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HOUSE BILL NO. 922

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 27, consisting of sections numbered 6.2-2700 through 6.2-2705, relating to Virginia FinTech Regulatory Sandbox Program; temporary product testing; consumer protections; report.*

Patron—Webert

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 27, consisting of sections numbered 6.2-2700 through 6.2-2705, as follows:

CHAPTER 27.**VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.****§ 6.2-2700. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Applicant" means an individual or business that is applying to participate in the Virginia FinTech Regulatory Sandbox Program established in this chapter.

"Financial product or service" means a product or service that supports the provision of banking or financial services, including those products or services that (i) require a state license or registration or (ii) include a business model, delivery mechanism, or element that may require a state license, registration, or authorization to act as a financial institution, enterprise, or other entity that is regulated by Title 6.2 and related provisions. "Financial product or service" does not include a product or service governed by the Securities Act pursuant to Chapter 5 (§ 13.1-501 et seq.) of Title 13.1.

"Participant" means an individual or business that is approved to participate in the Program in accordance with the provisions of this chapter.

"Program" means the Virginia FinTech Regulatory Sandbox Program established in this chapter.

"Test" means to temporarily provide a financial product or service in accordance with the provisions of this chapter.

§ 6.2-2701. Virginia FinTech Regulatory Sandbox Program established; application requirements.

A. The Commission shall establish and administer the Program, which enables participants to obtain limited access to the financial market in the Commonwealth to test a financial product or service without obtaining a license or other authorization that may otherwise be required.

B. The Commission shall not approve participation in the Program by an applicant who has been convicted, entered a plea of nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance for a crime (i) involving theft, fraud, or dishonesty or (ii) that bears a substantial relationship to the applicant's or participant's ability to safely and competently participate in the Program.

C. An applicant shall apply for the Program on a form prescribed by the Commission that includes the following:

1. Information verifying that the applicant is subject to the jurisdiction of the Commonwealth;

2. Information demonstrating that the applicant has established a physical or virtual location that is adequately accessible to the Commission, from which test products and services will be developed or performed and where all required records, documents, and data will be maintained;

3. Relevant personal and contact information for the applicant and any other participating personnel, including legal names, addresses, telephone numbers, email addresses, website addresses, and any other information required by the Commission;

4. Criminal convictions of the applicant or other participating personnel, if any;

5. Information demonstrating that the applicant possesses a developed plan and the necessary personnel, financial and technical expertise, and access to capital to test, monitor, and assess the proposed financial product or service;

6. A description of the financial product or service to be tested, including the following information:

a. The licensing, registration, or authorization requirements that the financial product or service would be subject to outside the Program, including a specific list of all state laws, regulations, and licensing or other requirements that the applicant is seeking to have waived during the test period;

b. How the financial product or service would benefit customers;

c. The differences between the financial product or service to be tested and existing services available in the Commonwealth;

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59 d. Any potential risks to consumers that use or purchase the financial product or service to be
60 tested;

61 e. How participating in the Program would enable a successful test of the financial product or
62 service;

63 f. A description of the proposed testing plan, including estimated time periods for beginning and
64 ending the test and for obtaining the necessary licensure or authorization after testing is complete;

65 g. A description of how the applicant will perform ongoing duties after the test; and

66 h. The applicant's method for ending the test and protecting consumers if the test fails, including
67 providing evidence of sufficient liability coverage and financial reserves to protect consumers and to
68 protect against insolvency by the applicant; and

69 7. Any other required information as determined by the Commission.

70 D. An applicant shall file a separate application for each financial product or service proposed to be
71 tested.

72 E. Once an application is filed and before it is approved, the Commission may seek any additional
73 relevant information from the applicant that the Commission determines is necessary, such as (i) proof
74 of sufficient assets, liability coverage, surety bond coverage, or other preparation by the applicant to
75 ensure consumer protection; (ii) information demonstrating that the applicant has sufficient resources to
76 continue ongoing duties during or after testing; or (iii) industry ratings and past performance of the
77 applicant.

78 F. The Commission shall inform an applicant as to whether its application has been approved for
79 participation in the Program no later than 90 days after a complete application is received by the
80 Commission, unless the Commission and applicant mutually agree to extend this 90-day response period.

81 G. In reviewing an application under this section, the Commission shall conduct an internal review
82 before approving an applicant for participation in the Program. Such internal review may include
83 collecting information regarding (i) the applicant's previous licenses or authorizations, if any; (ii) any
84 previous investigation, sanction, or legal action against the applicant; (iii) whether an applicant may
85 obtain a license or other authorization from the Bureau upon exiting the Program; and (iv) whether
86 certain licensure requirements or other regulations should not be waived during an applicant's
87 participation in the Program.

88 H. In reviewing an application under this section, the Commission shall consider whether a
89 competitor of an applicant is or has been a Program participant, and if so, allow this information to
90 serve as a factor in favor of approving that applicant for participation in the Program.

91 I. If the Commission approves admission to the Program, then an applicant may become a Program
92 participant. If the Commission denies an application submitted under this section, the Commission shall
93 provide a written description of the reason for denial to the applicant within the same 90-day response
94 period as described in subsection F.

95 **§ 6.2-2702. Scope of the Program.**

96 A. Once the Commission approves an application for participation pursuant to § 6.2-2701, the
97 participant has 24 months from the day of approval to test the financial product or service described in
98 the application. The Commission and a participant may mutually agree to extend this 24-month test
99 period if deemed appropriate by the Commission for the successful testing of the financial product or
100 service, provided that such agreement shall not extend beyond 36 months from the participant's date of
101 acceptance into the Program.

102 B. A participant testing a financial product or service within the Program is subject to the following
103 requirements:

104 1. All consumers shall be residents of the Commonwealth;

105 2. The Commission may, on a case-by-case basis, specify the maximum number of consumers that
106 may enter into an agreement with the participant to use the financial product or service being tested;
107 and

108 3. The Commission may, on a case-by-case basis, specify liability coverage requirements and
109 minimum financial reserve requirements that the participant must comply with during testing of the
110 financial product or service.

111 C. Nothing in this section shall restrict a participant who holds a license or other authorization from
112 another jurisdiction from acting in accordance with the terms of that license or authorization.

113 D. For the purposes of complying with any provision of federal law that requires licensure or
114 authorization by the participant, an applicant is deemed to possess the appropriate license or
115 authorization during the testing period for conducting business under the laws of the Commonwealth.

116 E. A Program participant testing a financial product or service shall not be subject to the state laws,
117 regulations, licensing requirements, or authorization requirements identified in the participant's
118 application as otherwise required outside the Program and shall be waived by the Commission in
119 writing.

120 F. The Commission may, by written notice, end participation in the Program by a participant at any

time if the Commission determines that a participant has failed to act in good faith in introducing a financial product or service to the financial market of the Commonwealth.

G. The Commission and its employees shall not be liable for any business losses or responsible for recouping any participant's expenses relating to application for and participation in the Program, including if an application is denied for any reason and if participation in the Program is terminated at any time.

H. No guaranty association in the Commonwealth shall be held liable for a participant's business losses or liabilities incurred as a result of activities related to Program participation.

§ 6.2-2703. Program consumer protections.

A. Prior to providing a financial product or service to a consumer, a participant shall disclose the following information to the consumer:

1. The name and contact information of the participant;
2. That the financial product or service is authorized pursuant to the Program;
3. That the financial product or service is undergoing testing and may not function precisely as intended, potentially exposing the consumer to financial risk;
4. That the provider of the financial product or service is not immune from civil liability for any losses or damages caused by the product or service to a consumer;
5. That the Commonwealth does not endorse or recommend the financial product or service being tested;

6. That the financial product or service is provided temporarily and may be discontinued at the end of the testing period;

7. The expected end date of the testing period; and

8. That a consumer may contact the Commission to file a complaint regarding the financial product or service being tested. The participant shall provide to the consumer the Commission's telephone number and website address where a complaint may be filed.

B. The disclosures required by subsection A shall be provided to a consumer in a clear and conspicuous manner and, for an Internet-based or application-based financial product or service, a consumer shall acknowledge receipt of the disclosures before a transaction is completed.

C. The Commission may determine that a participant shall make additional disclosures to a consumer beyond the requirements of subsection A.

§ 6.2-2704. Extensions.

A. No later than 30 days before the end of the Program testing period, a participant may request an extension of time to continue the testing period for the purpose of obtaining a license or other authorization as required by law for conducting business in the Commonwealth. The Commission shall grant or deny such extension by the end of the Program testing period.

B. The Commission may grant an extension in accordance with this section for a time period not longer than six months after the end of the Program testing period.

C. A participant that is granted an extension in accordance with this section shall provide the Commission with a written report every three months to provide an update on efforts to obtain a license or other authorization required by law, including any submitted, rejected, and accepted applications for licensure or other authorization.

§ 6.2-2705. Recordkeeping and reporting requirements; report.

A. A participant shall retain all records, documents, and data produced in the ordinary course of business regarding the financial product or service tested in the Program.

B. The Commission may request records, documents, and data from a participant and, upon the Commission's request, the participant shall make such records, documents, and data available for inspection by the Commission.

C. The Commission shall establish quarterly reporting requirements for participants, and such reports shall include any information about consumer complaints.

D. If a financial product or service fails before the end of the testing period, the participant shall notify the Commission and report on actions taken by the participant to ensure consumer protection as a result of the failure.

E. If the Commission determines that a participant has engaged, is engaging, or is about to engage in any practice or transaction in violation of this chapter or in violation of state or federal criminal law, the Commission may remove the participant from the Program.

F. By October 1, 2022, and annually thereafter, the Commission shall provide a report to the General Assembly that provides information about each Program participant and recommendations regarding the effectiveness of the Program.