S.B. 90 136th General Assembly	**Bill Analysis**

Version: As Introduced

Primary Sponsors: Sens. Cutrona and Lang

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SUMMARY

- Creates the Universal Regulatory Sandbox Program (referred to in this analysis as the "sandbox program").

- Establishes the Universal Regulatory Sandbox Program Advisory Committee and a regulatory relief division, within the Governor's Common Sense Initiative (CSI) office, to administer the sandbox program.

- Provides guidelines and required materials for the sandbox program application.

- Describes the evaluation process of applicants to the sandbox program.

- Establishes guidelines on the limits of an approved participant's demonstration and offering.

- Requires participants in the sandbox program to make certain disclosures to consumers before engaging in transactions.

- Establishes recordkeeping requirements for sandbox program participants.

- Permits a five-year demonstration period but allows the participant to request up to three 12-month extensions.

- Implements reporting requirements for sandbox program participants, state agencies, and the regulatory relief division.

- Requires the regulatory relief division to collect public suggestions to reform state laws and regulations to reduce regulatory burdens.

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DETAILED ANALYSIS

Creation of Universal Regulatory Sandbox Program

The bill requires the Governor's Common Sense Initiative (CSI) office to establish a Universal Regulatory Sandbox Program. Unlike the existing regulatory sandbox program found in Chapter 1355 of the Revised Code, which only pertains to novel financial products or services, the universal regulatory sandbox program required by the bill (referred to, hereafter, as the "sandbox program") applies to a wider range of innovative products or services. Businesses may apply to offer a new product or service through the sandbox program wherein the product or service would be exempted from certain state laws or regulations, including licenses or authorizations that might otherwise be required. If the application is approved, certain laws or regulations may be temporarily waived or suspended with respect to that product or service, permitting the business to demonstrate the value of relaxing statutory or regulatory restrictions on businesses and industries.

The bill largely excludes the beer, wine, and automotive industries from participating in the sandbox program.[1]

Regulatory relief office

The bill requires the Governor to establish a regulatory relief division within the CSI office, which is responsible for administering the sandbox program and applications for participation. The regulatory relief division also acts as the liaison between private businesses and state agencies to identify state laws or regulations that could be waived or suspended under the sandbox program.[2]

The bill permits the regulatory relief division to do all of the following:

- Identify state laws and regulations which the division believes unnecessarily inhibit the creation and success of new companies or industries in Ohio;

- Make recommendations to the Governor and the General Assembly regarding modifying those laws and regulations;

- Create a framework through which to analyze the risk to health, safety, and well-being of consumers as a result of permanently removing or temporarily waiving state laws and regulations that inhibit the creation or success of new and existing companies or industries in Ohio;

- Propose reciprocity agreements between states that use, or are proposing to use, similar sandbox programs.[3]

The bill permits the regulatory relief division to adopt rules as necessary to administer the sandbox program, including rules that establish application and reporting requirements, and that allow for cooperation and consultation with the Superintendent of Financial Institutions to ensure cohesive implementation with the existing regulatory sandbox program under Chapter 1355 of the Revised Code.[4]

Universal Regulatory Sandbox Program Advisory Committee

The bill creates the Universal Regulatory Sandbox Program Advisory Committee (referred to, hereafter, as the "Advisory Committee") within the CSI office. The Advisory Committee is comprised of 11 members who advise and make recommendations to the regulatory relief division. The bill requires the Advisory Committee to review applications for participation in the sandbox program and to make recommendations to the regulatory relief division as to whether an application should be approved.[5]

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[1] R.C. 1357.01(I) and (L) and 1357.02(A); R.C. 1355.02, not in the bill.

[2] R.C. 1357.02(B).

[3] R.C. 1357.02(C).

[4] R.C. 1357.02(C)(4).

[5] R.C. 1357.03(A).

The bill establishes the initial Advisory Committee members as follows:

- Six members, appointed by the Governor, representing business interests from a variety of industry clusters;

- Three members, appointed by the Governor, representing state agencies which regulate business;

- One member of the Senate, appointed by the President of the Senate;

- One member of the House of Representatives, appointed by the Speaker of the House of Representatives.

The Committee members, who serve without compensation, must be appointed within 30 days after the provision's effective date. Subsequent vacancies on the Advisory Committee must be filled in the same manner by the same appointing authority within 60 days of the vacancy occurring. The initial terms are staggered. After the initial term for each member appointed by the Governor, each subsequent member will serve a term lasting four years. Committee members appointed from the Senate or the House of Representatives will serve a term of two years or for the remainder of their legislative term, whichever is less.[6]

The Governor will select a chairperson for the Advisory Committee each year, and the Committee will meet at the call of the chairperson. The initial meeting must occur within 30 days after the last member's appointment. A majority of members constitutes a quorum for the Advisory Committee to conduct business. If needed, the regulatory relief division will provide technical and administrative support to the Committee. The Advisory Committee is not a public body required to conduct public meetings.[7]

Application to the sandbox program

Required materials

The bill requires any person seeking to participate in the sandbox program to submit an application to the regulatory relief division. If requested, the division must assist with preparing an application, including by helping to identify state agencies that regulate the person's business and laws or regulations that could have an adverse impact on the success of that business. The form and manner of the application are set by the regulatory relief division, but the bill requires it to include, at a minimum, all of the following:

- Confirmation that the applicant is subject to the jurisdiction of the CSI office;

- Confirmation that the applicant has established a physical or virtual location in the state, from which it will demonstrate an innovative offering and where all required records, documents, and data will be maintained;

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[6] R.C. 1357.03(B), (C), and (D).

[7] R.C. 1357.03(E), (F), and (G).

- The applicant's relevant personal and contact information, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the regulatory relief division;

- Disclosure of any criminal convictions of the applicant or other participating individuals;

- A list of the state agencies that regulate the applicant's business;

- Other information required by the regulatory relief division.[8]

The application must also include a description of the applicant's innovative offering. The applicant must describe how the offering is subject to licensing, legal prohibition, or other authorization requirements outside of the sandbox, and each law or regulation which the applicant seeks to waive or suspend while participating. The applicant must also describe the proposed demonstration plan, including its estimated duration and how the regulatory sandbox would enable the applicant to successfully demonstrate the offering. Lastly, the application must describe each of the following:

- The offering's benefits to consumers;

- How the offering differs from others available in Ohio;

- The risks that may exist for consumers who use or purchase the offering;

- How the applicant will end the demonstration and protect consumers if the offering fails;

- Acknowledgement that the applicant is subject to all laws and regulations regarding the offering after the demonstration concludes.[9]

If an applicant seeks to demonstrate more than one offering through the sandbox program, the applicant must file a separate application for each offering.[10]

Fees

The Governor may impose an application fee to offset the costs of the regulatory relief division and the CSI office in administering the sandbox program. The bill creates the Universal Regulatory Sandbox Program Fund within the state treasury, into which the fees must be deposited. Money in the fund will be used for the purposes of the bill.[11]

Regulatory relief office review

The bill requires the regulatory relief division to process and review applications for participation in the sandbox program. The division must consult with applicable government agencies which regulate the applicant's business and, if more information is required from the applicant, must seek out that information. The contents of each application and any related

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[8] R.C. 1357.05(A) and (B).

[9] R.C. 1357.05(A)(5).

[10] R.C. 1357.05(D).

[11] R.C. 1357.05(C).

information provided by the applicant are considered confidential, and the application is not a public record.

The regulatory relief division must review an application and refer it to the appropriate agency within five business days after receipt. In addition, it must provide the applicant with acknowledgement of receipt as well as the name and contact information for each state agency reviewing the application.[12]

Agency review

Within 30 days after receiving a complete application, the bill requires a state agency to review the application and provide a report to the regulatory relief division which recommends that the applicant be admitted, or denied entrance, into the sandbox program. The report must describe any identifiable, likely, and significant harm addressed by the law or regulation the application seeks or waive or suspend. The bill permits an agency to extend the general, 30-day deadline by five business days by providing written notice to the regulatory relief division. Only one extension is allowed for each application. If an agency fails to deliver a report by the deadline, the regulatory relief division is required to proceed as though the agency does not object to temporarily waiving or suspending the relevant laws or regulations.[13]

Preliminary application denial

If an agency recommends that an applicant be denied entrance into the sandbox program, the report submitted to the regulatory relief division must include the reasons for that recommendation. The reasons must include the agency's reasoning why a temporary waiver or suspension of the relevant laws or regulations would potentially cause significant harm to the health, safety, or financial well-being of consumers or the public, why it may create unreasonable expenses for the state's taxpayers, and the likelihood of the harm or expenses. If the agency determines that consumers or the public can be protected through less restrictive means than existing laws or regulation, the bill requires the agency to recommend how that may be achieved.[14]

Under the bill, the regulatory relief division must reject an application under the following circumstances:

- An applicable state agency recommends that the applicant be denied entrance to the sandbox program;

- An applicable state agency determines that the applicant's offering fails to comply with standards or specifications required by federal law or regulations;

- The regulatory relief division determines that the applicant is better suited for the regulatory sandbox program under Chapter 1355 of the Revised Code;

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[12] R.C. 1357.05(E), (F), and (G).

[13] R.C. 1357.06(A)(1), (2), and (5).

[14] R.C. 1357.06(A)(3) and (4).

- The applicant, or any person seeking to participate with the applicant in the sandbox program, has been convicted of any crime involving significant theft, fraud, or dishonesty, or has entered a plea of guilty or no contest for such a crime.[15]

Advisory Committee review

The regulatory relief division must provide all applications not rejected for a reason described above, and their corresponding agency reports, to the Advisory Committee. The Committee must meet to review an application no sooner than 30 days, but no later than 120 days, after receipt of the application from the regulatory relief division. Additionally, the Committee must meet at least once per calendar quarter to review these applications and agency reports, unless there are no applications available to review.[16] In reviewing an application, the Committee is required to consider the following factors:

- Whether the applicable agency previously issued a license or other authorization to the applicant;

- Whether the agency has previously investigated, sanctioned, or pursued legal action against the applicant;

- Whether a competitor to the applicant is or has been a participant in the sandbox program;

- Whether the applicant's plan adequately protects consumers from harm;

- The risk of harm to consumers compared to the potential benefits of the applicant's participation in the sandbox program.[17]

After reviewing an application and the corresponding agency reports, the Advisory Committee must provide a recommendation to the Governor and the CSI office as to whether the applicant should be admitted or denied entrance to the sandbox program.[18]

If the Committee recommends that an applicant be admitted to the sandbox program, the regulatory relief division may consult with the Governor and enter into a written agreement with the applicant to admit the applicant to the sandbox program. This agreement must describe the specific laws or regulations that are waived or suspended as part of the applicant's participation in the sandbox program.[19]

Application denial

The bill permits the regulatory relief division, the CSI office, and the Governor to deny an application for any reason, such as an evidence-based determination that suspending or waiving

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[15] R.C. 1357.06(B).

[16] R.C. 1357.06(C)(1) to (3).

[17] R.C. 1357.06(D).

[18] R.C. 1357.06(C)(5).

[19] R.C. 1357.07(A)(1) and (2).

a law or regulation would cause significant risk of harm to consumers or Ohio residents. As described above, the regulatory relief division, CSI office, or Governor must provide to the applicant a written description of the reasons for the application's denial. However, any application denial by the regulatory relief division, CSI office, or the Governor is final.[20]

Participation in the sandbox program

General

The bill permits a participant in the sandbox program to demonstrate their offering for five years following the date the participant entered into the agreement with the regulatory relief division (referred to in the bill as the "demonstration period"). During this period, the participant is not subject to enforcement of the laws or regulations waived or suspended by the agreement. The bill prohibits prosecutors from filing or pursuing charges against the participant related to those laws or regulations during the demonstration period. Similarly, state agencies may not pursue punitive action against a participant related to those laws or regulations. However, the participant does not have immunity related to any criminal offense committed during their participation in the sandbox program.[21]

Additionally, an agreement admitting an applicant to the sandbox program must not waive or suspend any tax levied by the state or other authority within the state, or any law or regulation which allows consumers to seek restitution in the event they are harmed.

The agreement's provisions to waive or suspend a law or regulation only apply with respect to that participant and consumers who are residents of this state. They do not apply to businesses not participating in the sandbox program, nor to consumers who are not Ohio residents. However, participation in the sandbox program does not impact a participant's ability to conduct business for which it is licensed or authorized in another jurisdiction.[22]

Required disclosures

Any participant in the sandbox program is required to disclose all of the following to a consumer before demonstrating the offering:

- The name and contact information of the sandbox participant;

- That the offering is authorized under the sandbox program;

- If applicable, that the participant does not have a license or other authorization to provide the offering under state law outside of the sandbox program;

- That the offering is undergoing testing, it may not function as intended, and it may expose the consumer to risks identified in the agency's report;

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[20] R.C. 1357.06(E).

[21] R.C. 1357.07(A)(2), (D), and (E).

[22] R.C. 1357.08(A)(3), (A)(4), and (B).

- That the participant is not immune from civil liability for losses or damages caused by the offering;

- That the participant is not immune from criminal prosecution if it violates state law or regulations not waived or suspended by the sandbox program;

- That the offering is a temporary demonstration;

- The expected end date of the demonstration;

- That the consumer may contact the regulatory relief division to file a complaint regarding the offering;

- The regulatory relief division's telephone number and website address where a complaint may be filed.

The disclosures must be clearly and conspicuously provided to a consumer. If the offering is internet or application-based, a consumer must acknowledge receipt of the disclosures before the transaction may be completed. Furthermore, the regulatory relief division may require a participant to make additional disclosures to a consumer.[23]

Recordkeeping requirements

Under the bill, each participant must retain any records, documents, or data produced in the ordinary course of business regarding the offering demonstrated through the sandbox program. If a participant ends its offering prior to the end of the demonstration period, it must notify the regulatory relief division and each applicable agency and report on actions taken to ensure that consumers have not been harmed.

The bill permits the regulatory relief division to request records, documents, or data from a participant and requires the participant to provide that information for inspection upon such a request.[24]

Removal from the sandbox program

The regulatory relief division may remove a participant from the sandbox program at any time and for any reason by providing written notice. This includes situations where the regulatory relief division, CSI office, or the Governor determines that the participant is not operating in good faith to bring an innovative offering to market.[25]

The regulatory relief division may also remove a participant from the sandbox program if it determines that the participant has engaged in, is engaging in, or will imminently engage in any

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[23] R.C. 1357.08.

[24] R.C. 1357.11(A), (B), and (C).

[25] R.C. 1357.07(F).

practice or transaction that violates the bill, or any other law or regulation not waived or suspended by the sandbox program.[26]

If a participant's inclusion in the sandbox program is ended, neither the regulatory relief division nor its employees are liable for any business losses or application expenses incurred by the participant in relation to the sandbox program.[27]

Demonstration period expiration and extensions

The bill requires participants in the sandbox program to notify the regulatory relief division no less than 30 days before the end of the five-year demonstration period whether the participant is seeking an extension or plans to exit the sandbox program. If the division does not receive this notice by the required deadline, then the demonstration period will end on the date five years after the date on which the participant entered into the agreement with the division. However, if a demonstration includes an offering that requires ongoing duties, the bill requires the sandbox participant to continue to fulfill those duties after the sandbox program demonstration period ends.[28]

If a participant properly requests an extension of the demonstration period prior to the deadline, the regulatory relief division must grant or deny the request before the end of the demonstration period. If approved, the division may grant an extension for no more than 12 months following the date on which the initial demonstration period ended. The participant may apply for, and the division may grant, as many as three 12-month extensions to the participant's demonstration period.[29]

Reporting requirements

CSI office

Beginning October 1, of the year following the effective date of this provision, the CSI office must submit a written report to the General Assembly regarding the activities of the regulatory relief division. This report must contain all of the following:

- Information regarding each participant in the sandbox program, including the industry that the participant represents and the anticipated or actual cost savings experienced by each participant;

- Information on the sandbox program's impact on consumer outcomes;

- Recommended changes to laws or regulations that the regulatory relief division determines unnecessarily inhibit the creation and success of new companies or industries;

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[26] R.C. 1357.11(G).

[27] R.C. 1357.07(G).

[28] R.C. 1357.09.

[29] R.C. 1357.10.

- ▪ Recommended changes to the sandbox program or the regulatory relief division.[30]

Sandbox participants

The regulatory relief division is required to establish quarterly reporting requirements for each participant in the sandbox program, including information about consumer complaints.[31]

In addition, a sandbox participant is required to notify the regulatory relief division and any applicable agency of any incident that results in harm to the health, safety, or financial well-being of a consumer. Failure to do so permits the regulatory relief division to immediately remove the participant from the sandbox program.[32]

Within 30 days after exiting the sandbox program, the bill requires the participant to submit a written report to the regulatory relief division and each applicable agency detailing the demonstration, including any incidents of harm to consumers, any legal action filed against the participant as a result of the demonstration, and any complaints filed with an applicable agency as a result of the demonstration.[33]

State agencies

Within 30 days after an applicable agency receives a quarterly report or written report from a sandbox participant, the bill requires the agency to provide a written report to the regulatory relief division describing any statutory or regulatory reform the agency recommends based on the demonstration.[34]

Public suggestions and recommendations

The bill requires the regulatory relief division to create and maintain a public webpage on the CSI office's website through which Ohio residents and businesses can make suggestions regarding laws and regulations that could be modified or eliminated. On a quarterly basis, if not more frequently, the regulatory relief division is required to compile all suggestions submitted through the webpage and provide a written report to the Governor and the General Assembly which describes the most common suggestions. In compiling the report, the regulatory relief division and the Advisory Committee must ensure that private information of the residents and businesses remains private.

The regulatory relief division may evaluate the report and provide suggestions regarding which state laws or regulations could be modified or eliminated, with the purpose of reducing the regulatory burden on Ohio residents and businesses while still protecting consumers.[35]

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[30] R.C. 1357.04.

[31] R.C. 1357.11(B).

[32] R.C. 1357.11(D).

[33] R.C. 1357.11(E).

[34] R.C. 1357.11(F).

[35] R.C. 1357.12.

HISTORY

Action	Date
Introduced	02-10-25