

HOUSE BILL No. 2133

By Committee on Financial Institutions and Pensions

1-23

1 AN ACT concerning financial institutions; relating to ~~payments made with~~  
2 ~~credit and debit cards; allowing a surcharge for use of such cards;~~  
3 ~~amending K.S.A. 12-16,125 and 72-1176 and K.S.A. 2022 Supp. 19-~~  
4 ~~122 and 75-30,100 and repealing the existing sections; also repealing~~  
5 ~~K.S.A. 2022 Supp. 16a-2-403~~ *the technology-enabled fiduciary*  
6 *financial institutions act; providing that fiduciary financial*  
7 *institutions shall be overseen, supervised and examined by the office*  
8 *of the state bank commissioner as a chartered trust company;*  
9 *allowing a fiduciary financial institution to publish or promulgate*  
10 *itself as a trust company in legal or regulatory filings or in*  
11 *disclosures to existing or prospective customers or investors;*  
12 *authorizing a fiduciary financial institution to exercise fiduciary*  
13 *powers and full trust powers and to engage as a trust company under*  
14 *state and federal law; amending K.S.A. 9-2307, 9-2308 and 9-2310*  
15 *and repealing the existing sections.*

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

18 ~~Section 1. K.S.A. 12-16,125 is hereby amended to read as follows:~~  
19 ~~12-16,125. A city may accept credit or debit cards for the payment of~~  
20 ~~taxes, utility fees or other exactions. The city may establish the type of~~  
21 ~~credit or debit card the city will accept. The city may set a fee to be added~~  
22 ~~to each credit card transaction equal to the charge paid by the city for the~~  
23 ~~use of the credit card by the person. If the city imposes a fee for payments~~  
24 ~~made by credit card, the city shall provide notice of such fee to the person~~  
25 ~~making payment by credit card.~~

26 Any transaction involving payment by credit card pursuant to this  
27 section shall not be subject to the provisions of K.S.A. 16a-2-403, and  
28 amendments thereto.

29 ~~Sec. 2. K.S.A. 2022 Supp. 19-122 is hereby amended to read as~~  
30 ~~follows: 19-122. (a) Any county may accept credit or debit cards for the~~  
31 ~~payment of any taxes, utility fees or other exactions. The county may~~  
32 ~~establish the type of credit or debit card the county will accept. The county~~  
33 ~~may set a fee to be added to each credit card transaction equal to the~~  
34 ~~charge paid by the county for the use of the credit card by the person. If~~  
35 ~~the county imposes a fee for payments made by credit card, the county~~  
36 ~~shall provide notice of such fee to the person making payment by credit~~

1 card.

2 (b) ~~Any transaction involving payment by credit card pursuant to this~~  
3 ~~section shall not be subject to the provisions of K.S.A. 16a-2-403, and~~  
4 ~~amendments thereto.~~

5 ~~Sec. 3. K.S.A. 72-1176 is hereby amended to read as follows: 72-~~  
6 ~~1176. The board of education of any school district, pursuant to a policy~~  
7 ~~developed and adopted by the board, may provide for the acceptance of~~  
8 ~~payment in the form of a credit or debit card of fees, tuition or other~~  
9 ~~charges imposed by the school district. The policy may provide for~~  
10 ~~imposition of an additional fee to recover the actual amount of any costs~~  
11 ~~incurred by the school district by reason of the method of payment used.~~  
12 ~~The policy also may provide for establishment by the school district of~~  
13 ~~secure internet sockets that will allow payment by a credit or debit card via~~  
14 ~~the internet. Any transactions involving payment by credit card pursuant to~~  
15 ~~this section shall not be subject to the provisions of K.S.A. 16a-2-403, and~~  
16 ~~amendments thereto.~~

17 ~~Sec. 4. K.S.A. 2022 Supp. 75-30.100 is hereby amended to read as~~  
18 ~~follows: 75-30.100. (a) Any state agency that imposes or collects fees,~~  
19 ~~tuition or other charges shall accept payment thereof in the form of a~~  
20 ~~personal, certified or cashier's check or money order. A state agency may~~  
21 ~~accept payment by credit card, debit card or other method designated by~~  
22 ~~the agency. A state agency may impose an additional fee to recover the~~  
23 ~~actual amount of any cost incurred by reason of the method of payment~~  
24 ~~used by the payee.~~

25 ~~(b) In addition to the methods specified in subsection (a), after June~~  
26 ~~30, 2001, a state agency shall accept payment of fees, tuition or other~~  
27 ~~charges in the form of a credit card or debit card.~~

28 ~~(c) Any transactions involving payment by credit card or debit card~~  
29 ~~pursuant to this section shall not be subject to the provisions of K.S.A.~~  
30 ~~16a-2-403, and amendments thereto.~~

31 ~~(d) The provisions of this section shall not apply to any fees, fines or~~  
32 ~~charges imposed by the secretary of corrections on offenders under the~~  
33 ~~jurisdiction of the secretary of corrections or juvenile offenders placed in~~  
34 ~~juvenile correctional facilities under the jurisdiction of the secretary of~~  
35 ~~corrections.~~

36 ~~(e) Any municipal university, community college, technical college or~~  
37 ~~vocational educational school, as defined by K.S.A. 74-3201b, and~~  
38 ~~amendments thereto, or not-for-profit private postsecondary educational~~  
39 ~~institution that was granted approval to confer academic or honorary~~  
40 ~~degrees by the Kansas state board of education under the provisions of~~  
41 ~~K.S.A. 17-6105, prior to its repeal, or is otherwise exempt from the Kansas~~  
42 ~~private and out-of-state postsecondary educational institution act pursuant~~  
43 ~~to K.S.A. 74-32,164, and amendments thereto, accepting payment of fees,~~

1 tuition or other charges in the form of a credit card or debit card shall not  
2 be subject to the provisions of K.S.A. 16a-2-403, and amendments thereto.

3 ~~Sec. 5. K.S.A. 12-16,125 and 72-1176 and K.S.A. 2022 Supp. 16a-2-~~  
4 ~~403, 19-122 and 75-30,100 are hereby repealed.~~

5 *Section 1. K.S.A. 9-2307 is hereby amended to read as follows: 9-*  
6 *2307. (a) A fiduciary financial institution shall make a report to the*  
7 *commissioner pursuant to the provisions of K.S.A. 9-1704, and*  
8 *amendments thereto. In making such a report, a fiduciary financial*  
9 *institution shall:*

10 *(1) Report the fiduciary financial institution's fidfin transactions*  
11 *pursuant to generally accepted accounting principles; and*

12 *(2) calculate such fiduciary financial institution's capital solvency*  
13 *by including the value of all tangible and intangible assets owned by the*  
14 *fiduciary financial institution, regardless of use.*

15 *(b) In examining a fiduciary financial institution, the state banking*  
16 *board and the commissioner shall:*

17 *(1) Consider that the collateral or underlying assets associated with*  
18 *fidfin transactions are volatile in nature and that such volatility has*  
19 *been accepted by the members and customers of the fiduciary financial*  
20 *institution;*

21 *(2) respect the form, treatment and character of fidfin transactions*  
22 *under the laws of this state notwithstanding the treatment or*  
23 *characterization of such transactions under generally accepted*  
24 *accounting principles or for tax purposes;*

25 *(3) evaluate whether available capital, including the agreement of a*  
26 *fiduciary financial institution's members to contribute capital pursuant*  
27 *to K.S.A. 9-2305, and amendments thereto, exceeds the fiduciary*  
28 *financial institution's obligations, determined in accordance with*  
29 *generally accepted accounting principles;*

30 *(4) evaluate the background and qualifications of a fiduciary*  
31 *financial institution's executive officers and directors, the internal*  
32 *controls and audit processes enacted by the fiduciary financial*  
33 *institution and adherence to its policies and procedures;*

34 *(5) evaluate the profitability of a fiduciary financial institution in*  
35 *accordance with subsection (c);*

36 *(6) evaluate a fiduciary financial institution's compliance with*  
37 *applicable state and federal laws; and*

38 *(7) evaluate a fiduciary financial institution's information*  
39 *technology systems, policies and practices.*

40 *(c) Profitability shall not be a consideration in evaluating a*  
41 *fiduciary financial institution if sufficient capital and equity exist in the*  
42 *business, including, without limitation, membership capital, surplus,*  
43 *undivided profits and commitments by members to contribute additional*

1 **capital to the fiduciary financial institution pursuant to K.S.A. 9-2305,**  
2 **and amendments thereto, to satisfy the fiduciary financial institution's**  
3 **obligations.**

4 (d) *A fiduciary financial institution shall be overseen, supervised and*  
5 *examined by the office of the state bank commissioner as a chartered trust*  
6 *company as defined in K.S.A. 9-701, and amendments thereto, exercising*  
7 *fiduciary powers and engaging in trust business pursuant to K.S.A. 9-*  
8 *2310, and amendments thereto, and rules and regulations adopted*  
9 *pursuant to state law by such office and shall be designated, recognized*  
10 *and referenced as a chartered trust company as defined in K.S.A. 9-701,*  
11 *and amendments thereto, by the office of the state bank commissioner*  
12 *without exception.*

13 **Sec. 2. K.S.A. 9-2308 is hereby amended to read as follows: 9-2308.**  
14 ***A fiduciary financial institution may use in such fiduciary financial***  
15 ***institution's business name or advertising the words "fiduciary financial***  
16 ***institution" or any similar term or phrase, but may not use in such***  
17 ***institution's name the words "bank" or "trust company" without***  
18 ***reference to fidfin trusts or any other term that tends to imply that such***  
19 ***fiduciary financial institution is a bank or trust company, unless the***  
20 ***commissioner has approved the use in writing after finding that the use***  
21 ***will not be misleading. A fiduciary financial institution is a chartered trust***  
22 ***company as defined in K.S.A. 9-701, and amendments thereto, for all***  
23 ***purposes under federal and state law as if authorized under K.S.A. 9-***  
24 ***804(c), and amendments thereto. While a fiduciary financial institution is***  
25 ***a trust company for purposes of federal and state law and rules and***  
26 ***regulations and possesses trust powers under this act, it is the intent of***  
27 ***this section to impose restrictions on the business name of such***  
28 ***institution to avoid confusion with other banks and trust companies that***  
29 ***operate in this state but that are not fiduciary financial institutions. The***  
30 ***naming restrictions on the business name imposed under this section***  
31 ***shall in no way reduce or eliminate the trust powers granted to a***  
32 ***fiduciary financial institution as a trust company under this act. Other***  
33 ***than indicating that the fiduciary financial institution is headquartered***  
34 ***and chartered in Kansas, no fiduciary financial institution's name or***  
35 ***advertising shall infer or imply that such fiduciary financial institution***  
36 ***is endorsed by, an affiliate of or otherwise connected with the***  
37 ***government of the state of Kansas. Nothing in this section or K.S.A. 9-***  
38 ***2011, and amendments thereto, shall restrict a fiduciary financial***  
39 ***institution from publishing or promulgating itself as a trust company as***  
40 ***defined in K.S.A. 9-701, and amendments thereto, in legal or regulatory***  
41 ***filings or disclosures to existing or prospective customers or investors.***

42 **Sec. 3. K.S.A. 9-2310 is hereby amended to read as follows: 9-2310.**  
43 ***Any fiduciary financial institution is hereby authorized to exercise by its***

1 *board of directors or duly authorized officers or agents, subject to law,*  
2 *the following powers:*

3 *(a) To engage in fidfin transactions in accordance with K.S.A. 9-*  
4 *2311, and amendments thereto;*

5 *(b) to receive, retain and manage alternative asset custody accounts*  
6 *in accordance with K.S.A. 9-2313, and amendments thereto; and*

7 *(c) to exercise fiduciary powers and full trust powers and to engage*  
8 *as a trust company in trust business as defined in K.S.A. 9-701, and*  
9 *amendments thereto, as incidental to and any other applicable federal or*  
10 *state law or rules and regulations, in any manner that assists in the*  
11 *performance of the activities in subsections (a) and (b); and*

12 *(d) to publish and promulgate itself as a chartered trust company as*  
13 *defined in K.S.A. 9-701, and amendments thereto, in legal or regulatory*  
14 *filings or disclosures to existing or prospective customers or investors,*  
15 *subject only to the restriction on the business name as provided in K.S.A.*  
16 *9-2308, and amendments thereto.*

17 **Sec. 4. K.S.A. 9-2307, 9-2308 and 9-2310 are hereby repealed.**

18 ~~Sec. 5.~~ **5.** This act shall take effect and be in force from and after its  
19 publication in the ~~statute book~~ **Kansas register.**