

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENGROSSED

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; rulemaking.

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) The Division of Financial Institutions shall require a sandbox participant to post a
56 consumer protection bond with the commissioner as security for potential losses suffered by
57 consumers. The bond amount shall be determined by the commissioner in consultation with the
58 sandbox participant in an amount not less than \$5,000 and shall be commensurate with the risk

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