

By: Paxton

S.B. No. 860

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a regulatory sandbox program administered by the attorney general for certain financial products and services; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 99, Business & Commerce Code, is amended by adding Chapter 2005 to read as follows:

CHAPTER 2005. REGULATORY SANDBOX PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2005.001. DEFINITIONS. In this chapter:

(1) "Applicable agency" means the department of this state established by law to regulate certain types of business activity in this state and the people engaging in that business, including the issuance of licenses and registrations, that the attorney general determines would regulate a program participant if the person were not operating under this chapter.

(2) "Consumer" means a person who enters into a transaction or agreement to receive an innovative financial product or service that is being offered under this chapter.

(3) "Financial product or service" means a financial product or service that requires a license or registration, or a financial product or service that includes a business model, delivery mechanism, or element that would otherwise require a license, registration, or other authorization to act as a financial

1 institution that is regulated under the Finance Code or The
2 Securities Act.

3 (4) "Innovative" means the use of new or emerging
4 technology or the reimagining of existing technology to address a
5 problem, provide a benefit, or otherwise offer a product, service,
6 business model, or delivery mechanism that is not known by the
7 attorney general to have comparable widespread offering.

8 (5) "Innovative financial product or service" means a
9 financial product or service that is considered innovative by the
10 attorney general.

11 (6) "Program" means the regulatory sandbox program
12 established under this chapter that allows a person, without being
13 licensed or registered under the laws of this state, to test
14 innovative financial products or services for a limited time and on
15 a limited basis.

16 (7) "Program participant" means a person whose
17 application to participate in the program is approved and in good
18 standing.

19 (8) "Test" means to provide a financial product or
20 service to the extent allowed under this chapter.

21 Sec. 2005.002. CONFLICT OF LAW. If there is a conflict
22 between this chapter and another law or regulation of this state,
23 this chapter controls.

24 Sec. 2005.003. FEDERAL LICENSURE REQUIREMENTS. A program
25 participant is considered to be licensed, registered, or otherwise
26 authorized to act in this state for purposes of any federal law that
27 requires a person to be licensed, registered, or otherwise

1 authorized to act.

2 Sec. 2005.004. CREATION OF PROGRAM. (a) The attorney
3 general, in consultation with applicable agencies in this state,
4 shall create a regulatory sandbox program that enables a person to
5 obtain limited access to the market in this state to test innovative
6 financial products or services without obtaining a license,
7 registration, or other regulatory authorization.

8 (b) The program shall be administered by the consumer
9 protection division of the office of the attorney general.

10 Sec. 2005.005. REPORT ON REGULATIONS. (a) Not later than
11 December 31 of each even-numbered year, the attorney general shall
12 deliver a report to each legislative committee with jurisdiction
13 over each applicable agency.

14 (b) The report shall give an overview of the program,
15 including detailed recommendations on regulations appropriate for
16 certain financial products and services tested in the program.

17 SUBCHAPTER B. APPLICATION FOR PROGRAM PARTICIPATION

18 Sec. 2005.051. APPLICATION REQUIRED. (a) A person must
19 obtain approval from the attorney general before testing an
20 innovative financial product or service as a program participant.
21 A separate application is required for each product or service to be
22 tested under the program.

23 (b) A person that is licensed, registered, or has otherwise
24 gained regulatory authorization to provide a financial product or
25 service in this state must submit an application to test a new
26 financial product or service under the program.

27 Sec. 2005.052. APPLICATION. (a) The attorney general

1 shall review each submitted application to test a product or
2 service under the program.

3 (b) The attorney general shall accept and review
4 applications on a rolling basis.

5 (c) The application must be on a form prescribed under
6 Section 2005.053 and demonstrate that the applicant:

7 (1) is subject to the attorney general's jurisdiction
8 through incorporation, residency, presents agreement, or some
9 other means;

10 (2) has an established location that the attorney
11 general can access, either physically or virtually, from which
12 testing will be developed and performed, and where all required
13 records, documents, and data will be maintained; and

14 (3) has an adequate understanding of the product or
15 service and a sufficient plan to:

16 (A) test, monitor, and assess the product or
17 service; and

18 (B) ensure that consumers are protected from the
19 test's failure.

20 Sec. 2005.053. CONTENTS OF APPLICATION. The attorney
21 general by rule shall prescribe the application form. The form must
22 require the applicant to:

23 (1) provide personal and contact information for the
24 applicant, including the applicant's full legal name, addresses,
25 phone numbers, e-mail addresses, Internet website addresses, and
26 other information the attorney general requires;

27 (2) disclose any criminal convictions of the applicant

1 or the officers and directors of the applicant; and

2 (3) provide a detailed description of the innovative
3 product or service the applicant desires to test in the program,
4 including:

5 (A) the regulation the product or service would
6 be subject to outside of this program;

7 (B) the benefit the product or service would
8 provide consumers;

9 (C) how the product or service is different from
10 products and services available to consumers in this state;

11 (D) any risks to consumers who use or purchase
12 the product or service;

13 (E) how participation in the program will allow
14 for a successful test of the product or service;

15 (F) the proposed testing plan, including the
16 estimated time period needed for market entry, market exit, and
17 pursuit of necessary licensure, registration, or other regulatory
18 authorization; and

19 (G) how the applicant will wind down the test and
20 protect consumers if the product or service fails.

21 Sec. 2005.054. APPLICATION FEE. (a) The attorney general
22 shall collect an application fee for each application submitted.

23 (b) The attorney general by rule shall set the application
24 fee amount.

25 (c) All application fees collected under this section shall
26 be remitted to the comptroller for deposit in the general revenue
27 fund. Money deposited under this subsection may be appropriated

1 only for programs of the consumer protection division of the office
2 of the attorney general.

3 Sec. 2005.055. CONSULTATION WITH APPLICABLE AGENCY. (a)
4 Before acting on an application under Section 2005.056, the
5 attorney general must consult with the applicable agency.

6 (b) In consulting with the applicable agency, the attorney
7 general may seek information regarding if:

8 (1) the applicant could obtain a license,
9 registration, or other authorization from the applicable agency;
10 and

11 (2) the applicable agency has:

12 (A) issued a license or registration to the
13 applicant; or

14 (B) investigated, sanctioned, or disciplined, or
15 pursued legal action against, the applicant.

16 Sec. 2005.056. APPROVAL OR DENIAL OF APPLICATION. (a) Not
17 later than the 90th day after the date the application is submitted,
18 the attorney general shall notify the applicant if the application
19 is approved for participation in the program.

20 (b) The attorney general and an applicant may mutually agree
21 to extend the time to review an application under Subsection (a).

22 (c) In reviewing an application, the attorney general may
23 request any additional information necessary for the attorney
24 general to make a determination.

25 (d) Not later than the 30th day after the date the applicant
26 receives notice of denial of an application by the attorney
27 general, the applicant may file with the attorney general an appeal

1 of the attorney general's determination requesting a time and place
2 for a hearing before a hearing officer designated by the attorney
3 general. The applicant is entitled to a hearing not later than the
4 60th day after the date of the request. A hearing under this
5 subsection is governed by Chapter 2001, Government Code. After the
6 hearing, based on the findings of fact, conclusions of law, and
7 recommendations of the hearing officer, the attorney general shall
8 enter a final order.

9 SUBCHAPTER C. PROGRAM ADMINISTRATION

10 Sec. 2005.101. APPROVAL OF PROGRAM PARTICIPATION. (a) On
11 approval of an application by the attorney general, the applicant
12 shall be issued a unique registration number.

13 (b) The program participant may test the product or service
14 under the program for not longer than 24 months after the date the
15 application is approved.

16 Sec. 2005.102. MAXIMUM NUMBER OF CONSUMERS. A product or
17 service tested under the program may not be offered for sale or use
18 to more than 10,000 consumers.

19 Sec. 2005.103. SCOPE OF PROGRAM. (a) Program participants
20 may only offer financial products or services to residents of this
21 state.

22 (b) The program is open only to the following financial
23 products and services:

24 (1) consumer loans subject to Chapter 342, Finance
25 Code, other than mortgage loans;

26 (2) money transmission as defined by Section 151.301,
27 Finance Code;

1 (3) retail installment transactions as defined by
2 Section 348.001, Finance Code; and

3 (4) acting as an investment adviser as defined by
4 Subsection N, Section 4, The Securities Act (Article 581-4,
5 Vernon's Texas Civil Statutes).

6 (c) Mortgage loans are not an eligible product to be tested
7 in the program.

8 Sec. 2005.104. PROVISIONS APPLICABLE GENERALLY. (a) The
9 attorney general may determine that certain laws or regulations
10 apply to a program participant.

11 (b) If the attorney general determines that a law or
12 regulation applies to a program participant, the attorney general
13 must notify in writing the participant of the specific law or
14 regulation.

15 Sec. 2005.105. PROVISIONS APPLICABLE TO CONSUMER LOANS.
16 (a) This section applies to consumer loans that would be subject to
17 Chapter 342, Finance Code, if not offered under the program.

18 (b) A lender may not lend to an individual borrower more
19 than:

20 (1) \$15,000 for each loan; and

21 (2) \$50,000 in aggregate for all loans.

22 (c) The sum of all fees, interest, and other amounts in
23 excess of principal due under a loan may not exceed 30 percent of
24 the principal of that consumer loan.

25 Sec. 2005.106. PROVISIONS APPLICABLE TO MONEY
26 TRANSMISSION. (a) This section applies to money transmission as
27 defined by Section 151.301, Finance Code.

1 (b) A money transmission business may not transmit for an
2 individual consumer more than:

3 (1) \$2,500 for each transaction; and

4 (2) \$25,000 in aggregate for all transactions.

5 Sec. 2005.107. PROVISIONS APPLICABLE TO MOTOR VEHICLE
6 RETAIL INSTALLMENT TRANSACTIONS. (a) This section applies to a
7 retail installment transaction as defined by Section 348.001,
8 Finance Code.

9 (b) Sections 342.002, 348.102, 348.107, 348.112, 348.123,
10 348.201, 348.204, 348.205, 348.208, 348.209, and 348.412, Finance
11 Code, apply to a retail installment transaction under the program.

12 (c) The sum of all fees, interest, and other amounts in
13 excess of principal due under a retail installment transaction may
14 not exceed 30 percent of the principal of that retail installment
15 transaction.

16 Sec. 2005.108. PROVISIONS APPLICABLE TO INVESTMENT
17 ADVISERS. (a) This section applies to a financial adviser as
18 defined by Subsection N, Section 4, The Securities Act (Article
19 581-4, Vernon's Texas Civil Statutes), offering investment
20 services.

21 (b) Each program participant offering investment services
22 must make, maintain, and preserve books and records in accordance
23 with the requirements imposed on federal covered advisers under 17
24 C.F.R. Section 275.204-2.

25 (c) The participant shall file with the attorney general and
26 the State Securities Board a copy of any notices or written
27 undertakings required to be filed by federal covered advisors with

1 the United States Securities and Exchange Commission under 17
2 C.F.R. Section 275.204-2.

3 (d) Subsection C, Section 29, The Securities Act (Article
4 581-29, Vernon's Texas Civil Statutes), applies to investment
5 services offered under this program.

6 (e) State Securities Board rules adopted under The
7 Securities Act (Article 581-1 et seq., Vernon's Texas Civil
8 Statutes) apply as they relate to:

- 9 (1) dishonest and unethical practices;
10 (2) information required to be furnished to clients;
11 (3) custody of client funds or securities; and
12 (4) disclosure of financial and disciplinary
13 information to clients.

14 Sec. 2005.109. REPORTING REQUIREMENTS. (a) The attorney
15 general may require program participants to periodically report
16 information requested by the attorney general.

17 (b) Program participants shall make records, documents, and
18 data available for inspection by the attorney general.

19 Sec. 2005.110. CONFIDENTIALITY OF RECORDS UNDER PROGRAM.

20 (a) Subject to Subsection (b), records provided to the attorney
21 general by a program participant are confidential and do not
22 constitute public information for purposes of Chapter 552,
23 Government Code.

24 (b) Records provided to the attorney general by a program
25 participant may be disclosed to:

- 26 (1) federal and state agencies;
27 (2) representatives of foreign governments who have

1 regulatory authority over a program participant;

2 (3) a state or federal grand jury in response to a
3 subpoena; and

4 (4) the state auditor for the purpose of conducting
5 audits authorized by law.

6 Sec. 2005.111. REMOVAL FROM PROGRAM. (a) If the attorney
7 general believes a program participant is violating an applicable
8 state or federal regulation, the attorney general may remove the
9 participant from the program immediately.

10 (b) The decision to remove a program participant may be
11 appealed using the process under Section 2005.056(d).

12 SUBCHAPTER D. CONSUMER PROTECTION

13 Sec. 2005.151. WRITTEN CONSUMER DISCLOSURE REQUIRED. (a)
14 Before providing an innovative financial product or service to a
15 consumer, a program participant must disclose to the consumer all
16 information required under this section.

17 (b) The program participant must disclose:

18 (1) the name and contact information of the
19 participant, including the registration number assigned by the
20 attorney general under Section 2005.101(a);

21 (2) that the financial product or service is
22 authorized under the program, and the participant does not have a
23 license, registration, or other regulatory authorization to
24 provide financial products or services under the laws of this state
25 that regulate financial products and services;

26 (3) that this state does not endorse or recommend the
27 financial product or service;

1 (4) that the financial product or service is a
2 temporary test under the program and may be discontinued at the end
3 of the testing period, and the expected end date of the test; and

4 (5) that consumers may contact the consumer protection
5 division of the office of the attorney general regarding the
6 financial product or service and provide the division's phone
7 number, e-mail address, and Internet website where complaints may
8 be filed.

9 (c) The disclosure required by Subsection (b) must be:

10 (1) clear and conspicuous;

11 (2) in both English and Spanish; and

12 (3) physically or digitally signed by the consumer.

13 Sec. 2005.152. FAILURE OF TEST. (a) If a financial product
14 or service fails, the program participant shall notify the attorney
15 general not later than the 30th day before the date the program
16 participant will cease operation.

17 (b) The program participant shall implement the wind down
18 plan as described in the application under Section 2005.053.

19 SUBCHAPTER E. TERMINATION OF PROGRAM

20 Sec. 2005.201. EXPIRATION. This chapter expires on
21 December 31, 2029.

22 Sec. 2005.202. PROGRAM WRAP UP. The attorney general shall
23 make all necessary preparations to ensure that all program
24 participants' tests of financial products or services are concluded
25 before the date under Section 2005.201.

26 SECTION 2. This Act takes effect September 1, 2019.