

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

D

SENATE BILL 470
PROPOSED COMMITTEE SUBSTITUTE S470-PCS15288-TG-24

Short Title: North Carolina Regulatory Sandbox Act.

(Public)

Sponsors:

Referred to:

April 5, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA REGULATORY SANDBOX ACT AND TO
3 ESTABLISH THE NORTH CAROLINA INNOVATION COUNCIL.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

6 **"Chapter 169.**

7 **"North Carolina Regulatory Sandbox.**

8 **"§ 169-1. Short title; definitions.**

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

11 (b) The following definitions apply in this Chapter:

12 (1) Applicable State agency. – The Office of the Commissioner of Banks or the
13 Department of Insurance, based upon either's regulatory oversight and
14 responsibility relative to the particular product or service covered under this
15 Chapter.

16 (2) Blockchain technology. – An electronic method for storing cryptographically
17 secure data in a database or distributed ledger technology that is decentralized,
18 consensus-based, mathematically verified, and distributed across multiple
19 locations.

20 (3) Consumer. – A person, whether a natural person or a legal entity, that
21 purchases or enters into a banking, financial, insurance, or related transaction
22 that involves an innovative product that is made available through the
23 regulatory sandbox and that is being tested by a participant.

24 (4) Entity. – Any person or legal entity organized under the laws of the United
25 States, or any state within the United States, and subject to the jurisdiction of
26 this State.

27 (5) FinTech. – Certain innovative products or services that support the provision
28 of banking or financial services.

29 (6) Innovation. – Providing a financial or insurance product or service or a
30 substantial component of such, or using or incorporating new or emerging
31 technology, including blockchain technology, or developing a new use of
32 existing technology to address a problem, provide a benefit or otherwise offer
33 a product, service, business model or delivery mechanism to the public that is
34 not known at present to have a comparable widespread offering in this State.



* S 4 7 0 - P C S 1 5 2 8 8 - T G - 2 4 *

- 1 (7) Innovative product or service. – A financial, insurance, or emerging
2 technology product or service that includes an innovation component or
3 element.
- 4 (8) InsurTech. – Certain innovative products or services that support the provision
5 of insurance services.
- 6 (9) North Carolina Innovation Council or Council. – The Council established by
7 G.S. 169-4.
- 8 (10) Personal information. – Information that identifies or describes an individual,
9 including, but not limited to, a name, social security number, home address,
10 telephone number, and medical or employment history.
- 11 (11) Regulatory sandbox, sandbox, or sandbox program. – The program
12 established by this Chapter that permits a person or entity to temporarily test
13 an innovative financial or insurance product or service and make it available
14 to consumers on a limited basis without being subject to certain licensing or
15 other regulatory obligations imposed under applicable State law.
- 16 (12) Regulatory sandbox applicant or applicant. – Any person or entity applying to
17 the regulatory sandbox for an innovation waiver.
- 18 (13) Sandbox participant or participant. – Any person or entity whose application
19 to participate in the regulatory sandbox has been approved pursuant to this
20 Chapter.
- 21 (14) Waiver. – A document issued pursuant to this Chapter that allows a person to
22 temporarily test an innovative product or service on a limited basis without
23 otherwise being subject to the same licensing or authorization provisions of
24 the laws of this State or in full compliance with the laws of this State.

25 **§ 169-2. Legislative findings.**

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

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

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

1 support and development of the banking, insurance, and related industries in a manner that
2 benefits rural, urban, and suburban areas of the State.

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

9 **"§ 169-3. Regulatory sandbox program established; innovation waivers; limitations.**

10 (a) Notwithstanding any other provision of law, a person who makes an innovative
11 product or service available to consumers in the regulatory sandbox may be granted a waiver of
12 specified requirements imposed by statute or rule, or portions thereof, if these statutes or rules
13 do not currently permit the product or service to be made available to consumers.

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

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

19 **"§ 169-4. North Carolina Innovation Council established.**

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

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

27 (1) The Commissioner of Banks or appointed designee.

28 (2) The Commissioner of Insurance and Fire Marshal or appointed designee.

29 (3) The Secretary of State or appointed designee.

30 (4) The Attorney General or appointed designee.

31 (5) Two public members appointed by the Governor.

32 (6) One public member appointed by the Lieutenant Governor.

33 (7) Two public members appointed by the Senate President Pro Tempore from
34 academia.

35 (8) Two public members appointed by the House Speaker from the North
36 Carolina entrepreneurial or blockchain community.

37 Public members shall have a background in one or more of the following areas or related
38 areas, including financial services, insurance, blockchain, FinTech, InsurTech, or
39 entrepreneurship.

40 (c) The membership of the Innovation Council shall receive no compensation for their
41 services, except for reasonable travel expenses.

42 **"§ 169-5. Regulatory assistance; technical assistance; nonprofit organizations.**

43 A designated nonprofit organization which has been duly authorized by the Office of the
44 Secretary of State shall be recognized as partners that may help sandbox applicants navigate the
45 regulatory sandbox application process. Certain participating nonprofit organizations may also
46 assist sandbox participants with the design and implementation of products and services during
47 the regulatory sandbox program period. Nonprofit organizations wishing to assist regulatory
48 sandbox applicants and participants shall submit an application to the Innovation Council for
49 approval. Such organizations shall additionally be empowered to explore, provide input, analyze,
50 and make recommendations with respect to innovations and the application of innovative
51 technologies that would additionally provide benefit to the State, its consumers, and its industry.

"§ 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.

"§ 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

1 Council or applicable State agency has discretion to publish a list of sandbox participants or a
2 public notice of the existence of any innovation waivers.

3 (b) A sandbox participant may be required to post a consumer protection bond, or
4 alternatively, a deposit of cash or marketable securities, with the applicable State agency in an
5 amount determined by it, as security for potential losses suffered by consumers. This security
6 may be cancelled or refunded when the waiver has expired or when the applicable State agency
7 has determined that any consumer claims have been satisfied, whichever is later.

8 (c) At the end of the sandbox period, the sandbox participant shall submit a final report
9 in a manner and format prescribed by the applicable State agency. If the sandbox participant
10 cannot obtain regulatory compliance within 90 days following the expiration of the sandbox
11 period, the participant shall wind down operations with existing consumers within 90 days after
12 the conclusion of the sandbox period, except that the sandbox participant may (i) collect and
13 receive money owed by the consumer based on agreements made before conclusion of the
14 sandbox period, (ii) take necessary legal actions, and (iii) take such other actions that are
15 authorized by the applicable State agency. If a sandbox participant has ongoing duties after the
16 expiration date of the sandbox regulatory waiver, the sandbox participant shall continue to fulfill
17 only those duties or arrange for another person or entity to fulfill those duties after the date the
18 waiver terminates. If a sandbox participant's business objectives fail before the end of the testing
19 period, the sandbox participant must notify the applicable State agency to ensure consumers have
20 not been harmed as a result of the innovative product or service.

21 **"§ 169-8. Consumer protections.**

22 (a) Nothing in this Chapter shall be construed as altering or amending the applicability
23 of any criminal or consumer protection laws.

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

26 (1) The name and contact information of the sandbox participant.

27 (2) That the innovative product or service is authorized pursuant to the regulatory
28 sandbox for a temporary testing period.

29 (3) That neither the State of North Carolina nor any of the applicable State
30 agencies endorses or recommends the innovative product or service and is not
31 subject to any liability for losses or damages caused by the product or service.

32 (4) That the consumer may contact the applicable State agency, including the
33 Attorney General, to file complaints, notices of suspected legal violations, or
34 other comments relating to the innovative product or service being tested and
35 provide the consumer with the requisite agency telephone number and website
36 address or other contact information where complaints or other comments
37 may be filed.

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

40 (c) Any other statements or additional disclosures that may be required by the relevant
41 State agency or by regulation to further the purposes of this Chapter.

42 **"§ 169-9. Records requirements.**

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

50 **"§ 169-10. Privacy; confidentiality of records.**

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

5 (b) Documents, materials, or other information in the possession of the applicable State
6 agency that are obtained by, or disclosed to, that agency or any other person in the course of
7 filing for review and approval of an innovative product or service under this Act are not public
8 records under Chapter 132 of the General Statutes, are confidential and privileged, are not subject
9 to a subpoena or discovery, and are inadmissible in evidence in any civil action.

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

15 **"§ 169-11. Blockchain initiatives.**

16 The Innovation Council may explore, receive input, analyze, and make recommendations,
17 with respect to blockchain initiatives and the application of blockchain technology, that would
18 additionally provide benefit to the State, its consumers, and its industry.

19 **"§ 169-12. Reciprocity.**

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

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

25 (c) This Chapter permits persons, applicants, or entities that are authorized in other
26 jurisdictions or that hold a license in other jurisdictions to be recognized as sandbox participants
27 in this State."

28 **SECTION 2.** This act becomes effective October 1, 2021.