

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 562

By: Montgomery

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5
6 AS INTRODUCED

7 An Act relating to financial technology; creating
8 Oklahoma Financial Technology Access and Improvement
9 Act; defining terms; creating regulatory sandbox
10 program within Oklahoma Department of Commerce;
11 establishing duties and authority of Department in
12 administering program; enumerating information to be
13 included in application form prescribed by
14 Department; authorizing application fee; requiring
15 application for each product or service; authorizing
16 Department to seek additional information;
17 prescribing time period for application consideration
18 and authorizing extension under specified conditions;
19 requiring specified consultation by Department in
20 consideration of application and authorizing
21 consideration of, and attributing certain weight to,
22 specified factors; authorizing denial of application
23 and requiring written description; establishing time
24 limit for testing of product or service if
application is approved; enumerating requirements for
product or service tested; clarifying authority of
participant to act in certain capacity; providing
status of participant with respect to certain state
regulatory powers and authorizing certain
determination; requiring notice by Department with
respect to application of certain regulatory powers;
prohibiting immunity for criminal offenses as
participant; authorizing Department to terminate
participation and requiring written notice; requiring
participant to provide specified items of notice to
consumer in certain forms; authorizing Department to
require additional disclosures to consumer; setting
timeframe and procedures for terminating
participation in regulatory sandbox; requiring
participant to continue certain activity under
specified circumstances; authorizing participant to

1 request extension and establishing related
2 procedures; authorizing Department to grant extension
3 for specified time period; requiring participant to
4 retain certain records, documents and data; requiring
5 certain participant reporting under specified
6 circumstance; authorizing Department to require
7 certain records and to compel participant to make
8 records available; providing conditions for
9 participant removal from program; providing for
10 codification; and providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 5061.12 of Title 74, unless
there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma
Financial Technology Access and Improvement Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 5061.13 of Title 74, unless
there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Financial Technology Access and
Improvement Act:

1. "Applicable agency" means a Department or agency of the
state, that by law regulates business activity in the state and
persons engaged in such business activity, including the issuance of
licenses or other types of authorization, which the Department
determines would otherwise regulate a sandbox participant;

1 2. "Applicant" means an individual or entity that is applying
2 to participate in the regulatory sandbox;

3 3. "Blockchain technology" means the use of a digital database
4 containing records of financial transactions, which can be
5 simultaneously used and shared within a decentralized, publicly
6 accessible network and can record transactions between two parties
7 in a verifiable and permanent way;

8 4. "Consumer" means a person that purchases or otherwise enters
9 into a transaction agreement to receive an innovative product or
10 service that is being tested by a sandbox participant;

11 5. "Department" means the Oklahoma Department of Commerce;

12 6. "Financial product or service" means:

13 a. a financial product or financial service that requires
14 state licensure or registration, or

15 b. a financial product or financial service that includes
16 a business model, delivery mechanism, or element that
17 may require a license or other authorization to act as
18 a financial institution, enterprise, or other entity
19 that is regulated by this state, or other related
20 provisions.

21 "Financial product or service" does not include a product or
22 service that is governed by Title 36 or Title 71 of the Oklahoma
23 Statutes;

1 7. "Innovation" means the use or incorporation of a new or
2 emerging technology or a new use of existing technology, including
3 blockchain technology, to address a problem, provide a benefit, or
4 otherwise offer a product, service, business model, or delivery
5 mechanism that is not known by the Department to have a comparable
6 widespread offering in the state;

7 8. "Innovative product or service" means a financial product or
8 service that includes an innovation;

9 9. "Regulatory sandbox" means the Regulatory Sandbox Program
10 created by Section 3, which allows a person to temporarily test an
11 innovative product or service on a limited basis as authorized by
12 this act;

13 10. "Sandbox participant" means a person whose application to
14 participate in the regulatory sandbox is approved in accordance with
15 the provisions of this act;

16 11. "Test" means to provide an innovative product or service in
17 accordance with the provisions of this act.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 5061.14 of Title 74, unless
20 there is created a duplication in numbering, reads as follows:

21 A. There is created in the Oklahoma Department of Commerce the
22 Regulatory Sandbox Program. In administering the regulatory
23 sandbox, the Department:

24 1. Shall consult with each applicable agency;

1 2. Shall establish a program to enable a person to obtain
2 limited access to the market in the state to test an innovative
3 product or service; and

4 3. May enter into agreements with or follow the best practices
5 of other Oklahoma state agencies or other states that are
6 administering similar programs.

7 B. An applicant for the regulatory sandbox shall provide to the
8 Department an application in a form prescribed by the Department
9 that:

10 1. Demonstrates the applicant is subject to the jurisdiction of
11 the state;

12 2. Demonstrates the applicant has established a physical
13 location in the state, from which testing will be developed and
14 performed and where all required records, documents, and data will
15 be maintained;

16 3. Contains relevant personal and contact information for the
17 applicant, including legal names, addresses, telephone numbers,
18 email addresses, website addresses, and other information required
19 by the Department;

20 4. Discloses criminal convictions of the applicant or other
21 participating personnel, if any;

22 5. Demonstrates that the applicant has the necessary personnel,
23 financial and technical expertise, access to capital, and developed
24 plan to test, monitor, and assess the innovative product or service;

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6. Contains a description of the innovative product or service to be tested, including statements regarding the following:

- a. how the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox,
- b. how the innovative product or service would benefit consumers,
- c. how the innovative product or service is different from other products or services available in the state,
- d. what risks may confront consumers that use or purchase the innovative product or service,
- e. how participating in the regulatory sandbox would enable a successful test of the innovative product or service,
- f. a description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete,
- g. a description of how the applicant will perform ongoing duties after the test,
- h. how the applicant will end the test and protect consumers if the test fails, and

1 i. any other required information as determined by the
2 Department.

3 C. The Department is hereby authorized to promulgate rules to
4 establish a fee for application to the regulatory sandbox program.

5 D. An applicant shall file a separate application for each
6 innovative product or service to be tested.

7 E. After an application is filed, the Department may seek
8 additional information from the applicant that the Department
9 determines is necessary.

10 F. Except as otherwise provided in this subsection, not later
11 than ninety (90) days after the day on which a complete application
12 is received by the Department, the Department shall inform the
13 applicant whether the application is approved for entry into the
14 regulatory sandbox. The Department and an applicant may mutually
15 agree to extend the ninety-day time period described in this
16 subsection for the Department to determine whether an application is
17 approved.

18 G. In reviewing an application under this section, the
19 Department shall consult with, and get approval from, each
20 applicable agency before admitting an applicant into the regulatory
21 sandbox. Such consultation may include seeking information about
22 whether:

23 1. The applicable agency has previously issued a license or
24 other authorization to the applicant;

1 2. The applicable agency has previously investigated,
2 sanctioned, or pursued legal action against the applicant;

3 3. Whether the applicant could obtain a license or other
4 authorization from the applicable agency after exiting the
5 regulatory sandbox; and

6 4. Whether certain licensure or other regulations should not
7 be waived even if the applicant is accepted into the regulatory
8 sandbox.

9 H. In reviewing an application under this section, the
10 Department shall consider whether a competitor to the applicant is
11 or has been a sandbox participant and, if so, weigh that as a factor
12 in favor of allowing the applicant to also become a sandbox
13 participant.

14 I. If the Department and each applicable agency approve
15 admitting an applicant into the regulatory sandbox an applicant may
16 become a sandbox participant. The Department may deny any
17 application submitted under this section, for any reason, at the
18 Department's discretion. If the Department denies an application
19 submitted under this section, the Department shall provide to the
20 applicant a written description of the reasons for the denial as a
21 sandbox participant.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 5061.15 of Title 74, unless
24 there is created a duplication in numbering, reads as follows:

1 A. If the Oklahoma Department of Commerce approves an
2 application under Section 3 of this act, the sandbox participant has
3 twenty-four (24) months after the day on which the application was
4 approved to test the innovative product or service described in the
5 sandbox participant's application. An innovative product or service
6 that is tested within the regulatory sandbox is subject to the
7 following:

8 1. Consumers shall be residents of this state;

9 2. The Department may, on a case by case basis, specify the
10 maximum number of consumers that may transact through or enter into
11 an agreement to use the innovative product or service;

12 3. For a sandbox participant testing a consumer loan the
13 Department may, on a case by case basis, specify the maximum amount
14 of an individual loan that may be issued to an individual consumer
15 and the maximum amount of aggregate loans that may be issued to an
16 individual consumer; and

17 4. For a sandbox participant testing an innovative product or
18 service that would normally require a money transmission license
19 under Section 1513 of Title 6 of the Oklahoma Statutes, the
20 Department may, on a case by case basis, specify the maximum amount
21 of a single transaction for an individual consumer and the maximum
22 aggregate amount of transactions for an individual consumer.

1 B. This section does not restrict a sandbox participant who
2 holds a license or other authorization in another jurisdiction from
3 acting in accordance with that license or other authorization.

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

7 D. Except as otherwise provided in this act, a sandbox
8 participant that is testing an innovative product or service is not
9 subject to state laws that regulate financial products or services.
10 The Department may only determine that certain state laws that
11 regulate a financial product or service apply to a sandbox
12 participant if the Department, at the Department's sole discretion,
13 determines that:

14 1. An applicant's plan to protect consumers will not adequately
15 protect consumers from the harm the state law addresses; and

16 2. The benefits to consumers of applying the law outweigh the
17 potential benefits to consumers from increased competition,
18 innovation, and consumer access that waiving the law, in conjunction
19 with the applicant's ability to compensate consumers who may be
20 harmed, would provide.

21 E. If the Department determines that certain state laws that
22 regulate a financial product or service apply to a sandbox
23 participant, the Department shall notify the sandbox participant of
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1 the specific regulatory provisions that apply to the sandbox
2 participant.

3 F. Notwithstanding any other provision of this act, a sandbox
4 participant does not have immunity related to any criminal offense
5 committed during participation.

6 G. By written notice, the Department may end a sandbox
7 participant's participation in the regulatory sandbox at any time
8 and for any reason including if the Department determines a sandbox
9 participant is not operating in good faith to bring an innovative
10 product or service to market.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 5061.16 of Title 74, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Before providing an innovative product or service to a
15 consumer, a sandbox participant shall disclose the following to the
16 consumer:

- 17 1. The name and contact information of the sandbox participant;
- 18 2. That the innovative product or service is authorized
19 pursuant to the regulatory sandbox and, if applicable, that the
20 sandbox participant does not have a license or other authorization
21 to provide a product or service under state laws that regulate
22 products or services outside the regulatory sandbox;

1 3. That the innovative product or service is undergoing testing
2 and may not function as intended and may expose the customer to
3 financial risk;

4 4. That the provider of the innovative product or service is
5 not immune from civil liability for any losses or damages caused by
6 the innovative product or service;

7 5. That the state does not endorse or recommend the innovative
8 product or service;

9 6. That the innovative product or service is a temporary test
10 that may be discontinued at the end of the testing period;

11 7. The expected end date of the testing period; and

12 8. That a consumer may contact the Department to file a
13 complaint regarding the innovative product or service being tested
14 and provide the Department's telephone number and website address
15 where a complaint may be filed.

16 B. The disclosures required by subsection A of this section
17 shall be provided to a consumer in a clear and conspicuous form and,
18 for an internet or application-based innovative product or service,
19 a consumer shall acknowledge receipt of the disclosure before a
20 transaction may be completed.

21 C. The Department may require that a sandbox participant make
22 additional disclosures to a consumer.

1 SECTION 6. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 5061.17 of Title 74, unless
3 there is created a duplication in numbering, reads as follows:

4 A. At least thirty (30) days before the end of the twenty-four-
5 month regulatory sandbox testing period, a sandbox participant
6 shall:

7 1. Notify the Department that the sandbox participant will exit
8 the regulatory sandbox, discontinue the sandbox participant's test,
9 and will stop offering any innovative product or service in the
10 regulatory sandbox within sixty (60) days after the day on which the
11 24-month testing period ends; or

12 2. Seek an extension pursuant to Section 7 of this act.

13 B. If the Department does not receive notification as required
14 by subsection A of this section, the regulatory sandbox testing
15 period ends at the end of the twenty-four-month testing period and
16 the sandbox participant shall immediately stop offering each
17 innovative product or service being tested.

18 C. If a test includes offering an innovative product or service
19 that requires ongoing duties, such as servicing a loan, the sandbox
20 participant shall continue to fulfill those duties or arrange for
21 another person to fulfill those duties after the date on which the
22 sandbox participant exits the regulatory sandbox.

1 SECTION 7. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 5061.18 of Title 74, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Not later than thirty (30) days before the end of the
5 twenty-four-month regulatory sandbox testing period, a sandbox
6 participant may request an extension of the regulatory sandbox
7 testing period for the purpose of obtaining a license or other
8 authorization required by law.

9 B. The Oklahoma Department of Commerce shall grant or deny a
10 request for an extension in accordance with subsection A of this
11 section by the end of the twenty-four-month regulatory sandbox
12 testing period.

13 C. The Department may grant an extension in accordance with
14 this section for not more than six (6) months after the end of the
15 regulatory sandbox testing period.

16 D. A sandbox participant that obtains an extension in
17 accordance with this section shall provide the Department with a
18 written report every three (3) months that provides an update on
19 efforts to obtain a license or other authorization required by law,
20 including any submitted applications for licensure or other
21 authorization, rejected applications, or issued licenses or other
22 authorization.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5061.19 of Title 74, unless
3 there is created a duplication in numbering, reads as follows:

4 A. A sandbox participant shall retain records, documents, and
5 data produced in the ordinary course of business regarding an
6 innovative product or service tested in the regulatory sandbox.

7 B. If an innovative product or service fails before the end of
8 a testing period, the sandbox participant shall notify the
9 Department and report on actions taken by the sandbox participant to
10 ensure consumers have not been harmed as a result of the failure.

11 C. The Department may establish periodic reporting requirements
12 for a sandbox participant.

13 D. The Department may request records, documents and data from
14 a sandbox participant, and, upon the Department's request, a sandbox
15 participant shall make such records, documents and data available
16 for inspection by the Department.

17 E. If the Department determines that a sandbox participant has
18 engaged in, is engaging in, or is about to engage in any practice or
19 transaction that is in violation of this act or that constitutes a
20 violation of a state or federal criminal law, the Department may
21 remove a sandbox participant from the Regulatory Sandbox Program.

22 SECTION 9. This act shall become effective November 1, 2021.
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