

HOUSE BILL NO. 1268

Introduced by

Representatives Toman, Becker, Christensen, Kading, Mock

Senator Vedaa

1 A BILL for an Act to create and enact chapter 6-15 and a new subdivision to subsection 2 of
2 section 12-60-24 of the North Dakota Century Code, relating to a financial technology sandbox
3 program for innovative financial products and services and criminal history background checks.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 6-15 of the North Dakota Century Code is created and enacted as
6 follows:

7 **6-15-01. Definitions.**

8 As used in this chapter:

- 9 1. "Blockchain" means a digital ledger or database that is chronological,
10 consensus-based, decentralized, and mathematically verified in nature.
- 11 2. "Commissioner" means the commissioner of financial institutions.
- 12 3. "Consumer" means a person in this state which purchases or enters an agreement to
13 receive an innovative financial product or service made available through the financial
14 technology sandbox.
- 15 4. "Financial product or service" means a product or service related to finance, including
16 banking, securities, consumer credit, or money transmission which is under the
17 jurisdiction of the commissioner or secretary.
- 18 5. "Financial technology sandbox" means the program created by this chapter which
19 allows a person to make an innovative financial product or service available to
20 consumers during a sandbox period through a waiver of existing statutory and rule
21 requirements by the commissioner or secretary.
- 22 6. "Innovative" means new or emerging technology, or new uses of existing technology,
23 which provides a product, service, business model, or delivery mechanism to the

1 public and has no substantially comparable, widely available analogue in this state,
2 including blockchain technology.

3 7. "Sandbox period" means the period of time, initially not longer than twenty-four
4 months, in which the commissioner or secretary has authorized an innovative financial
5 product or service to be made available to consumers which also encompasses any
6 extension granted under this chapter.

7 8. "Secretary" means the secretary of state.

8 **6-15-02. Financial technology sandbox waiver - Applicability of criminal and**
9 **consumer protection statutes - Referral to investigatory agencies - Civil liability.**

10 1. Notwithstanding any other provision of law, a person that makes an innovative
11 financial product or service available to consumers in the financial technology sandbox
12 may be granted a waiver of specified requirements imposed by statute or rule if these
13 statutes or rules do not currently permit the product or service to be made available to
14 consumers. A waiver under this subsection may be no broader than necessary to
15 accomplish the purposes and standards set forth in this chapter, as determined by the
16 commissioner or secretary.

17 2. A person that makes an innovative financial product or service available to consumers
18 in the financial technology sandbox is:

19 a. Not immune from civil damages for acts and omissions relating to this chapter;
20 and

21 b. Subject to all criminal and consumer protection laws.

22 3. The commissioner or secretary may refer suspected violations of law relating to this
23 chapter to appropriate state or federal agencies for investigation, prosecution, civil
24 penalties, and other appropriate enforcement actions.

25 4. If service of process on a person making an innovative financial product or service
26 available to consumers in the financial technology sandbox is not feasible, service on
27 the secretary of state is deemed service on the person.

28 **6-15-03. Financial technology sandbox application - Standards for approval -**
29 **Consumer protection bond.**

30 1. A person shall apply to the commissioner or secretary to make an innovative financial
31 product or service available to consumers in the financial technology sandbox, based

1 on the office that administers the statute or rule for which a waiver is sought. If both
2 the commissioner and the secretary jointly administer a statute or rule, or if the
3 appropriate office is not known, an application may be filed with either the
4 commissioner or the secretary. If an application is filed with an office that does not
5 administer the statute or rule for which a waiver is sought, the receiving office shall
6 forward the application to the correct office. The person shall specify in an application
7 the statutory or rule requirements for which a waiver is sought, and the reasons why
8 these requirements prohibit the innovative financial product or service from being
9 made available to consumers. The application also must contain the elements
10 required for authorization which are set forth in subsection 6. The commissioner and
11 secretary, by rule, each shall prescribe a method of application.

12 2. An organization making an application under this section must be a domestic
13 corporation or other organized domestic entity with a physical presence, other than
14 that of a registered office or agent, in this state.

15 3. Before an employee applies on behalf of an organization intending to make an
16 innovative financial product or service available through the financial technology
17 sandbox, the employee shall obtain the consent of the organization before filing an
18 application under this section.

19 4. The individual filing an application under this section and the individuals who are
20 substantially involved in the development, operation, or management of the innovative
21 financial product or service, as a condition of an application, shall submit to a criminal
22 history background check pursuant to section 12-60-24.

23 5. An application made under this section must be accompanied by a fee of five hundred
24 dollars. The fee must be deposited into the financial technology innovation account.

25 6. The commissioner or secretary, as applicable, shall authorize or deny a financial
26 technology sandbox application in writing within ninety days of receiving the
27 application. The commissioner or secretary and the person making an application may
28 jointly agree to extend the time beyond ninety days. The commissioner or secretary
29 may impose conditions on any authorization, consistent with this chapter. In deciding
30 to authorize or deny an application under this subsection, the commissioner or
31 secretary shall consider each of the following:

- 1 a. The nature of the innovative financial product or service proposed to be made
- 2 available to consumers in the sandbox, including all relevant technical details,
- 3 which may include whether the product or service utilizes blockchain technology;
- 4 b. The potential risk to consumers and methods that will be used to protect
- 5 consumers and resolve complaints during the sandbox period;
- 6 c. A business plan proposed by the person, including a statement of arranged
- 7 capital;
- 8 d. Whether the person has the necessary personnel, adequate financial and
- 9 technical expertise, and a sufficient plan to test, monitor, and assess the
- 10 innovative financial product or service;
- 11 e. Whether any person substantially involved in the development, operation, or
- 12 management of the innovative financial product or service has been convicted of,
- 13 or is currently under investigation for, fraud, state or federal securities violations,
- 14 or any property-based offense;
- 15 f. A copy of the disclosures required under subsection 3 of section 6-15-05 which
- 16 will be provided to consumers; and
- 17 g. Any other factor the commissioner or secretary determines to be relevant.
- 18 7. If an application is authorized under subsection 6, the commissioner or secretary shall
- 19 specify the statutory or rule requirements for which a waiver is granted and the length
- 20 of the initial sandbox period. The commissioner or secretary also shall post notice of
- 21 the approval of a sandbox application under this subsection, a summary of the
- 22 innovative financial product or service and the contact information of the person
- 23 making the product or service available through the sandbox on the internet website of
- 24 the commissioner or secretary.
- 25 8. A person authorized under subsection 6 to enter the financial technology sandbox
- 26 shall post a consumer protection bond with the commissioner or secretary as security
- 27 for potential losses suffered by consumers. The bond amount must be determined by
- 28 the commissioner or secretary in an amount not less than ten thousand dollars and
- 29 must be commensurate with the risk profile of the innovative financial product or
- 30 service. The commissioner or secretary may require a bond under this subsection be
- 31 increased or decreased at any time based on risk profile. Unless a bond is enforced

1 under subdivision b of subsection 2 of section 6-15-08, the commissioner or secretary
2 shall cancel or allow the bond to expire two years after the date of the conclusion of
3 the sandbox period.

4 9. A person authorized under subsection 6 to enter the financial technology sandbox is
5 deemed to possess an appropriate license for the purposes of federal law requiring
6 state licensure or authorization.

7 10. Authorization under subsection 6 may not be construed to create a property right.

8 **6-15-04. Financial technology innovation account.**

9 1. There is created within the state treasury the financial technology innovation account.
10 Funds within the account may only be expended by legislative appropriation. All funds
11 within the account must be invested by the state treasurer and all investment earnings
12 from the account must be credited to the general fund. The account must be divided
13 into two subaccounts controlled by the commissioner and secretary, respectively, for
14 the purposes of administrative management. For the purposes of accounting and
15 investing only, the subaccounts are treated as separate accounts.

16 2. Subject to legislative appropriation, application fees remitted to the account must be
17 deposited into the subaccount controlled by the commissioner or secretary, as
18 applicable, based on the receiving official. These funds, and any additional funds
19 appropriated by the legislative assembly, must be used only for the purposes of
20 administering this chapter, including processing of sandbox applications and
21 monitoring, examination, and enforcement activities relating to this chapter.

22 **6-15-05. Operation of financial technology sandbox.**

23 1. Except as otherwise provided by section 6-15-07, a person authorized under
24 subsection 6 of section 6-15-03 to enter the financial technology sandbox may make
25 an innovative financial product or service available to consumers during the sandbox
26 period.

27 2. The commissioner or secretary, on a case-by-case basis, may specify the maximum
28 number of consumers permitted to receive an innovative financial product or service,
29 after consultation with the person authorized under subsection 6 of section 6-15-03 to
30 make the product or service available in the financial technology sandbox.

- 1 3. Before a consumer purchases or enters an agreement to receive an innovative
2 financial product or service through the financial technology sandbox, the person
3 making the product or service available shall provide a written statement of the
4 following to the consumer:
- 5 a. The name and contact information of the person making the product or service
6 available to consumers;
- 7 b. That the product or service has been authorized to be made available to
8 consumers for a temporary period by the commissioner or secretary, as
9 applicable, under the laws of this state;
- 10 c. That the state does not endorse the product or service and is not subject to
11 liability for losses or damages caused by the product or service;
- 12 d. That the product or service is undergoing testing, may not function as intended,
13 and may entail financial risk;
- 14 e. That the person making the product or service available to consumers is not
15 immune from civil liability for any losses or damages caused by the product or
16 service;
- 17 f. The expected end date of the sandbox period;
- 18 g. The name and contact information of the commissioner or secretary, as
19 applicable, and notification that suspected legal violations, complaints, or other
20 comments related to the product or service may be submitted to the
21 commissioner or secretary; and
- 22 h. Any other statements or disclosures required by rules of the commissioner or
23 secretary which are necessary to further the purposes of this chapter.
- 24 4. A person authorized to make an innovative financial product or service available to
25 consumers in the financial technology sandbox shall maintain comprehensive records
26 relating to the innovative financial product or service. The person shall keep these
27 records for not less than five years after the conclusion of the sandbox period. The
28 commissioner and secretary may specify further records requirements under this
29 subsection by rule.
- 30 5. The commissioner or secretary, as applicable, may examine the records maintained
31 under subsection 4 at any time, with or without notice. All direct and indirect costs of

1 an examination conducted under this subsection must be paid by the person making
2 the innovative financial product or service available in the financial technology
3 sandbox. Records made available to the commissioner or secretary under this
4 subsection are confidential, but may be released to appropriate state and federal
5 agencies for the purposes of investigation.

6 6. Unless granted an extension pursuant to section 6-15-07, not less than thirty days
7 before the conclusion of the sandbox period, a person that makes an innovative
8 financial product or service available in the financial technology sandbox shall provide
9 written notification to consumers regarding the conclusion of the sandbox period and
10 may not make the product or service available to any new consumers after the
11 conclusion of the sandbox period until legal authority outside of the sandbox exists to
12 make the product or service available to consumers. The person shall wind down
13 operations with existing consumers within sixty days after the conclusion of the
14 sandbox period, except that, after the sixtieth day, the person may:

15 a. Collect and receive money owed to the person and service loans made by the
16 person, based on agreements with consumers made before the conclusion of the
17 sandbox period;

18 b. Take necessary legal action; and

19 c. Take other actions authorized by the commissioner or secretary by rule which are
20 not inconsistent with this subsection.

21 7. The commissioner and the secretary, jointly or separately, may enter agreements with
22 state, federal, or foreign regulatory agencies to allow persons that make an innovative
23 financial product or service available in this state through the financial technology
24 sandbox to make their products or services available in other jurisdictions and to allow
25 persons operating in similar financial technology sandboxes in other jurisdictions to
26 make innovative financial products and services available in this state under the
27 standards of this chapter.

28 **6-15-06. Revocation or suspension of financial technology sandbox authorization.**

29 1. The commissioner or secretary, by order, may revoke or suspend authorization
30 granted to a person under subsection 6 of section 6-15-03 if:

- 1 a. The person has violated or refused to comply with this chapter or any rule, order,
2 or decision adopted by the commissioner or secretary;
- 3 b. A fact or condition exists that, if it had existed or become known at the time of the
4 financial technology sandbox application, would have warranted denial of the
5 application or the imposition of material conditions;
- 6 c. A material error, false statement, misrepresentation, or material omission was
7 made in the financial technology sandbox application; or
- 8 d. After consultation with the person, continued testing of the innovative financial
9 product or service would:
- 10 (1) Be likely to harm consumers; or
- 11 (2) No longer serve the purposes of this chapter because of the financial or
12 operational failure of the product or service.
- 13 2. Written notification of a revocation or suspension order made under subsection 1 must
14 be served using any means authorized by law, and if the notice relates to a
15 suspension, include any conditions or remedial action that must be completed before
16 the suspension will be lifted by the commissioner or secretary.

17 **6-15-07. Extension of sandbox period.**

- 18 1. A person granted authorization under subsection 6 of section 6-15-03 may apply for an
19 extension of the initial sandbox period for not more than twelve additional months. An
20 application for an extension must be made not later than sixty days before the
21 conclusion of the initial sandbox period specified by the commissioner or secretary.
22 The commissioner or secretary shall approve or deny the application for extension in
23 writing not later than thirty-five days before the conclusion of the initial sandbox period.
- 24 2. An application for extension by a person must cite one of the following reasons as the
25 basis for the application and provide all relevant supporting information that:
- 26 a. Statutory or rule amendments are necessary to conduct business in this state on
27 a permanent basis; or
- 28 b. An application for a license or other authorization required to conduct business in
29 this state on a permanent basis has been filed with the appropriate office and
30 approval is pending.

1 **6-15-08. Rules and orders - Enforcement of bond - Restitution.**

2 1. The commissioner and secretary each shall adopt rules to implement this chapter. The
3 rules adopted by the commissioner and secretary under this subsection must be as
4 consistent as reasonably possible, but must account for differences in the statutes and
5 programs administered by the commissioner and secretary.

6 2. The commissioner or secretary may issue:

7 a. All necessary orders to enforce this chapter, including ordering the payment of
8 restitution, and enforce these orders in any court of competent jurisdiction; and

9 b. An order under subdivision a to enforce the bond posted under subsection 8 of
10 section 6-15-03, or a portion of this bond, and use proceeds from the bond to
11 offset losses suffered by consumers as a result of an innovative financial product
12 or service.

13 3. All actions of the commissioner or secretary under this chapter are subject to chapter
14 28-32.

15 **SECTION 2.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota
16 Century Code is created and enacted as follows:

17 The commissioner of financial institutions and secretary of state for obtaining
18 background information on persons specified under section 6-15-03 as part of a
19 financial technology sandbox application.