

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4621**

BY DELEGATES CAPITO, COWLES, ESPINOSA, SHOTT AND

QUEEN

[Originating in the Committee on the Judiciary.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §31A-8G-1, §31A-8G-2, §31A-8G-3, §31A-8G-4, §31A-8G-5, §31A-8G-6,  
3 §31A-8G-7, and §31A-8G-8, all relating to the West Virginia FinTech Regulatory Sandbox  
4 Program; defining terms; establishing requirements for participants to temporarily test  
5 innovative financial products or services on a limited basis without otherwise being  
6 licensed or authorized to act under the laws of the state; establishing scope of the ability  
7 to operate without otherwise being licensed or authorized to act with respect to approved  
8 financial products or services; providing consumer protections; establishing time  
9 limitations on the ability to operate without otherwise being licensed or authorized to act  
10 with respect to approved financial products or services; providing reporting requirements;  
11 and providing for rulemaking.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8G. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.**

**§31A-8G-1. The West Virginia FinTech Regulatory Sandbox Program.**

1 This article shall be known as the West Virginia FinTech Regulatory Sandbox Act.

**§31A-8G-2. Definitions.**

1 As used in this article:

2 “Applicable agency” means a department or agency of the state that by law regulates  
3 certain types of business activity in the state and persons engaged in such business activity,  
4 including the issuance of licenses or other types of authorization, which the department  
5 determines would otherwise regulate a sandbox participant.

6 “Applicant” means an individual or entity that is applying to participate in the regulatory  
7 sandbox.

8 “Consumer” means a person that purchases or otherwise enters into a transaction or  
9 agreement to receive an innovative product or service that is being tested by a sandbox  
10 participant.

11 “Distributed ledger” means the use of a digital database containing records of financial  
12 transactions, including blockchain technology, which can be simultaneously used and shared  
13 within a decentralized, publicly accessible network and can record transactions between two  
14 parties in a verifiable and permanent way.

15 “Division of Financial Institutions” and “division” means the West Virginia Division of  
16 Financial Institutions.

17 “Financial product or service” means:

18 (A) A financial product or financial service that requires state licensure or registration; or

19 (B) A financial product or financial service that includes a business model, delivery  
20 mechanism, or element that may require a license or other authorization to act as a financial  
21 institution, enterprise, or other entity that is regulated by West Virginia Division of Financial  
22 Institutions under Chapters 31, 31A, 31C, and 32A-2 of this code or other related provisions.

23 “Innovation” means the use or incorporation of a new or emerging technology or a new  
24 use of existing technology, including distributed ledger, to address a problem, provide a benefit,  
25 or otherwise offer a product, service, business model, or delivery mechanism that is not known  
26 by the Division of Financial Institutions to have a comparable widespread offering in the state.

27 “Innovative product or service” means a financial product or service that includes an  
28 innovation.

29 “Regulatory sandbox” means the West Virginia FinTech Regulatory Sandbox program  
30 created by this article, which allows a person to temporarily test an innovative product or service  
31 on a limited basis without otherwise being licensed or authorized to act under the laws of the  
32 state.

33 “Sandbox participant” means a person whose application to participate in the regulatory  
34 sandbox is approved in accordance with the provisions of this article.

35 “Test” means to provide an innovative product or service in accordance with the provisions  
36 of this chapter.

**§31A-8G-3. Regulatory Sandbox Program; administration; application requirements; fee; rule-making.**

1       (a) There is created in the Division of Financial Institutions the Regulatory Sandbox  
2 Program.

3       (b) In administering the regulatory sandbox, the Division of Financial Institutions:

4       (1) Shall consult with the West Virginia Development Office relating to the economic  
5 development opportunities relating to the potential sandbox participant and may consult with any  
6 applicable agency which otherwise may have jurisdiction or authority relating to any activity  
7 proposed for the regulatory sandbox for which the applicant is seeking to proceed without  
8 authorization or license;

9       (2) Shall have the authority to promulgate rules in accordance with §31A-2-4 and §29A-3-  
10 1 et seq. of this code for the purposes of administering the regulatory sandbox; and

11       (3) Shall establish a program to encourage and enable an individual or an entity to partner  
12 with existing financial services providers operating within the state to obtain limited access to the  
13 market in the state to test an innovative product or service without obtaining a license or other  
14 authorization that might otherwise be required; and

15       (4) May enter into cooperative, coordinating, or information-sharing agreements with or  
16 follow the best practices of the federal Consumer Financial Protection Bureau or other states that  
17 are administering similar programs as well as other state agencies to carry out the mandates of  
18 this article.

19       (c) An applicant for the regulatory sandbox shall provide to the Division of Financial  
20 Institutions an application in a form prescribed by the Division of Financial Institutions that:

21       (1) Demonstrates the applicant is subject to the jurisdiction of the state;

22       (2) Demonstrates the applicant has established a physical location in the state;

23       (3) Demonstrates that the applicant has worked in good faith with the Division of Financial  
24 Institutions to establish a partnership with a bank operating within the State of West Virginia or

25 another financial institution licensed by the State of West Virginia to implement the applicant's  
26 proposed test of an innovative product or service within the regulatory sandbox: *Provided*, That  
27 the applicant shall not be excluded from participation in the regulatory sandbox solely based on  
28 the applicant's ability to establish a partnership with a bank operating within the State of West  
29 Virginia or another financial institution licensed by the State of West Virginia.

30 (4) Contains relevant personal and contact information for the applicant, including legal  
31 names, addresses, telephone numbers, email addresses, website addresses, and other  
32 information required by the Division of Financial Institutions;

33 (5) Discloses criminal convictions of the applicant or other participating personnel, if any;

34 (6) Demonstrates that the applicant has the necessary personnel, financial and technical  
35 expertise, access to capital, and developed plan to test, monitor, and assess the innovative  
36 product or service;

37 (7) Contains a description of the innovative product or service to be tested, including  
38 statements regarding all of the following:

39 (A) How the innovative product or service is subject to licensing or other authorization  
40 requirements outside of the regulatory sandbox;

41 (B) How the innovative product or service would benefit consumers;

42 (C) How the innovative product or service is different from other products or services  
43 available in the state;

44 (D) What risks may confront consumers that use or purchase the innovative product or  
45 service;

46 (E) What measures will be put into place to limit potential risks and harm to consumers;

47 (F) How participating in the regulatory sandbox would enable a successful test of the  
48 innovative product or service;

49 (G) A description of the proposed testing plan, including estimated time periods for  
50 beginning the test, ending the test, and obtaining necessary licensure or authorizations after the  
51 testing is complete;

52 (H) A description of how the applicant will perform ongoing duties after the test; and

53 (I) How the applicant will end the test and protect consumers if the test fails.

54 (8) Provides any other information as required by the Division of Financial Institutions.

55 (d) The Division of Financial Institutions may collect an application fee of no greater than  
56 \$1,000 from an applicant.

57 (e) An applicant shall file a separate application for each innovative product or service that  
58 the applicant wants to test.

59 (f) After an application is filed, the Division of Financial Institutions may seek additional  
60 information from the applicant as it deems necessary.

61 (g) Subject to subsection (h) of this section, not later than 90 days after the day on which  
62 a complete application is received by the Division of Financial Institutions, the Division shall inform  
63 the applicant as to whether the application is approved for entry into the regulatory sandbox.

64 (h) The Division of Financial Institutions and an applicant may mutually agree to extend  
65 the 90-day time period described in subsection (g) of this section in order for the Division to  
66 determine whether an application is approved for entry into the regulatory sandbox.

67 (i)(1) In reviewing an application under this section, the Division of Financial Institutions  
68 may consult with, and seek the approval of, any applicable agency before admitting an applicant  
69 into the regulatory sandbox.

70 (2) The consultation with an applicable agency may include seeking information about  
71 whether:

72 (A) The applicable agency has previously issued a license or other authorization to the  
73 applicant;

74 (B) The applicable agency has previously investigated, sanctioned, or pursued legal action  
75 against the applicant;

76 (C) Whether the applicant could obtain a license or other authorization from the applicable  
77 agency after exiting the regulatory sandbox; and

78 (D) Whether certain licensure or other regulations should not be waived even if the  
79 applicant is accepted into the regulatory sandbox.

80 (j) In reviewing an application under this section, the Division of Financial Institutions shall  
81 consider whether a competitor to the applicant is or has been a sandbox participant and, if so,  
82 weigh that as a factor in favor of allowing the applicant to also become a sandbox participant.

83 (k) If the Division of Financial Institutions approves admitting an applicant into the  
84 regulatory sandbox, an applicant may become a sandbox participant.

85 (l)(1) The Division of Financial Institutions may deny any application submitted under this  
86 section, for any reason, at the division's discretion.

87 (2) If the Division of Financial Institutions denies an application submitted under this  
88 section, the division shall provide to the applicant a written description of the reasons for the denial  
89 as a sandbox participant.

**§31A-8G-4. Scope; testing period; licenses; consumer protections.**

1 (a) If the Division of Financial Institutions approves an application under §31A-8G-3 of this  
2 code, the sandbox participant has 24 months after the day on which the application was approved  
3 to test the innovative product or service described in the sandbox participant's application.

4 (b) An innovative product or service that is tested within the regulatory sandbox is subject  
5 to the following:

6 (1) All consumers participating in the innovative product or service being tested shall be  
7 residents of the state;

8           (2) The Division of Financial Institutions may, on a case-by-case basis, specify the  
9 maximum number of consumers that may transact through or enter into an agreement to use the  
10 innovative product or service;

11           (3) For a sandbox participant testing a consumer loan the Division of Financial Institutions  
12 may, on a case-by-case basis, specify the maximum amount of an individual loan that may be  
13 issued to an individual consumer and the maximum amount of aggregate loans that may be issued  
14 to an individual consumer; and

15           (4) For a sandbox participant testing an innovative product or service that would normally  
16 require a money transmission license pursuant to this code, the Division of Financial Institutions  
17 may, on a case-by-case basis, specify the maximum amount of a single transaction for an  
18 individual consumer and the maximum aggregate amount of transactions for an individual  
19 consumer.

20           (c) This section does not restrict a sandbox participant who holds a license or other  
21 authorization in another jurisdiction from acting in accordance with that license or other  
22 authorization.

23           (d) A sandbox participant is deemed to possess an appropriate license under the laws of  
24 the state for the purposes of any provision of federal law requiring state licensure or authorization.

25           (e) Except as otherwise provided in this chapter, including subsections (f), (g), and (h) of  
26 this section, a sandbox participant that is testing an innovative product or service is not subject to  
27 state laws that regulate financial products or services.

28           (f) Sandbox participants and the innovative products and services that they are testing in  
29 the regulatory sandbox are subject to all applicable consumer protection laws, including, but not  
30 limited to those contained in Chapter 46A of the West Virginia Code, the Collection Agency Act  
31 contained in Chapter 47 of this Code, and any limitations on interest rates, whether or not those  
32 limitations would otherwise require licensure.

33 (g)(1) The Division of Financial Institutions may determine that additional certain other  
34 state laws that regulate a financial product or service apply to a sandbox participant if the Division  
35 of Financial Institutions, at its sole discretion, determines that an applicant's proposed testing plan  
36 or the innovative product or service to be tested poses significant enough risk to consumers or to  
37 the safety and soundness of other institutions within the financial services marketplace as to  
38 warrant the imposition of other applicable state laws.

39 (2) The Division of Financial Institutions shall determine the applicability of certain state  
40 laws to each innovative product or service prior to approval of any application to participate in the  
41 regulatory sandbox and shall notify the sandbox participant of the specific regulatory provisions  
42 that shall apply to the innovative product or service throughout the duration of the testing period.

43 (3) If at any time during the testing period, the Division of Financial Institutions determines  
44 that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers  
45 or the safety and soundness of other institutions operating within the financial services  
46 marketplace, the division may require that the sandbox participant come into compliance with  
47 such state laws within a reasonable time.

48 (h) Notwithstanding any other provision of this chapter, a sandbox participant does not  
49 have immunity related to any criminal offense committed during the sandbox participant's  
50 participation in the regulatory sandbox.

51 (i) By written notice, the Division of Financial Institutions may end a sandbox participant's  
52 participation in the regulatory sandbox at any time and for any reason, including if the division  
53 determines a sandbox participant is not operating in good faith to bring an innovative product or  
54 service to market.

55 (j) Shall require the sandbox participant to post a consumer protection bond with the  
56 commissioner as security for potential losses suffered by consumers. The bond amount shall be  
57 determined by the commissioner in consultation with the admitted participant in an amount not  
58 less than \$5,000 and shall be commensurate with the risk profile of the innovative financial product

59 or service. The commissioner may require that a bond be increased or decreased at any time  
60 based on risk profile and shall provide the sandbox participant with 30 days prior written notice.  
61 The commissioner may use bond proceeds to offset losses suffered by consumers as a result of  
62 an innovative financial product or service. The bond shall expire two years after the date of the  
63 conclusion of the sandbox period. The commissioner may accept electronic bonds from any  
64 participant.

**§31A-8G-5. Additional consumer protections; disclosures.**

1 (a) Before providing an innovative product or service to a consumer, a sandbox participant  
2 shall disclose the following to the consumer:

3 (1) The name and contact information of the sandbox participant;

4 (2) That the innovative product or service is authorized pursuant to the regulatory sandbox  
5 and, if applicable, that the sandbox participant does not have a license or other authorization to  
6 provide a product or service under state laws that regulate products or services outside the  
7 regulatory sandbox;

8 (3) That the innovative product or service is undergoing testing and may not function as  
9 intended and may expose the customer to financial risk;

10 (4) That the provider of the innovative product or service is not immune from civil liability  
11 for any losses or damages caused by the innovative product or service;

12 (5) That the state does not endorse or recommend the innovative product or service;

13 (6) That the innovative product or service is a temporary test that may be discontinued at  
14 the end of the testing period;

15 (7) The expected end date of the testing period; and

16 (8) That a consumer may contact the Division of Financial Institutions to file a complaint  
17 regarding the innovative product or service being tested and provide the division's telephone  
18 number and website address where a complaint may be filed.

19 (b) The disclosures required by subsection (a) of this section shall be provided to a  
20 consumer in a clear and conspicuous form and, for an internet or application-based innovative  
21 product or service, a consumer shall acknowledge receipt of the disclosure before a transaction  
22 may be completed.

23 (c) The Division of Financial Institutions may require that a sandbox participant make  
24 additional disclosures to a consumer.

**§31A-8G-6. Exiting requirements; extensions.**

1 (a) At least 30 days before the end of the 24-month regulatory sandbox testing period, a  
2 sandbox participant shall:

3 (1) Notify the Division of Financial Institutions that the sandbox participant will exit the  
4 regulatory sandbox, discontinue the sandbox participant's test, and will stop offering any  
5 innovative product or service in the regulatory sandbox within 60 days after the day on which the  
6 24-month testing period ends; or

7 (2) Seek an extension in accordance with §31A-8G-7 of this code.

8 (b) Subject to subsection (c) of this section, if the Division of Financial Institutions does  
9 not receive notification as required by subsection (a) of this section, the regulatory sandbox testing  
10 period ends at the end of the 24-month testing period and the sandbox participant shall  
11 immediately stop offering each innovative product or service being tested.

12 (c) If a test includes offering an innovative product or service that requires ongoing duties,  
13 such as servicing a loan, the sandbox participant shall continue to fulfill those duties or arrange  
14 for another person to fulfill those duties after the date on which the sandbox participant exits the  
15 regulatory sandbox.

**§31A-8G-7. Testing period extensions.**

1 (a) Not later than 30 days before the end of the 24-month regulatory sandbox testing  
2 period, a sandbox participant may request an extension of the regulatory sandbox testing period  
3 for the purpose of obtaining a license or other authorization required by law.

4 (b) The Division of Financial Institutions shall grant or deny a request for an extension in  
5 accordance with subsection (a) of this section, by the end of the 24-month regulatory sandbox  
6 testing period.

7 (c) The Division of Financial Institutions may grant an extension in accordance with this  
8 section for not more than 12 months after the end of the regulatory sandbox testing period.

9 (d) A sandbox participant that obtains an extension in accordance with this section shall  
10 provide the Division of Financial Institutions with a written report every three months that provides  
11 an update on efforts to obtain a license or other authorization required by law, including any  
12 submitted applications for licensure or other authorization, rejected applications, or issued  
13 licenses or other authorization.

**§31A-8G-8. Record keeping and reporting requirements; participant removal.**

1 (a) A sandbox participant shall retain records, documents, and data produced in the  
2 ordinary course of business regarding an innovative product or service tested in the regulatory  
3 sandbox.

4 (b) If an innovative product or service fails before the end of a testing period, the sandbox  
5 participant shall notify the Division of Financial Institutions and report on actions taken by the  
6 sandbox participant to ensure consumers have not been harmed as a result of the failure.

7 (c) The Division of Financial Institutions will collaborate with participants admitted to the  
8 regulatory sandbox to establish periodic and reasonable reporting requirements for a sandbox  
9 participant.

10 (d) The Division of Financial Institutions may request records, documents, and data from  
11 a sandbox participant and, upon the division's request, a sandbox participant shall make such  
12 records, documents, and data available for inspection by the division.

13 (e) If the Division of Financial Institutions determines that a sandbox participant has  
14 engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation  
15 of this chapter or that constitutes a violation of a state or federal criminal law, the division may

16 remove a sandbox participant from the regulatory sandbox and may refer suspected violations of  
17 law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil  
18 penalties and other appropriate enforcement actions.

19 (f) On or before December 1 of each year, the Division of Financial Institutions shall  
20 provide an annual written report to the Joint Committee on Government and Finance that provides  
21 information regarding each sandbox participant and that provides recommendations regarding  
22 the effectiveness of the regulatory sandbox. This report shall be made publicly available on the  
23 division's website.

NOTE: The purpose of this bill is to create the West Virginia FinTech Regulatory Sandbox, which enables a participant to obtain limited access to West Virginia's financial services market to test innovative financial products or services prior to obtaining full state licensure or other authorization that otherwise may be required. The bill requires the West Virginia Division of Financial Institutions to be responsible for the admission process and operation of the Sandbox Program, in partnership with the West Virginia Division of Financial Institutions and other appropriate agencies.

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