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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 249**  
**134<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Wilson

Yosef Schiff, Attorney

### SUMMARY

- Creates 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.
- Permits novel financial products and services 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 of Financial Institutions 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.
- Permits the Superintendent to require a sandbox participant to comply with specified financial product and service regulations the participant would otherwise not be subject to.

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## DETAILED ANALYSIS

### 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.<sup>1</sup>

A novel financial product or service is a financial product or service that makes 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.<sup>2</sup>

A financial product or service is a product or service that requires licensure or other authorization under, or that includes a business model, delivery mechanism, or element that requires a license or other authorization to act as a financial institution or other person that is regulated by, any of the following laws:

- The Ohio financial institutions and credit union laws;<sup>3</sup>
- The Ohio Money Transmitter Act;<sup>4</sup>
- The Ohio Check Cashing Act;<sup>5</sup>
- The Ohio Anti-Money Laundering Law;<sup>6</sup>

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<sup>1</sup> R.C. 1355.02.

<sup>2</sup> R.C. 1355.01.

<sup>3</sup> R.C. Title XI and Chapter 1733.

<sup>4</sup> R.C. 1315.01 through 1315.18 and 1315.99.

<sup>5</sup> R.C. 1315.21 through 1315.30 and 1315.99.

<sup>6</sup> R.C. 1315.51 through 1315.55 and 1315.99.

- The Ohio Small Loan Act;<sup>7</sup>
- The Ohio Short-Term Loan Act;<sup>8</sup>
- The Ohio General Loan Law;<sup>9</sup>
- The Ohio Consumer Installment Loan Act;<sup>10</sup>
- The Ohio Insurance Premium Finance Company Act;<sup>11</sup>
- The Ohio Residential Mortgage Lending Act;<sup>12</sup>
- The Ohio Credit Services Organizations Act;<sup>13</sup>
- The Ohio Pawnbrokers Act;<sup>14</sup> or
- The Ohio Precious Metals Dealers Act.<sup>15</sup>

“Financial product or service” does not include a product or service that requires licensure under, or that includes a business model, delivery mechanism, or element that requires a license to act as a person regulated by, the Ohio Securities Act.<sup>16</sup>

## Application

### Requirement to apply

Under the bill, a person needs to apply to enter the regulatory sandbox to test a novel financial product or service if either of the following applies:

- The person does not hold a license or other authorization under the laws listed in “**Overview**” above.
- The person holds a license or other authorization under the laws listed in “**Overview**” above, and the novel financial product falls outside the scope of that license or authorization.

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<sup>7</sup> R.C. 1321.01 through 1321.33 and 1321.99.

<sup>8</sup> R.C. 1321.35 through 1321.48 and 1321.99.

<sup>9</sup> R.C. 1321.51 through 1321.60 and 1321.99.

<sup>10</sup> R.C. 1321.62 through 1321.702 and 1321.99.

<sup>11</sup> R.C. 1321.71 through 1321.83.

<sup>12</sup> R.C. Chapter 1322.

<sup>13</sup> R.C. Chapter 4712.

<sup>14</sup> R.C. Chapter 4727.

<sup>15</sup> R.C. Chapter 4728.

<sup>16</sup> R.C. 1355.01; R.C. Title XI and Chapters 1315, 1321, 1322, 1733, 4712, 4727, and 4728, not in the bill.

A person must file a separate application for each novel financial product or service the person seeks to test.<sup>17</sup>

### **Application contents**

The bill requires the Superintendent to develop and make publicly available an 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 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 United States, 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 to the above, the application form may require the applicant to provide the following:

- Relevant personal and contact information for the applicant;
- Disclosure of any criminal convictions of the applicant and key personnel;
- 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.

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<sup>17</sup> R.C. 1355.03(A).

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. 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.<sup>18</sup>

### **Review, approval, and denial of application**

The Superintendent must review each completed application on a rolling basis. Not later than 90 days after an application is initially submitted, the Superintendent must approve or deny the application and notify the applicant of the decision unless the Superintendent notifies the applicant within this time period that additional information is required. If additional information is required, the applicant shall have 30 days to file the additional information with the Superintendent, and the Superintendent shall have 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 as described in "**Applicable agencies**" below.
- 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 short-term consumer loan, the applicant has proven that the consumer will not be charged interest and fees in connection with the loan that are higher than what are otherwise permitted under Ohio law for a substantially similar loan product.
- The applicant has met any other condition imposed by the Superintendent.

The Superintendent may deny an application in the Superintendent's discretion. If the Superintendent does not approve the application within the 90-120-day timeframe described above, the application is deemed denied. A denial is not an appealable action for the purposes of the appeal provisions of the Ohio Administrative Procedure Act.<sup>19</sup>

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<sup>18</sup> R.C. 1355.03(B).

<sup>19</sup> R.C. 1355.03(C); R.C. 119.12, not in the bill.

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.<sup>20</sup>

## Applicable agencies

Under the bill, the Superintendent must consult with all applicable agencies before admitting a person into the regulatory sandbox. An applicable agency is an Ohio state department or agency to which both of the following apply:

- It is authorized to regulate certain types of business activity in Ohio and persons engaged in such business, including the issuance of licenses or other types of authorization.
- 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 any of the following:

- Whether the applicable agency previously has either:
  - Issued a license or other authorization to the applicant;
  - Investigated, sanctioned, or pursued legal action against the applicant.
- Whether the applicant could obtain a license or other authorization from an applicable agency after exiting the regulatory sandbox.<sup>21</sup>

## 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. 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.

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<sup>20</sup> R.C. 1355.04(B) and 1355.05(A).

<sup>21</sup> R.C. 1355.01 and 1355.04(A).

The Superintendent may require applicants and sandbox participants to utilize a multistate licensing system in complying with the bill.<sup>22</sup>

## 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 novel financial 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.

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.<sup>23</sup>

## 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 any novel financial products or services 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

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<sup>22</sup> R.C. 1355.05(B), (C), and (G).

<sup>23</sup> R.C. 1355.06.

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.<sup>24</sup>

### **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.<sup>25</sup>

### **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.

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.<sup>26</sup>

### **Application of other laws and licenses**

A sandbox participant that holds another license or authorization may act in accordance with that other license or authorization, so long as the product or service offered pursuant to the license or authorization is not the novel financial product or service being tested in the regulatory sandbox.

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<sup>24</sup> R.C. 1355.07(C).

<sup>25</sup> R.C. 1355.08.

<sup>26</sup> R.C. 1355.09; R.C. 1349.19, not in the bill.



Except as otherwise provided in the bill, a sandbox participant is not subject to state laws that establish requirements pursuant to a license or authorization issued by an applicable agency that otherwise would or may regulate a novel financial product or service.

The Superintendent may determine that certain state laws that regulate a financial product or service 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.<sup>27</sup>

## **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;
- 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.<sup>28</sup>

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 Consumer Sales Practices Act. Under continuing law, unconscionable acts under the CSPA are subject to investigation and lawsuits

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<sup>27</sup> R.C. 1355.05(D), (E), and (F).

<sup>28</sup> R.C. 1355.10(A), (B), and (D)(1).

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.<sup>29</sup>

The Superintendent and any applicable agency consulted by the Superintendent pursuant to "**Applicable agencies**" above are not liable for the disclosure of records, information, or data received or obtained pursuant to the bill.<sup>30</sup>

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.<sup>31</sup>

## Other provisions

The bill allows the Superintendent to establish periodic reporting requirements for sandbox participants.

The Superintendent may seek records, documents, and data from sandbox participants. Upon the Superintendent's request, a sandbox participant must make such records, documents, and data available for inspection.

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 Consumer Sales Practices Act (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 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.

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<sup>29</sup> R.C. 1355.10(D)(2); R.C. 1345.06, 1345.07, and 1345.09, not in the bill.

<sup>30</sup> R.C. 1355.10(C).

<sup>31</sup> R.C. 1355.10(E).

Sandbox participants are subject to the CSPA. The CSPA clarifies whether specific business practices are legal, defines what businesses can and cannot claim in their advertisements, and outlines the legal remedies available when a business violates the CSPA.

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

Lastly, 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.<sup>32</sup>

## Definitions

**“Consumer”** means a person that obtains, from a sandbox participant, a novel financial product or service that is to be used primarily for personal, family, household, or business purposes. “Consumer” includes a legal representative of the person.

**“Person”** includes an individual, corporation, business trust, estate, trust, partnership, and association.

**“Regulatory sandbox”** means the program established by this chapter under which a person is licensed to temporarily test a novel financial product or service on a limited basis without otherwise being licensed or authorized to act under the laws of Ohio.

**“Sandbox participant”** means a person that has been granted a license to test a novel financial product or service in the regulatory sandbox.

**“Test”** means to provide products and services as allowed by the bill.<sup>33</sup>

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## HISTORY

Action	Date
Introduced	10-05-21

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<sup>32</sup> R.C. 1355.11; R.C. 119.12 and Chapter 1345, not in the bill.

<sup>33</sup> R.C. 1355.01.