

Proposed Innovation Council Statute Revision

§ 169-1. Short title; definitions.

(a) This Chapter shall be known and may be cited as the “North Carolina Regulatory Sandbox Act of 2021.”

(b) The following definitions apply in this Chapter:

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(14) Waiver. — A document issued pursuant to this Chapter that allows a sandbox participant to temporarily test an innovative product or service on a limited basis without otherwise being subject to the same licensing or authorization provisions of the laws of this State or in full compliance with the laws of this State.

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§ 169-3. Regulatory sandbox program established; innovation waivers; limitations.

(a) Notwithstanding any other provision of law, a sandbox participant who makes an innovative product or service available to consumers in the regulatory sandbox may be granted a waiver of specified requirements imposed by statute or rule.

(b) A waiver under subsection (a) of this section shall be no broader than necessary to accomplish the purposes set forth in this Act, as determined by the applicable State agency.

(c) A waiver is valid for the duration of participation in the regulatory sandbox, not to exceed 24 months from the date of admission into the regulatory sandbox program unless an extension is granted.

(d) Unless otherwise provided in this Chapter, nothing in this statute shall limit or affect the authority of any State agency or otherwise alter existing State law.

§ 169-4. North Carolina Innovation Council established.

(a) The North Carolina Innovation Council is established and its duties and powers are as follows:

(1) The purpose of the Council is to support innovation, investment, and job creation within North Carolina by encouraging participation in the regulatory created by this Chapter.

(2) The Council is empowered to set standards, principles, guidelines, and policy priorities for the types of innovations that the regulatory sandbox program will support.

(3) The Council shall be responsible for admission into the regulatory sandbox and for assigning selected participants to the applicable State agency.

(4) The Council may adopt rules further implementing this Chapter, including but not limited to:

a. The operation, supervision, managing, and communication of the regulatory sandbox under this chapter;

b. The information required and the process for receiving, reviewing, accepting, and denying applications to the regulatory sandbox;

c. Establishing conditions of the waiver; and

d. The termination or removal of any participant from the regulatory sandbox.

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§ 169-5. Regulatory assistance; technical assistance; nonprofit organizations.

A designated nonprofit organization which has been duly authorized by the Office of the Secretary of State shall be recognized as partners that may help sandbox applicants navigate the regulatory sandbox application process. Certain participating nonprofit organizations may also assist sandbox participants with

the design and implementation of products and services during the regulatory sandbox program period. Nonprofit organizations wishing to assist regulatory sandbox applicants and participants shall submit an application to the Innovation Council for approval. Such organizations shall additionally be empowered to explore, provide input, analyze, and make recommendations to the Council with respect to innovations and the application of innovative technologies that would additionally provide benefit to the State, its consumers, and its industry. The Council may also remove a previously approved nonprofit partner at its discretion. Selection, denial, or removal of a non-profit under this section is exempt from the contested case process provided in Chapter 150B of the General Statutes.

Nothing shall prevent a nonprofit applicant from reapplying to assist sandbox applicants under this Section after the nonprofit application is denied. Any nonprofit partner removed may not reapply to be a nonprofit partner of the Council for a period of two (2) years, or within such time as the Council may approve.

§ 169-6. Regulatory sandbox applications.

(e) The Innovation Council may deny an application in its discretion, provided defined reasons are given for the action. A denial may be resolved with an applicant through the informal procedures specified in G.S. 150B-22; however, no applicant shall be entitled to convert any dispute unresolved by informal procedures into a contested case, nor shall any applicant be entitled to judicial review under Article 4 of Chapter 150B of the General Statutes. Nothing shall prevent an applicant from reapplying for entry to the regulatory sandbox under this Chapter after the application is denied if the applicant has taken action to address the reasons for denial given by the applicable State agency.

(f) Admission into the regulatory sandbox.

- (1) Upon receipt of an application for the Regulatory Sandbox, the Council shall determine if the application is within the jurisdiction of the Council. If not, the Council shall deny the application.
- (2) Approval of an applicant into the Regulatory Sandbox shall be by a simple majority vote of the Council at a duly noticed public hearing.

§ 169-7. Regulatory sandbox requirements; procedures.

(a) Upon approval of an applicant's application for entry into the regulatory sandbox, the applicant will have a period of 24 months to test the innovative product or service. The Council may revoke the waiver if the applicant fails to meet any of the conditions of the waiver. Innovations tested within the regulatory sandbox must be offered only to consumers who are residents of the State, except for any innovative products or services associated with a money transmitter, in which case only the physical presence of the consumer in the State at the time of the transaction may be required. The Council, in consultation with the applicable State agency, may, on a case by case basis, specify reporting measurements and limits or restrictions on the innovative product or service. The sandbox participant, the Council, and the applicable State agency may agree, by mutual agreement, to extend the 24-month sandbox period or to increase the specified limits, if applicable. The Innovation Council or applicable State agency has discretion to publish a list of sandbox participants or a public notice of the existence of any innovation waivers. Consumer contracts shall not bind sandbox participants to provide service more than 90 days past the sandbox period, provided that the applicable State agency may require the sandbox participant to provide such services beyond the 90-day period as may be necessary to prevent consumer harm, as set forth in subsections (d) & (e) below. Sandbox participants shall include in all consumer contracts and renewals that all services may be terminated according to this Act and waiver.

(b) A sandbox participant shall be required to post a consumer protection bond, or alternatively, a deposit of cash or readily marketable securities, with the applicable State agency in an amount determined by the applicable State agency, as security for potential losses suffered by consumers. This security may be

cancelled or refunded when the applicable State agency has determined that all consumer claims have been satisfied, or four (4) years after the waiver expires, whichever is sooner.

(c) Not later than 30 days before the end of the sandbox period, a sandbox participant may request an extension of not more than 12 months for the purpose of obtaining a license or other authorization required by law. The applicable State agency shall grant or deny a request for an extension by the end of the sandbox period. The Innovation Council and the applicable State agency shall provide for an expedited process for an innovative product or service that is substantially similar to a product or service for which a waiver has previously been granted.

(d) At the end of the sandbox period, the sandbox participant shall submit a final report in a manner and format prescribed by the applicable State agency. If the sandbox participant cannot obtain regulatory compliance within 90 days following the expiration of the sandbox period, the participant shall wind down operations with existing consumers within 90 days after the conclusion of the sandbox period, as directed by the applicable State agency. If a sandbox participant has ongoing duties after the expiration date of the sandbox regulatory waiver, the sandbox participant shall continue to fulfill only those duties or arrange for a third party, acceptable to the applicable State agency, to fulfill those duties after the date the waiver terminates, provided that the sandbox participant shall remain liable for any consumer harm resulting from its sandbox participation or winding down regardless of whether a third party assists in the winding down.

(e) If a sandbox participant's business objectives fail before the end of the testing period, the sandbox participant must immediately notify the applicable State agency and take such actions as directed by the applicable State agency to ensure consumers are not harmed as a result of sandbox participant's participation in the sandbox or its the innovative product or service.

(f) Each instance where a sandbox participant fails to comply with any requirement of subsection (d) and (e) of this section is a separate violation of G.S. 75-1.1. This provision is in addition to, and not in lieu of, any other causes of action or relief available to consumers, the applicable State agency, the Innovation Council, or the Attorney General for violation of this section.

§ 169-8. Consumer protections.

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(b) Prior to offering an innovative product or service to consumers, a sandbox participant shall make all of the following disclosures to consumers:

- (1) The name and contact information of the sandbox participant.
- (2) That the innovative product or service is authorized pursuant to the regulatory sandbox for a temporary testing period.
- (3) That neither the State of North Carolina nor any of the applicable State agencies endorses or recommends the innovative product or service and is not subject to any liability for losses or damages caused by the product or service.
- (4) That the consumer may contact the applicable State agency, including the Office of the Attorney General, to file complaints, notices of suspected legal violations, or other comments relating to the innovative product or service being tested and provide the consumer with the requisite agency telephone number and website address or other contact information where complaints or other comments may be filed.

(b1) All disclosures to consumers must be in a clear and conspicuous format in both English and Spanish.

(c) A sandbox participant shall make any other statements or additional disclosures that may be required by the applicable State agency or by regulation to further the purposes of this Chapter.

(d) Nothing in this Act affects the applicable State agency's exercise of its authority with respect to the efficacy of an innovative product or service or limits the ability of an applicable State agency to ensure the financial capability of a sandbox participant transacting business with consumers.

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§ 169-10. Privacy; confidentiality of records.

(a) The Innovation Council or applicable State agency may collect personal information that is relevant and necessary to accomplish a lawful purpose. The Innovation Council or applicable State agency may not disclose personal information without the consent of the subject of the information, or unless required by law or regulation.

(b) Documents, materials, or other information in the possession of the applicable State agency that are obtained by, or disclosed to, that agency or any other person in the course of filing for review and approval of an innovative product or service under this Act are not public records under Chapter 132 of the General Statutes, and except in actions brought for violation of § 169-7 above, are confidential and privileged, are not subject to a subpoena or discovery, and are inadmissible in evidence in any civil action. The Council or the applicable State agency may also use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of their official duties or this Chapter.

(c) Nothing in this section shall prohibit a sandbox participant, upon approval of the applicable State agency, from disclosing information to an insurance carrier for the purpose of obtaining insurance coverage required for participation in the sandbox program; provided, however, that the insurance carrier must agree in writing to maintain the confidentiality of the information.

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§ 169-13. Executive Director.

There is hereby created the position of Executive Director of the NC Innovation Council, who shall perform all duties imposed by statute and such duties as may be assigned by the NC Innovation Council.

§ 169-14. Appointment of Executive Director.

(a) The NC Innovation Council shall appoint an Executive Director for a renewable term of two years with compensation to be determined by the Office of State Human Resources.

(b) The Executive Director shall serve at the discretion of the Council.

(c) The Executive Director shall be responsible for encouraging participation in the Regulatory Sandbox and for staffing, administration, and execution of the decisions and orders of the NC Innovation Council and shall perform such other responsibilities as may be assigned by the NC Innovation Council.