

ENROLLED ACT NO. 34, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to trade and commerce; making legislative findings; creating the financial technology sandbox for the testing of financial products and services in Wyoming; authorizing limited waivers of specified statutes and rules under certain conditions; establishing standards and procedures for sandbox applications, operations and supervision; authorizing reciprocity agreements with other regulators; requiring criminal history background checks; creating an account; requiring a consumer protection bond; specifying standards for the suspension and revocation of sandbox authorization; authorizing rules and orders; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1.

(a) The legislature finds the following:

(i) Financial technology is undergoing a transformational period in which new technologies are providing greater automation, connectivity and transparency for financial products and services;

(ii) Existing legal frameworks are restricting financial technology innovation because these frameworks were largely established at a time when technology was not a fundamental component of financial products and services;

(iii) Financial technology innovators require a supervised, flexible regulatory sandbox to test new products and services using waivers of specified statutes and rules under defined conditions;

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(iv) Jurisdictions which establish regulatory sandboxes are more likely to provide a welcoming business environment for technology innovators and may experience significant business growth;

(v) Other jurisdictions have enacted, or are considering, regulatory sandboxes for financial technology innovators in their jurisdictions;

(vi) The state of Wyoming currently offers one of the best business environments in the United States for blockchain and financial technology innovators, and should offer a regulatory sandbox for these innovators to develop the next generation of financial technology products and services in Wyoming.

Section 2. W.S. 13-5-304 and 40-28-101 through 40-28-109 are created to read:

13-5-304. Applicability of chapter.

The Financial Technology Sandbox Act shall apply to this chapter.

CHAPTER 28
FINANCIAL TECHNOLOGY SANDBOX ACT

40-28-101. Short title.

This act may be cited as the "Financial Technology Sandbox Act."

40-28-102. Definitions.

(a) As used in this act:

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(i) "Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature;

(ii) "Commissioner" means the state banking commissioner;

(iii) "Consumer" means a person, whether a natural person or a legal entity, in Wyoming who purchases or enters into an agreement to receive an innovative financial product or service made available through the financial technology sandbox;

(iv) "Financial product or service" means a product or service related to finance, including banking, securities, consumer credit or money transmission, which is subject to statutory or rule requirements identified in W.S. 40-28-103(a) and is under the jurisdiction of the commissioner or secretary;

(v) "Financial technology sandbox" means the program created by this act which allows a person to make an innovative financial product or service available to consumers during a sandbox period through a waiver of existing statutory and rule requirements, or portions thereof, by the commissioner or secretary;

(vi) "Innovative" means new or emerging technology, or new uses of existing technology, that provides a product, service, business model or delivery mechanism to the public and has no substantially comparable, widely available analogue in Wyoming, including blockchain technology;

(vii) "Sandbox period" means the period of time, initially not longer than twenty-four (24) months, in which

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the commissioner or secretary has authorized an innovative financial product or service to be made available to consumers, which shall also encompass any extension granted under W.S. 40-28-108;

(viii) "Secretary" means the secretary of state;

(ix) "This act" means W.S. 40-28-101 through 40-28-109.

40-28-103. Financial technology sandbox waiver; applicability of criminal and consumer protection statutes; referral to investigatory agencies; civil liability.

(a) Notwithstanding any other provision of law, a person who makes an innovative financial product or service available to consumers in the financial technology 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. A waiver under this subsection shall be no broader than necessary to accomplish the purposes and standards set forth in this act, as determined by the commissioner or secretary. The following statutes, and the rules adopted under them, or portions of these statutes and rules, may be waived by the commissioner or secretary for the sandbox period, upon receipt and approval of an application made pursuant to W.S. 40-28-104:

(i) W.S. 13-1-101 through 13-2-904;

(ii) W.S. 13-5-301 through 13-5-703;

(iii) W.S. 17-4-201 through 17-4-412;

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(iv) W.S. 17-16-101 through 17-16-1810, provided that no provisions relating to the liability of incorporators, directors and officers shall be eligible for a waiver;

(v) W.S. 17-28-101 through 17-28-111;

(vi) W.S. 17-29-101 through 17-29-1105, provided that no provisions relating to the liability of organizers, managers and members shall be eligible for a waiver;

(vii) W.S. 40-14-101 through 40-14-702;

(viii) W.S. 40-21-101 through 40-21-119;

(ix) W.S. 40-22-101 through 40-22-129;

(x) W.S. 40-23-101 through 40-23-133.

(b) A person who makes an innovative financial product or service available to consumers in the financial technology sandbox is:

(i) Not immune from civil damages for acts and omissions relating to this act; and

(ii) Subject to all criminal and consumer protection laws, including W.S. 40-12-101 through 40-12-114.

(c) The commissioner or secretary may refer suspected violations of law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil penalties and other appropriate enforcement actions.

(d) If service of process on a person making an innovative financial product or service available to

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consumers in the financial technology sandbox is not feasible, service on the secretary of state shall be deemed service on the person.

40-28-104. Financial technology sandbox application; standards for approval; consumer protection bond.

(a) A person shall apply to the commissioner or secretary to make an innovative financial product or service available to consumers in the financial technology sandbox, based on the office that administers the statute or rule, or portion thereof, for which a waiver is sought. If both the commissioner and the secretary jointly administer a statute or rule, or if the appropriate office is not known, an application may be filed with either the commissioner or the secretary. If an application is filed with an office that does not administer the statute or rule for which a waiver is sought, the receiving office shall forward the application to the correct office. The person shall specify in an application the statutory or rule requirements for which a waiver is sought, and the reasons why these requirements prohibit the innovative financial product or service from being made available to consumers. The application shall also contain the elements required for authorization which are set forth in subsection (f) of this section. The commissioner and secretary shall each, by rule, prescribe a method of application.

(b) A business entity making an application under this section shall be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent, in Wyoming.

(c) Before an employee applies on behalf of an institution, firm or other entity intending to make an innovative financial product or service available through the

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financial technology sandbox, the employee shall obtain the consent of the institution, firm or entity before filing an application under this section.

(d) The individual filing an application under this section and the individuals who are substantially involved in the development, operation or management of the innovative financial product or service shall, as a condition of an application, submit to a criminal history background check pursuant to W.S. 7-19-201.

(e) An application made under this section shall be accompanied by a fee of five hundred dollars (\$500.00). The fee shall be deposited into the financial technology innovation account as provided in W.S. 40-28-105.

(f) The commissioner or secretary, as applicable, shall authorize or deny a financial technology sandbox application in writing within ninety (90) days of receiving the application. The commissioner or secretary and the person who has made an application may jointly agree to extend the time beyond ninety (90) days. The commissioner or secretary may impose conditions on any authorization, consistent with this act. In deciding to authorize or deny an application under this subsection, the commissioner or secretary shall consider each of the following:

(i) The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details, which may include whether the product or service utilizes blockchain technology;

(ii) The potential risk to consumers and methods which will be used to protect consumers and resolve complaints during the sandbox period;

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(iii) A business plan proposed by the person, including a statement of arranged capital;

(iv) Whether the person has the necessary personnel, adequate financial and technical expertise and a sufficient plan to test, monitor and assess the innovative financial product or service;

(v) Whether any person substantially involved in the development, operation or management of the innovative financial product or service has been convicted of, or is currently under investigation for, fraud, state or federal securities violations or any property based offense;

(vi) A copy of the disclosures required under W.S. 40-28-106(c) that will be provided to consumers;

(vii) Any other factor that the commissioner or secretary determines to be relevant.

(g) If an application is authorized under subsection (f) of this section, the commissioner or secretary shall specify the statutory or rule requirements, or portions thereof, for which a waiver is granted and the length of the initial sandbox period, consistent with W.S. 40-28-102(a)(vii). The commissioner or secretary shall also post notice of the approval of a sandbox application under this subsection, a summary of the innovative financial product or service and the contact information of the person making the product or service available through the sandbox on the internet website of the commissioner or secretary.

(h) A person authorized under subsection (f) of this section to enter into the financial technology sandbox shall post a consumer protection bond with the commissioner or

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secretary as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner or secretary in an amount not less than ten thousand dollars (\$10,000.00) and shall be commensurate with the risk profile of the innovative financial product or service. The commissioner or secretary may require that a bond under this subsection be increased or decreased at any time based on risk profile. Unless a bond is enforced under W.S. 40-28-109(b)(ii), the commissioner or secretary shall cancel or allow the bond to expire two (2) years after the date of the conclusion of the sandbox period.

(j) A person authorized under subsection (f) of this section to enter into the financial technology sandbox shall be deemed to possess an appropriate license for the purposes of federal law requiring state licensure or authorization.

(k) Authorization under subsection (f) of this section shall not be construed to create a property right.

40-28-105. Financial technology innovation account.

(a) There is created the financial technology innovation account. Funds within the account shall only be expended by legislative appropriation. All funds within the account shall be invested by the state treasurer and all investment earnings from the account shall be credited to the general fund. The account shall be divided into two (2) subaccounts controlled by the commissioner and secretary, respectively, for the purposes of administrative management. For the purposes of accounting and investing only, the subaccounts shall be treated as separate accounts.

(b) Subject to legislative appropriation, application fees remitted to the account pursuant to W.S. 40-28-104(e) shall be deposited into the subaccount controlled by the

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commissioner or secretary, as applicable, based on the receiving official. These funds, and any additional funds appropriated by the legislature, shall be used only for the purposes of administering this act, including processing of sandbox applications and monitoring, examination and enforcement activities relating to this act.

40-28-106. Operation of financial technology sandbox.

(a) Except as otherwise provided by W.S. 40-28-108, a person authorized under W.S. 40-28-104(f) to enter into the financial technology sandbox may make an innovative financial product or service available to consumers during the sandbox period.

(b) The commissioner or secretary may, on a case by case basis, specify the maximum number of consumers permitted to receive an innovative financial product or service, after consultation with the person authorized under W.S. 40-28-104(f) to make the product or service available in the financial technology sandbox.

(c) Before a consumer purchases or enters into an agreement to receive an innovative financial product or service through the financial technology sandbox, the person making the product or service available shall provide a written statement of the following to the consumer:

(i) The name and contact information of the person making the product or service available to consumers;

(ii) That the product or service has been authorized to be made available to consumers for a temporary period by the commissioner or secretary, as applicable, under the laws of Wyoming;

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(iii) That the state of Wyoming does not endorse the product or service and is not subject to liability for losses or damages caused by the product or service;

(iv) That the product or service is undergoing testing, may not function as intended and may entail financial risk;

(v) That the person making the product or service available to consumers is not immune from civil liability for any losses or damages caused by the product or service;

(vi) The expected end date of the sandbox period;

(vii) The name and contact information of the commissioner or secretary, as applicable, and notification that suspected legal violations, complaints or other comments related to the product or service may be submitted to the commissioner or secretary;

(viii) Any other statements or disclosures required by rule of the commissioner or secretary which are necessary to further the purposes of this act.

(d) A person authorized to make an innovative financial product or service available to consumers in the financial technology sandbox shall maintain comprehensive records relating to the innovative financial product or service. The person shall keep these records for not less than five (5) years after the conclusion of the sandbox period. The commissioner and secretary may specify further records requirements under this subsection by rule.

(e) The commissioner or secretary, as applicable, may examine the records maintained under subsection (d) of this section at any time, with or without notice. All direct and

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indirect costs of an examination conducted under this subsection shall be paid by the person making the innovative financial product or service available in the financial technology sandbox. Records made available to the commissioner or secretary under this subsection shall be confidential and shall not be subject to disclosure under the Wyoming Public Records Act but may be released to appropriate state and federal agencies for the purposes of investigation.

(f) Unless granted an extension pursuant to W.S. 40-28-108, not less than thirty (30) days before the conclusion of the sandbox period, a person who makes an innovative financial product or service available in the financial technology sandbox shall provide written notification to consumers regarding the conclusion of the sandbox period and shall not make the product or service available to any new consumers after the conclusion of the sandbox period until legal authority outside of the sandbox exists to make the product or service available to consumers. The person shall wind down operations with existing consumers within sixty (60) days after the conclusion of the sandbox period, except that, after the sixtieth day, the person may:

(i) Collect and receive money owed to the person and service loans made by the person, based on agreements with consumers made before the conclusion of the sandbox period;

(ii) Take necessary legal action; and

(iii) Take other actions authorized by the commissioner or secretary by rule which are not inconsistent with this subsection.

(g) The commissioner and the secretary may, jointly or separately, enter into agreements with state, federal or

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foreign regulatory agencies to allow persons who make an innovative financial product or service available in Wyoming through the financial technology sandbox to make their products or services available in other jurisdictions and to allow persons operating in similar financial technology sandboxes in other jurisdictions to make innovative financial products and services available in Wyoming under the standards of this chapter.

40-28-107. Revocation or suspension of financial technology sandbox authorization.

(a) The commissioner or secretary may, by order, revoke or suspend authorization granted to a person under W.S. 40-28-104(f) if:

(i) The person has violated or refused to comply with this act or any lawful rule, order or decision adopted by the commissioner or secretary;

(ii) A fact or condition exists that, if it had existed or become known at the time of the financial technology sandbox application, would have warranted denial of the application or the imposition of material conditions;

(iii) A material error, false statement, misrepresentation or material omission was made in the financial technology sandbox application; or

(iv) After consultation with the person, continued testing of the innovative financial product or service would:

(A) Be likely to harm consumers; or

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(B) No longer serve the purposes of this act because of the financial or operational failure of the product or service.

(b) Written notification of a revocation or suspension order made under subsection (a) of this section shall be served using any means authorized by law, and if the notice relates to a suspension, include any conditions or remedial action which shall be completed before the suspension will be lifted by the commissioner or secretary.

40-28-108. Extension of sandbox period.

(a) A person granted authorization under W.S. 40-28-104(f) may apply for an extension of the initial sandbox period for not more than twelve (12) additional months. An application for an extension shall be made not later than sixty (60) days before the conclusion of the initial sandbox period specified by the commissioner or secretary. The commissioner or secretary shall approve or deny the application for extension in writing not later than thirty-five (35) days before the conclusion of the initial sandbox period. An application for extension by a person shall cite one (1) of the following reasons as the basis for the application and provide all relevant supporting information that:

(i) Statutory or rule amendments are necessary to conduct business in Wyoming on a permanent basis; or

(ii) An application for a license or other authorization required to conduct business in Wyoming on a permanent basis has been filed with the appropriate office and approval is currently pending.

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40-28-109. Rules and orders; enforcement of bond; restitution; applicability of Wyoming Administrative Procedure Act.

(a) The commissioner and secretary shall each adopt rules to implement this act. The rules adopted by the commissioner and secretary under this subsection shall be as consistent as reasonably possible, but shall account for differences in the statutes and programs administered by the commissioner and secretary.

(b) The commissioner or secretary may issue:

(i) All necessary orders to enforce this act, including ordering the payment of restitution, and enforce these orders in any court of competent jurisdiction;

(ii) An order under paragraph (i) of this subsection to enforce the bond posted under W.S. 40-28-104(h), or a portion of this bond, and use proceeds from the bond to offset losses suffered by consumers as a result of an innovative financial product or service.

(c) All actions of the commissioner or secretary under this act shall be subject to the Wyoming Administrative Procedure Act.

Section 3. W.S. 7-19-106(a) by creating a new paragraph (xxx), 7-19-201(a) by creating a new paragraph (xxvi), 13-1-201, 17-4-105, 17-16-102, 17-28-111, 17-29-107, 40-14-106 by creating a new subsection (f), 40-21-104, 40-22-104 by creating a new subsection (b) and 40-23-105 by creating a new subsection (b) are amended to read:

7-19-106. Access to, and dissemination of, information.

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(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(xxx) The banking commissioner or the secretary of state for purposes of obtaining background information on persons specified in W.S. 40-28-104(d) as part of a financial technology sandbox application.

7-19-201. State or national criminal history record information.

(a) The following persons shall be required to submit to fingerprinting in order to obtain state and national criminal history record information:

(xxvi) Persons specified in W.S. 40-28-104(d) as part of a financial technology sandbox application.

13-1-201. General applicability.

(a) This act applies to all banks in this state organized under this act and to national banks where specifically provided by the text.

(b) The Financial Technology Sandbox Act shall apply to this act.

17-4-105. Electronic records and signatures; applicability.

(a) This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of

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that act (15 U.S.C. § 7003(b)). This act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule adopted or order issued under this act, in a manner consistent with section 104(a) of that act (15 U.S.C. § 7004(a)).

(b) The Financial Technology Sandbox Act shall apply to this act.

17-16-102. Reservation of power to amend or repeal; applicability.

(a) The legislature has power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

(b) The Financial Technology Sandbox Act shall apply to this act.

17-28-111. Rules and regulations; applicability.

(a) The secretary of state shall have the power reasonably necessary to perform the duties required of him by this chapter. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this chapter.

(b) The Financial Technology Sandbox Act shall apply to this chapter.

17-29-107. Supplemental principles of law; applicability.

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(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) The Financial Technology Sandbox Act shall apply to this chapter.

40-14-106. Waiver; agreement to forego rights; settlement of claims; legal rate of interest; applicability.

(f) The Financial Technology Sandbox Act shall apply to this act.

40-21-104. Applicability.

(a) This act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after July 1, 2001.

(b) The Financial Technology Sandbox Act shall apply to this act.

40-22-104. Exemptions; applicability.

(b) The Financial Technology Sandbox Act shall apply to this act.

40-23-105. Exemptions from license requirements.

(b) The Financial Technology Sandbox Act shall apply to this act.

Section 4. Consistent with W.S. 40-28-109(a), the banking commissioner and the secretary of state shall adopt rules to implement this act on or before January 1, 2020,

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provided these rules shall not take effect until January 1, 2020.

Section 5.

(a) Except as otherwise provided by subsection (b) of this section, this act is effective January 1, 2020.

(b) Section 4 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk