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Utah Passes the Third State-Run "Sandbox" for Innovative Financial Products and Services

Blockchain and the Law on **July 31, 2019**

Utah's governor recently signed into law H.B. 378, which created a sandbox program for companies providing "innovative financial products or services" in the state. The program, run by Utah's Department of Commerce, requires companies to apply and meet certain requirements in order to participate in the sandbox. Importantly, H.B. 378 specifically includes "blockchain technology" within its scope.

The Utah Sandbox

Companies accepted into Utah's sandbox are permitted to test their business models without any state license or authorization that might otherwise be required, including any federal law requiring state licensure, on a limited basis (i.e., up to 24 months).

In order to participate in Utah's program, an applicant must have a physical location in Utah where testing of the product or service takes place, and the product or service may only be tested with Utah residents. Applicants must also provide information describing how the product or service will benefit consumers and is different from existing products or services, what risks consumers may face, and how the applicant plans to test the product or service.

Comparable Programs

Utah is the third U.S. state to pass legislation establishing a sandbox for Fintech companies. Arizona passed its sandbox legislation in March 2018 and Wyoming enacted sandbox legislation in February of this year (see our post regarding Wyoming here).

At the federal level, regulatory sandboxes has been considered, though none have been implemented thus far. For example, Rep. Patrick McHenry (R-NC) introduced H.R. 6118, the Financial Services Innovation Act of 2016, which would have allowed innovative financial product and service companies to apply to federal agencies for exemptions from statutory or regulatory requirements, subject to terms approved by the applicable agencies. Last year, the Consumer Financial Protection Bureau created its Office of Innovation to identify certain areas, such as no-action letters and product sandboxes, that could help foster innovation.

There are also headwinds against the adoption of sandboxes, however. Securities and Exchange Commissioner Hester M. Peirce (who has been referred to as "crypto mom" for her support of innovation in the blockchain and digital asset space), spoke in May last year about regulatory sandboxes at a conference in Los Angeles, CA. In her speech, entitled "Beaches and Bitcoin," Commissioner Peirce expressed skepticism about the effectiveness of regulatory sandbox programs:

> "My fear that regulators will grab hold of the shovels and buckets is why I am often wary of so-called regulatory sandboxes. I am entirely in favor of finding ways to make appropriate regulatory allowances that clear the way for innovation to flourish. What troubles me about sandboxes, however, is that the regulator is typically sitting right there next to the entrepreneurs. The regulator is facilitating and hosting the sandbox."

In light of such concerns, companies operating in the blockchain and digital asset industry may opt to continue holding on to their own "shovels and buckets" rather than participating in a state-sanctioned sandbox, unless and until the advantages of participation become more clear. Others, however, may find that these sandboxes offer a period of light touch regulatory oversight, which enables them to build out proofs-of-concept without incurring impractical compliance costs at the start-up stage.

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