

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 583

BY SENATORS AZINGER AND BOSO

[Originating in the Committee on Banking and
Insurance; Reported on February 19, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §31A-9-1, §31A-9-2, §31A-9-3, §31A-9-4, §31A-9-5, §31A-9-6, §31A-9-7,
3 §31A-9-8, and §31A-9-9, all relating to creating the Financial Technology Sandbox Act
4 and program for the testing of financial products and services; defining terms; authorizing
5 waivers of certain statutes and rules covering the regulation of financial products and
6 services offered to consumers in this state; providing for service of process; specifying
7 responsibilities and authority of Commissioner of Financial Institutions; establishing
8 standards and procedures related to applicants and applications for participation in the
9 program; requiring application fee and reimbursement of costs incurred by Division for
10 Financial Institutions; setting forth requirements concerning criminal history background
11 checks and considerations regarding participation in the program; requiring posting of
12 bond; creating the Financial Technology Innovation Account; specifying limits of program
13 and standards for the suspension and revocation of an applicant’s authorization under the
14 program; requiring written statement of disclosures to consumers; requiring retention of
15 certain records and exempting them from Freedom of Information Act; authorizing
16 reciprocity agreements with other regulators; permitting potential extension of the
17 program; authorizing rulemaking and orders; and permitting the creation of a new unit
18 under the Division of Financial Institutions with staff for administration of the program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FINANCIAL TECHNOLOGY SANDBOX ACT.

§31A-9-1. Short title.

1 This article may be cited as the “Financial Technology Sandbox Act”.

§31A-9-2. Definitions.

1 As used in this article:

2 (1) “Blockchain” means a digital ledger or database which is chronological, consensus-
3 based, decentralized, and mathematically verified in nature;

4 (2) "Commissioner" has the meaning set forth in §31A-1-2 of this code;

5 (3) "Consumer" means a person, whether a natural person or a legal entity, in West
6 Virginia who purchases or enters into an agreement to receive an innovative financial product or
7 service made available through the financial technology sandbox;

8 (4) "Division" has the meaning set forth in §31A-1-2 of this code;

9 (5) "Financial product or service" means a product or service related to finance, including
10 banking, securities, consumer credit, or money transmission, which is subject to statutory or rule
11 requirements under the laws of this state and is under the jurisdiction of the commissioner;

12 (6) "Financial technology sandbox" means the program created by this article which allows
13 a person to make an innovative financial product or service available to consumers during a
14 sandbox period through a waiver of existing statutory and rule requirements, or portions thereof,
15 by the commissioner;

16 (7) "Innovative" means new or emerging technology, or new uses of existing technology,
17 that provides a product, service, business model, or delivery mechanism to the public and has no
18 substantially comparable, widely available analogue in West Virginia, including blockchain
19 technology;

20 (8) "Person" has the meaning set forth in §31A-1-2 of this code; and

21 (9) "Sandbox period" means the period of time, initially not longer than 24 months, in which
22 the commissioner has authorized an innovative financial product or service to be made available
23 to consumers, which shall also encompass any extension granted under §31A-9-8 of this code.

§31A-9-3. Waivers; applicability of criminal and consumer protection statutes; background checks; civil liability.

1 (a) Notwithstanding any other provision of law, a person who seeks to make an innovative
2 financial product or service available to consumers in the financial technology sandbox may be
3 granted a waiver of certain specified requirements, imposed by West Virginia statute or rule, or
4 portions thereof, if these statutes or rules do not currently permit the product or service to be

5 made available to consumers. A waiver under this subsection may be no broader than necessary
6 to accomplish the purposes and standards set forth in this article, as determined by the
7 commissioner.

8 (b) A person who makes an innovative financial product or service available to consumers
9 in the financial technology sandbox is:

10 (1) Not immune from civil damages for acts and omissions relating to this article; and

11 (2) Subject to all criminal and consumer protection laws of this state and as may be
12 applicable under federal law.

13 (c) The commissioner may refer suspected violations of law relating to this article to
14 appropriate state or federal agencies for investigation, prosecution, civil penalties, and other
15 appropriate enforcement actions.

16 (d) If service of process on a person making an innovative financial product or service
17 available to consumers in the financial technology sandbox is not feasible, service on the
18 Secretary of State shall be considered service on the person.

§31A-9-4. Financial technology sandbox application; standards for approval; consumer protection bond.

1 (a) A person shall apply to the commissioner to make an innovative financial product or
2 service available to consumers in the financial technology sandbox, based on the office that
3 administers the statute or rule, or portion thereof, for which a waiver is sought. If the commissioner
4 administers the statute or rule, or if the appropriate office is not known, an application may be
5 filed with the commissioner. If an application is filed with an office that does not administer the
6 statute or rule for which a waiver is sought, the receiving office shall forward the application to the
7 correct office. The person shall specify in an application the statutory or rule requirements for
8 which a waiver is sought, as well as the reasons why these requirements prohibit the innovative
9 financial product or service from being made available to consumers. The application shall also
10 contain the elements required for authorization which are set forth in this article. The

11 commissioner shall prescribe a method of application which shall be displayed on the division's
12 website.

13 (b) A business entity making an application under this section shall be a domestic
14 corporation or other organized domestic entity with a physical presence, other than that of a
15 registered office or agent, in West Virginia.

16 (c) Before an employee applies on behalf of an institution, firm, or other entity intending to
17 make an innovative financial product or service available through the financial technology
18 sandbox, the employee shall obtain the written consent of the institution, firm, or entity before
19 filing an application under this section.

20 (d) The individual filing an application under this section and the individuals who are
21 substantially involved in the development, operation, or management of the innovative financial
22 product or service shall, as a condition of an application, submit to a criminal history background
23 check at each individual's expense, with such background check results being sent directly to the
24 division.

25 (e) An application made under this section shall be accompanied by a fee of \$500. The
26 fee shall be deposited into the Financial Technology Innovation Account created by §31A-9-5 of
27 this code.

28 (f) The commissioner shall authorize or deny a financial technology sandbox application
29 in writing within 90 days of receiving the application. The commissioner and the person who has
30 made an application may jointly agree in writing to extend the time beyond 90 days. The
31 commissioner may impose conditions on any authorization, consistent with this article. In deciding
32 to authorize or deny an application, the commissioner shall consider each of the following:

33 (1) The nature of the innovative financial product or service proposed to be made available
34 to consumers in the sandbox, including all relevant technical details, which may include whether
35 the product or service utilizes blockchain technology;

36 (2) The potential risk to consumers and methods which will be used to protect consumers

37 and resolve complaints during the sandbox period;

38 (3) A business plan proposed by the person, including a statement of arranged capital;

39 (4) Whether the person has the necessary personnel, adequate financial and technical
40 expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or
41 service;

42 (5) Whether any person substantially involved in the development, operation, or
43 management of the innovative financial product or service has been convicted of, or is currently
44 under investigation for, any fraudulent act or omission, state or federal securities violations, or
45 any property-based offense;

46 (6) The disclosures required under this article that will be provided to consumers;

47 (7) Any other factor that the commissioner determines to be relevant.

48 (g) If an application is authorized under this article, the commissioner shall specify the
49 statutory or rule requirements, or portions thereof, for which a waiver is granted and the length of
50 the initial sandbox period. The commissioner shall also post notice of the approval of a sandbox
51 application under this subsection, a summary of the innovative financial product or service, and
52 the contact information of the person making the product or service available through the sandbox
53 on the division's website.

54 (h) A person authorized under this article to enter into the financial technology sandbox
55 shall post a consumer protection bond with the commissioner as security for potential losses
56 suffered by consumers. The bond amount shall be determined by the commissioner in an amount
57 not less than \$10,000 and shall be commensurate with the risk profile of the innovative financial
58 product or service. The commissioner may require that a bond be increased or decreased at any
59 time based on risk profile. The commissioner may use bond proceeds to offset losses suffered by
60 consumers as a result of an innovative financial product or service.

61 Unless a bond is enforced under this article, the commissioner shall cancel or allow the
62 bond to expire two years after the date of the conclusion of the sandbox period.

63 (i) A person authorized under this article to enter into the financial technology sandbox
64 shall be deemed to possess an appropriate license for the purposes of federal law requiring state
65 licensure or authorization.

66 (j) Authorization under this article shall not be construed to create a property right.

67 (k) If an application is granted, the person authorized under this article to enter into the
68 financial technology sandbox shall be responsible for reimbursing the commissioner for all actual
69 costs expended in processing the application, monitoring and examining the financial technology
70 sandbox, and enforcing the provisions of this article relevant to such applicant, including the cost
71 of division employees at a rate of \$50 per employee hour expended.

§31A-9-5. Financial Technology Innovation Account.

1 (a) There is created a special revenue account designated the “Financial Technology
2 Innovation Account”. Funds within the account shall be administered by the commissioner and
3 expended only as set forth in this section.

4 (b) Application fees remitted pursuant to this article and reimbursements by an applicant
5 pursuant to §31A-9-4(k) of this code shall be deposited into the Financial Technology Innovation
6 Account. Funds in the Financial Technology Innovation Account shall be used only for the purpose
7 of administering this article, including processing of sandbox applications, monitoring and
8 examining any financial technology sandbox, and enforcement activities relating to this article.

§31A-9-6. Operation of financial technology sandbox.

1 (a) A person authorized under this article to enter into the financial technology sandbox
2 may make an innovative financial product or service available to consumers during the sandbox
3 period.

4 (b) The commissioner may, on a case by case basis, specify the maximum number of
5 consumers permitted to receive an innovative financial product or service, after consultation with
6 the person authorized under this article to make the product or service available in the financial
7 technology sandbox.

8 (c) Before a consumer purchases or enters into an agreement to receive an innovative
9 financial product or service through the financial technology sandbox, the person making the
10 product or service available shall provide a written statement of the following to the consumer:

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

13 (2) That the product or service has been authorized to be made available to consumers
14 for a temporary period by the commissioner under the laws of West Virginia;

15 (3) That the State of West Virginia does not endorse the product or service and is not
16 subject to liability for losses or damages caused by the product or service;

17 (4) That the product or service is undergoing testing, may not function as intended, and
18 may entail financial risk;

19 (5) That the person making the product or service available to consumers is not immune
20 from civil liability for any losses or damages caused by the product or service;

21 (6) The expected end date of the sandbox period;

22 (7) The name and contact information of the commissioner and notification that suspected
23 legal violations, complaints, or other comments related to the product or service may be submitted
24 to the commissioner; and

25 (8) Any other statements or disclosures that the commissioner may deem necessary or to
26 further the purposes of this article.

27 (d) A person authorized to make an innovative financial product or service available to
28 consumers in the financial technology sandbox shall maintain comprehensive records relating to
29 the innovative financial product or service. The person shall keep these records for not less than
30 five years after the conclusion of the sandbox period. The commissioner may specify further
31 records requirements under this subsection.

32 (e) The commissioner may examine the records required to be maintained under this
33 article at any time, with or without notice. All direct and indirect costs of an examination conducted

34 under this subsection shall be paid by the person making the innovative financial product or
35 service available in the financial technology sandbox. Records made available to the
36 commissioner under this subsection are confidential and may not be subject to disclosure under
37 §29B-1-1 et seq., the Freedom of Information Act, but may be released to appropriate state and
38 federal agencies for the purposes of investigation or upon court order.

39 (f) Unless granted an extension pursuant to §31A-9-8 of this code, not less than 30 days
40 before the conclusion of the sandbox period, a person who makes an innovative financial product
41 or service available in the financial technology sandbox shall provide written notification to
42 consumers regarding the conclusion of the sandbox period and shall not make the product or
43 service available to any new consumers after the conclusion of the sandbox period until legal
44 authority outside of the sandbox exists to make the product or service available to consumers.
45 The person shall wind down operations with existing consumers within 60 days after the
46 conclusion of the sandbox period, except that, after the 60th day, the person may:

47 (1) Collect and receive money owed to the person and service loans made by the person,
48 based on agreements with consumers made before the conclusion of the sandbox period;

49 (2) Take necessary legal action; and

50 (3) Take other actions authorized by the commissioner that are not inconsistent with this
51 subsection.

52 (g) The commissioner may enter into agreements with state, federal, or foreign regulatory
53 agencies to allow persons who make an innovative financial product or service available in West
54 Virginia through the financial technology sandbox to make their products or services available in
55 other jurisdictions and to allow persons operating in similar financial technology sandboxes in
56 other jurisdictions to make innovative financial products and services available in West Virginia
57 under the standards of this article.

§31A-9-7. Revocation or suspension of financial technology sandbox authorization.

1 (a) The commissioner may, by order, revoke, or suspend authorization granted to a person

2 under this article if:

3 (1) The person has violated or refused to comply with any provision of this article or any
4 lawful rule, order, requirement, or decision by the commissioner;

5 (2) A fact or condition exists that, if it had existed or become known at the time of the
6 financial technology sandbox application, would have warranted denial of the application or the
7 imposition of material conditions;

8 (3) A material error, false statement, misrepresentation, or material omission was made in
9 the financial technology sandbox application; or

10 (4) After consultation with the person, in the opinion of the commissioner, continued testing
11 of the innovative financial product or service would:

12 (A) Be likely to harm consumers; or

13 (B) No longer serve the purposes of this article because of the financial or operational
14 failure of the product or service.

15 (b) Written notification of a revocation or suspension order made under this section shall
16 be served using any means authorized by law and, if the notice relates to a suspension, include
17 any conditions or remedial action which shall be completed before the suspension will be lifted by
18 the commissioner.

§31A-9-8. Extension of sandbox period.

1 (a) A person granted authorization under this article may apply for an extension of the
2 initial sandbox period for not more than 12 additional months. An application for an extension
3 shall be made not later than 60 days before the conclusion of the initial sandbox period specified
4 by the commissioner. The commissioner shall approve or deny the application for an extension in
5 writing not later than 35 days before the conclusion of the initial sandbox period. An application
6 for an extension by a person shall cite one of the following reasons as the basis for such
7 application and provide all relevant supporting information that:

8 (1) Statutory or rule amendments are necessary to conduct business in West Virginia on

9 a permanent basis; or

10 (2) An application for a license or other authorization required to conduct business in West
11 Virginia on a permanent basis has been filed with the appropriate office or entity and approval is
12 currently pending.

§31A-9-9. Rules and orders; enforcement of bond; restitution.

1 (a) The commissioner may propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 et seq. of this code to implement this article.

3 (b) The commissioner may create a new unit within the division to assist in the
4 management of the program to be at all times staffed with at least one full-time employee to be
5 hired by the commissioner for the purpose of administering the program under this article.

6 (c) The commissioner may issue:

7 (1) Any necessary orders to enforce this article, including ordering the payment of
8 restitution, and enforce these orders in any court of competent jurisdiction; and

9 (2) Any order needed to enforce any bond posted under this article, or a portion of such
10 bond, or to distribute any bond proceeds to affected consumers.

NOTE: The purpose of this bill is to create the financial technology sandbox program for the testing of financial products and services in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.