

HOUSE BILL No. 2235

By Committee on Financial Institutions and Pensions

Requested by Representative Hoheisel

2-4

AN ACT concerning financial institutions; relating to the technology-enabled fiduciary financial institutions act; making the act part of the state banking code; defining certain terms; reducing the fiduciary financial institution charter application fee; providing due dates for reports to the office of the state bank commissioner; exempting fiduciary financial institutions from certain records retention requirements; authorizing the issuance of certificates and trust certificates; providing for the supervision of fiduciary financial institutions by the bank commissioner; including Kansas nonprofit corporations as qualified charities for purposes of the fiduciary financial institution income tax credit; amending K.S.A. 9-542, 9-2303, 9-2307, 9-2309, 9-2310, 9-2311, 9-2312 and 9-2322 and K.S.A. 2024 Supp. 9-2301 and 79-32,283 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 9-542 is hereby amended to read as follows: 9-542. Articles 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20~~and~~, 21 ~~and~~ 23 of chapter 9 of the Kansas Statutes Annotated; ~~and~~ K.S.A. 74-3004, 74-3005, 74-3006, 75-1304, 75-1305~~and~~, 75-1306; and 75-1308, ~~and K.S.A. 9-814, 9-815, 9-816, 9-1141, 9-1409, 9-1725, 9-1726, 9-1810, 9-1811, 9-1919, 9-1920, 9-1921 and 9-2019,~~ and amendments thereto, shall constitute and may be cited as the state banking code.

Sec. 2. K.S.A. 2024 Supp. 9-2301 is hereby amended to read as follows: 9-2301. (a) The provisions of K.S.A. 9-2301 through 9-2327, and amendments thereto, shall be known and may be cited as the technology-enabled fiduciary financial institutions act. The technology-enabled fiduciary financial institutions act shall be a part of and supplemental to chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

(b) For purposes of the technology-enabled fiduciary financial institutions act:

(1) "Act" means the technology-enabled fiduciary financial institutions act;

(2) "alternative asset" means professionally managed investment assets ~~that are not publicly traded~~, including, but not limited to, private equity, venture capital, leveraged buyouts, special situations, structured

1 credit, private debt, private real estate funds and natural resources,
2 including any economic or beneficial interest therein *and any items that*
3 *may be held by an alternative asset custody account;*

4 (3) "alternative asset custody account" means an account created by
5 the owner of an alternative asset that designates a fiduciary financial
6 institution as custodian or agent and into which the owner transfers,
7 electronically or otherwise, content, materials, data, information,
8 documents, reports and contracts in any form, including, without
9 limitation, evidence of ownership, subscription agreements, private
10 placement memoranda, limited partnership agreements, *limited liability*
11 *company agreements, stock agreements in companies and attendant*
12 *documents (including investor questionnaire, side letters, regulatory*
13 *filings, confidentiality agreements, legal opinions, capitalization tables,*
14 *joinder agreements, business plans and offering memorandums),*
15 *certificates, depositary receipts, currency,* operating agreements, financial
16 statements, annual and quarterly reports, capital account statements, tax
17 statements, correspondence from the general partner, manager or
18 investment advisor of the alternative asset, an investment contract as
19 defined in K.S.A. 17-12a102(28)(E), and amendments thereto, *any digital*
20 *or hard copy representation of the foregoing, including smart contracts,*
21 *and any digital asset as defined in K.S.A. 58-4802, and amendments*
22 *thereto, controllable electronic record, controllable account or*
23 *controllable payment intangible* whether such information and evidence of
24 ownership is in hard copy form or a representation of such ~~information~~
25 ~~that ownership~~ is stored in a computer readable format *from which the*
26 *custodian may create and issue a certificate to the beneficial owner;*

27 ~~(4) "charitable beneficiaries" means one or more charities,~~
28 ~~contributions to which are allowable as a deduction pursuant to section~~
29 ~~170 of the federal internal revenue code that are designated as~~
30 ~~beneficiaries of a fidfin trust~~ "certificate" means a certificate representing
31 the beneficial ownership of a trust or an asset held in an alternative asset
32 custody account that may be implemented by a digitization process,
33 including a machine-based system in which a record of ownership and
34 transactions is maintained with the use of distributed ledger technology,
35 smart contracts, peer-to-peer networks or other technologies that can
36 generate a digital replication of the certificate which digital replication
37 may be divided by such machine-based system as necessary to represent
38 one or more beneficial owners and which may be secured, accessed or
39 transferred by means of private keys, electronic signatures or other
40 analogues comprised of code, script or programming language. Each
41 digital certificate or divided replication thereof, may, depending on its
42 terms, constitute a digital asset as defined in K.S.A. 58-4802, and
43 amendments thereto, a controllable electronic record, a controllable

1 *account or a controllable payment intangible and to the extent involved in*
2 *a transaction shall be subject to K.S.A. 84-1-301, and amendments thereto;*

3 (5) *"controllable account" means an account as defined in K.S.A. 84-*
4 *9-102(a)(2)(A) through (D), and amendments thereto, evidenced by a*
5 *controllable electronic record that provides that the account debtor*
6 *undertakes to pay the person who has control of the controllable*
7 *electronic record;*

8 (6) *"controllable electronic record" means a record as defined in*
9 *K.S.A. 84-9-102(a)(69), and amendments thereto, stored in an electronic*
10 *medium that may be subject to control by:*

11 (A) *Giving a person:*

12 (i) *Power to avail such person of substantially all the benefit from the*
13 *electronic record; and*

14 (ii) *exclusive power to:*

15 (a) *Prevent others from availing themselves of substantially all the*
16 *benefit from the electronic record; and*

17 (b) *transfer control of the electronic record to another person or*
18 *cause another person to obtain control of another controllable electronic*
19 *record as a result of the transfer of the electronic record; and*

20 (B) *enabling the person readily to identify in any way, including by*
21 *name, identifying number, cryptographic key, office or account number, as*
22 *having the powers specified in subparagraph (A).*

23 *"Controllable electronic record" does not include a controllable*
24 *account, a controllable payment intangible, a deposit account, an*
25 *electronic copy of a record evidencing chattel paper, an electronic*
26 *document of title, electronic money, investment property or a transferable*
27 *record.*

28 (7) *"controllable payment intangible" means a payment intangible as*
29 *defined in K.S.A. 84-9-102(a)(61), and amendments thereto, evidenced by*
30 *a controllable electronic record that provides that the account debtor*
31 *undertakes to pay the person who has control of the controllable*
32 *electronic record;*

33 (8) *"custodial services" means the safekeeping and management of an*
34 *alternative asset custody account, including the execution of customer*
35 *instructions, serving as agent, issuing depositary receipts, fund*
36 *administrative services and overall decision-making and management of*
37 *the account by a fiduciary financial institution and "custodial services"*
38 *shall be deemed to involve the exercise of fiduciary and trust powers;*

39 ~~(6)(9)~~ *"director" means a person designated as a member of the board*
40 *of directors pursuant to K.S.A. 9-2306, and amendments thereto;*

41 ~~(7)(10)~~ *"economic growth zone" means an incorporated community*
42 *with a population of not more than 5,000 people located within one of the*
43 *following counties: Allen, Anderson, Barber, Bourbon, Brown, Chase,*

1 Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche,
2 Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray,
3 Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman,
4 Jackson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn,
5 Logan, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton,
6 Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt,
7 Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman,
8 Smith, Stafford, Stanton, Stevens, Sumner, Trego, Thomas, Wabaunsee,
9 Wallace, Washington, Wichita, Wilson or Woodson;

10 ~~(8)~~(11) "excluded fiduciary" means a fiduciary financial institution in
11 its capacity as trustee of a fidfin trust, provided that a fiduciary financial
12 institution shall only be deemed an "excluded fiduciary" to the extent the
13 fiduciary financial institution is excluded from exercising certain powers
14 under the instrument that may be exercised by the trust advisor or other
15 persons designated in the instrument;

16 ~~(9)~~(12) "fidfin," "fidfin services" or "fidfin transactions" means the
17 financing of a fidfin trust or the acquisition of alternative assets on behalf
18 of and through a fidfin trust, or both, as provided in K.S.A. 9-2311, and
19 amendments thereto, including loans, extensions of credit and direct
20 investments;

21 ~~(10)~~(13) "fidfin trust" means a trust created to facilitate the delivery
22 of fidfin services by a fiduciary financial institution;

23 ~~(11)~~(14) "fiduciary" means a trustee, a trust advisor or a custodian of
24 an alternative asset custody account appointed under an instrument that is
25 acting in a fiduciary capacity for any person, trust or estate;

26 ~~(12)~~(15) "instrument" means any document creating a fidfin trust or
27 alternative asset custody account;

28 ~~(13)~~(16) "officer" means a person who participates or has authority to
29 participate, other than in the capacity of a director, in major policymaking
30 functions of a bank, trust company or fiduciary financial institution,
31 whether or not the officer has an official title or if the officer is serving
32 without salary or other compensation. "Officer" includes the chairperson
33 of the board, president, vice president, cashier, secretary and treasurer of a
34 bank, trust company or fiduciary financial institution;

35 ~~(14)~~(17) "organizer" means a person who filed the fiduciary financial
36 institution formation documents;

37 ~~(15)~~(18) "out-of-state bank" means a national or state bank, savings
38 and loan association or savings bank not incorporated under the laws of
39 Kansas;

40 ~~(16)~~(19) "out-of-state financial institution" means an out-of-state
41 bank or an out-of-state trust company;

42 ~~(17)~~(20) "out-of-state trust company" means a national or state trust
43 company not incorporated under the laws of Kansas;

1 ~~(18)~~(21) *"qualified charities" means the same as defined in K.S.A.*
2 *79-32,283, and amendments thereto;*

3 (22) (A) "qualified investment" means the purchase or development,
4 in the aggregate, of at least 10,000 square feet of commercial, industrial,
5 multiuse or multifamily real estate in the economic growth zone where the
6 fiduciary financial institution maintains its principal office pursuant to
7 K.S.A. 9-2309, and amendments thereto, provided that such community
8 has committed to develop the necessary infrastructure to support a
9 "qualified investment." A "qualified investment":

10 (i) May include, as part of satisfying the square footage requirements,
11 the suitable office space of such fiduciary financial institution, as provided
12 in K.S.A. 9-2309, and amendments thereto, if owned by the fiduciary
13 financial institution;

14 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-
15 1102, and amendments thereto;

16 (iii) may be retained by a fiduciary financial institution for as long as
17 the fiduciary financial institution operates in this state; and

18 (iv) may be sold, transferred or otherwise disposed of, including a
19 sale or transfer to an affiliate of the fiduciary financial institution, if the
20 fiduciary financial institution continues to maintain its principal office in
21 an economic growth zone pursuant to K.S.A. 9-2309, and amendments
22 thereto;

23 (B) notwithstanding the foregoing provisions, if a fiduciary financial
24 institution leases any portion of a qualified investment made by another
25 fiduciary financial institution as the lessee fiduciary financial institution's
26 suitable office space:

27 (i) The lessee fiduciary financial institution shall make, or cause to be
28 made, a qualified investment in an economic growth zone other than the
29 economic growth zone where such fiduciary financial institution maintains
30 its principal office;

31 (ii) the leased square footage shall count toward the square footage
32 requirement applicable to a qualified investment under this section, if such
33 lease has an initial term of not less than five years; and

34 (iii) the square footage requirement otherwise applicable to a
35 qualified investment of the lessee fiduciary financial institution shall be
36 reduced from 10,000 square feet to 5,000 square feet;

37 ~~(19)~~(23) "technology-enabled fiduciary financial institution" or
38 "fiduciary financial institution" means any limited liability company,
39 limited partnership or corporation that:

40 (A) Is organized to perform any one or more of the activities and
41 services authorized by this act;

42 (B) has been authorized to conduct business as a fiduciary financial
43 institution under this chapter pursuant to the provisions of K.S.A. 9-2302,

1 and amendments thereto;

2 (C) has made, committed to make or caused to be made a qualified
3 investment; and

4 (D) has committed, in or as a part of the application provided in
5 K.S.A. 9-2302, and amendments thereto, to conduct any fidfin transactions
6 in accordance with K.S.A. 9-2311, and amendments thereto, including the
7 distributions required therein;

8 ~~(20)~~(24) "trust" means a trust created pursuant to the Kansas uniform
9 trust code, K.S.A. 58a-101 et seq., and amendments thereto, or *a trust*
10 *created or otherwise authorized to transact business* pursuant to the
11 Kansas business trust act of 1961, K.S.A. ~~47-2707 et seq.~~ 17-2030, and
12 amendments thereto, *the beneficial ownership of which may be*
13 *represented by a trust certificate*;

14 ~~(21)~~(25) "trust advisor" means a fiduciary granted authority by an
15 instrument to exercise, consent, direct, including the power to direct as
16 provided in K.S.A. 58a-808, and amendments thereto, or approve all or
17 any portion of the powers and discretion conferred upon the trustee of a
18 fidfin trust, including the power to invest the assets of a fidfin trust or
19 make or cause distributions to be made from such fidfin trust; and

20 ~~(22)~~(26) the definitions of K.S.A. 9-701, and amendments thereto,
21 apply to fiduciary financial institutions except as otherwise provided in
22 this act.

23 Sec. 3. K.S.A. 9-2303 is hereby amended to read as follows: 9-2303.

24 (a) An application for a fiduciary financial institution charter shall include
25 a nonrefundable fee to be remitted in a manner prescribed by the
26 commissioner. Until July 1, 2025, the application fee shall be \$250,000.
27 On and after July 1, 2025, the application fee shall be ~~\$100,000~~ \$50,000.
28 The expense of every annual regular fiduciary financial institution
29 examination, together with the expense of administering fiduciary
30 financial institution laws, including salaries, travel expenses, third-party
31 fees for consultants or other entities necessary to assist the commissioner,
32 supplies and equipment, shall be paid by the fiduciary financial institutions
33 of this state. Prior to the beginning of each fiscal year, the commissioner
34 shall make an estimate of the fiduciary financial institution expenses to be
35 incurred by the office of the state bank commissioner during such fiscal
36 year in an amount not less than \$1,000,000. The commissioner shall
37 allocate and assess each fiduciary financial institution in this state on the
38 basis of such fiduciary financial institution's total fidfin transaction
39 balances, consisting of the aggregate fidfin financing balances of the
40 fiduciary financial institution reflected in the last December 31 report filed
41 with the commissioner pursuant to K.S.A. 9-1704, and amendments
42 thereto. If a fiduciary financial institution has no fidfin transaction
43 balances, but such fiduciary financial institution is otherwise providing

1 custodial services or trust services, the commissioner shall allocate and
2 assess such fiduciary financial institution in a manner the commissioner
3 deems reasonable and appropriate. A fiduciary financial institution that has
4 no fidfin transaction balances and no alternative asset custody accounts
5 reflected in the last December 31 report filed with the commissioner may
6 be granted inactive status by the commissioner. The annual assessment
7 shall not exceed \$10,000 for such an inactive fiduciary financial
8 institution. The annual fee shall be first assessed for the year immediately
9 following the year the fiduciary financial institution received authority to
10 engage in fidfin transactions, custodial services and trust business and for
11 each year thereafter.

12 (b) (1) A statement of each assessment made under the provisions of
13 subsection (a) shall be sent by the commissioner on July 1 or the next
14 business day thereafter to each fiduciary financial institution. When the
15 commissioner issues such a statement, payment shall be made within 15
16 business days after the date the statement was sent in a manner prescribed
17 by the commissioner, which may include such installment periods as the
18 commissioner deems appropriate but not more frequently than monthly.

19 (2) The commissioner shall remit all moneys received from such fees
20 and assessments to the state treasurer in accordance with the provisions of
21 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
22 remittance, the state treasurer shall deposit the entire amount in the state
23 treasury and credit 75% of each remittance to the bank commissioner fee
24 fund and 25% to the technology-enabled fiduciary financial institutions
25 development and expansion fund established in K.S.A. 9-2324, and
26 amendments thereto.

27 Sec. 4. K.S.A. 9-2307 is hereby amended to read as follows: 9-2307.

28 (a) A fiduciary financial institution shall make a report to the
29 commissioner pursuant to the provisions of K.S.A. 9-1704, and
30 amendments thereto, *except that such report required by K.S.A. 9-1704(b),*
31 *and amendments thereto, shall not be due until March 1 of each year. All*
32 *other financial reports of a fiduciary financial institution shall be due not*
33 *earlier than 60 days after the request for such report is made by the*
34 *commissioner.* In making such a report, a fiduciary financial institution
35 shall:

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

38 (2) calculate such fiduciary financial institution's capital solvency by
39 including the value of all tangible and intangible assets owned by the
40 fiduciary financial institution, regardless of use.

41 (b) In *regulating, supervising and* examining a fiduciary financial
42 institution, the state banking board and the commissioner shall:

43 (1) Consider that the collateral or underlying assets associated with

1 fidfin transactions are volatile in nature and that such volatility has been
2 accepted by the members and customers of the fiduciary financial
3 institution;

4 (2) respect the form, treatment and character of fidfin transactions
5 under the laws of this state notwithstanding the treatment or
6 characterization of such transactions under generally accepted accounting
7 principles or for tax purposes;

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

13 (4) evaluate the background and qualifications of a fiduciary financial
14 institution's executive officers and directors, the internal controls and audit
15 processes enacted by the fiduciary financial institution and adherence to its
16 policies and procedures;

17 (5) evaluate the profitability of a fiduciary financial institution in
18 accordance with subsection (c);

19 (6) evaluate a fiduciary financial institution's compliance with
20 applicable state and federal laws; and

21 (7) evaluate a fiduciary financial institution's information technology
22 systems, policies and practices.

23 (c) Profitability shall not be a consideration in evaluating a fiduciary
24 financial institution if sufficient capital and equity exist in the business,
25 including, without limitation, membership capital, surplus, undivided
26 profits and commitments by members to contribute additional capital to
27 the fiduciary financial institution pursuant to K.S.A. 9-2305, and
28 amendments thereto, to satisfy the fiduciary financial institution's
29 obligations.

30 (d) *The provisions of K.S.A. 9-1130(b), and amendments thereto, and*
31 *K.A.R. 17-12-2 shall not apply to a fiduciary financial institution.*

32 Sec. 5. K.S.A. 9-2309 is hereby amended to read as follows: 9-2309.
33 (a) A fiduciary financial institution shall:

34 (1) Maintain suitable office space in an economic growth zone; as
35 defined in K.S.A. 9-2301, and amendments thereto, for fidfin transactions,
36 custodial services and trust business and for the storage of, and access to,
37 fiduciary financial institution records;

38 (2) employ, engage or contract with at least three employees to
39 provide services for the fiduciary financial institution in Kansas related to
40 the powers of the fiduciary financial institution and to facilitate the
41 examinations required by this act; and

42 (3) perform fidfin transactions, custodial services and trust business
43 in Kansas, and a fiduciary financial institution may also engage in fidfin

1 transactions, custodial services and trust business in other states to the
2 extent permitted by applicable law.

3 (b) As used in this section, the term "suitable office space" means at
4 least 2,000 square feet of class A office space located in an economic
5 growth zone selected by the fiduciary financial institution that the
6 fiduciary financial institution utilizes as such fiduciary financial
7 institution's principal office.

8 (c) The fiduciary financial institution's principal office shall:

9 (1) Be in premises distinct and divided from the office space of any
10 other entity;

11 (2) be located in an economic growth zone selected by the fiduciary
12 financial institution;

13 (3) have the name, charter and certificate of authority of the fiduciary
14 financial institution prominently displayed;

15 (4) have access to premises in or adjacent to the office space
16 sufficient to facilitate on-site examinations *and supervision* by the state
17 banking board or commissioner;

18 (5) to the extent the fiduciary financial institution maintains hard
19 copies of any documents required to be maintained under this chapter,
20 have a secure fireproof file cabinet that contains all such hard copies; and

21 (6) to the extent the fiduciary financial institution maintains any
22 record electronically, have a secure computer terminal or other secure
23 electronic device that provides access to such records, including account
24 information, as necessary to facilitate an efficient and effective
25 examination.

26 (d) Fidfin transactions, custodial services and trust business is
27 deemed to have been performed in Kansas for purposes of this section if
28 fidfin transaction or custodial service agreements are approved or signed
29 in this state on behalf of the fiduciary financial institution and at least three
30 of the following acts are performed by a technology platform wholly or
31 partly operated in this state:

32 (1) Annual account reviews;

33 (2) annual investment reviews;

34 (3) trust or custodial accounting;

35 (4) account correspondence;

36 (5) reviewing and signing trust account or custodial account tax
37 returns; or

38 (6) distributing account statements.

39 Sec. 6. K.S.A. 9-2310 is hereby amended to read as follows: 9-2310.
40 Any fiduciary financial institution is hereby authorized to exercise by its
41 board of directors or duly authorized officers or agents, subject to law, the
42 following powers:

43 (a) To engage in fidfin transactions in accordance with K.S.A. 9-

1 2311, and amendments thereto;

2 (b) to receive, retain and manage alternative asset custody accounts in
3 accordance with K.S.A. 9-2313, and amendments thereto, *and to issue*
4 *certificates associated with such accounts or the underlying alternative*
5 *assets*; and

6 (c) to engage in trust business as defined in K.S.A. 9-701, and
7 amendments thereto, as incidental to the activities in subsections (a) and
8 (b), *including, as trustee, issuing trust certificates on behalf of a trust.*

9 Sec. 7. K.S.A. 9-2311 is hereby amended to read as follows: 9-2311.

10 (a) If authorized by the terms of an instrument as such term is defined in
11 K.S.A. 9-2301, and amendments thereto, a fiduciary financial institution
12 may:

13 (1) Extend financing, such as through loans or extensions of credit to
14 a fidfin trust when:

15 (A) The fiduciary financial institution serves as trustee of the
16 borrowing fidfin trust;

17 (B) the financing is collateralized or supported by the assets of such
18 fidfin trust;

19 (C) the financing is nonrecourse as to the fiduciary financial
20 institution's customer and is not otherwise guaranteed by such customer;

21 (D) the fiduciary financial institution agrees, in the applicable
22 financing agreement or other written document, that the fiduciary financial
23 institution is providing financing in a fiduciary capacity; *and*

24 (E) the fiduciary financial institution agrees that such fiduciary
25 financial institution will manage the collateral or assets underlying the
26 financing in a fiduciary capacity; ~~and~~

27 (2) acquire or invest in an alternative asset on behalf of and through a
28 fidfin trust; *and*

29 (3) *undertake such actions with regard to a trust as defined in K.S.A.*
30 *9-2301, and amendments thereto.*

31 (b) The financing of a fidfin trust pursuant to subsection (a)(1) and
32 (a)(2) shall be considered a fiduciary finance or fidfin transaction.

33 (c) If authorized or directed by the terms of an instrument, no
34 fiduciary financial institution shall be deemed to have a conflict of interest,
35 to have violated a duty to a fidfin trust or the beneficiaries thereof or to
36 have engaged in self-dealing by entering into a fidfin transaction.

37 (d) ~~The combination rules provisions~~ of K.S.A. 9-1104(~~f~~), and
38 amendments thereto, shall be inapplicable to a fiduciary financial
39 institution's fidfin transactions regardless of the identity of the fidfin trust
40 beneficiary if:

41 (1) The borrower is a fidfin trust; and

42 (2) the fiduciary financial institution serves as trustee of the
43 borrowing fidfin trust.

1 (e) A fiduciary financial institution that engages in a fidfin transaction
2 shall be a fiduciary. Subject to the duties and standards of utmost care and
3 loyalty that are associated with serving as a fiduciary, a fiduciary financial
4 institution shall be deemed to be exercising fiduciary powers. All income
5 generated by such fidfin transactions, including interest and investment
6 income, shall be deemed to be income derived from the exercise of such
7 fiduciary powers.

8 (f) A fiduciary financial institution that engages in fidfin transactions
9 shall distribute, cause to be distributed or otherwise facilitate the
10 distribution of the required distribution amount as provided by this section.
11 For purposes of this section, "required distribution amount" means cash,
12 beneficial interests or other assets with a value equal to 2.5% of such
13 fiduciary financial institution's fidfin transactions originated during the
14 calendar year. Such transactions shall exclude any renewals, extensions of
15 credit or accruals associated with transactions made in a prior calendar
16 year, less any credit available to such fiduciary financial institution
17 pursuant to K.S.A. 9-2302, and amendments thereto. The required
18 distribution amount shall be distributed as follows:

19 (1) (A) To the department of commerce:

Required distribution amount	Percentage to department of commerce
20 \$0 to \$500,000	90%
21 \$500,001 to \$1,000,000	50%
22 Above \$1,000,000	10%

23 (B) the amounts specified in subparagraph (A) shall apply to
24 fiduciary financial institutions chartered prior to January 1, 2023. For
25 fiduciary financial institutions chartered after such date, the department of
26 commerce may publish one or more schedules in the Kansas register as the
27 department of commerce deems reasonably necessary to facilitate
28 economic growth and development in one or more economic growth
29 zones. No such schedule shall be effective until after its publication in the
30 Kansas register. The department of commerce shall timely submit any
31 schedule published under this section to the commissioner. The
32 commissioner shall provide a copy of such schedule to any applicant for a
33 fiduciary financial institution charter prior to the issuance of such charter.
34 A fiduciary financial institution shall be subject to the schedule in
35 existence on the date such fiduciary financial institution's charter is issued
36 and shall not be subject to any schedules published after such date; *and*

37 (C) the department of commerce shall remit all distributions under
38 this subsection to the state treasurer in accordance with the provisions of
39 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
40 remittance, the state treasurer shall deposit the entire amount in the state
41 treasury to the credit of the technology-enabled fiduciary financial
42 institutions development and expansion fund established in K.S.A. 9-2324,
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1 and amendments thereto; and

2 (2) the balance of the required distribution amount shall be distributed
3 to one or more qualified charities as defined in K.S.A. 2024 Supp. 79-
4 32,283, and amendments thereto, as shall be selected by the fiduciary
5 financial institution. An economic growth zone or qualified charity shall
6 have no obligation to repay any distributions received under this act or to
7 make any contributions to a fiduciary financial institution.

8 (g) The form, treatment and character of fidfin transactions under the
9 laws of this state shall be respected for all purposes of this act
10 notwithstanding the treatment or characterization of such transactions
11 under generally accepted accounting principles or for tax purposes.

12 (h) A fiduciary financial institution shall disclose to a customer the
13 information required by rules and regulations adopted by the
14 commissioner pursuant to K.S.A. 9-2322, and amendments thereto, to
15 ensure that the customer is informed regarding the nature of the customer's
16 transactions with the fiduciary financial institution, taking into account the
17 level of sophistication of the customer.

18 Sec. 8. K.S.A. 9-2312 is hereby amended to read as follows: 9-2312.

19 (a) Subject to the requirements of K.S.A. 9-2309(d), and amendments
20 thereto, a fiduciary financial institution may:

21 (1) Employ attorneys, accountants, investment advisors, agents or
22 other persons, even if they are affiliated or associated with the fiduciary
23 financial institution, to advise or assist the fiduciary financial institution in
24 the performance of such fiduciary financial institution's fidfin transactions,
25 custodial services and trust business and act without independent
26 investigation upon such recommendations;

27 (2) employ one or more agents to perform any act of fidfin
28 transactions, custodial services or trust business;

29 (3) license internet-related services, including web services, software,
30 mobile applications, technology-enabled platforms and processes to or
31 from affiliates, third parties, other fiduciary financial institutions and their
32 affiliates;

33 (4) license fidfin products and forms; as defined in K.S.A. 9-2321,
34 and amendments thereto, to or from other fiduciary financial institutions
35 and their affiliates;

36 (5) perform any services that a fiduciary financial institution is
37 authorized to perform under the laws of this state on behalf of another
38 fiduciary financial institution; and

39 (6) employ another fiduciary financial institution to perform any
40 services that a fiduciary financial institution is authorized to perform under
41 the laws of this state.

42 (b) A party engaged by a fiduciary financial institution pursuant to
43 subsection (a) shall not be deemed to have engaged in fidfin transactions,

1 custodial services or trust business in this state nor shall such party be
2 deemed a trust service office of the fiduciary financial institution under
3 K.S.A. 9-2108, and amendments thereto, or a trust facility or out-of-state
4 facility under K.S.A. 9-2111, and amendments thereto, by reason of
5 providing services to a fiduciary financial institution or licensing products,
6 platforms, systems or processes to such fiduciary financial institution.

7 (c) A fiduciary financial institution that provides services or licenses
8 fidfin products or forms pursuant to subsection (a) shall not be deemed a
9 trust service office of the fiduciary financial institution that has acquired
10 such services or licensed such products or forms.

11 (d) If a fiduciary financial institution offers its technology-enabled
12 platform to provide fidfin services to residents of other states, neither the
13 marketing, use and deployment of such platform by parties in other states
14 nor the origination of fidfin services through such platform shall constitute
15 an out-of-state trust facility under K.S.A. 9-2111, and amendments thereto,
16 if the fiduciary financial institution complies with the provisions of K.S.A.
17 9-2309, and amendments thereto.

18 (e) A fiduciary financial institution shall provide notice to the
19 commissioner pursuant to the provisions of K.S.A. 9-2103(a)(12), and
20 amendments thereto, if such fiduciary financial institution engages a party
21 pursuant to the provisions of subsection (a).

22 (f) Whenever a fiduciary financial institution causes to be performed
23 for such fiduciary financial institution, by contract or otherwise, any
24 service authorized under this act or the state banking code, such
25 performance shall be subject to regulation, *supervision* and examination by
26 the commissioner to the same extent as if such service was being
27 performed by the fiduciary financial institution itself.

28 Sec. 9. K.S.A. 9-2322 is hereby amended to read as follows: 9-2322.

29 (a) Pursuant to K.S.A. 9-1713, and amendments thereto, the commissioner
30 shall adopt rules and regulations ~~on or before January 1, 2022,~~ as are
31 necessary to administer this act *and supervise and examine a fiduciary*
32 *financial institution.*

33 (b) The office of the state bank commissioner may enter into
34 contracts for technical assistance and professional services as are
35 necessary to administer the provisions of this act and ~~to meet the deadline~~
36 for the adoption of rules and regulations provided by this section. Such
37 contracts shall be exempt from the requirements of K.S.A. 75-3739, 75-
38 37,102 and 75-37,132, and amendments thereto, or any other statute
39 relating to the procurement of such services.

40 Sec. 10. K.S.A. 2024 Supp. 79-32,283 is hereby amended to read as
41 follows: 79-32,283. (a) For taxable years commencing after December 31,
42 2020, there shall be allowed as a credit against the tax liability of a
43 fiduciary financial institution imposed pursuant to the Kansas income tax

1 act or the privilege tax imposed upon a fiduciary financial institution
2 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and
3 amendments thereto, in an amount equal to the qualified charitable
4 distributions made in connection with the fiduciary financial institution's
5 fidfin activities during such taxable year if the fiduciary financial
6 institution maintained such fiduciary financial institution's principal office
7 in an economic growth zone during such taxable year in accordance with
8 the provisions of K.S.A. 9-2309, and amendments thereto.

9 (b) For purposes of this section:

10 (1) "Economic growth zone" and "fidfin" means the same as defined
11 in K.S.A. 9-2301, and amendments thereto;

12 (2) "qualified charitable distributions" means distributions of cash,
13 beneficial interests or other assets to one or more qualified charities having
14 an aggregate value equal to at least 2.5% of the fiduciary financial
15 institution's transactions originated during the taxable year. Such
16 transactions shall exclude any renewals, extensions of credit or accruals
17 associated with transactions made in a prior taxable year; *and*

18 (3) (A) "qualified charities" means one or more:

19 (i) Charities, ~~in~~ to which contributions are allowable as a deduction
20 pursuant to section 170 of the federal internal revenue code ~~if such~~
21 ~~charities have;~~ or

22 (ii) *Kansas nonprofit corporations regardless of their federal income*
23 *tax treatment.*

24 (B) *Such "qualified charities" shall have:*

25 ~~(A)~~(i) Been organized pursuant to a charter promulgated by the
26 department of commerce for the purposes of making distributions for the
27 benefit of economic growth zones;

28 ~~(B)~~(ii) committed in writing to utilize the entire amount of the
29 qualified charitable distributions, excluding reasonable administrative
30 expenses, exclusively for the benefit of charitable causes located in one or
31 more economic growth zones or postsecondary educational institutions as
32 defined in K.S.A. 74-3201b, and amendments thereto; and

33 ~~(C)~~(iii) agreed to provide an annual report to the department of
34 commerce detailing qualified distributions received during such year,
35 distributions made pursuant to *this* subparagraph ~~(B)~~ and the remaining
36 balance of qualified distributions as of the end of the reporting year.

37 (C) The requirements of subparagraph ~~(A)~~(B)(i) shall not apply to a
38 charity; ~~contributions to which are allowable as a deduction pursuant to~~
39 ~~section 170 of the federal internal revenue code;~~ that has committed in
40 writing to utilize the entire amount of the qualified charitable distributions,
41 excluding reasonable administrative expenses, exclusively for the benefit
42 of the economic growth zone identified in K.S.A. 9-2325(a)(2), and
43 amendments thereto.

1 (c) No credit shall be allowed under this section if the fiduciary
2 financial institution's tax return on which the credit is claimed is not timely
3 filed, including any extension.

4 (d) A distribution or remittance to the department of commerce
5 pursuant to K.S.A. 9-2311, and amendments thereto, shall be deemed a
6 qualified charitable distribution for purposes of this section.

7 (e) A fiduciary financial institution shall not be required to ensure that
8 qualified charitable distributions are made solely for the benefit of the
9 economic growth zones where such fiduciary financial institution has:

10 (1) Established such fiduciary financial institution's principal office
11 pursuant to K.S.A. 9-2309, and amendments thereto; or

12 (2) made qualified investments as defined in K.S.A. 9-2301, and
13 amendments thereto. Qualified charitable distributions may be made for
14 the benefit of any one or more economic growth zones.

15 (f) If a fiduciary financial institution is a pass-through entity for
16 Kansas tax purposes and the credit allowed by this section for a taxable
17 year is greater than the fiduciary financial institution's tax liability against
18 which the tax credit may be applied, a member of the entity or any other
19 party who is required to report such income on a Kansas income tax return
20 is entitled to a tax credit equal to the tax credit determined for the fiduciary
21 financial institution for the taxable year in excess of the fiduciary financial
22 institution's tax liability under the Kansas income tax act or privilege tax
23 under article 11 of chapter 79 of the Kansas Statutes Annotated, and
24 amendments thereto, for the taxable year multiplied by the percentage of
25 the fiduciary financial institution's distributive income to which the
26 member is entitled. Tax credits allowed and earned under this section shall
27 not be sold, assigned, conveyed or otherwise transferred.

28 (g) If the amount of a tax credit allowed a member or other party
29 under this section exceeds the taxpayer's income tax liability for the
30 taxable year in which the tax credit is allowed, the amount thereof that
31 exceeds such tax liability may be carried over for deduction from the
32 taxpayer's income or privilege tax liability in the next succeeding taxable
33 year or years until the total amount of the tax credit has been deducted
34 from tax liability, except that no such tax credit shall be carried over for
35 deduction after the 5th taxable year succeeding the taxable year in which
36 the tax credit is first allowed.

37 (h) In any taxable year, a fiduciary financial institution shall pay the
38 greater of the qualified charitable distributions made during such taxable
39 year or the tax liability of a fiduciary financial institution imposed
40 pursuant to the Kansas income tax act or the privilege tax imposed upon a
41 fiduciary financial institution pursuant to article 11 of chapter 79 of the
42 Kansas Statutes Annotated, and amendments thereto.

43 (i) This section shall be a part of and supplemental to the Kansas

1 income tax act.

2 Sec. 11. K.S.A. 9-542, 9-2303, 9-2307, 9-2309, 9-2310, 9-2311, 9-
3 2312 and 9-2322 and K.S.A. 2024 Supp. 9-2301 and 79-32,283 are hereby
4 repealed.

5 Sec. 12. This act shall take effect and be in force from and after its
6 publication in the statute book.