Arizona Creates Legislative Sandbox to Foster Fintech Business Growth

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Many entrepreneurs and existing companies exploring opportunities in the fintech space often experience the daunting hurdles, or uncertainties, imposed by state-level regulations. Under traditional regulatory programs, the licensing process can take months and consume tens of thousands of dollars in fees, compliance costs, and legal expenses. Some startups, with thin capital reserves, face the Hobson's Choice of blatant non-compliance or simply avoiding innovating in this important space all together. Either way, the state's consumers and businesses are ultimately disadvantaged. The State of Arizona recognized this common problem and very recently passed legislation to safely encourage such worthwhile business innovation.

After a year of efforts, last week Arizona became the first U.S. jurisdiction to create a FinTech regulatory "sandbox," giving new financial services companies using innovative technological advances an opportunity to provide services to Arizona consumers without long waiting times and burdensome filing fees, in exchange for working with regulators to ensure consumer protection efforts are intact. Other non-US jurisdictions such as the Australia, Singapore, the United Kingdom, and United Arab Emirates have already adopted similar regulatory sandboxes.

Under the oversight of the Arizona Attorney General, Arizona's sandbox will offer startups, entrepreneurs, and incumbent companies the flexibility to test, develop, launch, or offer new products or services to up to 10,000 Arizona consumers (or up to 17,500, if the company demonstrates adequate capitalization and risk management), for a period of 24 months following the application's approval, with the possibility of a 1-year extension. The bill also includes a reciprocity provision permitting the Attorney General to enter into agreements with other states that would allow Arizona sandbox participants to operate in other jurisdictions that establish similar programs.

Key aspects of Arizona's regulatory sandbox program include:

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- The Office of the Arizona Attorney General is responsible for approving and providing entry of applicants into the sandbox, after consulting with other Arizona regulatory authorities.
- The sandbox program will be administered by the Civil Division of the Office of the Arizona Attorney General.
- The Arizona Attorney General anticipates accepting sandbox applications in late 2018.
- Application fee amounts have yet to be determined by the Arizona Attorney General's Office.
- Sandbox participants must provide detailed information regarding their service or product on a form prescribed by the Arizona Attorney General's Office.
- Sandbox participants will have 24 months after their approval date to test their innovative financial product or service.
- A sandbox participant may be granted an extension of up to one year upon request to the Arizona Attorney General's Office.
- Consumers must be Arizona residents.
- The sandbox provides caps on the numbers of individuals who may participate in a particular sandbox agreement and caps on the amount of loans that may be issued.
- The Arizona Consumer Fraud Act guides all products and services offered in the sandbox and any product offered in the sandbox must comply with all statutory limits and caps in Arizona law related to financial transactions.
- The program ends on July 1, 2028.

While not specifically targeted as a blockchain solution, the Arizona regulatory sandbox may not only help regulators better understand the new technology, but also entice blockchain and cryptocurrency innovators to move to Arizona.

"For blockchain and virtual currency innovators, this affords them an ability to develop their products with regulation, but they don't have to grapple with what traditional licenses they may or may not have to obtain," explained a lobbyist who helped craft the law.

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More states could soon adopt a similar approach, as similar legislation has already been introduced in Illinois and is being considered in other states. The state banking regulators across the six New England states have been exploring the creation of a multi-state, regional compact (New England Regulatory FinTech Sandbox). Although this will ease Arizona's regulatory requirements for FinTech companies, each state has its own requirements, and the federal government still regulates FinTech companies, depending on the activity (i.e. FinCEN, SEC, CFTC), and regulatory compliance is still a hefty burden for FinTech companies.

If you are interested in what regulatory requirements your FinTech company or startup may face, please do not hesitate to contact Bill Repasky or Jeff Gorham with Frost Brown Todd's Blockchain and Digital Currency Group.

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