

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4621

BY DELEGATES CAPITO, COWLES,

ESPINOSA, SHOTT AND QUEEN

[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT 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 creating the West Virginia FinTech Regulatory
4 Sandbox Program; defining terms; providing that the program shall be administered by the
5 West Virginia Division of Financial Institutions, establishing requirements for participants
6 to temporarily test innovative financial products or services on a limited basis without
7 otherwise being licensed under the laws of the state; establishing scope of the ability to
8 operate approved financial products or services without a license; providing consumer
9 protections; establishing time limitations on the ability to test approved financial products
10 or services without a license; providing reporting requirements; providing for rulemaking;
11 and directing the West Virginia Division of Financial Institutions to provide annual reports
12 to the Legislature.

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 regulatory sandbox participant.

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

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 regulatory 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” mean 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 the West Virginia Division of Financial
22 Institutions under chapters 31, 31A, and 31C of this code, §32A-2-1 *et seq.* of this code, or other
23 related provisions.

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

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

30 “Regulatory sandbox participant” means a person whose application to participate in the
31 regulatory sandbox program is approved in accordance with the provisions of this article.

32 “Regulatory sandbox program” means the West Virginia FinTech Regulatory Sandbox
33 Program created by this article, which allows a person to temporarily test an innovative product

34 or service on a limited basis without otherwise being licensed or authorized to act under the laws
35 of the state.

36 “Regulatory sandbox testing period” means a 24-month period beginning on the date an
37 applicant is admitted to the regulatory sandbox program.

38 “Test” means to provide an innovative product or service in accordance with the provisions
39 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (d) The Division of Financial Institutions may collect an application fee of not more than
72 \$1,500 from an applicant.

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

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

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

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

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

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

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

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

93 (j) In reviewing an application under this section, the Division of Financial Institutions shall
94 consider whether a competitor to the applicant is or has been a regulatory sandbox participant

95 and, if so, weigh that as a factor in favor of allowing the applicant to also become a regulatory
96 sandbox participant.

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

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

101 (2) If the Division of Financial Institutions denies an application submitted under this
102 section, the division shall provide to the applicant a written description of the reasons for the denial
103 as a regulatory 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 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 commissioner may use bond proceeds to offset losses suffered by
65 consumers as a result of an innovative product or service. The bond shall expire two years after

66 the date of the conclusion of the regulatory sandbox testing period. The commissioner may accept
67 electronic bonds from any regulatory sandbox participant.

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

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

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

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

8 (3) That the innovative product or service is undergoing testing, may not function as
9 intended, and may expose the consumer 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 conclusion of the regulatory sandbox testing period;

15 (7) The expected end date of the regulatory sandbox 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 of Financial
18 Institution's telephone 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 investigate all consumer complaints made
24 against a regulatory sandbox participant pursuant to subsection (a) of this section: *Provided*, That
25 the consumer making the complaint was directly provided the innovative product or service by the
26 regulatory sandbox participant, and the innovative product or service was provided in the course
27 of participation in the regulatory sandbox program.

28 (d) The Division of Financial Institutions may require that a regulatory sandbox participant
29 make additional disclosures to a consumer.

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

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

3 (1) Notify the Division of Financial Institutions that the regulatory sandbox participant will
4 exit the regulatory sandbox program, discontinue the regulatory sandbox participant's test, and
5 stop offering any innovative product or service in the regulatory sandbox program within 60 days
6 after the day on which the regulatory sandbox 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
10 participant shall immediately stop offering each innovative product or service being tested at the
11 conclusion of the regulatory sandbox testing period.

12 (c) If a test includes offering an innovative product or service that requires ongoing duties,
13 such as servicing a loan, the regulatory sandbox participant shall continue to fulfill those duties or
14 arrange for another person to fulfill those duties after the date on which the regulatory sandbox
15 participant exits the regulatory sandbox program, and not less than 30 days before the conclusion
16 of the regulatory sandbox testing period, notify, in writing, any consumer of the innovative product
17 or service of the plan related to continuation or discontinuation of duties with respect to the
18 innovative product or service.

§31A-8G-7. Testing period extensions.

1 (a) Thirty days prior to the conclusion of the regulatory sandbox testing period, a regulatory
2 sandbox participant may request an extension of the regulatory sandbox testing period for the
3 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 conclusion of the regulatory sandbox testing
6 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 conclusion of the regulatory sandbox testing period.

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

§31A-8G-8. Recordkeeping and reporting requirements; participant removal.

1 (a) A regulatory sandbox participant shall retain records, documents, and data produced
2 in the ordinary course of business regarding an innovative product or service tested in the
3 regulatory sandbox program, and shall maintain comprehensive records for not less than five
4 years after the conclusion of the regulatory sandbox testing period.

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

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

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

15 (e) If the Division of Financial Institutions determines that a regulatory sandbox participant
16 has engaged in, is engaging in, or is about to engage in any practice or transaction that is in
17 violation of this chapter or that constitutes a violation of a state or federal criminal law, the Division
18 of Financial Institutions may remove a regulatory sandbox participant from the regulatory sandbox
19 program and may refer suspected violations of law relating to this act to appropriate state or
20 federal agencies for investigation, prosecution, civil penalties, and other appropriate enforcement
21 actions.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2020.

.....
Governor