinuance of a novel financial product or service is not appealable under the Administrative Procedure Act.

It is unclear whether the act allows the Superintendent to revoke a license or discontinue a product or service based on the participant's violation of the CSPA, if the participant and the Superintendent previously agreed that the participant is exempt from the CSPA during the testing period.¹⁴

¹¹ R.C. 1355.11(E).

¹² R.C. 1355.05(F).

¹³ R.C. 1355.05(G).

¹⁴ R.C. 1355.11(C) and (D).

Recordkeeping, test failure, security breach

The act 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 participant must make the 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.

A sandbox participant, like any person that owns or licenses computerized data that includes personal information, must disclose any security breach that compromises the security or confidentiality of that information to the affected person if the participant reasonably believes the breach will cause a material risk of identity theft or fraud. The sandbox participant must also notify the Superintendent of each breach.¹⁵

Confidentiality and disclosure of information

Generally, records submitted to or obtained by the Superintendent or an applicable agency under the regulatory sandbox program are not public records and must not be disclosed. However, the act prescribes some exceptions to the general rule. For example, 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. Furthermore, the Superintendent or applicable agency may disclose other records and information to the following:

- State and federal agencies;
- 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.¹⁶

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,

¹⁵ R.C. 1355.09 and 1355.11(A) and (B); R.C. 1349.19, not in the act.

¹⁶ R.C. 1355.10(A), (B), and (D)(1).

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 act'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 the 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.¹⁷

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 act.¹⁸

The act does not 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.¹⁹

Coordination with other jurisdictions

Under the act, the Superintendent may 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.

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.²⁰

Biennial report

The act requires the Superintendent to publish 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 regulations affected the development and performance of the novel financial products and

¹⁷ R.C. 1355.10(D)(2); R.C. 1345.06, 1345.07, and 1345.09, not in the act.

¹⁸ R.C. 1355.10(C).

¹⁹ R.C. 1355.10(E).

²⁰ R.C. 1355.11(G) and (H).

services. The report must not disclose proprietary information or other materials the disclosure of which is prohibited under the Regulatory Sandbox Law.²¹

HISTORY

Action	Date
Introduced	10-05-21
Reported, S. Financial Institutions & Technology	12-15-21
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Reported, H. Financial Institutions	11-16-22
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²¹ R.C. 1355.11(l).