

Regulatory Sandbox Program; HB 2291

HB 2291 creates a general regulatory sandbox program (Program) within the Regulatory Relief Division (Division) of the Office of the Attorney General (Office).

Program applicants may petition for relief from state laws and rules and regulations as approved by the Program for an applicant's innovative business offering that would typically require a license, certification, registration, or other authorization required by state law.

The Program may not consider certain applications related to liquor and cereal malt beverages. The Program does not apply to the waiver or suspension of any licensing requirement or rule and regulation regarding licensing for purposes of federal or state law.

The Division is authorized to provide recommendations to the Governor and Legislature on amending or repealing such laws and rules and regulations.

Regulatory Relief Division

The bill establishes and maintains the Division within the Office to administer and support the Program's operations. The Attorney General must establish and maintain the Division, appoint employees and agents as necessary, and prescribe the duties and compensation for each employee and agent, subject to appropriations. Such employee appointments are limited to one full-time and one part-time employee, unless additional staff is requested by and authorized pursuant to appropriations as approved by the House Committee on Appropriations and the Senate Committee on Ways and Means.

The Division will be headed by a Director appointed by the Attorney General. The Director reports to the Attorney General and is authorized to appoint staff subject to the Attorney General's approval.

The bill requires the Division to:

- Administer provisions of this Act;
- Administer the Program; and
- Act as a liaison between private businesses and applicable agencies to identify rules and regulations that could be waived or suspended under the Program.

The Division is authorized to:

- Review state laws and rules and regulations that may unnecessarily inhibit the creation or success of new and existing companies and provide recommendations to the Governor and the Legislature on amending or repealing such state laws and rules and regulations;

- Create a framework for analyzing the risk level to the health, safety, and financial well-being of consumers related to repealing state laws and rules and regulations;
- Propose potential reciprocity agreements with other states using, or proposing to use, similar programs;
- Adopt rules and regulations regarding the administration of the Program, including rules and regulations that administer the Program and set forth the application process; and
- Consult and cooperate with other state agencies relating to the Program.

Program Advisory Committee

The bill creates a Program Advisory Committee (Committee) consisting of 11 members as follows:

- Five members of the business community from various industries appointed by the Director;
- Two members appointed by the Director representing state agencies that license or regulate businesses;
- One member of the Senate appointed by the Senate President;
- One member of the Senate appointed by the Senate Minority Leader;
- One member of the House of Representatives appointed by the Speaker of the House of Representatives; and
- One member of the House of Representatives appointed by the House of Representatives Minority Leader.

Committee appointments made by the Director are for four-year renewable terms. Legislative appointments are for two-year renewable terms. Any vacancy in an unexpired term will be filled in the same manner as the original appointment. Notwithstanding the listed requirements, the Director has the authority to adjust the length of appointment terms so that approximately one-half of the Committee is appointed every two years.

The Director is required to select a chairperson from among the Committee members on an annual basis. A majority of the Committee constitutes a quorum. All Committee actions will be by motion adopted by a majority of those present when there is a quorum. The Committee can meet at any time and place within the state upon the call of the chairperson or a majority of the Committee members.

The Committee is required to advise and make recommendations to the Division. The Division is required to provide assistance to the Committee to prepare and publish meeting agendas, public notices, meeting minutes, and any research, data, or information requested by the Committee.

The Committee is authorized to recess for a closed or executive meeting when considering matters related to applications submitted by applicants.

If approved by the Legislative Coordinating Committee, legislative members of the Committee will be paid for expenses, mileage, and subsistence for attending authorized Committee meetings.

Division Report

Beginning in 2027, on or before the first day of each regular legislative session, the Director is required to prepare and submit a report to the Senate Committee on Commerce; the House Committee on Commerce, Labor and Economic Development; and the Joint Committee on Administrative Rules and Regulations or their successor committees. The bill requires the report to include:

- Information regarding each Program participant, including which industries each participant represents;
- Anticipated or actual cost savings each participant experienced due to their Program participation;
- Recommendations regarding any laws or rules and regulations that should be repealed or amended;
- Information regarding consumer outcomes; and
- Recommendations for changes to the Program or other Division duties.

General Regulatory Sandbox Program

The bill does not permit any waiver or suspension of any licensing requirement or rule and regulation regarding licensing or to permit a deemed license for purpose of federal or state law. The bill prohibits use for any innovative offerings regulated under the following acts, and no waiver or suspension of any licensing requirement or any other rule and regulation of those acts is permitted:

- Kansas Liquor Control Act;
- Club and Drinking Establishment Act; and
- Kansas Cereal Malt Beverage Act.

In administering the Program, the bill requires the Division to:

- Consult with each applicable state agency; and
- Establish a program to enable a person to obtain legal protections and limited access to the market in the state to demonstrate an innovative offering without obtaining a license, certification, registration, or other authorization that might otherwise be required by state law.

Additionally, the bill authorizes the Division to:

- Enter into agreements with, or adopt the best practices of, corresponding federal regulatory agencies or other states that are administering similar programs; and
- Consult with businesses within the state about existing or potential proposals for the Program.

Application Form

The Division is required to provide relevant information about the Program and how to apply for the Program. The Division may provide assistance to an applicant in preparing an application for submission. An applicant can contact the Division to request a consultation about the Program before submitting an application. An applicant is required to submit a Program application in a form prescribed by the Division that:

- Confirms the applicant is subject to Kansas jurisdiction;
- Confirms the applicant has established a physical or virtual location in the state from where the demonstration of an innovative offering will be developed and performed and where all required records, documents, and data will be maintained;
- Contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the Division;
- Discloses the applicant's, or other participating personnel's, criminal convictions, if any;
- Contains a description of the innovative offering to be demonstrated, including statements regarding:
 - How the offering is subject to legal prohibition or other authorization requirements outside of the Program;
 - Each rule and regulation the applicant seeks to have waived or suspended while participating in the Program;
 - How the offering would benefit consumers;

- How the offering is different from other available offerings in the state;
 - What risks might exist for consumers who use or purchase the offering;
 - How participating in the Program would enable a successful offering demonstration;
 - A description of the proposed demonstration plan, including estimated time periods for beginning and ending the demonstration;
 - Recognition that the applicant will be subject to all laws and rules and regulations pertaining to the applicant's offering after the demonstration's conclusion; and
 - How the applicant will end the demonstration and protect consumers if the demonstration fails;
- Lists each agency, if any, the applicant reasonably believes to regulate the applicant's business; and
 - Provides any other required information as determined by the Division.

Application Fees and Information

For each submitted application, the Division is authorized to collect a fee not to exceed \$250. An applicant is required to file a separate application for each innovative offering that the applicant seeks to demonstrate.

The application and any related information provided by the applicant is confidential and privileged, except that the application and related information can be disclosed to an expert contracted by the Division for specific services to review the records. This information is considered confidential and privileged with regards to the Kansas Open Records Act. This confidentiality and privilege expires on July 1, 2030, unless the Legislature reviews and reenacts the confidentiality and privilege prior to July 1, 2030.

Review Process

After an application is filed, the Division is required to consult with each applicable agency that regulates the applicant's business to determine whether more information is needed from the applicant and to seek any other information from the applicant the Division determines is necessary for a complete application.

No later than five business days after the day a complete application is received, the Division is required to review the application and refer the application to each applicable agency that regulates the applicant's business. The Division is also required to provide the applicant with an acknowledgment of application receipt and contact information of each agency the application has been referred to for review.

No later than 30 days after receiving a complete application for review, the applicable agency must provide a written report to the Director that:

- Describes any identifiable, likely, and significant harm to the health, safety, or financial well-being of consumers against which the relevant law or rule and regulation protects; and
- Makes a recommendation to the Division that the application be admitted or denied entrance into the Program.

An agency is authorized to request an additional five business days to deliver the written report by providing notice to the Director. Such request is automatically granted and the applicable agency can only request one extension per application.

If the agency recommends an application be denied from entering into the Program, the bill requires the written report to include a description of the reasons for the recommendation, including why a temporary waiver or suspension of the relevant rules and regulations is likely to significantly harm the health, safety, or financial well-being of consumers or the public and the likelihood of such harm occurring.

If the agency determines that the consumer's or public's health, safety, or financial well-being can be protected through less-restrictive means, the agency is required to provide a recommendation of how such less-restrictive means could be achieved.

If an agency fails to deliver a written report, the Director is required to assume the agency does not object to a temporary waiver or suspension of the relevant rules and regulations sought in the application.

An agency can reject an application if the agency determines the applicant's offering fails to comply with standards or specifications required by federal law or regulation or previously approved for use by a federal agency. Such rejection requires written notice to the Division within the review period (30 days, or 35 days with an extension).

An agency is authorized to reject an application preliminary approved by the Division if the agency's recommended rejection provides a description of the agency's reasons for why application approval would create a substantial risk of harm to the health or safety of the public or creates unreasonable expenses for state taxpayers. The Division is required to deny applications under these agency rejections unless the Committee recommends, by a two-thirds vote, that the application be approved.

Upon receiving a written report, the Director is required to provide the application and written report to the Committee. The Director is authorized to call the Committee to meet as needed, but not less than once per quarter if applications are available to review.

After receiving an application and reviewing the written report, the Committee is required to provide the Director with the Committee's recommendation as to whether the applicant should be admitted into the Program.

In reviewing an application and each agency's written report, the Division is required to consult with each agency and the Committee before admitting an applicant into the Program. Such consultation may seek information regarding whether the agency has previously issued a

license or other authorization to the applicant and investigated, sanctioned, or pursued legal action against the applicant.

In reviewing an application, if an applicant's competitor is or has been a Program participant, the Division and each agency must weigh such competitor's participation as a factor in favor of allowing the applicant to also participate in the Program.

In reviewing an application, the Division is required to consider if:

- The applicant's plan will adequately protect consumers from potential harm identified by an agency in the written report;
- The risk of harm to consumers is outweighed by the potential benefits to consumers from the applicant's participation in the Program; and
- Certain rules and regulations that regulate an offering should not be waived or suspended, even if the applicant is approved as a Program participant, including applicable anti-fraud or disclosure provisions.

Participation Determination

An applicant becomes a Program participant if the Division approves the application and enters into a written agreement with the applicant describing the specific rules and regulations that are waived or suspended as part of Program participation.

The Division is not authorized to enter into an agreement that waives or suspends a tax, fee, or charge administered under Chapter 79 of the *Kansas Statutes Annotated*.

When an applicant is approved for Program participation, the Director is required to provide approval notice to the applicant's competitors and the public on the Attorney General's or Division's website.

The Division is authorized to end a participant's Program participation at any time for any reason, including if the Director determines that a participant is not operating in good faith to bring an innovative offering to market.

The Division and its employees are not held liable for any business losses or the recouping of application expenses or other expenses related to the Program, including for denying an applicant's application to participate in the Program or ending a participant's Program participation at any time for any reason.

The Director is authorized to deny any application submitted for any reason, including if the Director determines that suspending or waiving enforcement would cause a significant risk of harm to consumers or residents of the state.

The Director is required to deny a Program application if the applicant, or any person seeking to participate with the applicant, has been convicted or entered a plea of *nolo contendere* for any crime involving significant theft, fraud, or dishonesty if the crime bears a

significant relationship to the applicant's or other participant's ability to safely and competently participate in the Program.

If the Division denies an application, the Division must provide a written description of the reasons for not allowing an applicant to participate in the Program. Such denial is not subject to the Kansas Administrative Procedure Act or the Kansas Judicial Review Act.

Program Participation

If an applicant is approved for Program participation, the participant has 24 months after the date of approval to demonstrate the offering described in the application.

The bill requires each consumer of a demonstration offering within the Program to be a Kansas resident, and the bill states no rule and regulation waived or suspended prevents a consumer from seeking restitution in the event the consumer is harmed.

A participant who holds a certification or registration in another jurisdiction is not restricted from acting in accordance with that authorization. A participant is deemed to possess an appropriate certification or registration under Kansas law for the purposes of any federal law provision requiring licensure or other authorization by the State.

A participant, during the demonstration period, is not subject to the enforcement of rules and regulations identified in the written agreement. A prosecutor is not authorized to file or pursue charges related to a rule and regulation identified in the agreement for any act or omission that occurs during the demonstration period. An agency is not authorized to file or pursue any punitive action against a participant, including a fine or license suspension or revocation, for the violation of a rule and regulation that was identified in the agreement and occurs during the demonstration period.

A participant does not have immunity related to any criminal offense committed during the participant's participation in the Program.

Consumer Disclosure

Before demonstrating an offering to a consumer, a participant must disclose to the consumer:

- The name and contact information of the sandbox participant;
- That the offering is authorized pursuant to the Program and, if applicable, the participant does not have a certification or registration to provide an offering under state laws that regulate offerings outside of the Program;
- That the offering is undergoing testing and may not function as intended and may expose the consumer to certain risks as identified by the applicable agency's report;

- That the provider of the offering is not immune from civil liability for any losses or damages caused by the offering;
- That the provider of the offering is not immune from criminal prosecution for violations of state law or rules and regulations that are not suspended or waived as allowed by the Program;
- That the offering is a temporary demonstration that may be discontinued at the end of the demonstration period;
- The expected end date of the demonstration period; and
- That a consumer may contact the Division and file a complaint regarding the demonstrated offering and provide the Division's telephone number and website address where a complaint may be filed.

The bill requires such disclosure to be provided in a clear and conspicuous form, and for an offering on a website or application, a consumer would be required to acknowledge receipt of the disclosure before any transaction could be completed. The Division is authorized to require participants to make additional consumer disclosures.

Winding Down the Demonstration

At least 30 days before the end of the Program demonstration period, the participant is required to either notify the Division that the participant will leave the Program and discontinue the participant's demonstration after the day on which the 24-month demonstration period ends or seek an extension of the demonstration period.

If an extension is sought, the Division is required to grant or deny such a request by the end of the 24-month testing period. If such an extension is granted, the extension can be granted for up to 12 months after the end of the original testing period.

If the Division does not receive notice the participant will either end the program or seek an extension, the demonstration period ends at the end of the 24-month testing period. If a demonstration includes an offering that requires ongoing duties, the participant can continue to do so but is subject to enforcement of the rules and regulations that were waived or suspended as identified in the written agreement.

Data Retention and Reporting

The bill requires a participant to retain records, documents, and data produced in the ordinary course of business regarding a demonstrated offering in the Program.

If a participant ceases to provide an offering before the end of a demonstration period, the participant is required to notify the Division and each applicable agency and report on actions taken by the participant to ensure consumers have not been harmed as a result.

The Division is required to establish quarterly reporting requirements for a participant, including information about any consumer complaints. The Division can request records, documents, and data from a Program participant, and upon such request, the participant is required to make such information available for Division inspection.

Within three business days, a participant is required to notify the Division, each applicable agency, and the Joint Committee on Administrative Rules and Regulations of the existence of any incidents that result in harm to the health, safety, or financial well-being of a consumer. Within seven business days, a participant is required to provide the details surrounding any such incident to those entities.

If a participant fails to notify the Division and each applicable agency of such an incident, or an applicable agency has evidence that significant harm to a consumer has occurred, the Division is authorized to immediately remove the participant from the Program.

Within 30 days after the date a participant leaves the Program, the participant is required to submit an exit report to the Division, each applicable agency, and the Joint Committee on Administrative Rules and Regulations describing an overview of the participant's demonstration, including any:

- Incidents of consumer harm;
- Legal action filed against the participant as a result of the participant's demonstration; and
- Complaints filed with an applicable agency as result of the participant's demonstration.

Within 30 days after an applicable agency receives the quarterly reporting described below or an exit report, the agency is required to provide a written report to the Division and the Joint Committee on Administrative Rules and Regulations on the demonstration that describes any statutory or regulatory reform the agency recommends as a result of the demonstration.

The Division is authorized to remove a participant from the Program at any time if the Division determines that a participant has engaged in, is engaging in, or is about to engage in any practice or transaction that violates this Act or constitutes a violation of a law or rule and regulation whose suspension or waiver was not granted in the written agreement.

The Division is required to create and maintain a website that invites residents and businesses in the state to make suggestions regarding laws and rules and regulations that can be modified or eliminated to reduce the regulatory burden on those individuals and entities.

On at least a quarterly basis, the Division is required to compile the results of such suggestions and provide a report to the Governor; Senate Committee on Commerce; House Committee on Commerce, Labor and Economic Development; and the Joint Committee on Administrative Rules and Regulations or their successor committees.

In creating the report, the Division is required to ensure private information of residents and businesses making suggestions on the website is not made public, and the Division can

evaluate the suggestions and provide analysis and suggestions regarding which state laws and rules and regulations can be modified or eliminated to reduce the regulatory burden while still protecting consumers.

The Kansas Open Meetings Act is amended to authorize the Committee to hold closed or executive meetings to discuss applications to the Program.