



HOUSE BILL 624: North Carolina Regulatory Sandbox Act.

2021-2022 General Assembly

Committee:		Date:	February 1, 2022
Introduced by:		Prepared by:	Cindy Avrette Staff Attorney
Analysis of:	S.L. 2021-166		

OVERVIEW: *S.L. 2021-166 will help facilitate the development of innovative financial and insurance products or services that utilize new or emerging technology. It does so by creating a "regulatory sandbox program" whereby an overseeing agency may waive, with limited exceptions and for a limited time, statutory or regulatory requirements that otherwise would not permit a participant to offer the product or service to consumers. The overseeing agency would be either the Office of the Commissioner of Banks or the Department of Insurance. The product or service offered must include disclosures to the consumers that it is authorized to be offered for a temporary testing period and is not endorsed or recommended by the State or the supervising agency.*

The act became effective October 15, 2021.

BILL ANALYSIS: S.L. 2021-166 enacts the North Carolina Regulatory Sandbox Act of 2021 as new Chapter 169 of the General Statutes. The new chapter establishes the North Carolina Innovation Council ("Council") with the following 11 members:

- The Commissioner of Banks or appointed designee
- The Commissioner of Insurance and Fire Marshall or appointed designee
- The Secretary of State or appointed designee
- The Attorney General or appointed designee
- Two public members appointed by the Governor
- One public member appointed by the Lt. Governor
- Two public members appointed from academia by the Senate President Pro Tempore
- Two public members appointed from the North Carolina entrepreneurial or blockchain community by the House Speaker

Companies may apply to the Council to offer an innovative product or service under the Regulatory Sandbox Program. An "innovative product or service" is a financial or insurance product or service utilizing new or emerging technology, or involving a new use of existing technology, to address a problem or provide a benefit to the public that is not known to have a comparable widespread offering in this State. An example of an innovative product may be wearable sniffers for factory workers to help detect toxic gases.

In determining admission to the program, the Council must consider all of the following:

- The nature of the innovation product or service and the potential risk to consumers
- The methods for protecting consumers and resolving complaints during the sandbox period
- The applicant's business plan
- Whether the entity's management has sufficient expertise to conduct a pilot of the proposed product or service

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- Whether any person substantially involved in the development, operation or management of the innovative product or service has been convicted of or under investigation for fraud or a violation of State or federal securities law
- Any other factor the Council or the applicable State agency deems relevant

Applicants must have a physical presence in the State and pay a \$50 application fee. Applicants selected to participate in the sandbox must pay a participation fee of \$450 to cover reasonable expenses of the applicable State agency. Additional participation fees may be required depending on factors such as the size of an entity or the number of its customers, under a fee schedule to be determined and published by the Council. Sandbox participants may also be required to post a consumer protection bond or a deposit of cash or readily marketable securities with the applicable State agency, as security for potential losses suffered by consumers. If an application is denied, the Council must provide specific reasons for its denial. Denied applicants may utilize the informal dispute resolution procedures of the Administrative Procedure Act but are not entitled to initiate a contested case or seek judicial review of a denial.

If selected to participate in the sandbox, the company and its offering will be overseen by either the Office of the Commissioner of Banks or the Department of Insurance, depending on the service or product offered. The overseeing agency may provide an innovation waiver of some statutory or regulatory requirements that would otherwise prevent the offering. For purposes of any provision of federal law requiring State licensure or authorization, a participant will be deemed to possess the appropriate license. The Council or applicable State agency may enter into reciprocity agreements with other State, federal or foreign regulators to advance the purposes of the regulatory sandbox, including agreements permitting a participant to operate in other jurisdictions.

An innovation waiver cannot be granted that would alter or amend specified consumer protection statutes. An innovation waiver may be valid for a 24-month period. A participant and its assigned agency may agree to extend the initial 24-month period or to alter the parameters of the product or service being offered under the program.

The applicable State agency may publish a list of sandbox participants or a public notice of the existence of any innovation waivers. A participant in the sandbox is required to make the following disclosures to consumers before offering an innovative product or service:

- The participant's name and contact information.
- The product or service is authorized for a temporary testing period pursuant to the sandbox program.
- The product or service is not endorsed by the State or the applicable State agency, neither of which is liable for any losses or damages caused by the product or service.
- The consumer can file complaints with the applicable State agency or the Attorney General and provide contact information where complaints or other comments may be filed.

At the conclusion of the sandbox period, a participant must submit a final report. If the participant cannot obtain regulatory compliance within 90 days following the expiration of the sandbox period, the participant must wind down its operations with existing consumers. A sandbox participant whose business objectives fail before the end of the sandbox period must notify the applicable State agency to ensure consumers have not been harmed because of the innovative product or service.

Nothing in the Act affects the applicable State agency's exercise of its authority with respect to the efficacy of an innovative product or service or limits its ability to ensure a sandbox participant's financial capability. Participants are required to maintain records and data regarding the tested product or service for at least five years after conclusion of the testing period or as required under the record retention policy of the applicable State agency. Personal information obtained by the Council or applicable State agency

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cannot be disclosed without the consent of the subject of the personal information unless required by law or regulation. Information obtained by the applicable State agency during review and approval of an innovative product or service cannot be disclosed under the public records laws or pursuant to subpoena or discovery and is not admissible in a civil action. An insurance carrier is required to keep confidential any information disclosed to it by a sandbox participant with the approval of the applicable State agency for the purpose of obtaining required participant insurance coverage.

EFFECTIVE DATE: This act became effective October 15, 2021.

Bill Patterson, counsel to the Senate Commerce Committee, substantially contributed to this summary.