

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 327

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO FINANCIAL TECHNOLOGY; AMENDING TITLE 26, IDAHO CODE, BY THE AD-  
2 DITION OF A NEW CHAPTER 38, TITLE 26, IDAHO CODE, TO PROVIDE A SHORT TI-  
3 TLE, TO DEFINE TERMS, TO PROVIDE FOR UTILITY TOKENS, TO PROVIDE FOR POW-  
4 ERS AND DUTIES OF THE DIRECTOR, AND TO PROVIDE REMEDIES FOR VIOLATIONS;  
5 AND AMENDING TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 39,  
6 TITLE 26, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PRO-  
7 VIDE FOR A FINANCIAL TECHNOLOGY SANDBOX AND A CERTAIN WAIVER, TO PRO-  
8 VIDE FOR A FINANCIAL TECHNOLOGY SANDBOX APPLICATION, TO PROVIDE FOR THE  
9 OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX, TO PROVIDE FOR REVOCATION  
10 OR SUSPENSION OF THE FINANCIAL TECHNOLOGY SANDBOX AUTHORIZATION,  
11 TO PROVIDE FOR EXTENSION OF THE SANDBOX PERIOD, AND TO PROVIDE FOR RULES  
12 AND ORDERS, BONDS, RESTITUTION, AND APPLICABILITY OF THE ADMINISTRA-  
13 TIVE PROCEDURE ACT.  
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Title 26, Idaho Code, be, and the same is hereby amended  
17 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
18 ter 38, Title 26, Idaho Code, and to read as follows:

19 CHAPTER 38  
20 IDAHO UTILITY TOKEN ACT

21 26-3801. SHORT TITLE. This chapter shall be known and may be cited as  
22 the "Idaho Utility Token Act."

23 26-3802. DEFINITIONS. As used in this chapter:

24 (1) "Blockchain" means a digital ledger or database that is chronolog-  
25 ical, consensus-based, decentralized, and mathematically verified in na-  
26 ture.

27 (2) "Consumptive" means a circumstance when a token is exchangeable  
28 for, or provided for the receipt of, services, software, content, or real  
29 or tangible personal property, including rights of access to services, con-  
30 tent, or real or tangible personal property.

31 (3) "Director" means the director of the Idaho department of finance.

32 (4) "Facilitator" means a person who, as a business, makes open  
33 blockchain tokens under subsection (6) of this section available for resale  
34 to the public after a token has been purchased by an initial buyer.

35 (5) "Financial investment" means a contract, transaction, or arrange-  
36 ment in which a person invests money in a common enterprise and is led to ex-  
37 pect profits solely from the efforts of a promoter or a third party.

38 (6) "Open blockchain token" means a digital unit that:

39 (a) Is created:

- 1 (i) In response to the verification or collection of a specified  
2 number of transactions relating to a digital ledger or database;  
3 (ii) By deploying computer code to a digital ledger or database,  
4 which may include a blockchain, that allows for the creation of  
5 digital tokens or other units; or  
6 (iii) Using a combination of the methods specified in subpara-  
7 graphs (i) and (ii) of this paragraph;  
8 (b) Is recorded to a digital ledger or database, which may include a  
9 blockchain; and  
10 (c) Is capable of being traded or transferred between persons without  
11 an intermediary or custodian of value.  
12 (7) "Seller" means a person who makes an open blockchain token avail-  
13 able for purchase to an initial buyer.

- 14 26-3803. UTILITY TOKENS. (1) An open blockchain token with the follow-  
15 ing characteristics constitutes intangible personal property:  
16 (a) The predominant purpose of the token is consumptive as defined in  
17 section 26-3802, Idaho Code;  
18 (b) The developer or seller did not market the token to the initial  
19 buyer as a financial investment as defined in section 26-3802, Idaho  
20 Code; and  
21 (c) At least one (1) of the following subparagraphs is satisfied:  
22 (i) The developer or seller reasonably believes that it sold the  
23 token to the initial buyer for a consumptive purpose;  
24 (ii) The token has a consumptive purpose that is available at or  
25 near the time of sale and can be used at or near the time of sale for  
26 a consumptive purpose;  
27 (iii) The initial buyer of the token is prohibited by the developer  
28 or seller of the token from reselling the token until the token is  
29 available to be used for a consumptive purpose; or  
30 (iv) The developer or seller takes other reasonable precautions  
31 to prevent an initial buyer from purchasing the token as a finan-  
32 cial investment.  
33 (2) Before making an open blockchain token pursuant to subsection (1)  
34 of this section available for sale, the developer or seller of a token, or the  
35 registered agent of the developer or seller, shall electronically file a no-  
36 tice of intent with the director and pay a filing fee of five hundred dollars  
37 (\$500). The notice of intent shall contain the name of the person acting as  
38 a developer or seller, the contact information of the person or the regis-  
39 tered agent of the person, and comprehensive details on the open blockchain  
40 token made available for sale, as required by the director. A form shall be  
41 made available by the director for this purpose, which shall include a secure  
42 electronic form conspicuously posted on the department of finance website.  
43 A developer or seller of a token, or the registered agent of the developer or  
44 seller, if applicable, shall have a continuing duty to update the contact in-  
45 formation provided on a notice of intent as long as the open blockchain token  
46 associated with the notice is actively being sold.  
47 (3) A facilitator must comply with the following requirements:

1 (a) Before making any token available for resale to the public, confirm  
2 with the director that a notice of intent has been filed pursuant to sub-  
3 section (2) of this section;

4 (b) At all times, have a reasonable and good faith belief that a token  
5 subject to resale conforms to the requirements of subsection (1) of this  
6 section; and

7 (c) Take reasonably prompt action to terminate the resale of a token  
8 that does not conform to the requirements of this subsection.

9 (4) Virtual currency or a digital security shall not constitute an open  
10 blockchain token.

11 26-3804. POWERS AND DUTIES OF DIRECTOR. In addition to any other du-  
12 ties imposed upon the director by law, the director may, pursuant to chapter  
13 52, title 67, Idaho Code, issue orders and promulgate rules that are, in the  
14 opinion of the director, necessary to execute, enforce, and effectuate the  
15 purposes of this chapter.

16 26-3805. REMEDIES. Whenever the director finds that any person has en-  
17 gaged in any act or practice constituting a violation of any provision of  
18 this chapter or rules or orders promulgated thereto, he may in his discre-  
19 tion:

20 (1) Order such person to cease and desist from the violation of any pro-  
21 vision of this chapter, rule, or order;

22 (2) Bring an action in any court of competent jurisdiction to enjoin  
23 any such acts or practices and to enforce compliance with this chapter or any  
24 rule or order promulgated thereto. Upon a showing that a person has engaged  
25 in any act or practice constituting a violation of this chapter or any rule  
26 promulgated thereto, a permanent or temporary injunction, restraining or-  
27 der, or writ of mandamus shall be granted. The director shall not be required  
28 to furnish a bond; and

29 (3) In addition to the remedies in subsection (2) of this section,  
30 and upon a showing in any court of competent jurisdiction that a person has  
31 violated the provisions of this chapter or any rule or order promulgated  
32 thereto, be granted one (1) or more of the following additional remedies:

33 (a) An order restoring to any person in interest any consideration,  
34 funds, or property that may have been acquired or transferred in viola-  
35 tion of this chapter;

36 (b) An order that the person violating this chapter, rules, or any order  
37 promulgated thereto pay a civil penalty to the director in an amount not  
38 to exceed five thousand dollars (\$5,000) for each violation;

39 (c) An order awarding the director all costs incurred and that, in the  
40 discretion of the court, may include an amount representing reasonable  
41 attorney's fees and reimbursements for investigative efforts; or

42 (d) An order granting other appropriate remedies.

43 SECTION 2. That Title 26, Idaho Code, be, and the same is hereby amended  
44 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
45 ter 39, Title 26, Idaho Code, and to read as follows:

46 CHAPTER 39  
47 FINANCIAL TECHNOLOGY SANDBOX

1           26-3901. SHORT TITLE. This act shall be known and may be cited as the  
2 "Financial Technology Sandbox Act."

3           26-3902. DEFINITIONS. As used in this chapter:

4           (1) "Blockchain" means a digital ledger or database that is chronolog-  
5 ical, consensus-based, decentralized, and mathematically verified in na-  
6 ture.

7           (2) "Consumer" means a person, whether a natural person or a legal en-  
8 tity, who purchases or otherwise enters into a transaction or agreement to  
9 receive an innovative financial product or service made available through  
10 the financial technology sandbox.

11           (3) "Director" means the director of the Idaho department of finance.

12           (4) "Financial product or service" means a product or service related  
13 to finance, including banking, securities, consumer credit, or money trans-  
14 mission, that is subject to statutory or rule requirements identified in  
15 section 26-3903(1), Idaho Code, and is under the jurisdiction of the direc-  
16 tor.

17           (5) "Financial technology sandbox" means the program created by this  
18 chapter that allows a person to make an innovative financial product or ser-  
19 vice available to consumers during a sandbox period through a waiver of ex-  
20 isting statutory and rule requirements, or portions thereof, by the direc-  
21 tor.

22           (6) "Innovative" means new or emerging technology, or new uses of ex-  
23 isting technology, that provides a product, service, business model, or de-  
24 livery mechanism to the public and has no substantially comparable or widely  
25 available analogue in Idaho, including blockchain technology.

26           (7) "Sandbox period" means the period of time, initially not longer  
27 than twenty-four (24) months, when the director has authorized an innovative  
28 financial product or service to be made available to consumers, including  
29 any extension granted under section 26-3907, Idaho Code.

30           26-3903. FINANCIAL TECHNOLOGY SANDBOX WAIVER -- APPLICABILITY OF  
31 CRIMINAL AND CONSUMER PROTECTION STATUTES -- REFERRAL TO INVESTIGATORY  
32 AGENCIES -- CIVIL LIABILITY. (1) Notwithstanding any other provision of law,  
33 a person who makes an innovative financial product or service available to  
34 consumers in the financial technology sandbox may be granted a waiver of  
35 specified requirements imposed by statute or rule, or portions thereof, if  
36 these statutes or rules do not currently permit the product or service to  
37 be made available to consumers. A waiver under this subsection shall be no  
38 broader than necessary to accomplish the purposes and standards set forth in  
39 this chapter, as determined by the director.

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

42           (a) Not immune from civil damages for acts and omissions relating to  
43 this chapter; and

44           (b) Subject to all criminal and consumer protection laws of this state.

45           (3) The director may refer suspected violations of law relating to this  
46 chapter to appropriate state or federal agencies for investigation, prose-  
47 cution, civil penalties, and other appropriate enforcement actions.

1 (4) Service of process on a person making an innovative financial prod-  
2 uct or service available to consumers in the financial technology sandbox  
3 may be made by personally serving such person or may be accomplished pursuant  
4 to the process established in section 5-508, Idaho Code.

5 26-3904. FINANCIAL TECHNOLOGY SANDBOX APPLICATION -- STANDARDS FOR  
6 APPROVAL -- CONSUMER PROTECTION BOND. (1) A person shall apply to the di-  
7 rector to make an innovative financial product or service available to con-  
8 sumers in the financial technology sandbox. The person shall specify in an  
9 application the statutory or rule requirements for which a waiver is sought  
10 and the reasons why these requirements prohibit the innovative financial  
11 product or service from being made available to consumers. The application  
12 shall also contain the elements required for authorization pursuant to sub-  
13 section (6) of this section. The director shall, by rule, prescribe a method  
14 of application.

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

18 (3) Before an employee applies on behalf of an institution, firm, or  
19 other entity intending to make an innovative financial product or service  
20 available through the financial technology sandbox, the employee shall ob-  
21 tain the consent of the institution, firm, or entity before filing an appli-  
22 cation under this section.

23 (4) The individual filing an application under this section and the in-  
24 dividuals who are substantially involved in the development, operation, or  
25 management of the innovative financial product or service shall, as a condi-  
26 tion of an application, submit to a fingerprint-based criminal history check  
27 of the Idaho central criminal history database and the federal bureau of in-  
28 vestigation criminal history database.

29 (5) An application made under this section shall be accompanied by a fee  
30 of five hundred dollars (\$500). The fee shall be deposited by the director  
31 into the financial institution's administration account and may be expended  
32 for any purpose authorized for that account.

33 (6) The director shall authorize or deny a financial technology sand-  
34 box application in writing within sixty (60) days of receiving the applica-  
35 tion. The director and the person who has made an application may jointly  
36 agree to extend the time beyond sixty (60) days. The director may impose con-  
37 ditions on any authorization, consistent with this chapter. In deciding to  
38 authorize or deny an application under this subsection, the director shall  
39 consider each of the following:

40 (a) The nature of the innovative financial product or service proposed  
41 to be made available to consumers in the sandbox, including all rele-  
42 vant technical details, which may include whether the product or ser-  
43 vice utilizes blockchain technology;

44 (b) The potential risk to consumers and methods that will be used to  
45 protect consumers and resolve complaints during the sandbox period;

46 (c) A business plan proposed by the person, including a statement of ar-  
47 ranged capital;

1 (d) Whether the person has the necessary personnel, adequate financial  
2 and technical expertise, and a sufficient plan to test, monitor, and as-  
3 sess the innovative financial product or service;

4 (e) Whether any person substantially involved in the development, op-  
5 eration, or management of the innovative financial product or service  
6 has been convicted of, or is currently under investigation for, fraud,  
7 state or federal securities violations, or any property-based offense;

8 (f) A copy of the disclosures required under section 26-3905(3), Idaho  
9 Code, that will be provided to consumers; and

10 (g) Any other factor that the director determines to be relevant.

11 (7) If an application is authorized under subsection (6) of this sec-  
12 tion, the director shall specify the statutory or rule requirements, or por-  
13 tions thereof, for which a waiver is granted and the length of the initial  
14 sandbox period, pursuant to section 26-3902(7), Idaho Code. The director  
15 shall also post notice of the approval of a sandbox application under this  
16 subsection, a summary of the innovative financial product or service, and  
17 the contact information of the person making the product or service avail-  
18 able through the sandbox on the department of finance website.

19 (8) A person authorized under subsection (6) of this section to enter  
20 into the financial technology sandbox shall post a surety bond with the  
21 director as security for potential losses suffered by consumers. The bond  
22 amount shall be determined by the director in an amount not less than ten  
23 thousand dollars (\$10,000) and shall be commensurate with the risk profile  
24 of the innovative financial product or service. The director may require  
25 that a bond under this subsection be increased or decreased at any time based  
26 on risk profile. Unless a bond is enforced under section 26-3908(2)(b),  
27 Idaho Code, the director shall cancel or allow the bond to expire two (2)  
28 years after the date of the conclusion of the sandbox period.

29 (9) A person authorized under subsection (6) of this section to enter  
30 into the financial technology sandbox shall be deemed to possess an appro-  
31 priate license for the purposes of federal law requiring state licensure or  
32 authorization.

33 (10) Authorization under subsection (6) of this section shall not be  
34 construed to create a property right.

35 26-3905. OPERATION OF FINANCIAL TECHNOLOGY SANDBOX. (1) Except as  
36 otherwise provided by section 26-3907, Idaho Code, a person authorized un-  
37 der section 26-3904(6), Idaho Code, to enter into the financial technology  
38 sandbox may make an innovative financial product or service available to  
39 consumers during the sandbox period.

40 (2) The director may, on a case by case basis, specify the maximum  
41 number of consumers permitted to receive an innovative financial product  
42 or service after consultation with the person authorized under section  
43 26-3904(6), Idaho Code, to make the product or service available in the fi-  
44 nancial technology sandbox.

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

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

3 (b) That the product or service has been authorized to be made avail-  
4 able to consumers for a temporary period by the director under the laws  
5 of Idaho;

6 (c) That the state of Idaho does not endorse the product or service and  
7 is not subject to liability for losses or damages caused by the product  
8 or service;

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

11 (e) That the person making the product or service available to con-  
12 sumers is not immune from civil liability for any losses or damages  
13 caused by the product or service;

14 (f) The expected end date of the sandbox period;

15 (g) The name and contact information of the director and notification  
16 that suspected legal violations, complaints, or other comments related  
17 to the product or service may be submitted to the director; and

18 (h) Any other statements or disclosures required by rule of the direc-  
19 tor that are necessary to further the purposes of this chapter.

20 (4) A person authorized to make an innovative financial product or ser-  
21 vice available to consumers in the financial technology sandbox shall main-  
22 tain comprehensive records relating to the innovative financial product or  
23 service. The person shall keep these records for not less than five (5) years  
24 after the conclusion of the sandbox period. The director may specify further  
25 records requirements under this subsection by rule.

26 (5) The director may examine the records maintained under subsection  
27 (4) of this section at any time, with or without notice. All direct and in-  
28 direct costs of an examination conducted under this subsection shall be paid  
29 by the person making the innovative financial product or service available  
30 in the financial technology sandbox. Records made available to the director  
31 under this subsection shall be confidential and shall not be subject to dis-  
32 closure under chapter 1, title 74, Idaho Code, but may be released to appro-  
33 priate state and federal agencies for the purposes of investigation. The de-  
34 partment of finance is authorized two (2) additional full-time employees for  
35 the purposes of this chapter.

36 (6) Unless granted an extension pursuant to section 26-3907, Idaho  
37 Code, no fewer than thirty (30) days before the conclusion of the sandbox  
38 period, a person who makes an innovative financial product or service avail-  
39 able in the financial technology sandbox shall provide written notification  
40 to consumers regarding the conclusion of the sandbox period and shall not  
41 make the product or service available to any new consumers after the con-  
42 clusion of the sandbox period until legal authority outside of the sandbox  
43 exists to make the product or service available to consumers. The person  
44 shall wind down operations with existing consumers within sixty (60) days  
45 after the conclusion of the sandbox period, except that, after the sixtieth  
46 day, the person may:

47 (a) Collect and receive money owed to the person and service loans made  
48 by the person, based on agreements with consumers made before the con-  
49 clusion of the sandbox period;

50 (b) Take necessary legal action; and

1 (c) Take other actions authorized by the director by rule that are not  
2 inconsistent with this subsection.

3 (7) The director may, jointly or separately, enter into agreements with  
4 state, federal, or foreign regulatory agencies to allow persons who make  
5 an innovative financial product or service available in Idaho through the  
6 financial technology sandbox to make their products or services available  
7 in other jurisdictions and to allow persons operating in similar financial  
8 technology sandboxes in other jurisdictions to make innovative financial  
9 products and services available in Idaho under the standards of this chap-  
10 ter.

11 26-3906. REVOCATION OR SUSPENSION OF FINANCIAL TECHNOLOGY SANDBOX AU-  
12 THORIZATION. (1) The director may, by order, revoke or suspend authorization  
13 granted to a person under section 26-3904(6), Idaho Code, if:

14 (a) The person has violated or refused to comply with this chapter or  
15 any lawful rule, order, or decision adopted by the director;

16 (b) A fact or condition exists that, if it had existed or become known  
17 at the time of the financial technology sandbox application, would have  
18 warranted denial of the application or the imposition of material con-  
19 ditions;

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

22 (d) After consultation with the person, continued testing of the inno-  
23 vative financial product or service would:

24 (i) Be likely to harm consumers; or

25 (ii) No longer serve the purposes of this chapter because of the  
26 financial or operational failure of the product or service.

27 (2) Written notification of a revocation or suspension order made under  
28 subsection (1) of this section shall be served using any means authorized by  
29 law and, if the notice relates to a suspension, include any conditions or re-  
30 medial action to be completed before the suspension will be lifted by the di-  
31 rector.

32 26-3907. EXTENSION OF SANDBOX PERIOD. A person granted authorization  
33 under section 29-3904(6), Idaho Code, may apply for an extension of the ini-  
34 tial sandbox period for no more than twelve (12) additional months. An ap-  
35 plication for an extension shall be made no later than sixty (60) days before  
36 the conclusion of the initial sandbox period specified by the director. The  
37 director shall approve or deny the application for extension in writing no  
38 later than thirty-five (35) days before the conclusion of the initial sand-  
39 box period. An application for extension by a person shall cite one (1) of  
40 the following reasons as the basis for the application and provide all rele-  
41 vant supporting information that:

42 (1) Statutory or rule amendments are necessary to conduct business in  
43 Idaho on a permanent basis; or

44 (2) An application for a license or other authorization required to  
45 conduct business in Idaho on a permanent basis has been filed with the appro-  
46 priate office and approval is currently pending.



1           26-3908. RULES AND ORDERS -- ENFORCEMENT OF BOND -- RESTITUTION --  
2 APPLICABILITY OF IDAHO ADMINISTRATIVE PROCEDURE ACT. (1) The director may  
3 adopt rules if necessary to implement this chapter.  
4           (2) The director may issue:  
5           (a) All necessary orders to enforce this chapter, including ordering  
6           the payment of restitution, and enforce these orders in any court of  
7           competent jurisdiction; and  
8           (b) An order under paragraph (a) of this subsection to enforce the bond  
9           posted under section 26-3904(8), Idaho Code, or a portion of this bond,  
10           and use proceeds from the bond to offset losses suffered by consumers as  
11           a result of an innovative financial product or service.  
12           (3) All actions of the director under this chapter shall be subject to  
13 the Idaho administrative procedure act.