

William E. Morris Institute for Justice

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March 27, 2019

Hand-Delivered

The Honorable Douglas Ducey
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

Re: Request for a Veto of House Bill 2177

Dear Governor Ducey:

The William E. Morris Institute for Justice (“Institute”) strongly urges you to veto House Bill 2177. The Institute is a non-profit public interest program that works on issues that are of importance to low-income Arizonans. Public transparency and oversight is such an issue. The hallmark of our democracy is that we value the public’s right to know what our government is doing. Therefore, the Institute requests that you **veto House Bill 2177 and require that the regulatory sandbox program has transparency and public oversight before it is expanded.**

Last legislative session, the Legislature created the “Regulatory Sandbox Program” that went into effect in August 2018 to allow applicants to test certain “innovative” financial products and services without a state license and meeting other requirements. *See* A.R.S. §§ 41-5601 – 5612. Although the law just went into effect in August 2018, House Bill 2177 proposes to expand this new sandbox program to more “innovations” in the financial products and services arena. While initially, the bill was called a clean-up, the proponents refused to reconsider the prohibition on public records request in the current statute. Thus, the new sandbox program which has no track record continues to suffer from the lack of transparency and public oversight.

Whether or not you support the regulatory sandbox program, as Governor, you should be concerned about the lack of transparency and public oversight for the program.

As explained below, this is a new program with no track record that is being administered out of the view of the public by the Arizona Attorney General (“AG”).

While an application to enter the regulatory sandbox is required, the information requested is solely in the discretion of the AG. A.R.S. § 41-5603(F) (information that “may” be required). The AG in his/her sole discretion decides if the application is approved. The AG is not required to make any findings concerning the application and the decision to deny an application is not appealable. A.R.S. §§ 41-5603(J); 5604(B).

The only information the AG is required to make public is the form application. A.R.S. §§ 41-5603(F). The AG in his discretion also posts on the website “Frequently Asked Questions” about the program and the name of entities approved to be in the sandbox, their start date and general product description.

The current regulatory sandbox statute provides that “[r]ecords that are submitted to or obtained by the attorney general in administering [the program] *are not public records or open for inspection by the public.*” A.R.S. § 41-5610(A) (emphasis added). The financial regulatory sandbox has garnered a lot of attention from consumer advocates who are concerned about the new program’s administration. When members of the public interested in the administration and operation of the regulatory sandbox program submitted public records requests to the AG for those records, the AG refused to produce the documents relying on the above prohibition on producing documents.

This lack of public records disclosure conflicts with the Department of Financial Institutions’ (“DFI”) public records provision. There are two types of entities regulated by the DFI; financial institutions and enterprises (those under the jurisdiction of the DFI who are not a financial institution). *See* A.R.S. § 6-101 (8) and (6), respectively. For enterprises, pursuant to A.R.S. § 6-129.01, *all* documents are open for public inspection unless the public welfare or welfare of the enterprise requires the document to be withheld. The entities in the sandbox are expected to be enterprises because they are licensed. Thus, if these enterprises are in the regulatory sandbox program, the records are secret. If they are out of the regulatory sandbox program, the records are subject to public disclosure. *This difference in treatment creates secrecy and violates public trust in our government.*

This new program is administered in secrecy by the AG. The public has a right to know what is going on. Proprietary and other confidential information can be redacted from responses to public records requests and such redactions occur all the time when the DFI and other state agencies respond to public records requests.

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Therefore, for all the above reasons, the Institute requests that you veto House Bill 2177. We urge you to require that transparency and public oversight be a part of the regulatory sandbox program. Please let me know if you have any questions or if I can provide you with any additional information.

Sincerely,

/s/

Ellen Sue Katz