

Regulatory Sandbox

Social advancement is driven largely by the development of new technologies or products that propose to satisfy people's needs in new ways. The market process is a process of discovery. It is not always possible to foresee which new technologies or processes market participants may select. This makes it difficult for lawmakers and regulators to correctly anticipate the emergence of new industries. Meanwhile, relative inflexibility of existing legal restrictions may impede the emergence of these new industries.

An example is the emergence of on-demand ride-sharing services. Even as these products were being adopted in other markets, Nevada's existing regulatory regime treated ride-share drivers as livery drivers by default and these drivers were subject to minimum fees and drive times that made ride-sharing unworkable.

In 2014, the United Kingdom began to pioneer a new approach to regulation called a "regulatory sandbox." This approach allows an innovative company to apply for temporary relief from existing regulations in order to test their products on a limited scale and establish proof of concept. Regulators can also use these trials to assess the market challenges that confront a new industry and how regulations might be tailored to better protect the public interest. Hundreds of innovative companies participated in the United Kingdom's program and research shows these companies were 50% more likely to attract capital after demonstrating proof of concept.¹

The success of this program has inspired nine U.S. states to create regulatory sandboxes within specific industries while another three states have created a sandbox framework that can be used by companies in any industry. Nevada launched a temporary sandbox framework targeted specifically to financial technology firms following 2019 legislation.²

Key Points

Regulatory sandboxes should be available in every industry. In 2021, Utah became the first state to make its sandbox available for applicants in any industry. Arizona and Kentucky followed suit in 2022 and 2023, respectively. These frameworks are poised to make these states havens of economic innovation and development, as entrepreneurs flock to these areas to try new ideas.

Sandboxes include consumer protections. Although the point of a sandbox is to create needed flexibility within the regulatory structure, participants in these programs may still be required to carry appropriate insurance coverages, submit their products to assurance companies like Underwriters Laboratory, or hold consumer funds in an escrow account until the product has been delivered.

There are many examples of technologies that could have emerged faster with a sandbox. From the sharing economy to cryptocurrency and even healthcare, Nevada Policy has documented multiple examples where a sandbox could have helped innovators overcome existing regulatory hurdles. One such example was 23andMe's inability to mine its large database of genetic data to offer its customers diagnoses of treatable medical conditions.³

Sandboxes are a low-cost way to create a hub of innovation. Many of Nevada's efforts to spur economic development have focused on targeted tax breaks or grants of taxpayer dollars to specific companies. This approach entails high costs, rests on questionable constitutional grounds, and is not highly innovative. Sandboxes are an alternative approach to development that unleashes the dormant creativity of startup entrepreneurs.

Recommendations

Enact a universal regulatory sandbox. In collaboration with the Libertas Institute, Nevada Policy has proposed model language that would create a universal regulatory sandbox.⁴

¹ Ouarda Merrouche et al., "Digging for Gold: How Regulatory Sandboxes Help Fintechs Raise Funding," Centre for Economic Policy Research.

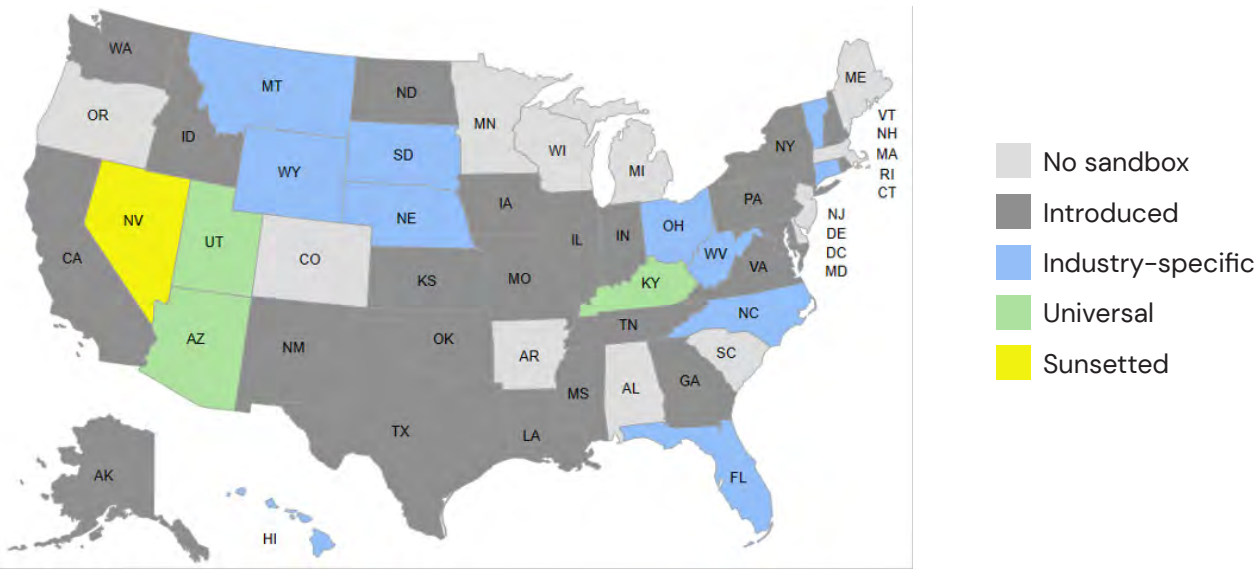
² Nevada Legislature, 80th Session, Senate Bill 161.

³ Cameron Belt, "State Permissions vs. Market Possibilities: Regulatory

Sandboxes in Nevada," Nevada Policy Research Institute policy study, October 2023.

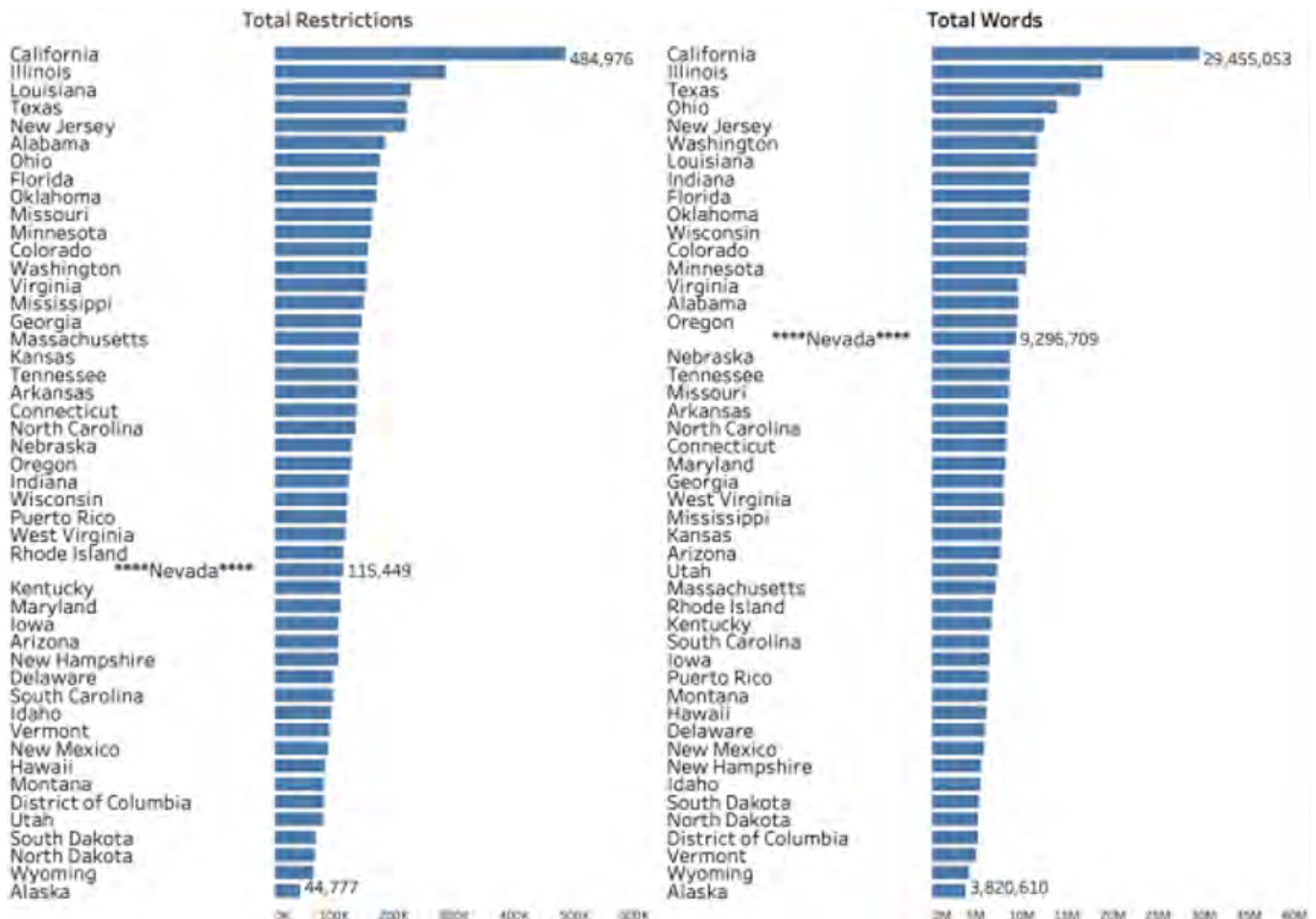
⁴ Ibid.

Modeling of Public Option Enrollment by DHHS Consultants



Source: Libertas Institute, "Regulatory Sandboxes: Impact Map."

Volume of Regulations by State (2023)



Source: RegData State Statute Tracker.