

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 514

SENATORS TARR AND PLYMALE

[Originating in the Committee on Economic
Development; reported on February 20, 2020]

1 A BILL 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 the West Virginia FinTech Regulatory Sandbox
4 Program; defining terms; establishing requirements for participants to temporarily test
5 innovative financial products or services on a limited basis without first obtaining licensure
6 pursuant to the laws of the state; establishing scope of the ability to operate without
7 otherwise being licensed with respect to approved financial products or services; providing
8 consumer protections; establishing time limitations on the ability to operate without
9 otherwise being licensed with respect to approved financial products or services; providing
10 program exit requirements; providing program extension; providing reporting
11 requirements; defining terms; and providing for rulemaking.

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 sandbox participant.

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

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 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, 31C, and 32A-2 of this code or other related provisions; or

23 (C) In consultation with applicable agencies and with written agreement, a product or
24 service that is governed by chapters 32 and 33 of this code.

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

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

31 “Regulatory sandbox” means the West Virginia FinTech Regulatory Sandbox Program
32 created by this article, which allows a person to temporarily test an innovative product or service
33 on a limited basis without otherwise being licensed or authorized to act under the laws of the
34 state.

35 “Sandbox participant” means a person whose application to participate in the regulatory
36 sandbox is approved in accordance with the provisions of this article.

37 “Test” means to provide an innovative product or service in accordance with the provisions
38 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, 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 sandbox participant and may consult with any
6 applicable agency which otherwise may have jurisdiction or authority relating to any activity
7 proposed for the regulatory sandbox for which the applicant is seeking to proceed without
8 authorization or license; and

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.

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

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

14 (2) Demonstrates the applicant is a domestic corporation or other organized domestic
15 entity with an established physical location in the state where all required records, documents,
16 and data relating to any approved testing can be made available for review by the Division of
17 Financial Institutions and any other applicable agency with jurisdiction;

18 (3) Demonstrates that the applicant has worked in good faith to establish a partnership
19 with a bank operating within the state of West Virginia or another financial institution licensed by
20 the State of West Virginia to implement the applicant’s proposed test of an innovative product or
21 service within the sandbox program: *Provided*, That the applicant shall not be excluded from
22 participation in the sandbox program solely based on the applicant’s ability to establish a

23 partnership with a bank operating within the state of West Virginia or another financial institution
24 licensed by the State of West Virginia;

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

28 (5) Discloses criminal convictions of the applicant or other participating personnel, if any,
29 and submits to a criminal background investigation, including requiring fingerprints for submission
30 to the Federal Bureau of Investigation or any governmental agency or entity authorized to
31 received such information for a state, national, or international criminal history check;

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

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

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

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

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

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

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

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

48 (G) A description of the proposed testing plan, including estimated time periods for

49 beginning the test, ending the test, and obtaining necessary licensure or authorizations after the
50 testing is complete;

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

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

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

57 (9) Posts a consumer protection bond with the commissioner as security for potential
58 losses suffered by consumers. The bond amount shall be determined by the commissioner in an
59 amount not less than \$25,000 and shall be commensurate with the risk profile of the innovative
60 financial product or service. The commissioner may require that a bond be increased or
61 decreased at any time based on risk profile. The bond shall expire two years after the date of the
62 conclusion of the sandbox period. The commissioner may accept electronic bonds from any
63 participant;

64 (10) Demonstrates registration with the West Virginia Secretary of State;

65 (11) Demonstrates that the applicant has an exit plan to limit consumer harm at the end
66 of the sandbox period, including a plan to notify consumers and advise them of next steps; and

67 (12) Provides any other information as required by the Division of Financial Institutions.

68 (d) The Division of Financial Institutions may collect an application fee of not more than
69 \$1,500 from an applicant.

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

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

74 (g) Pursuant to the provisions of subsection (h) of this section, not later than 90 days after

75 the day on which a complete application is received by the Division of Financial Institutions, the
76 division shall inform the applicant as to whether the application is approved for entry into the
77 regulatory sandbox.

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

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

84 (2) The consultation with an applicable agency may include seeking information about
85 whether:

86 (A) The applicable agency has previously issued a license or other authorization to the
87 applicant;

88 (B) The applicable agency has previously investigated, sanctioned, or pursued legal action
89 against the applicant;

90 (C) Whether the applicant could obtain a license or other authorization from the applicable
91 agency after exiting the regulatory sandbox; and

92 (D) Whether certain licensure or other regulations should not be waived even if the
93 applicant is accepted into the regulatory sandbox.

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

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

104 (m) The division may enter into cooperative, coordinating, or information-sharing
105 agreements with other federal and state agencies as necessary to fulfill the requirements of this
106 article.

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

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

7 (1) All consumers participating in the product or service being tested shall be residents of
8 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 sandbox participant testing a consumer loan, the Division of Financial Institutions
13 may, on a case-by-case basis, specify the maximum amount of an individual loan that may be
14 issued to an individual consumer and the maximum amount of aggregate loans that may be issued
15 to an individual consumer; and

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

20 consumer.

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

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

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

29 (f) Sandbox participants and the products and services that they are testing in the sandbox
30 program are subject to all applicable criminal and consumer protection laws, whether or not those
31 provisions would otherwise require licensure, including, but not limited to, those contained in
32 chapters 46A and 47 of this code and limitations on interest rates, including those set forth in
33 chapters 31, 46, 46A, and 47 of this code.

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

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

44 (3) If at any time during the testing period, the Division of Financial Institutions determines
45 that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers

46 or the safety and soundness of other institutions operating within the financial services
47 marketplace, the division may require that the sandbox participant come into compliance with
48 such state laws within a reasonable time.

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

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

56 (j) The commissioner may issue:

57 (1) Any necessary orders to enforce this article, including ordering the payment of
58 restitution, and enforce those orders in any court of competent jurisdiction; and

59 (2) Any order needed to enforce any bond posted under this article, or a portion of such
60 bond, or to distribute any bond proceeds to affected consumers.

61 (k) The commissioner may, at his or her discretion, make or cause to be made an
62 examination of the books, accounts, and records of every sandbox participant under the
63 provisions of this article, for the purpose of determining whether participant is complying with the
64 provisions hereof. If the examination is made outside of this state, the participant shall pay the
65 cost of the examination.

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

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

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

4 (2) That the innovative product or service is authorized pursuant to the regulatory sandbox
5 and, if applicable, that the sandbox participant does not have a license or other authorization to

6 provide a product or service under state laws that regulate products or services outside the
7 regulatory sandbox;

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

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

28 (d) The Division of Financial Institutions shall publicly post on its website the disclosures
29 required by this section, the list of approved sandbox participants, and the dates of approval for
30 each sandbox participant.

31 (e) The Division of Financial Institutions may require that a sandbox participant make

32 additional disclosures to a consumer.

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

1 (a) At least 30 days before the end of the 24-month regulatory sandbox testing period, a
2 sandbox participant shall:

3 (1) Notify the Division of Financial Institutions that the sandbox participant will exit the
4 regulatory sandbox, discontinue the sandbox participant's test, and stop offering any innovative
5 product or service in the regulatory sandbox within 60 days after the day on which the 24-month
6 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 testing
10 period ends at the end of the 24-month testing period and the sandbox participant shall
11 immediately stop offering each innovative product or service being tested.

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

§31A-8G-7. Testing period extensions.

1 (a) Not later than 30 days before the end of the 24-month regulatory sandbox testing
2 period, a sandbox participant may request an extension of the regulatory sandbox testing period
3 for the 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 end of the 24-month regulatory sandbox
6 testing 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 end of the regulatory sandbox testing period.

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

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

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

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

8 (c) The Division of Financial Institutions may establish periodic reporting requirements for
9 a sandbox participant.

10 (d) The Division of Financial Institutions may request records, documents, and data from
11 a sandbox participant and, upon the Division of Financial Institutions' request, a sandbox
12 participant shall make such records, documents, and data available for inspection by the Division
13 of Financial Institutions at the sandbox participant's physical location within the state of West
14 Virginia.

15 (e) If the Division of Financial Institutions determines that a sandbox participant has
16 engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation
17 of this chapter or that constitutes a violation of a state or federal criminal law, the Division of
18 Financial Institutions may remove a sandbox participant from the regulatory sandbox and may

19 refer suspected violations of law relating to this act to appropriate state or federal agencies for
20 investigation, prosecution, civil penalties, and other appropriate enforcement actions.

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