

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2764

BY DELEGATES CAPITO, KEATON AND L. PACK

[Introduced February 25, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §31A-8G-3 of the Code of West Virginia, 1931, as amended, relating
2 to allowing the Division of Financial Institutions enter into agreements with state, federal
3 or foreign regulatory agencies to allow persons who make an innovative financial product
4 or service available in West Virginia, under the program available under the West Virginia
5 FinTech Regulatory Sandbox Act, to make their products or services available in other
6 jurisdictions and to allow persons operating in similar regulatory sandboxes in other
7 jurisdictions to make innovative financial products and services available in West Virginia
8 under the standards provided in the West Virginia FinTech Regulatory Sandbox Act.

Be it enacted by the Legislature of West Virginia:

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

§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 program, 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 regulatory sandbox participant and may
6 consult with any applicable agency which otherwise may have jurisdiction or authority relating to
7 any activity proposed for the regulatory sandbox program for which the applicant is seeking to
8 proceed without 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 program;

11 (3) Shall establish a program permitting an individual or an entity to obtain limited access
12 to the market in the state to test an innovative product or service without obtaining a license or
13 other authorization that might otherwise be required; ~~and~~

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

18 (5) May enter into agreements with state, federal or foreign regulatory agencies to allow
19 persons who make an innovative financial product or service available in West Virginia through
20 the regulatory sandbox program to make their products or services available in other jurisdictions
21 and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make
22 innovative financial products and services available in West Virginia under the standards of this
23 article.

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

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

28 (2) Demonstrates that the applicant has established a physical location in the state; where
29 all required records, documents, and data relating to any approved testing can be made available
30 for examination and review by the Division of Financial Institutions and any other applicable
31 agency with jurisdiction;

32 (3) Demonstrates that the applicant has attempted in good faith to establish a partnership
33 with a bank operating within the State of West Virginia or another financial institution licensed by
34 the State of West Virginia to implement the applicant's proposed test of an innovative product or
35 service within the regulatory sandbox program: *Provided*, That the applicant ~~shall~~ may not be
36 excluded from participation in the regulatory sandbox program solely based on the applicant's
37 ability to establish a partnership with a bank operating within the State of West Virginia or another
38 financial institution licensed by the State of West Virginia;

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

42 (5) Discloses any and all criminal convictions of the applicant or other participating
43 personnel, if any, and submits to a criminal background investigation, including requiring
44 fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or
45 entity authorized to receive such information for a state, national or international criminal history
46 check;

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

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

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

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

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

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

59 (E) What measures will be put into place to limit potential risks and harm to consumers
60 and to resolve complaints during the regulatory sandbox testing period;

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

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

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

67 (I) How the applicant will end the test and protect consumers if the test fails;

68 (8) Sets forth whether the applicant has been provided any license or authorization by any
69 state or federal agency; whether any state or federal agency has previously investigated,
70 sanctioned, or pursued legal action against the applicant; and whether the applicant has had
71 licensure or authorization denied or withdrawn by any state or federal agency;

72 (9) Demonstrates registration with the West Virginia Secretary of State;

73 (10) Demonstrates that the applicant has an exit plan to limit consumer harm at the
74 conclusion of the regulatory sandbox testing period, including a plan to notify consumers and
75 advise them of next steps; and

76 (11) Provides any other information as required by the Division of Financial Institutions.

77 (d) The Division of Financial Institutions may collect an application fee of not more than
78 \$1,500 from an applicant.

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

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

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

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

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

93 (2) The consultation with an applicable agency may include but is not limited to seeking
94 information about whether:

95 (A) The applicant could obtain a license or other authorization from the applicable agency
96 after exiting the regulatory sandbox program; and

97 (B) Certain licensure or other regulations should not be waived even if the applicant is
98 accepted into the regulatory sandbox program.

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

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

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

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

NOTE: The purpose of this bill is to allow the Division of Financial Institutions to enter into reciprocity agreements with other jurisdictions that operate similar programs to the West Virginia Fintech Sandbox Program.

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