



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Financial Institutions Division of TITLE-SERIES: 106-21

RULE TYPE: Legislative Amendment to Existing Rule: Yes

RULE NAME: Rule Pertaining to the Fintech Regulatory
Sandbox Program

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

31A-8G-3 and 31A-2-4

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 06/26/2020

DATE(S) OF PREVIOUS EMERGENCY AMENDMENT(S)

None

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

In accordance with the provisions of W. Va. Code 29A-3-15(f)(1) and (3) defining an emergency situation, the Division states the following justification for this emergency rule filing. House Bill 4621 was passed during the 2020 Legislative Session and signed into law by the Governor. The law became effective on June 5, 2020, and registers companies wishing to develop and test innovative financial products and/or services with the citizens of West Virginia forming the test market. The Division of Financial Institutions has determined that in order to protect the financial safety and security of the consumer and citizens of West Virginia, a rule is required to provide more clarity to applicants who wish to utilize the West Virginia sandbox. These provisions are meant to protect consumers from poorly performing products and/or bad actors while allowing the efficient operation of the regulatory sandbox and supporting the growth of innovative technology in West Virginia. The emergency amendment is being filed so that the emergency rule continues to mirror the rule that will ultimately be reviewed by the Legislature during the 2021 Legislative Session after modifications were approved by the Legislative Rule-Making Review Committee.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The impact on revenues of state government is unknown at this time. West Virginia is only the fifth state in the United States to enact a fintech regulatory sandbox, with three of those four others in operation for less than one year, so there is little data on their potential fiscal impact.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The impact on the Division's special revenue account is similarly unknown. The Division is assessing a \$1200 per product or service application fee and anticipates likely no greater than five applications in year one of the sandbox's operation. Therefore, the Division will rely on existing revenues from other programs to support the sandbox program as it grows.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The sandbox is intended to provide a test market using West Virginia residents for an innovative financial product or service. The potential market is limited by law to minimize a negative impact, and the law contains adequate consumer protections to mitigate against any risk of loss.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	6000

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The Division continues to analyze the staffing required for this program and anticipates the need for support staff at some point to dedicate at least a portion of their time to this program, including an administrative services assistant and a paralegal. The balance of the time for those staff would support existing Division programs requiring administrative support. The Division is working on a reorganization of its current structure to enable existing professional staff to assess applications and manage the program. A final assessment of program costs will be made after approval and completion of the reorganization.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 106
LEGISLATIVE RULE
COMMISSIONER OF FINANCIAL INSTITUTIONS

SERIES 21
RULE PERTAINING TO THE FINTECH REGULATORY SANDBOX PROGRAM

§106-21-1. General.

1.1. Scope. -- This rule establishes the general method for implementing West Virginia Code §§31A-8G-1, et seq.; it applies to all participants in the Fintech Regulatory Sandbox Program under that statute.

1.2. Authority. -- W.Va. Code §§31A-8G-3 and 31A-2-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§106-21-2. Definitions.

2.1. General Rule. – Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided in W.Va. Code §§31A-1-2 and 31A-8G-1, et seq.

2.2. Terms defined.

2.2.1. “Participant” means a regulatory sandbox participant as that term is defined in W. Va. Code §31A-8G-2.

2.2.2. “Sandbox” means the regulatory sandbox program as that term is defined in W. Va. Code §31A-8G-2.

2.2.3. “Self-regulatory organization” means an entity, such as a non governmental organization, which has the power to create and enforce stand-alone industry and professional regulations and standards on its own, such as the Global Financial Innovation Network and the American Consumer Financial Innovation Network.

§106-21-3. Objectives; Initial and Extension Applications.

3.1. The operation of the fintech regulatory sandbox program shall have the following objectives:

3.1.1. The testing of innovative financial products or services;

3.1.2. The analysis of regulatory, supervisory, and consumer protection statutes and rules in the use of financial technology; and

3.1.3. The identification of potential amendments to existing laws and rules and their application to financial products and services that would encourage and enable innovation in financial services.

3.2. The Commissioner or his or her designee may consult with prospective sandbox participants before an application is filed to learn about the business model of the prospective participant and determine whether the innovative financial product or service is appropriate for the sandbox. Consultations made pursuant to the section shall be confidential and not subject to disclosure.

3.3. A prospective sandbox participant shall complete and submit an application to the Commissioner on a form prescribed by the Commissioner. The Commissioner may direct an applicant to file a license application through the Nationwide Mortgage Licensing System and Registry operated by the State Regulatory Registry, LLC. The application shall be attested to as to its completeness and veracity.

3.4. The Commissioner may refuse to accept an incomplete application. The time period for making a determination on an application shall not commence until a complete application is received.

3.5. As a part of the application process, at the Commissioner's discretion, the following individuals may be required to submit release forms as a part of the fingerprint based background review process for participation in the sandbox: Chief Executive Officer, President, owners and investors controlling either directly or indirectly 10% or more of the applicant as well as other individuals that are identified as controlling the day to day activity of the applicant.

§106-21-4. Consumer Protection Bond.

4.1. The consumer protection bond required by the sandbox shall be in place before an innovative product or service is made available to consumers.

4.2. The Commissioner may require a sandbox participant to increase or decrease its consumer protection bond depending upon the risk profile of the product or service and the number of consumers served. In no event shall a bond amount be less than that required by statute.

§106-21-5. Information Sharing Agreements.

5.1. The Commissioner may enter into information sharing agreements with other governmental agencies or self-regulatory organizations to carry out the purpose of the regulatory sandbox program or for any other purpose relating to the sandbox.

5.2. The Commissioner may participate in multi-jurisdictional agreements to further the purposes of the regulatory sandbox program.

§106-21-6. Applicability of Administrative Due Process Provisions.

6.1. Existing administrative procedure laws and rules which are applicable to a particular program or body of law shall apply to the extent not inconsistent with the regulatory sandbox program. If a sandbox participant would have required a license as a money transmitter, for example, to operate outside of the sandbox, those administrative procedure laws applicable to money transmitters would apply.

6.2. If a sandbox participant offers a product or service that would normally require a license in more than one program or body of law, the Commissioner shall use the procedural laws and rules most applicable to the product or service at issue.

§106-21-7. Partnership with Existing Financial Institution.

7.1. The Commissioner or his or her designee shall make available a list of financial institutions currently licensed and regulated by the Division of Financial Institutions upon request of an applicant.

7.2. An applicant shall attest on its application that it has either entered into a partnership with an existing financial institution to access the market in West Virginia to test an innovative product or service or demonstrate that it has in good faith attempted to establish a partnership with an existing financial institution in this state.

§106-21-8. Disclosures Related to Activity in Other Sandbox Jurisdictions.

8.1. Applicants must disclose whether they have conducted a similar test of the same product or services or a similar product or services in another jurisdiction operating a sandbox program.

8.2. An applicant must also submit the following information as a part of the application process:

8.2.1. A copy of any approved or denied application by the applicant that was submitted to another jurisdiction operating a sandbox program, if any.

8.2.2. A statement concerning whether the applicant's regulatory sandbox participation elsewhere, if any, were successful or not, or remain ongoing.

8.2.3. A statement by the applicant describing any complaints tied to its regulatory sandbox participation in another jurisdiction, if any, and their status or resolution.