

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 583

BY SENATORS AZINGER AND BOSO

[Introduced February 12, 2019; Referred
to the Committee on Banking and Insurance; and then to
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-9-1, §31A-9-2, §31A-9-3, §31A-9-4, §31A-9-5, §31A-9-6, §31A-9-7,
 3 §31A-9-8, and §31A-9-9, all relating to creating the financial technology sandbox program
 4 for the testing of financial products and services in West Virginia; defining terms;
 5 authorizing the Division of Financial Institutions to accept applications for participation and
 6 to authorize waivers of certain statutes and rules covering the regulation of financial
 7 services offered to consumers in this state; establishing standards and procedures for
 8 accepting applications, operations, and supervision by the Division of Financial
 9 Institutions; authorizing reciprocity agreements with other regulators; requiring criminal
 10 history background checks; creating an account for the deposit of funds generated under
 11 the program; requiring a consumer protection bond; specifying standards for the
 12 suspension and revocation of a participant's authorization under the program; authorizing
 13 rules and orders; creating a new unit under the Division of Financial Services for the
 14 management of the program; and providing for effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FINANCIAL REGULATORY SANDBOX ACT.

§31A-9-1. Short title.

1 This act may be cited as the "Financial Technology Sandbox Act."

§31A-9-2. Definitions.

1 As used in this article:

2 (1) "Blockchain" means a digital ledger or database which is chronological, consensus-
 3 based, decentralized and mathematically verified in nature.

4 (2) "Commissioner" has the meaning set forth in §31A-2-1 of this code.

5 (3) "Consumer" means a person, whether a natural person or a legal entity, in West
 6 Virginia who purchases or enters into an agreement to receive an innovative financial product or
 7 service made available through the financial technology sandbox.

8 (4) "Division" has the meaning set forth in §32A-1-2 of this code.

9 (5) "Financial product or service" means a product or service related to finance, including
10 banking, securities, consumer credit or money transmission, which is subject to statutory or rule
11 requirements under the laws of this state and is under the jurisdiction of the commissioner;

12 (6) "Financial technology sandbox" means the program created by this act which allows a
13 person to make an innovative financial product or service available to consumers during a
14 sandbox period through a waiver of existing statutory and rule requirements, or portions thereof,
15 by the commissioner;

16 (7) "Innovative" means new or emerging technology, or new uses of existing technology,
17 that provides a product, service, business model or delivery mechanism to the public and has no
18 substantially comparable, widely available analogue in West Virginia, including blockchain
19 technology;

20 (8) "Person" has the meaning set forth in §31A-1-2 of this code.

21 (9) "Sandbox period" means the period of time, initially not longer than 24 months, in which
22 the commissioner has authorized an innovative financial product or service to be made available
23 to consumers, which shall also encompass any extension granted under §31A-9-8 of this code.

§31A-9-3. Waivers; applicability of criminal and consumer protection statutes; background checks; civil liability.

1 (a) Notwithstanding any other provision of law, a person who seeks to make an innovative
2 financial product or service available to consumers in the financial technology sandbox may be
3 granted a waiver of certain specified requirements, imposed by West Virginia statute or rule, or
4 portions thereof, if these statutes or rules do not currently permit the product or service to be
5 made available to consumers. A waiver under this subsection may be no broader than necessary
6 to accomplish the purposes and standards set forth in this article, as determined by the
7 commissioner.

8 (b) A person who makes an innovative financial product or service available to consumers

9 in the financial technology sandbox is:

10 (1) Not immune from civil damages for acts and omissions relating to this article; and

11 (2) Subject to all criminal and consumer protection laws of this state and as may be
12 applicable under federal law;

13 (c) The commissioner may refer suspected violations of law relating to this article to
14 appropriate state or federal agencies for investigation, prosecution, civil penalties and other
15 appropriate enforcement actions.

16 (d) If service of process on a person making an innovative financial product or service
17 available to consumers in the financial technology sandbox is not feasible, service on the
18 Secretary of State shall be considered service on the person.

§31A-9-4. Financial technology sandbox application; standards for approval; consumer protection bond.

1 (a) A person shall apply to the commissioner to make an innovative financial product or
2 service available to consumers in the financial technology sandbox, based on the office that
3 administers the statute or rule, or portion thereof, for which a waiver is sought. If the commissioner
4 administers the statute or rule, or if the appropriate office is not known, an application may be
5 filed with the commissioner. If an application is filed with an office that does not administer the
6 statute or rule for which a waiver is sought, the receiving office shall forward the application to the
7 correct office. The person shall specify in an application the statutory or rule requirements for
8 which a waiver is sought, and the reasons why these requirements prohibit the innovative financial
9 product or service from being made available to consumers. The application shall also contain
10 the elements required for authorization which are set forth in this article. The commissioner shall
11 prescribe a method of application which shall be displayed on the division's website.

12 (b) A business entity making an application under this section shall be a domestic
13 corporation or other organized domestic entity with a physical presence, other than that of a
14 registered office or agent, in West Virginia.

15 (c) Before an employee applies on behalf of an institution, firm or other entity intending to
16 make an innovative financial product or service available through the financial technology
17 sandbox, the employee shall obtain the written consent of the institution, firm or entity before filing
18 an application under this section.

19 (d) The individual filing an application under this section and the individuals who are
20 substantially involved in the development, operation or management of the innovative financial
21 product or service shall, as a condition of an application, submit to a criminal history background
22 check.

23 (e) An application made under this section shall be accompanied by a fee of \$500. The
24 fee shall be deposited into the financial technology innovation account as provided in §31A-9-5
25 of this code.

26 (f) The commissioner shall authorize or deny a financial technology sandbox application
27 in writing within 90 days of receiving the application. The commissioner and the person who has
28 made an application may jointly agree in writing to extend the time beyond 90 days. The
29 commissioner may impose conditions on any authorization, consistent with this article. In
30 deciding to authorize or deny an application under this subsection, the commissioner shall
31 consider each of the following:

32 (1) The nature of the innovative financial product or service proposed to be made available
33 to consumers in the sandbox, including all relevant technical details, which may include whether
34 the product or service utilizes blockchain technology;

35 (2) The potential risk to consumers and methods which will be used to protect consumers
36 and resolve complaints during the sandbox period;

37 (3) A business plan proposed by the person, including a statement of arranged capital;

38 (4) Whether the person has the necessary personnel, adequate financial and technical
39 expertise and a sufficient plan to test, monitor and assess the innovative financial product or
40 service;

41 (5) Whether any person substantially involved in the development, operation or
42 management of the innovative financial product or service has been convicted of, or is currently
43 under investigation for, fraud, state or federal securities violations or any property based offense;

44 (6) A copy of the disclosures required under this act that will be provided to consumers;

45 (7) Any other factor that the commissioner determines to be relevant.

46 (g) If an application is authorized under this act, the commissioner shall specify the
47 statutory or rule requirements, or portions thereof, for which a waiver is granted and the length of
48 the initial sandbox period. The commissioner shall also post notice of the approval of a sandbox
49 application under this subsection, a summary of the innovative financial product or service and
50 the contact information of the person making the product or service available through the sandbox
51 on the Internet website of the commissioner.

52 (h) A person authorized under this act to enter into the financial technology sandbox shall
53 post a consumer protection bond with the commissioner as security for potential losses suffered
54 by consumers. The bond amount shall be determined by the commissioner in an amount not less
55 than \$10,000 and shall be commensurate with the risk profile of the innovative financial product
56 or service. The commissioner may require that a bond under this subsection be increased or
57 decreased at any time based on risk profile. Unless a bond is enforced under this article, the
58 commissioner shall cancel or allow the bond to expire two years after the date of the conclusion
59 of the sandbox period.

60 (i) A person authorized under this article to enter into the financial technology sandbox
61 shall be deemed to possess an appropriate license for the purposes of federal law requiring state
62 licensure or authorization.

63 (j) Authorization under this act shall not be construed to create a property right.

§31A-9-5. Financial technology innovation account.

1 (a) There is created the financial technology innovation account. Funds within the account
2 shall only be expended by legislative appropriation. All funds within the account shall be invested

3 by the State Treasurer and all investment earnings from the account shall be credited to the
4 general fund. The account shall be divided into two subaccounts controlled by the commissioner
5 for the purposes of administrative management. For the purposes of accounting and investing
6 only, the subaccounts shall be treated as separate accounts.

7 (b) Subject to legislative appropriation, application fees remitted to the account pursuant
8 to this article shall be deposited into the subaccount controlled by the commissioner based on the
9 receiving official. These funds, and any additional funds appropriated by the Legislature, shall be
10 used only for the purposes of administering this article, include processing of sandbox
11 applications and monitoring, examination and enforcement activities relating to this article.

§31A-9-6. Operation of financial technology sandbox.

1 (a) A person authorized under this article to enter into the financial technology sandbox
2 may make an innovative financial product or service available to consumers during the sandbox
3 period.

4 (b) The commissioner may, on a case by case basis, specify the maximum number of
5 consumers permitted to receive an innovative financial product or service, after consultation with
6 the person authorized under this article to make the product or service available in the financial
7 technology sandbox.

8 (c) Before a consumer purchases or enters into an agreement to receive an innovative
9 financial product or service through the financial technology sandbox, the person making the
10 product or service available shall provide a written statement of the following to the consumer:

11 (1) The name and contact information of the person making the product or service
12 available to consumers;

13 (2) That the product or service has been authorized to be made available to consumers
14 for a temporary period by the commissioner or secretary, as applicable, under the laws of West
15 Virginia;

16 (3) That the State of West Virginia does not endorse the product or service and is not

17 subject to liability for losses or damages caused by the product or service;

18 (4) That the product or service is undergoing testing, may not function as intended and
19 may entail financial risk;

20 (5) That the person making the product or service available to consumers is not immune
21 from civil liability for any losses or damages caused by the product or service;

22 (6) The expected end date of the sandbox period;

23 (7) The name and contact information of the commissioner and notification that suspected
24 legal violations, complaints or other comments related to the product or service may be submitted
25 to the commissioner;

26 (8) Any other statements or disclosures required by the commissioner which are
27 necessary to further the purposes of this article.

28 (d) A person authorized to make an innovative financial product or service available to
29 consumers in the financial technology sandbox shall maintain comprehensive records relating to
30 the innovative financial product or service. The person shall keep these records for not less than
31 five years after the conclusion of the sandbox period. The commissioner may specify further
32 records requirements under this subsection by rule.

33 (e) The commissioner may examine the records required to be maintained under this
34 article at any time, with or without notice. All direct and indirect costs of an examination conducted
35 under this subsection shall be paid by the person making the innovative financial product or
36 service available in the financial technology sandbox. Records made available to the
37 commissioner under this subsection are confidential and may not be subject to disclosure under
38 §29B-1-1 et seq., the Freedom of Information Act, but may be released to appropriate state and
39 federal agencies for the purposes of investigation.

40 (f) Unless granted an extension pursuant to §31A-9-8 of this code, not less than 30 days
41 before the conclusion of the sandbox period, a person who makes an innovative financial product
42 or service available in the financial technology sandbox shall provide written notification to

43 consumers regarding the conclusion of the sandbox period and shall not make the product or
44 service available to any new consumers after the conclusion of the sandbox period until legal
45 authority outside of the sandbox exists to make the product or service available to consumers.

46 The person shall wind down operations with existing consumers within 60 days after the
47 conclusion of the sandbox period, except that, after the 60th day, the person may:

48 (1) Collect and receive money owed to the person and service loans made by the person,
49 based on agreements with consumers made before the conclusion of the sandbox period;

50 (2) Take necessary legal action; and

51 (3) Take other actions authorized by the commissioner by rule which is not inconsistent
52 with this subsection.

53 (g) The commissioner may enter into agreements with state, federal or foreign regulatory
54 agencies to allow persons who make an innovative financial product or service available in West
55 Virginia through the financial technology sandbox to make their products or services available in
56 other jurisdictions and to allow persons operating in similar financial technology sandboxes in
57 other jurisdictions to make innovative financial products and services available in West Virginia
58 under the standards of this chapter.

§31A-9-7. Revocation or suspension of financial technology sandbox authorization.

1 (a) The commissioner may, by order, revoke or suspend authorization granted to a person
2 under this article if:

3 (1) The person has violated or refused to comply with this article or any lawful rule, order
4 or decision adopted by the commissioner;

5 (2) A fact or condition exists that, if it had existed or become known at the time of the
6 financial technology sandbox application, would have warranted denial of the application or the
7 imposition of material conditions;

8 (3) A material error, false statement, misrepresentation or material omission was made in
9 the financial technology sandbox application; or

10 (4) After consultation with the person, continued testing of the innovative financial product
11 or service would:

12 (A) Be likely to harm consumers; or

13 (B) No longer serve the purposes of this act because of the financial or operational failure
14 of the product or service.

15 (b) Written notification of a revocation or suspension order made under subsection (a) of
16 this section shall be served using any means authorized by law, and if the notice relates to a
17 suspension, include any conditions or remedial action which shall be completed before the
18 suspension will be lifted by the commissioner or secretary.

§31A-9-8. Extension of sandbox period.

1 (a) A person granted authorization under this act may apply for an extension of the initial
2 sandbox period for not more than 12 additional months. An application for an extension shall be
3 made not later than 60 days before the conclusion of the initial sandbox period specified by the
4 commissioner. The commissioner shall approve or deny the application for extension in writing
5 not later than 35 days before the conclusion of the initial sandbox period. An application for
6 extension by a person shall cite one of the following reasons as the basis for the application and
7 provide all relevant supporting information that:

8 (1) Statutory or rule amendments are necessary to conduct business in West Virginia on
9 a permanent basis; or

10 (2) An application for a license or other authorization required to conduct business in West
11 Virginia on a permanent basis has been filed with the appropriate office and approval is currently
12 pending.

§31A-9-9. Rules and orders; enforcement of bond; restitution; applicability of State
Administrative Procedures Act

1 (a) The commissioner may propose rules for legislative approval in accordance with §29A-
2 3-1 et seq., of this code, to implement this article.

3 (b) The commissioner may create a new unit within the division to assist in the
4 management of the program to be at all times staffed with one full time employee to be hired by
5 the commissioner for the sole purpose of administering the program under this act.

6 (c) The commissioner may issue:

7 (1) All necessary orders to enforce this act, including ordering the payment of restitution,
8 and enforce these orders in any court of competent jurisdiction;

9 (2) An order to enforce the bond posted under this article, or a portion of this bond, and
10 use proceeds from the bond to offset losses suffered by consumers as a result of an innovative
11 financial product or service.

12 (d) All actions of the commissioner under this act shall be subject to §29A-3-1 et seq., of
13 this code, the State Administrative Procedures Act.

NOTE: The purpose of this bill is to create the financial technology sandbox program for the testing of financial products and services in West Virginia.

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