
SENATE BILL 5447

State of Washington

67th Legislature

2021 Regular Session

By Senators Brown and Rivers

Read first time 02/11/21. Referred to Committee on Business,
Financial Services & Trade.

1 AN ACT Relating to financial products and services; adding a new
2 chapter to Title 43 RCW; and providing an expiration date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
5 section apply throughout this chapter unless the context clearly
6 requires otherwise.

7 (1) "Applicable agency" means a department or agency of this
8 state established by law to regulate certain types of business
9 activity in this state and persons engaged in such business,
10 including the issuance of licenses or other types of authorization,
11 that the department determines would regulate a sandbox participant
12 if the person was not a regulatory sandbox participant.

13 (2) "Consumer" means a person that purchases or otherwise enters
14 into a transaction or agreement to receive an innovative financial
15 product or service that is being tested by a sandbox participant.

16 (3) "Department" means the department of financial institutions.

17 (4) "Financial product or service" means a product or service
18 that requires licensure by the department or a product or service
19 that includes a business model, delivery mechanism, or element that
20 may otherwise require a license or other authorization to act as a

1 financial institution or enterprise or other entity that is regulated
2 under chapter 43.320 RCW.

3 (5) "Innovation" means the use or incorporation of new or
4 emerging technology or the reimagination of uses for existing
5 technology to address a problem, provide a benefit, or otherwise
6 offer a product, service, business model, or delivery mechanism that
7 is not known by the department to have a comparable widespread
8 offering in this state.

9 (6) "Innovative financial product or service" means a financial
10 product or service that includes an innovation.

11 (7) "Regulatory sandbox" means the program established by this
12 chapter that allows a person to temporarily test innovative financial
13 products or services on a limited basis without otherwise being
14 licensed or authorized to act under the laws of this state.

15 (8) "Sandbox participant" means a person whose application to
16 participate in the regulatory sandbox is approved pursuant to this
17 chapter.

18 (9) "Test" means to provide products and services as allowed by
19 this chapter.

20 NEW SECTION. **Sec. 2.** PROGRAM PURPOSE. The department shall
21 establish a regulatory sandbox program in consultation with
22 applicable agencies of this state to enable a person to obtain
23 limited access to the market in this state to test innovative
24 financial products or services without obtaining a license or other
25 authorization that otherwise might be required.

26 NEW SECTION. **Sec. 3.** APPLICATION PROCESS AND REQUIREMENTS—FEE.

27 (1) Any person may apply to enter the regulatory sandbox to test an
28 innovation.

29 (2) The department must accept and review each application for
30 entry into the regulatory sandbox on a rolling basis.

31 (3) An application must demonstrate that an applicant both:

32 (a) Is an entity or individual that is subject to the
33 jurisdiction of the department through incorporation, residency,
34 presence agreement, or otherwise; and

35 (b) Has established a location, whether physical or virtual, that
36 is adequately accessible to the department, from which testing will
37 be developed and performed and where all required records, documents,
38 and data will be maintained.

1 (4) Persons that already possess a license or other authorization
2 under state laws that regulate a financial product or service must
3 file an application with the department to test innovative financial
4 products or services within the regulatory sandbox.

5 (5) Applications must contain sufficient information to
6 demonstrate that an applicant has an adequate understanding of the
7 innovation and a sufficient plan to test, monitor, and assess the
8 innovation while ensuring consumers are protected from a test's
9 failure.

10 (6) Applications must contain the information required by a form
11 that is developed and made publicly available by the department. The
12 information required by the form may include:

13 (a) Relevant personal and contact information for the applicant,
14 including full legal names, addresses, telephone numbers, email
15 addresses, website addresses, and other information that the
16 department deems necessary;

17 (b) Disclosure of any criminal convictions of the applicant or
18 key personnel, if any;

19 (c) A description of the innovation desired to be tested,
20 including statements regarding all of the following:

21 (i) How an innovation is subject to regulation outside of the
22 regulatory sandbox;

23 (ii) How the innovation would benefit consumers;

24 (iii) How the innovation is different from other products or
25 services available in this state;

26 (iv) What risks will confront consumers that use or purchase the
27 innovative financial product or service;

28 (v) How entering the regulatory sandbox would enable a successful
29 test of the innovation;

30 (vi) A description of the proposed testing plan, including
31 estimated time periods for market entry, market exit, and the pursuit
32 of necessary licensure or authorization; and

33 (vii) How the applicant will wind down the test and protect
34 consumers if the test fails.

35 (7) The department shall collect an application fee in an amount
36 to be determined by the department. The department shall deposit,
37 pursuant to RCW 43.320.110, all fees collected pursuant to this
38 subsection in the financial services regulation fund.

39 (8) A person must file a separate application for each innovation
40 sought to be tested.

1 (9) After the information required by subsection (6) of this
2 section is submitted, the department may seek additional information
3 that it deems necessary. Not later than 90 days after an application
4 is initially submitted, the department shall notify the applicant as
5 to whether the application is approved for entry into the regulatory
6 sandbox. The department and an applicant may mutually agree to extend
7 the time period for the department to determine whether an
8 application is approved for entry into the regulatory sandbox.

9 (10) The department may deny applications in its discretion and a
10 denial is not an appealable agency action for the purposes of chapter
11 34.05 RCW.

12 NEW SECTION. **Sec. 4.** CONSULTATION WITH APPLICABLE AGENCIES—
13 ADMISSION AUTHORITY—INSURANCE PRODUCTS—INVESTMENT MANAGEMENT. (1)
14 The department must consult with an applicable agency before
15 admitting a person into the regulatory sandbox. This consultation may
16 include seeking information about:

- 17 (a) Whether the applicable agency previously has either:
18 (i) Issued a license or other authorization to the applicant; or
19 (ii) Investigated, sanctioned, or pursued legal action against
20 the applicant; and
21 (b) Whether the applicant could obtain a license or other
22 authorization from an applicable agency after exiting the regulatory
23 sandbox.

24 (2) Notwithstanding subsection (1) of this section, the
25 department has sole authority to make the final decision whether to
26 admit a person into the regulatory sandbox.

27 NEW SECTION. **Sec. 5.** SCOPE. (1) If the department approves an
28 application for entry into the regulatory sandbox, the applicant is
29 deemed a sandbox participant and both of the following apply:

- 30 (a) The sandbox participant has 24 months after the date of
31 approval to test the innovative financial product or service
32 described in the sandbox participant's application; and
33 (b) The department must issue the sandbox participant a
34 registration number.

35 (2) Innovative financial products or services that are provided
36 within the regulatory sandbox are subject to the following
37 restrictions:

- 38 (a) Consumers must be residents of this state;

1 (b) Except as provided in subsection (3) of this section, not
2 more than 10,000 consumers may transact through or enter into an
3 agreement to use the innovation;

4 (c) For a sandbox participant testing loans, an individual
5 consumer lender loan may be issued for up to \$15,000, except that
6 aggregate loans per consumer may not exceed \$50,000. All consumer
7 lender loans issued in the regulatory sandbox, including loans in
8 excess of \$10,000, are subject to chapter 31.04 RCW;

9 (d) Except as provided in subsection (3) of this section, for a
10 sandbox participant testing products or services as a money
11 transmitter as defined in RCW 19.230.010, individual transactions per
12 consumer may not exceed \$2,500 and aggregate transactions per
13 consumer may not exceed \$25,000;

14 (e) For sandbox participants testing products or services as a
15 person as defined in RCW 63.14.010, all of the following apply:

16 (i) RCW 63.14.040;

17 (ii) RCW 63.14.043;

18 (iii) RCW 63.14.090;

19 (iv) RCW 63.14.130;

20 (v) RCW 63.14.140;

21 (vi) RCW 63.14.160; and

22 (vii) RCW 62A.9A-601; and

23 (f) For sandbox participants testing products or services that
24 provide investment management that is regulated pursuant to Title 21
25 RCW: Each sandbox participant must make, maintain, and preserve books
26 and records in accordance with the requirements imposed on federal
27 covered advisers under 17 C.F.R. Sec. 275.204-2. The sandbox
28 participant shall file with the secretary of state a copy of any
29 notices or written undertakings required to be filed by federal
30 covered advisers with the securities and exchange commission under 17
31 C.F.R. Sec. 275.204-2.

32 (3) If a sandbox participant demonstrates adequate financial
33 capitalization, risk management process, and management oversight,
34 the department may allow either or both of the following:

35 (a) Not more than 17,500 consumers to transact through or enter
36 into an agreement to use the innovation; and

37 (b) For a sandbox participant testing products or services as a
38 money transmitter as defined in RCW 19.230.010, individual
39 transactions per consumer that do not exceed \$15,000 and aggregate
40 transactions per consumer that do not exceed \$50,000.

1 (4) This section does not restrict a sandbox participant who
2 holds a license or other authorization in another jurisdiction from
3 acting pursuant to and in accordance with that license or other
4 authorization.

5 (5) A sandbox participant is deemed to possess an appropriate
6 license under the laws of this state for purposes of any provision of
7 federal law requiring state licensure or authorization.

8 (6) Except as otherwise provided in this chapter, a sandbox
9 participant is not subject to state laws that regulate a financial
10 product or service.

11 (7) The department may determine that certain state laws that
12 regulate a financial product or service apply to a sandbox
13 participant. If the department makes this determination and approves
14 an application for entry into the regulatory sandbox, the department
15 must notify the sandbox participant of the specific state regulatory
16 laws that will apply to the sandbox participant.

17 (8) A sandbox participant may obtain, record, provide, or
18 maintain in electronic form any information, writing, signature,
19 record, or disclosure that is required by this chapter or may
20 substitute any substantially similar equivalent information, writing,
21 signature, record, or disclosure that is approved by the department.

22 NEW SECTION. **Sec. 6.** CONSUMER PROTECTION. (1) Before providing
23 an innovative financial product or service to consumers, a sandbox
24 participant must disclose to consumers all of the following:

25 (a) The name and contact information of the sandbox participant,
26 including the registration number provided by the department pursuant
27 to section 5 of this act;

28 (b) That the innovative financial product or service is
29 authorized pursuant to the regulatory sandbox and, if applicable,
30 that the sandbox participant does not have a license or other
31 authorization to generally provide products or services under state
32 laws that regulate a financial product or service that is outside the
33 regulatory sandbox;

34 (c) That this state does not endorse or recommend the innovation;

35 (d) That the innovative financial product or service is a
36 temporary test that may be discontinued at the end of the testing
37 period, including the expected end date of the testing period; and

38 (e) That consumers may contact the department to file complaints
39 regarding the innovative financial product or service being tested

1 and provide the department's telephone number and website address
2 where complaints may be filed.

3 (2) The notifications prescribed by subsection (1) of this
4 section must be provided to consumers in a clear and conspicuous form
5 in both English and Spanish. For internet or application-based
6 innovative financial products or services, consumers must acknowledge
7 receipt of these notifications before completion of a transaction.

8 (3) The department may require that a sandbox participant make
9 additional disclosures to consumers. When the department approves an
10 application for entry into the regulatory sandbox, the department
11 shall notify the sandbox participant of the additional disclosures.

12 NEW SECTION. **Sec. 7.** EXIT REQUIREMENTS. (1) At least 30 days
13 before the end of the 24-month regulatory sandbox testing period, a
14 sandbox participant must either:

15 (a) Notify the department that the sandbox participant will exit
16 the regulatory sandbox, wind down its test, and cease offering any
17 innovative products or services in the regulatory sandbox within 60
18 days after the 24-month testing period ends; or

19 (b) Seek an extension pursuant to section 8 of this act to pursue
20 a license or other authorization required by law.

21 (2) If the department does not receive notification pursuant to
22 subsection (1) of this section, the regulatory sandbox testing period
23 ends at the end of the 24-month testing period and the sandbox
24 participant must immediately cease offering innovative products or
25 services.

26 (3) If a test includes offering products or services that require
27 ongoing duties, such as servicing a loan, the sandbox participant
28 must continue to fulfill those duties or arrange for another person
29 to fulfill those duties after the date the sandbox participant exits
30 the regulatory sandbox.

31 NEW SECTION. **Sec. 8.** EXTENSIONS. (1) A sandbox participant may
32 request an extension of the regulatory sandbox testing period for the
33 purpose of pursuing a license or other authorization required by law.

34 (2) The department may grant or deny a request for an extension
35 pursuant to subsection (1) of this section by the end of the 24-month
36 regulatory sandbox testing period. An extension pursuant to this
37 subsection is not effective for more than one year after the end of
38 the regulatory sandbox testing period.

1 (3) A sandbox participant that obtains an extension pursuant to
2 subsection (2) of this section must provide the department with a
3 written report every three months that provides an update on efforts
4 to obtain a license or other authorization, including any submitted
5 applications for licensure or other authorization, rejected
6 applications, or issued licenses or other authorization.

7 NEW SECTION. **Sec. 9.** RECORDKEEPING AND REPORTING REQUIREMENTS.

8 (1) A sandbox participant must retain records, documents, and data
9 produced in the ordinary course of business regarding an innovative
10 financial product or service tested in the regulatory sandbox.

11 (2) If an innovation fails before the end of the testing period,
12 the sandbox participant must notify the department and report on
13 actions taken to ensure consumers have not been harmed as a result of
14 the innovation's failure.

15 (3) A sandbox participant is subject to the requirements of
16 chapter 19.255 RCW and must notify the department of any breach of
17 the security of the system as defined in RCW 19.255.005.

18 NEW SECTION. **Sec. 10.** RECORDS—DISCLOSURE—EVIDENTIARY EFFECT.

19 (1) Records that are submitted to or obtained by the department in
20 administering this chapter are not public records or open for
21 inspection by the public.

22 (2) Records and information that are submitted or obtained
23 pursuant to this chapter may be disclosed to any of the following:

24 (a) State and federal agencies;

25 (b) Representatives of foreign countries that have regulatory or
26 supervisory authority over the activities of the sandbox participant;

27 (c) A federal, state, or county grand jury in response to a
28 lawful subpoena; and

29 (d) The state auditor for the purpose of conducting audits
30 authorized by law.

31 (3) The department and any applicable agency consulted by the
32 department pursuant to section 4 of this act are not liable for the
33 disclosure of records, information, or data received or obtained
34 pursuant to this chapter.

35 (4) The disclosure pursuant to subsection (2) of this section of
36 a complaint or the results of an examination, inquiry, or
37 investigation of a sandbox participant does not make that information
38 a public record and the sandbox participant or the sandbox

1 participant's holding company may not disclose that information to
2 the general public unless the disclosure is required by law. A
3 sandbox participant or the sandbox participant's holding company may
4 not disclose, use, or reference in any form comments, conclusions, or
5 results of an examination, inquiry, or investigation in any type of
6 communication to a customer or potential customer.

7 (5) This section does not prevent the disclosure of information
8 that is admissible in evidence in a civil or criminal proceeding
9 brought by a state or federal law enforcement agency to enforce or
10 prosecute civil or criminal violations of the law.

11 NEW SECTION. **Sec. 11.** REPORTING REQUIREMENTS—MONITORING—
12 ENFORCEMENT—AGREEMENTS. (1) The department may establish periodic
13 reporting requirements on sandbox participants.

14 (2) The department may seek records, documents, and data from
15 sandbox participants. On the department's request, sandbox
16 participants must make such records, documents, and data available
17 for inspection by the department.

18 (3) If the department has reasonable cause to believe that a
19 sandbox participant has engaged in, is engaging in, or is about to
20 engage in any practice or transaction that is in violation of this
21 chapter, that constitutes an unlawful practice under chapter 19.86
22 RCW, or that constitutes a violation of a state or federal criminal
23 law, the department may remove a sandbox participant from the
24 regulatory sandbox or order a sandbox participant to exit the
25 regulatory sandbox pursuant to section 7 of this act.

26 (4) Removal from the regulatory sandbox is not an appealable
27 agency action for the purposes of chapter 34.05 RCW.

28 (5) Sandbox participants are subject to the consumer fraud
29 provisions under chapter 19.86 RCW.

30 (6) The department may enter into agreements with state, federal,
31 or foreign regulators that allow sandbox participants to operate in
32 other jurisdictions and allow entities authorized to operate in other
33 jurisdictions to be recognized as sandbox participants in this state.

34 NEW SECTION. **Sec. 12.** PROGRAM TERMINATION. The program
35 established by this chapter ends July 1, 2031.

36 NEW SECTION. **Sec. 13.** REPORTING. The department shall publish
37 annually a written report recommending legislative or other action to

1 carry out the purposes of this chapter. This report shall contain,
2 for the preceding fiscal year, a description of the results of the
3 regulatory sandbox program established pursuant to this chapter.

4 NEW SECTION. **Sec. 14.** EXPIRATION. This chapter expires July 1,
5 2032.

6 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
7 constitute a new chapter in Title 43 RCW.

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