

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1127

Introduced by Wishart, 27.

Read first time January 19, 2022

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to state regulations; to adopt the Regulatory

2 Sandbox Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known and may be
2 cited as the Regulatory Sandbox Act.

3 Sec. 2. For purposes of the Regulatory Sandbox Act:

4 (1) Advisory committee means the General Regulatory Sandbox Program
5 Advisory Committee created in section 4 of this act;

6 (2) Applicable agency means a department or agency of the state that
7 by law regulates a business activity and persons engaged in such business
8 activity, including the issuance of licenses or other types of
9 authorization, which the office determines would otherwise regulate a
10 sandbox participant;

11 (3) Applicant means a person that applies to participate in the
12 regulatory sandbox program;

13 (4) Consumer means a person that purchases or otherwise enters into
14 a transaction or agreement to receive an innovative offering pursuant to
15 a demonstration by a sandbox participant;

16 (5) Demonstrate or demonstration means to temporarily provide an
17 innovative offering in accordance with the provisions of the regulatory
18 sandbox program;

19 (6) Executive director means the executive director of the
20 Regulatory Relief Office;

21 (7) Innovation means the use or incorporation of a new idea, a new
22 or emerging technology, or a new use of existing technology to address a
23 problem, provide a benefit, or otherwise offer a product, production
24 method, or service;

25 (8) Innovative offering means an offering that includes an
26 innovation;

27 (9) Office means the Regulatory Relief Office created in section 3
28 of this act;

29 (10) Product means a commercially distributed good that is:

30 (a) Tangible personal property;

31 (b) The result of a production process; and

1 (c) Passed through the distribution channel before consumption;

2 (11) Production means the method or process of creating or obtaining
3 a good, which may include assembling, breeding, capturing, collecting,
4 extracting, fabricating, farming, fishing, gathering, growing,
5 harvesting, hunting, manufacturing, mining, processing, raising, or
6 trapping a good;

7 (12) Regulatory sandbox program means the General Regulatory Sandbox
8 Program created in section 5 of this act, which allows a person to
9 temporarily demonstrate an innovative offering under a waiver or
10 suspension of one or more state laws or regulations;

11 (13) Sandbox participant means a person whose application to
12 participate in the regulatory sandbox program is approved in accordance
13 with the Regulatory Sandbox Act; and

14 (14) Service means any commercial activity, duty, or labor performed
15 for another person.

16 Sec. 3. (1) There is hereby created the Regulatory Relief Office,
17 which shall be within the Department of Economic Development.

18 (2) The office shall be administered by an executive director. The
19 executive director shall report to the Director of Economic Development
20 and may appoint staff subject to the approval of the Director of Economic
21 Development.

22 (3) The office shall:

23 (a) Administer the Regulatory Sandbox Act and the regulatory sandbox
24 program; and

25 (b) Act as a liaison between private businesses and applicable
26 agencies to identify state laws or regulations that could potentially be
27 waived or suspended under the regulatory sandbox program.

28 (4) The office may:

29 (a) Review state laws and regulations that may unnecessarily inhibit
30 the creation and success of new companies or industries and provide
31 recommendations to the Governor and the Legislature on modifying such

1 state laws and regulations;

2 (b) Create a framework for analyzing the risk level to the health,
3 safety, and financial well-being of consumers related to permanently
4 removing or temporarily waiving laws and regulations inhibiting the
5 creation or success of new and existing companies or industries;

6 (c) Propose potential reciprocity agreements between states that use
7 or are proposing to use similar regulatory sandbox programs; and

8 (d) Adopt and promulgate rules and regulations regarding:

9 (i) Administering the regulatory sandbox program, including rules
10 and regulations regarding the application process and the reporting
11 requirements of sandbox participants; and

12 (ii) Cooperating and consulting with other agencies in the state
13 that administer sandbox programs, if any.

14 Sec. 4. (1) There is hereby created the General Regulatory Sandbox
15 Program Advisory Committee.

16 (2) The advisory committee shall have eleven members as follows:

17 (a) Six voting members appointed by the executive director who
18 represent business interests and are selected from a variety of industry
19 clusters;

20 (b) Three voting members appointed by the executive director who
21 represent state agencies that regulate businesses; and

22 (c) Two members of the Legislature appointed by the Executive Board
23 of the Legislative Council, who shall be nonvoting members.

24 (3)(a) Subject to subdivision (3)(b) of this section, members of the
25 advisory committee who are not members of the Legislature shall be
26 appointed to four-year terms.

27 (b) Notwithstanding the requirements of subdivision (3)(a) of this
28 section, the executive director may adjust the length of terms of
29 appointments and reappointments to the advisory committee so that
30 approximately one-half of the voting members of the advisory committee
31 are appointed every two years.

1 (4) The executive director shall select a chairperson of the
2 advisory committee from among the voting members on an annual basis.

3 (5) A majority of the voting members of the advisory committee
4 constitutes a quorum for the purpose of conducting advisory committee
5 business, and the action of the majority of a quorum constitutes the
6 action of the advisory committee.

7 (6) The advisory committee shall advise and make recommendations to
8 the office as described in the Regulatory Sandbox Act.

9 (7) The office shall provide administrative staff support for the
10 advisory committee.

11 (8) The voting members of the advisory committee shall be reimbursed
12 for expenses as provided in sections 81-1174 to 81-1177.

13 (9) Meetings of the advisory committee are not subject to the Open
14 Meetings Act.

15 Sec. 5. (1) The General Regulatory Sandbox Program is created. The
16 office shall administer the program.

17 (2) In administering the regulatory sandbox program, the office:

18 (a) Shall consult with each applicable agency;

19 (b) Shall establish a program to enable a person to obtain legal
20 protections and limited access to the market in the state to demonstrate
21 an innovative offering without obtaining a license or other authorization
22 that might otherwise be required;

23 (c) May enter into agreements with or adopt the best practices of
24 corresponding federal regulatory agencies or other states that are
25 administering similar programs; and

26 (d) May consult with businesses in the state about existing or
27 potential proposals for the regulatory sandbox program.

28 (3)(a) An applicant for the regulatory sandbox program may contact
29 the office to request a consultation regarding the program before
30 submitting an application.

31 (b) The office may provide assistance to an applicant in preparing

1 an application for submission.

2 (4) An applicant for the regulatory sandbox program shall provide to
3 the office an application in a form prescribed by the office that:

4 (a) Confirms the applicant is subject to the jurisdiction of the
5 state;

6 (b) Confirms the applicant has established a physical or virtual
7 location in the state, from which the demonstration of an innovative
8 offering will be developed and performed and where all required records,
9 documents, and data will be maintained;

10 (c) Contains relevant personal and contact information for the
11 applicant, including legal names, addresses, telephone numbers, email
12 addresses, website addresses, and other information required by the
13 office;

14 (d) Discloses any criminal convictions of the applicant or other
15 participating personnel;

16 (e) Contains a description of the innovative offering to be
17 demonstrated, including statements regarding:

18 (i) How the offering is subject to licensing, legal prohibition, or
19 other authorization requirements outside of the regulatory sandbox
20 program;

21 (ii) Each law or regulation that the applicant seeks to have waived
22 or suspended while participating in the regulatory sandbox program;

23 (iii) How the offering would benefit consumers;

24 (iv) How the offering is different from other offerings available in
25 the state;

26 (v) What risks might exist for consumers who use or purchase the
27 offering;

28 (vi) How participating in the regulatory sandbox program would
29 enable a successful demonstration of the offering;

30 (vii) A description of the proposed demonstration plan, including
31 estimated time periods for beginning and ending the demonstration;

1 (viii) Recognition that the applicant will be subject to all laws
2 and regulations pertaining to the applicant's offering after conclusion
3 of the demonstration; and

4 (ix) How the applicant will end the demonstration and protect
5 consumers if the demonstration fails;

6 (f) Lists each government agency, if any, that the applicant knows
7 regulates the applicant's business; and

8 (g) Provides any other required information as determined by the
9 office.

10 (5) The office may collect an application fee from an applicant, not
11 to exceed XX dollars.

12 (6) An applicant shall file a separate application for each
13 innovative offering that the applicant wishes to demonstrate.

14 (7) After an application is filed, the office shall:

15 (a) Consult with each applicable agency that regulates the
16 applicant's business regarding whether more information is needed from
17 the applicant; and

18 (b) Seek additional information from the applicant that the office
19 determines is necessary.

20 (8) Trade secrets, academic and scientific research work, and other
21 proprietary or commercial information which may be filed with an
22 application shall not be considered to be public records as defined in
23 section 84-712.01 if the release of such trade secrets, work, or
24 information would give advantage to business competitors and serve no
25 public purpose. Any person seeking release of the trade secrets, work, or
26 information as a public record shall demonstrate to the satisfaction of
27 the office that the release would not violate this subsection.

28 (9) No later than five business days after the day on which a
29 complete application is received by the office, the office shall:

30 (a) Review the application and refer the application to each
31 applicable agency that regulates the applicant's business; and

1 (b) Provide to the applicant:

2 (i) An acknowledgment of receipt of the application; and

3 (ii) The identity and contact information of each applicable agency
4 to which the application has been referred for review.

5 (10)(a) Subject to subdivisions (10)(b) and (10)(f) of this section,
6 no later than thirty days after the day on which an applicable agency
7 receives a complete application for review, the applicable agency shall
8 provide a written report to the executive director of the applicable
9 agency's findings. The report shall:

10 (i) Describe any identifiable, likely, and significant harm to the
11 health, safety, or financial well-being of consumers that the relevant
12 law or regulation protects against; and

13 (ii) Make a recommendation to the office that the applicant either
14 be admitted or denied entrance into the regulatory sandbox program.

15 (b) The applicable agency may request an additional five business
16 days to deliver the written report by providing notice to the executive
17 director, which request shall automatically be granted. The applicable
18 agency may only request one extension per application.

19 (c) If the applicable agency recommends an applicant under this
20 section be denied entrance into the regulatory sandbox program, the
21 written report shall include a description of the reasons for the
22 recommendation, including why a temporary waiver or suspension of the
23 relevant laws or regulations would potentially significantly harm the
24 health, safety, or financial well-being of consumers or the public and
25 the likelihood of such harm occurring.

26 (d) If the applicable agency determines that the consumer's or
27 public's health, safety, or financial well-being can be protected through
28 less restrictive means than the existing relevant laws or regulations,
29 then the applicable agency shall provide a recommendation of how that can
30 be achieved.

31 (e) If an applicable agency fails to deliver a written report as

1 described in this subsection, the executive director shall assume that
2 the applicable agency does not object to the temporary waiver or
3 suspension of the relevant laws or regulations for an applicant seeking
4 to participate in the regulatory sandbox program.

5 (f) Notwithstanding any other provision of this section, an
6 applicable agency may by written notice to the office:

7 (i) Within the thirty days after the date on which the applicable
8 agency receives a complete application for review, or within thirty-five
9 days if an extension has been requested by the applicable agency, reject
10 an application if the applicable agency determines, in the applicable
11 agency's sole discretion, that the applicant's innovative offering fails
12 to comply with standards or specifications:

13 (A) Required by federal law or regulation; or

14 (B) Previously approved for use by a federal agency; or

15 (ii) Reject an application preliminarily approved by the office if
16 the applicable agency:

17 (A) Recommended rejection of the application in accordance with
18 subdivision (10)(c) of this section in the applicable agency's written
19 report; and

20 (B) Provides, in the written notice under this subdivision (10)(f),
21 a description of the applicable agency's reasons why approval of the
22 application would create a substantial risk of harm to the health or
23 safety of the public or create unreasonable expenses for taxpayers in the
24 state.

25 (g) If an applicable agency rejects an application under subdivision
26 (10)(f) of this section, the office shall not approve the application.

27 (11)(a) Upon receiving a written report described in subsection (10)
28 of this section, the executive director shall provide the application and
29 the written report to the advisory committee.

30 (b) The executive director may call the advisory committee to meet
31 as needed, but not less than once per quarter if applications are

1 available for review.

2 (c) After receiving and reviewing the application and each written
3 report, the advisory committee shall provide to the executive director
4 the advisory committee's recommendation as to whether or not the
5 applicant should be admitted as a sandbox participant.

6 (d) As part of the advisory committee's review of each written
7 report, the advisory committee shall use the criteria required for an
8 applicable agency as described in subsection (10) of this section.

9 (12)(a) In reviewing an application and each applicable agency's
10 written report, the office shall consult with each applicable agency and
11 the advisory committee before admitting an applicant into the regulatory
12 sandbox program.

13 (b) The consultation with each applicable agency and the
14 consultation with the advisory committee may include seeking information
15 about whether:

16 (i) The applicable agency has previously issued a license or other
17 authorization to the applicant; and

18 (ii) The applicable agency has previously investigated, sanctioned,
19 or pursued legal action against the applicant.

20 (13) In reviewing an application under this section, the office and
21 applicable agency shall consider whether a competitor to the applicant is
22 or has been a sandbox participant and, if so, weigh that as a factor in
23 favor of allowing the applicant to also become a sandbox participant.

24 (14) In reviewing an application under this section, the office
25 shall consider whether:

26 (a) The applicant's plan will adequately protect consumers from
27 potential harm identified by an applicable agency in the applicable
28 agency's written report;

29 (b) The risk of harm to consumers is outweighed by the potential
30 benefits to consumers from the applicant's participation in the
31 regulatory sandbox program; and

1 (c) Certain state laws or regulations that regulate an innovative
2 offering should not be waived or suspended even if the applicant is
3 approved as a sandbox participant, including applicable antifraud or
4 disclosure provisions.

5 (15)(a) An applicant becomes a sandbox participant if the office
6 approves the application for the regulatory sandbox program and enters
7 into a written agreement with the applicant describing the specific laws
8 and regulations that are waived or suspended as part of participation in
9 the regulatory sandbox program.

10 (b) Notwithstanding any other provision of the Regulatory Sandbox
11 Act, the office shall not enter into a written agreement with an
12 applicant that waives or suspends a tax, fee, or charge that is
13 administered by the Department of Revenue.

14 (16)(a) The executive director may deny, at his or her sole
15 discretion, any application submitted under this section for any reason,
16 including if the executive director determines that the preponderance of
17 the evidence demonstrates that suspending or waiving enforcement of a law
18 or regulation would cause a significant risk of harm to consumers or
19 residents of the state.

20 (b) If the executive director denies an application submitted under
21 this section, the office shall provide to the applicant a written
22 description of the reasons for not allowing the applicant to be a sandbox
23 participant.

24 (c) The denial of an application submitted under this section is not
25 subject to:

26 (i) Agency or judicial review; or

27 (ii) The Administrative Procedure Act.

28 (17) The executive director shall deny an application for
29 participation in the regulatory sandbox program if the applicant or any
30 person who seeks to participate with the applicant in demonstrating an
31 innovative offering has been convicted, entered a plea of guilty or nolo

1 contendere, or entered a plea of guilty or nolo contendere held in
2 abeyance, for any crime involving significant theft, fraud, or dishonesty
3 if the crime bears a significant relationship to the applicant's or other
4 participant's ability to safely and competently participate in the
5 regulatory sandbox program.

6 (18) When an applicant is approved for participation in the
7 regulatory sandbox program, the executive director may provide notice of
8 the approval to competitors of the applicant and to the public.

9 Sec. 6. (1) If the office approves an application under the
10 Regulatory Sandbox Act, the sandbox participant has twelve months after
11 the date on which the application was approved to demonstrate the
12 innovative offering described in the sandbox participant's application.

13 (2) An innovative offering that is demonstrated within the
14 regulatory sandbox program is subject to the following:

15 (a) Each consumer shall be a resident of Nebraska; and

16 (b) No law or regulation may be waived or suspended if waiving or
17 suspending the law or regulation would prevent a consumer from seeking
18 restitution in the event that the consumer is harmed.

19 (3) The Regulatory Sandbox Act does not restrict a sandbox
20 participant who holds a license or other authorization in another
21 jurisdiction from acting in accordance with that license or other
22 authorization.

23 (4) A sandbox participant is deemed to possess an appropriate
24 license or other authorization under the laws of this state for the
25 purposes of any provision of federal law requiring licensure or other
26 authorization by the state.

27 (5) Subject to subsection (6) of this section:

28 (a) During the demonstration period, a sandbox participant is not
29 subject to the enforcement of state laws or regulations identified as
30 waived or suspended in the written agreement between the office and the
31 sandbox participant;

1 (b) A prosecutor shall not file or pursue charges pertaining to a
2 violation of a law or regulation identified as waived or suspended in the
3 written agreement between the office and the sandbox participant so long
4 as the violation occurs during the demonstration period; and

5 (c) A state agency shall not file or pursue any punitive action
6 against a sandbox participant, including a fine or license suspension or
7 revocation, for a violation of a law or regulation identified as waived
8 or suspended in the written agreement between the office and the sandbox
9 participant so long as the violation occurs during the demonstration
10 period.

11 (6) Notwithstanding any other provision of the Regulatory Sandbox
12 Act, a sandbox participant does not have immunity related to any criminal
13 offense committed during the sandbox participant's participation in the
14 regulatory sandbox program.

15 (7) By written notice, the office may end a sandbox participant's
16 participation in the regulatory sandbox program at any time and for any
17 reason, including if the executive director determines that a sandbox
18 participant is not operating in good faith to bring an innovative
19 offering to market.

20 (8) The office and the office's employees are not liable for any
21 business losses or the recouping of application expenses or other
22 expenses related to the regulatory sandbox program, including for:

23 (a) Denying an application to participate in the regulatory sandbox
24 program for any reason; or

25 (b) Ending a sandbox participant's participation in the regulatory
26 sandbox program at any time and for any reason.

27 Sec. 7. (1) Before demonstrating an innovative offering to a
28 consumer, a sandbox participant shall disclose the following to the
29 consumer:

30 (a) The name and contact information of the sandbox participant;

31 (b) That the offering is authorized pursuant to the regulatory

1 sandbox program and, if applicable, that the sandbox participant does not
2 have a license or other authorization to provide an offering under state
3 laws that regulate offerings outside of the regulatory sandbox program;

4 (c) That the offering is undergoing testing and may not function as
5 intended and may expose the consumer to certain risks as identified by
6 the applicable agency's written report;

7 (d) That the provider of the offering is not immune from civil
8 liability for any losses or damages caused by the offering;

9 (e) That the provider of the offering is not immune from criminal
10 prosecution for violations of state law or regulations that are not
11 suspended or waived as allowed by the regulatory sandbox program;

12 (f) That the offering is a temporary demonstration that may be
13 discontinued at the end of the demonstration period;

14 (g) The expected end date of the demonstration period;

15 (h) That a consumer may contact the office and file a complaint
16 regarding the offering being demonstrated; and

17 (i) The office's telephone number and website address where a
18 complaint may be filed.

19 (2) The disclosures required by subsection (1) of this section shall
20 be provided to a consumer in a clear and conspicuous form and, for an
21 Internet or application-based offering, a consumer shall acknowledge
22 receipt of the disclosure before any transaction may be completed.

23 (3) The office may require that a sandbox participant make
24 additional disclosures to a consumer.

25 Sec. 8. (1) At least thirty days before the end of the twelve-month
26 regulatory sandbox program demonstration period, a sandbox participant
27 shall:

28 (a) Notify the office that the sandbox participant will exit the
29 regulatory sandbox program and discontinue the sandbox participant's
30 demonstration after the day on which the twelve-month demonstration
31 period ends; or

1 (b) Seek an extension in accordance with section 9 of this act.

2 (2) Subject to subsection (3) of this section, if the office does
3 not receive notification as required by subsection (1) of this section,
4 the regulatory sandbox program demonstration period ends at the end of
5 the twelve-month testing period.

6 (3) If a demonstration includes an innovative offering that requires
7 ongoing duties, the sandbox participant may continue to do so but will be
8 subject to enforcement of the laws or regulations that were waived or
9 suspended as part of the regulatory sandbox program.

10 Sec. 9. (1) Not later than thirty days before the end of the
11 twelve-month regulatory sandbox program demonstration period, a sandbox
12 participant may request an extension of such period.

13 (2) The office shall grant or deny a request for an extension by the
14 end of the twelve-month regulatory sandbox program demonstration period.

15 (3) The office may grant an extension in accordance with this
16 section for not more than twelve months after the end of the regulatory
17 sandbox program demonstration period.

18 Sec. 10. (1) A sandbox participant shall retain records, documents,
19 and data produced in the ordinary course of business regarding an
20 innovative offering demonstrated in the regulatory sandbox program.

21 (2) If a sandbox participant ceases to provide an innovative
22 offering before the end of a demonstration period, the sandbox
23 participant shall notify the office and each applicable agency and report
24 on actions taken by the sandbox participant to ensure consumers have not
25 been harmed as a result.

26 (3) The office shall establish quarterly reporting requirements for
27 a sandbox participant, including information about any consumer
28 complaints.

29 (4) The office may request records, documents, and data from a
30 sandbox participant and, upon the office's request, the sandbox
31 participant shall make such records, documents, and data available for

1 inspection by the office.

2 (5)(a) The sandbox participant shall notify the office and each
3 applicable agency of any incidents that result in harm to the health,
4 safety, or financial well-being of a consumer.

5 (b) If a sandbox participant fails to notify the office and each
6 applicable agency of any incidents as described in subdivision (5)(a) of
7 this section, or the office or an applicable agency has evidence that
8 significant harm to a consumer has occurred, the office may immediately
9 remove the sandbox participant from the regulatory sandbox program.

10 (6)(a) No later than thirty days after the day on which a sandbox
11 participant exits the regulatory sandbox program, the sandbox participant
12 shall submit a written report to the office and each applicable agency
13 describing an overview of the sandbox participant's demonstration,
14 including any:

15 (i) Incidents of harm to consumers;

16 (ii) Legal action filed against the participant as a result of the
17 participant's demonstration; and

18 (iii) Complaints filed with an applicable agency as a result of the
19 participant's demonstration.

20 (b) No later than thirty days after the day on which an applicable
21 agency receives the quarterly reporting described in subsection (3) of
22 this section or a written report from a sandbox participant as described
23 in subdivision (5)(a) of this section, the applicable agency shall
24 provide a written report to the office on the demonstration that
25 describes any statutory or regulatory reform the applicable agency
26 recommends as a result of the demonstration.

27 (7) The office may remove a sandbox participant from the regulatory
28 sandbox program at any time if the office determines that a sandbox
29 participant has engaged in, is engaging in, or is about to engage in any
30 practice or transaction that is in violation of the Regulatory Sandbox
31 Act or that constitutes a violation of a law or regulation for which

1 suspension or waiver has not been granted.

2 Sec. 11. The Department of Economic Development shall submit, as
3 part of the department's annual status report under section 81-1201.11,
4 the following information regarding the Regulatory Sandbox Act:

5 (1) Information regarding each participant in the regulatory sandbox
6 program, including which industries each participant represents and the
7 anticipated or actual cost savings that each participant experienced;

8 (2) Recommendations regarding any laws or regulations that should be
9 permanently modified;

10 (3) Information regarding outcomes for consumers; and

11 (4) Recommendations for changes to the regulatory sandbox program or
12 other duties of the office.

13 Sec. 12. (1) The office shall create and maintain on the Department
14 of Economic Development's website a web page that invites residents and
15 businesses in the state to make suggestions regarding laws and
16 regulations that could be modified or eliminated to reduce the regulatory
17 burden of residents and businesses in the state.

18 (2) On at least a quarterly basis, the office shall compile the
19 results of suggestions from the web page and provide a written report to
20 the Governor and the Legislature that describes the most common
21 suggestions.

22 (3) In creating the report described in subsection (2) of this
23 section, the office and the advisory committee:

24 (a) Shall ensure that private information of residents and
25 businesses that make suggestions on the web page is not made public; and

26 (b) May evaluate the suggestions and provide analysis and
27 suggestions regarding which state laws and regulations could be modified
28 or eliminated to reduce the regulatory burden of residents and businesses
29 in the state while still protecting consumers.