# 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.]

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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.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ....*is approved*.... this the ....*24th*....

day of .................*March*................., 2020.

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*Governor*

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE