

## Chapter 169.

### North Carolina Regulatory Sandbox.

#### § 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:

- (1) Applicable State agency. – The Office of the Commissioner of Banks or the Department of Insurance, based upon either's regulatory oversight and responsibility relative to the particular product or service covered under this Chapter.
- (2) Blockchain technology. – An electronic method for storing cryptographically secure data in a database or distributed ledger technology that is decentralized, consensus-based, mathematically verified, and distributed across multiple locations.
- (3) Consumer. – A person, whether a natural person or a legal entity, that purchases or enters into a banking, financial, insurance, or related transaction that involves an innovative product that is made available through the regulatory sandbox and that is being tested by a participant.
- (4) Entity. – Any person or legal entity organized under the laws of the United States, or any state within the United States, and subject to the jurisdiction of this State.
- (5) FinTech. – Certain innovative products or services that support the provision of banking or financial services.
- (6) Innovation. – Providing a financial or insurance product or service or a substantial component of such, or using or incorporating new or emerging technology, including blockchain technology, or developing a new use of existing technology to address a problem, provide a benefit or otherwise offer a product, service, business model or delivery mechanism to the public that is not known at present to have a comparable widespread offering in this State.
- (7) Innovative product or service. – A financial, insurance, or emerging technology product or service that includes an innovation component or element.
- (8) InsurTech. – Certain innovative products or services that support the provision of insurance services.
- (9) North Carolina Innovation Council or Council. – The Council established by G.S. 169-4.
- (10) Personal information. – Information that identifies or describes an individual, including, but not limited to, a name, social security number, home address, telephone number, and medical or employment history.
- (11) Regulatory sandbox, sandbox, or sandbox program. – The program established by this Chapter that permits a person or entity to temporarily test an innovative financial or insurance product or service and make it available to consumers on a limited basis without being subject to certain licensing or other regulatory obligations imposed under applicable State law.
- (12) Regulatory sandbox applicant or applicant. – Any person or entity applying to the regulatory sandbox for an innovation waiver.

- (13) Sandbox participant or participant. – Any person or entity whose application to participate in the regulatory sandbox has been approved pursuant to this Chapter.
- (14) Waiver. – A document issued pursuant to this Chapter that allows a person 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. (2021-166, s. 1.)

### **§ 169-2. Legislative findings.**

(a) The General Assembly finds that the banking and insurance industry is a major economic driver for the State. The General Assembly also finds that FinTech, InsurTech, and other emerging technologies are undergoing a transformational period and providing greater automation, connectivity, transparency, and opportunity for related products and services. The General Assembly recognizes that these new technologies hold the key for future growth across the State. Further, the General Assembly finds that existing legal and regulatory frameworks are restricting innovation because these frameworks were established largely at a time when technology was not a fundamental component of industry ecosystems, including banking and insurance. Since innovators require a flexible regulatory regimen to test new products, services, and emerging technologies, such as blockchain technology, the General Assembly also finds that adopting taxonomy related to blockchain, smart contracts, and other emerging technologies into State law would provide legal and regulatory clarification and create a more attractive jurisdiction for businesses and individuals who aim to do business in the State.

(b) The General Assembly finds that the technologically neutral drafting of the NC Uniform Electronic Transactions Act (UETA) adequately addresses the legal enforceability of smart contracts, electronic signatures, and electronic recording. Jurisdictions that establish regulatory sandboxes are more likely to provide a welcoming business climate for technology innovators and that this may contribute to significant business growth and economic development in the State.

(c) The General Assembly also finds that investment in broadband infrastructure and technology talent programs in rural North Carolina created a skilled and knowledgeable workforce that may further contribute to significant business growth and economic development in the State. Further, establishing a North Carolina Innovation Council (Innovation Council) would promote entrepreneurial development and support the State's efforts in developing and sustaining a regulatory sandbox. The Innovation Council shall also have as part of its mission the support and development of the banking, insurance, and related industries in a manner that benefits rural, urban, and suburban areas of the State.

(d) The General Assembly finds that certain nonprofit organizations are to be recognized as having a significant contribution for guiding companies through the regulatory sandbox process and providing technical assistance to regulatory sandbox participants. Finally, the General Assembly finds that modernization of relevant banking, insurance, and related laws will contribute to the economic vitality of all areas of the State and will help North Carolina remain competitive in the twenty-first century. (2021-166, s. 1.)

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

(a) Notwithstanding any other provision of law, a person 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, or portions thereof, if these statutes or rules do not currently permit the product or service to be made available to consumers.

(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. (2021-166, s. 1.)

#### **§ 169-4. North Carolina Innovation Council established.**

(a) The North Carolina Innovation Council is established. The purpose of the Innovation Council is to support innovation, investment, and job creation within North Carolina by encouraging participation in the regulatory sandbox. The Council is empowered to set standards, principles, guidelines, and policy priorities for the types of innovations that the regulatory sandbox program will support. The Council shall be responsible for admission into the regulatory sandbox program and for assigning selected participants to the applicable State agency.

(b) The Council shall consist of 11 members, as follows:

- (1) The Commissioner of Banks or appointed designee.
- (2) The Commissioner of Insurance and Fire Marshal or appointed designee.
- (3) The Secretary of State or appointed designee.
- (4) The Attorney General or appointed designee.
- (5) Two public members appointed by the Governor.
- (6) One public member appointed by the Lieutenant Governor.
- (7) Two public members from academia appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
- (8) Two public members from the North Carolina entrepreneurial or blockchain community appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

Public members shall have a background in one or more of the following areas or related areas: financial services; insurance; blockchain; FinTech; InsurTech; or entrepreneurship.

(c) Appointed members of the Council shall serve terms of four years, beginning on October 1, 2021, and every four years thereafter, except that one each of the two members appointed by the Governor, the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall serve an initial term of two years, and every four years thereafter. Appointed members may be reappointed but shall not serve more than two consecutive terms. Vacancies among appointed members shall be filled by the appointing authority and shall be for the remainder of the unexpired term.

(d) Upon appointment of a majority of the appointed members, the Secretary of State shall call the first meeting of the Council. At its initial meeting the Council shall elect an ex officio member as chair and an appointed member as vice-chair, each of whom shall serve a term of two years.

(e) The Council shall meet at least quarterly but may meet more frequently upon the call of the chair. A majority of the Council membership shall constitute a quorum.

(f) Members of the Council shall receive no compensation for their services other than such per diem compensation and necessary travel and subsistence expenses while engaged in the official discharge of their official duties as is provided by law for members of State boards and commissions. (2021-166, s. 1.)

**§ 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 with respect to innovations and the application of innovative technologies that would additionally provide benefit to the State, its consumers, and its industry. (2021-166, s. 1.)

**§ 169-6. Regulatory sandbox applications.**

(a) An entity may apply to participate in the regulatory sandbox by submitting an application to the Innovation Council. The Innovation Council shall select and refer applicants to the applicable State agency. Admission to the regulatory sandbox shall not be against the public interest and shall not unreasonably increase risk to consumers.

(b) Sandbox applicants must pay an application fee of fifty dollars (\$50.00). Applicants that are admitted into the regulatory sandbox program shall incur a participation fee of four hundred fifty dollars (\$450.00) to participate in the 24-month sandbox period to cover reasonable agency expenses. Additional participation fees may apply depending on factors such as the size of an entity or the number of customers an entity may have but will be capped at a reasonable amount to encourage participation in the sandbox program. The Innovation Council will determine and publish a fee schedule for these additional participation fees.

(c) An entity making an application to the sandbox program shall be a corporation or other organized entity with a physical presence in North Carolina. Upon acceptance to the sandbox program and as a condition to participation in the sandbox program, the individuals who are substantially involved in the development, operation, or management of the innovative product or service shall submit to a criminal history background check.

(d) In determining admission to the regulatory sandbox program, the Innovation Council shall consider all of the following:

- (1) The nature of the innovative product or service proposed to be made available to consumers, including the potential risk to consumers.
- (2) The methods that will be used to protect consumers and resolve complaints during the sandbox period.
- (3) A business plan, including availability of capital.
- (4) Whether the entity's management has the necessary expertise to conduct a pilot of the innovative product or service during the sandbox period.
- (5) Whether any person substantially involved in the development, operation, or management of the innovative product or service has been convicted of or is currently under investigation for fraud or State or federal securities law violations.

(6) Any other factor that the Innovation Council or the applicable State agency determines to be relevant.

(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 as long as the applicant has taken action to address the reasons for denial given by the applicable State agency. (2021-166, s. 1.)

**§ 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 after the date of approval to test the innovative product or service. 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 applicable State agency may, on a case by case basis, specify the maximum number of consumers permitted to receive an innovative product or service. The sandbox participant and applicable State agency may agree, by mutual agreement, to extend the 24-month sandbox period or to increase the applicable cap in terms of numbers of consumers or dollar limits, for the particular product or service, 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.

(b) A sandbox participant may 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 it, as security for potential losses suffered by consumers. This security may be cancelled or refunded when the waiver has expired or when the applicable State agency has determined that any consumer claims have been satisfied, whichever is later.

(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, except that the sandbox participant may (i) collect and receive money owed by the consumer based on agreements made before conclusion of the sandbox period, (ii) take necessary legal actions, and (iii) take such other actions that are authorized 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 another person or entity to fulfill those duties after the date the waiver terminates. If a sandbox participant's business objectives fail before the end of the testing period, the sandbox

participant must notify the applicable State agency to ensure consumers have not been harmed as a result of the innovative product or service. (2021-166, s. 1.)

### **§ 169-8. Consumer protections.**

(a) Nothing in this Chapter shall be construed as allowing the Council or an applicable State agency to grant an innovation waiver that alters or amends any of the following:

- (1) Article 12 of Chapter 20 of the General Statutes, Motor Vehicle Dealers and Manufacturers Licensing Law.
- (2) Chapter 24 of the General Statutes, Interest.
- (3) Chapter 25A of the General Statutes, Retail Installment Sales Act.
- (4) Chapter 25B of the General Statutes, Credit.
- (5) Article 15 of Chapter 53 of the General Statutes, Consumer Finance Act.
- (5a) All financial and solvency requirements that apply to nonadmitted domestic surplus lines insurers pursuant to G.S. 58-21-21(g).
- (5b) Article 36 of Chapter 58 of the General Statutes, North Carolina Rate Bureau.
- (5c) Article 37 of Chapter 58 of the General Statutes, North Carolina Motor Vehicle Reinsurance Facility.
- (6) Article 70 of Chapter 58 of the General Statutes, Collection Agencies.
- (7) Article 20 of Chapter 66 of the General Statutes, Loan Brokers.
- (8) Chapter 75 of the General Statutes, Monopolies, Trusts, and Consumer Protection.
- (9) Any other criminal or consumer protection laws.

(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 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.

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

(c) Any other statements or additional disclosures that may be required by the relevant 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 insurance 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. (2021-166, s. 1; 2022-46, s. 21.)

### **§ 169-9. Records requirements.**

A sandbox participant must retain comprehensive records, documents, and data produced in the ordinary course of business regarding an innovative product or service tested in the regulatory sandbox for a period not less than five years after the conclusion of the period of the testing or for the period required pursuant to the record retention policy for the applicable State agency. The records shall be available to the applicable State agency upon prior written request. The applicable State agency shall establish reporting requirements for each sandbox participant, including information about consumer complaints, if any. (2021-166, s. 1.)

**§ 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, are confidential and privileged, are not subject to a subpoena or discovery, and are inadmissible in evidence in any civil action.

(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. (2021-166, s. 1.)

**§ 169-11. Blockchain initiatives.**

The Innovation Council may explore, receive input, analyze, and make recommendations, with respect to blockchain initiatives and the application of blockchain technology, that would additionally provide benefit to the State, its consumers, and its industry. (2021-166, s. 1.)

**§ 169-12. Reciprocity.**

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

(b) The Innovation Council or applicable State agency may enter into agreements with other State, federal, or foreign regulators to advance the purpose of the regulatory sandbox, which may include permission for any sandbox participant to operate in other jurisdictions.

(c) This Chapter permits persons, applicants, or entities that are authorized in other jurisdictions or that hold a license in other jurisdictions to be recognized as sandbox participants in this State. (2021-166, s. 1.)