

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **House Bill 2709**

BY DELEGATES CAPITO, KEATON AND L. PACK

[Introduced February 23, 2021; Referred to the  
Committee on the Judiciary]



1 A BILL to amend and reenact §31A-8G-4 of the Code of West Virginia, 1931, as amended, relating  
2 to the aggregate liability of a surety on a consumer protection bond under the West Virginia  
3 Fintech Regulatory Sandbox Program.

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

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

**§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 regulatory sandbox participant has 24 months after the day on which the application  
3 was approved to test the innovative product or service described in the regulatory sandbox  
4 participant's application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (j) The Division of Financial Institutions shall require a regulatory sandbox participant to  
59 post a consumer protection bond as security for potential losses suffered by consumers. The  
60 bond amount shall be determined by the commissioner in an amount not less than \$5,000 and  
61 shall be commensurate with the risk profile of the innovative product or service. The  
62 commissioner may require that a bond be increased or decreased at any time based on risk profile  
63 and shall provide the regulatory sandbox participant with 30 days prior written notice of such  
64 increase or decrease. The aggregate liability of the surety in no event shall exceed the principal  
65 sum of the bond. The commissioner may use bond proceeds to offset losses suffered by  
66 consumers as a result of an innovative product or service. The bond shall expire two years after  
67 the date of the conclusion of the regulatory sandbox testing period. The commissioner may accept  
68 electronic bonds from any regulatory sandbox participant.

NOTE: The purpose of this bill is to provide that the aggregate liability of a surety on a consumer protection bond under the West Virginia Fintech Regulatory Sandbox Program does not exceed the principal sum of the bond.

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