



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

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Governor

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NOTICE OF INTENT TO ACT UPON A REGULATION

**NOTICE OF HEARING FOR ADOPTION AND AMENDMENT OF
REGULATIONS OF THE OFFICE OF THE DIRECTOR
LCB FILE No. R089-19**

December 16, 2019

The State of Nevada, Department of Business and Industry, Office of the Director (“Director” or “Department”) will hold a public hearing on **January 17, 2020, at 11:00 a.m.** The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of permanent regulations that pertain to chapter 657A of the Nevada Administrative Code (“NAC”). The public hearing will be held on the following date, time and locations:

January 17, 2020 at 11:00 a.m.

LAS VEGAS
NEVADA ROOM
NEVADA STATE BUSINESS CENTER
NEVADA DEPT. OF BUSINESS & INDUSTRY
3300 W. SAHARA AVENUE, SUITE 400
LAS VEGAS, NEVADA 89102

VIA VIDEO CONFERENCE TO:
CARSON CITY
1st FLOOR HEARING ROOM
NEVADA DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY
CARSON CITY, NEVADA 89706

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need for and purpose of the proposed regulation

To conform with and implement revisions made to the law governing the regulation of financial technology products and services as enacted by Senate Bill 161 of the 2019 Session of the Nevada Legislature (“SB 161”); to ensure that regulations are written clearly and concisely to facilitate statutory provisions, required program administration, and consumer protection; and to comply with the Department’s statutory duty to ensure the effectiveness of

NRS chapters 645A, 645B, 645F and 645G; NRS titles 55 and 56; and any regulations adopted pursuant thereto.

2. Description of proposed regulation and the manner in which approved or revised text of the proposed regulation prepared by the Legislative Counsel Bureau (“LCB”) may be obtained. Authority: SB 161.

The regulation proposed for adoption and amendment is stated in the attached Proposed Regulation of the Director of the Department of Business and Industry, LCB File No. R089-19. The proposed regulation includes measures to implement the requirement of SB 161 to establish and administer a Regulatory Experimentation Program for Product Innovation for the State of Nevada. This includes:

- Defining certain additional terms associated with the program, including what constitutes a document for the purposes of program record-keeping and consumer protection requirements;
- Clarifying the general exercise of authorities granted to the Director, Department, or any employees designated by the Director for administration of the program;
- Clarifying minimum consents in writing that an applicant must provide before the Director will consider a product or service for admission into the program, including consent to the applicability of Nevada law and courts, to certain background reviews or investigations, and to performance of any program requirements and conditions of test approval;
- Establishing a \$500 application fee for the program;
- Clarifying that potential regulatory waivers available under the program do not encompass general business licensing, registration or permit requirements by the state or any local government entity;
- Clarifying requirements for a participant’s physical or virtual business location under the program for the purposes of regulator or consumer contact;
- Requiring Director approval before a program participant can relocate or conduct other types of business out of the place where the product or service test is occurring;
- Clarifying minimum consumer information required in retained records and data;
- Requiring program participants to report to the Director on the status of tests and providing for the setting of standards and frequency of test reports by the Director;
- Increasing the record retention schedule for product or service tests;
- Requiring program participants to submit any records or data to the Director upon request;
- Clarifying the authority of the Director as it relates to response to any consumer complaint under the program; and
- Requiring submission of copies of any consumer complaints received by the Director to the Bureau of Consumer Protection in the Nevada Office of Attorney General.

Access to the approved or revised text of the proposed regulation prepared by the LCB pursuant to NRS 233B.063 may be obtained by visiting the website of the Nevada Legislature at <http://www.leg.state.nv.us>, hovering over the term “Law Library,” hovering over the term

“Nevada Register,” clicking upon the term “Browse,” and then clicking upon the term “Numerical Index” appearing under the category “2019 Regulations.” Access may then be obtained by scrolling down the list of LCB File Numbers to seek “R089-19” or by performing a search function specifying LCB File Number “R089-19” and clicking upon the item(s).

3. Statement of estimated economic effect of the proposed regulation on the business of financial product or service providers and upon the public

The Department does not foresee any adverse effects of the proposed regulation (whether immediate or long term, direct or indirect) to either the business of financial product or service providers or to the public.

The Department has determined that the proposed regulation does not have an adverse economic impact on small business. The regulation clarifies certain administrative aspects of the Regulatory Experimentation Program for Product Innovation, which is intended to lessen the financial burden on small business by providing an opportunity to test innovative products or services under temporary waiver from requirements of NRS chapters 645A, 645B, 645F and 645G; NRS titles 55 and 56; and any regulations adopted pursuant thereto, subject to any applicable conditions determined by the Department.

The Department anticipates that both the immediate and long-term beneficial effects of the proposed regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity.

4. Statement identifying the methodology used by the Department in determining the impact of the proposed regulation upon a small business

The Department reviewed the proposed regulation and preliminarily determined that it will not impose a direct and significant economic burden upon a small business, or directly restrict the formation, operation or expansion of a small business, because the proposed regulation clarifies and implements various requirements of SB 161 that are consistent with the plain language of SB 161, its legislative intent, and the associated legislative testimony and public comment made during hearings on the bill. One purpose of a regulatory sandbox program, such as the one authorized by SB 161, is to reduce economic burdens upon businesses wishing to test innovative products or services in the areas of regulatory interest. Another purpose is to facilitate the formation, operation or expansion of such businesses by giving them an opportunity to develop successful business models via their product or service tests before having to meet regulatory requirements that would otherwise apply to the businesses.

The Department vetted this preliminary determination by soliciting comments on the issue as part of its notice of workshop for the proposed regulation and in its e-mail notification to current licensees and pending applicants for licensure under NRS chapters 645A, 645B, 645F and 645G; and NRS titles 55 and 56. From October 30 to November 1, 2019, the Department sent the proposed regulation via e-mail to all licensees of the Financial Institutions Division (a total of 236 persons, of which 11 proved undeliverable) and Mortgage Lending Division (a total of 7,738 email addresses, of which 236 proved undeliverable) to solicit comment from

small businesses concerning the impact that the regulation would have on their business. The notice of workshop was additionally posted on the Department's website, the State's official website, and at the Director's offices in Las Vegas and Carson City. Following the conducted workshop and consideration of the comments received from five entities and individuals with respect to the statutory test parameters, program application requirements, definitions, records retention term, testing and reporting requirements, business relocation, exit procedures, treatment of confidential or trade secret information, scope of Director authorities, data sharing, and consumer protection elements such as interest-rate caps or bonding, the Director concluded that the proposed regulation does not impose a significant and direct burden upon a small business or restrict the formation, operation, or expansion of a small business.

5. The estimated cost to the agency for enforcement of the proposed regulation

The Department anticipates incurring additional costs to the Director's Office and the applicable regulator divisions (Financial Institutions and Mortgage Lending) for the implementation and enforcement of the proposed regulation. However, the Department is currently unable to provide a specific estimate pending program launch and initial execution. The Department currently expects the costs for enforcement of the proposed regulation to be met by the program application fee and/or absorbed into the workloads of existing staff.

6. Overlap or duplication with other state, local governmental or federal agencies

None known at the time of this posting.

7. Existence of federal-law requirement for proposed regulation or whether proposed regulation includes more stringent provisions than required by federal regulation governing same activity

None known at the time of this posting.

8. Establishment of new fee or increase to existing fee

The enabling statute requires an application fee of up to \$1,000 for each product or service application submitted to the program. This fee is set at \$500 in the proposed regulation. If the number of applications received does not exceed the number of program approvals permitted to the Director by statute, a \$500 fee is anticipated to result in total revenues of \$13,000 over the three calendar years (2020-22) the program is authorized to operate.

COMMENTS AND WRITTEN SUBMISSIONS

Persons wishing to comment upon the proposed action of the Department of Business and Industry may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Business and Industry, Director's Office, Attn: Nevada Sandbox Program, at 3300 West Sahara Avenue, Suite 425, Las Vegas, Nevada, 89102. Written submissions must be received by the Department on or before **January 10, 2020**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Business and Industry may proceed immediately to act upon any written submissions.

COPIES OF PROPOSED REGULATION

A copy of this notice and the proposed regulation will be on file at the Nevada State Library & Archives, 100 N. Stewart Street, Carson City, Nevada, 89701, for inspection by members of the public during business hours. A copy of the proposed regulation to be considered may be obtained at the hearing or may be downloaded from the Nevada Public Notice website at:

<https://notice.nv.gov>

The proposed regulation is also available on the Department's website at www.business.nv.gov and at the Department's offices at:

Southern Nevada
Department of Business & Industry
3300 West Sahara Avenue, Suite 425
Las Vegas, NV 89102

Northern Nevada
Department of Business & Industry
1830 College Parkway, Suite 100
Carson City, NV 89706

This Hearing Notice has been sent to all interested persons on the Department's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
3300 West Sahara Ave., Suite 425
Carson City, NV 89102

Eureka Branch Library
80 S. Monroe Street
P.O. Box 293
Eureka, NV 89316

Story County Library
175 E. Carson Street
PO Box 999
Virginia City, NV 89440

Department of Business and Industry
1830 College Pkwy., #100
Carson City, NV 89706

Tonopah Public Library
167 S. Central Street
Tonopah, NV 89049

White Pine County Library
950 Compton Street
Ely, NV 89301

Financial Institutions Division
3300 West Sahara Ave., Suite 250
Las Vegas, NV 89102

Washoe County Library
(Downtown Reno Library)
301 South Center Street
Reno, NV 89501

Mineral County Public Library
110 1st Street
Hawthorne, NV 89415

Division of Mortgage Lending
3300 West Sahara Ave., Suite 285
Las Vegas, NV 89102

Battle Mountain Library
625 S. Broad Street
P.O. Box 141
Battle Mountain, NV 89820

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419

Nevada State Library & Archives
100 N. Stewart Street
Carson City, NV 89701

Douglas County Library
1625 Library Lane
Minden, NV 89423-0337

Lincoln County Library
63 Main Street
P.O. Box 330
Pioche, NV 89043

Elko Conference Center
700 Moren Way (Silver Room)
Elko, NV 89801

Goldfield Public Library
Corner of Crook & Fourth St.
P.O. Box 430
Goldfield, NV 89013

Lyon County Library-
Yerington Branch Library
20 Nevin Way
Yerington, NV 89447-2399

Churchill County Library
553 South Maine Street
Fallon, NV 89406-3306

Elko County Library
720 Court Street
Elko, NV 89801-3397

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>.

Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copying.

Members of the public who are disabled and require special accommodations or assistance at the hearing must provide written notification, at least five (5) business days prior to the hearing, to the Director's Office at 1830 E. College Parkway, Suite 100, Carson City, Nevada 89706, or leslie.olson@business.nv.gov.

After the hearing, interested persons can contact Chris Weiss, Management Analyst, at (702) 486-5320, to request a copy of the Summary of Comments concerning the **January 17, 2020**, hearing.

Note that NRS 233B.064(2) provides as follows:

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

**PROPOSED REGULATION OF THE DIRECTOR OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R089-19

December 5, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-7, 9, 12 and 15, section 30 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.210); §§8, 10 and 11, section 12 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3986 (NRS 657A.400) and section 30 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.210); §§13 and 14, section 22 Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3990 (NRS 657A.500) and section 30 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.210).

A REGULATION relating to the Regulatory Experimentation Program for Product Innovation; establishing conditions for participation in the Program; requiring the location maintained by each participant to satisfy certain conditions; requiring participants to collect certain consumer information; requiring participants to submit certain reports; requiring participants to retain business documents; establishing the process by which complaints related to Program will be resolved; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Director of the Department of Business and Industry to establish and administer the Regulatory Experimentation Program for Product Innovation. (Section 11 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3986 (NRS 657A.200)) Existing law also authorizes the Director to adopt such regulations he or she deems necessary to administer the Program. (Section 30 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.210))

Sections 2-6 of this regulation define terms related to the Program.

Section 7 of this regulation provides that any authority, duties and responsibilities assigned to the Director related to the Program may be delegated to a designee employed by the

Department. **Section 7** similarly provides that any authority, duties or responsibilities related to the Program assigned to the Department may be exercised or performed by the Director.

Section 8 of this regulation requires each applicant for participation in the Program to consent in writing to: (1) the applicability of the laws of this State and personal jurisdiction of the courts of this State regarding all matters associated with the program and testing; (2) credit, criminal and background checks; and (3) certain requirements imposed by the Director as a condition or restriction on participation in the Program.

Existing law requires each application to participate in the Program submitted to the Director to be accompanied by a nonrefundable fee of not more than \$1,000. (Section 12 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3986 (NRS 657A.400)) **Section 8** of this regulation requires each applicant to submit a nonrefundable application fee of \$500.

Section 9 of this regulation requires each participant to possess each license, registration and permit required by this State or by a local government as a condition to conducting business under the Program. **Section 10** of this regulation requires each participant to maintain with the Director the physical or virtual address of the participant and, if the participant is not a natural person, the address of each officer, director or other principal of the applicant.

Existing law requires each participant to establish and maintain a physical or virtual location that is reasonably accessible to the Director, from which testing will occur and all records are maintained. (Section 12 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3986 (NRS 657A.400)) **Section 11** of this regulation requires that such a location be accessible by the Director from within this State and once established, may not be relocated without the prior approval of the Director. **Section 11** also prohibits a participant from engaging in testing where another business operates without prior approval from the Director and requires a participant to allow the Director to access and review any documents maintained at the physical or virtual location of the participant.

Section 12 of this regulation requires each participant to collect and record certain consumer information.

Existing law authorizes the Director to establish by regulation periodic reporting requirements for participants in the Program. (Section 22 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3990 (NRS 657A.500)) **Section 13** of this regulation requires each participant to submit periodic reports as required by the Director.

Existing law requires participants to retain all records and data produced in the ordinary course of business relating to a financial product or service tested in the Program for not less than 2 years after the end of the prescribed period of testing or for such longer period as the Director requires. (Section 22 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at

page 3990 (NRS 657A.500)) **Section 14** of this regulation requires each participant to retain all records and data produced in the ordinary course of business related to the test for not less than 6 years. **Section 14** also requires each participant to submit any records and data to the Director upon request.

Existing law requires the Director to establish and maintain a toll-free telephone number and Internet website through which a consumer may submit a complaint relating to any financial product or service provided by a participant. (Section 21 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3990 (NRS 657A.600)) **Section 15** of this regulation requires the Director to provide to the Bureau of Consumer Protection in the Office of the Attorney General a copy of any complaint received through the toll-free telephone number or Internet website and establishes how the Director will resolve complaints.

Section 1. Chapter 657A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 15, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” means the Department of Business and Industry.*

Sec. 4. *“Director” means the Director of the Department.*

Sec. 5. *“Document” means any electronic, written, printed or recorded material or information of any kind inscribed on a tangible medium or stored in an electronic format that is retrievable in perceivable form, including, without limitation, records, data, communications and audio and video recordings. The term includes originals and copies of documents that have been altered, including, without limitation, copies of documents that have been amended by adding notes, underlining or attachments.*

Sec. 6. *“Program” means the Regulatory Experimentation Program for Product Innovation established and administered by the Director pursuant to sections 2 to 31,*

inclusive, of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at pages 3985 to 3993, inclusive (NRS 657A.100 to 657A.530, inclusive).

Sec. 7. 1. *Any authority granted to the Director and any duty or responsibility assigned to the Director by any provision of this chapter or sections 2 to 31, inclusive, of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at pages 3985 to 3993, inclusive (NRS 657A.100 to 657A.530, inclusive), may be exercised or performed by any employee of the Department who is designated by the Director for that purpose.*

2. *Any authority granted to the Department and any duty or responsibility assigned to the Department by any provision of this chapter or sections 2 to 31, inclusive, of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at pages 3985 to 3993, inclusive (NRS 657A.100 to 657A.530), may be exercised or performed by the Director.*

Sec. 8. 1. *Before the Director will approve a financial product or service for participation in the Program, the applicant must consent in writing to:*

(a) The applicability of the laws of this State and the exercise of personal jurisdiction by the courts of this State over all matters related to the Program and the test of the financial product or service;

(b) The review or investigation of the credit history, criminal history and background of the applicant, if the applicant is a natural person and, if the applicant is not a natural person, each officer, director or other principal of the applicant; and

(c) Comply with any requirements imposed by the Director pursuant to section 15 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3988 (NRS 657A.430), section 20 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3989 (NRS

657A.330) or section 26.3 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.620).

2. Each application must be accompanied by a nonrefundable application fee of \$500.

Sec. 9. Except as otherwise provided in sections 2 to 31, inclusive, of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at pages 3985 to 3993 inclusive (NRS 657A.100 to 657A.530, inclusive), each participant must possess each license, registration and permit required by this State or by a local governmental entity as a condition to conducting business under the Program.

Sec. 10. Each participant shall maintain with the Director:

1. The current physical or virtual location of the participant established and maintained by the participant during the test of a financial product or service pursuant to section 12 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3986 (NRS 657A.400); and

2. If the participant is not a natural person, the current address of each officer, director or other principal of the participant.

Sec. 11. 1. The physical or virtual location established and maintained by a participant during the test of a financial product or service pursuant to section 12 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3986 (NRS 657A.400):

(a) Must be accessible to the Director from within this State; and

(b) May not be relocated without prior approval from the Director.

2. A participant shall not engage in testing within any office, suite, room or business location in which any other business is solicited or engaged, or in association or conjunction with any other business, without prior approval from the Director.

3. Each participant shall allow the Director to access and review any document maintained at the physical or virtual location of the participant pursuant to sections 2 to 31, inclusive, of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at pages 3985 to 3993, inclusive (NRS 657A.100 to 657A.530, inclusive).

Sec. 12. *Each participant shall collect and record data for each consumer that purchases a financial product or service offered through the Program during the test of the financial product or service including, without limitation:*

- 1. The name of and contact information for the consumer;*
- 2. A description of the financial product or service; and*
- 3. Any other relevant information regarding the transaction.*

Sec. 13. *1. Each participant shall submit periodic reports to the Director on the status of the test of a financial product or service, as required by the Director. The Director will consider the type of financial product or service being tested when determining the frequency of the required reports.*

2. Each report must be in the form prescribed by the Director and include any documents related to the test requested by the Director.

3. The Director may request additional documents related to the test at any time. A participant must submit all documents requested pursuant to this section to the Director.

Sec. 14. *1. Each participant must retain all records and data produced in the ordinary course of business related to the testing of a financial product or service for not less than 6 years after the end of the test.*

2. Each participant must submit any records or data retained pursuant to this section to the Director upon request.

Sec. 15. 1. *The Director, in consultation with the applicable regulator, may resolve any complaint received relating to a financial product or service provided by a participant:*

(a) By informal discussion and resolution between the consumer and the participant identified in the complaint;

(b) By referring the complaint to the Commissioner of Consumer Affairs of the Department;

(c) By requesting the Attorney General bring an action in any court of competent jurisdiction;

(d) Pursuant to any provisions agreed to by the participant pursuant to section 15 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3988 (NRS 657A.430), section 20 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3989 (NRS 657A.330) or section 26.3 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.620); or

(e) Any combination of the actions described in paragraphs (a) to (d), inclusive.

2. The Director shall provide to the Bureau of Consumer Protection in the Office of the Attorney General a copy of any complaint submitted through the toll-free telephone number or Internet website established and maintained by the Director pursuant to section 21 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3990 (NRS 657A.600).

3. Nothing in this section limits the authority of the Director to remove a participant from the Program or order the participant to exit the Program pursuant to section 26.3 of Senate

Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.620) or section 27 of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at page 3992 (NRS 657A.610), or take any other action authorized by sections 2 to 31, inclusive, of Senate Bill No. 161, chapter 611, Statutes of Nevada 2019, at pages 3985 to 3993, inclusive (NRS 657A.100 to 657A.530, inclusive).