

HOUSE BILL No. 2418

By Joint Committee on Fiduciary Financial Institutions Oversight

1-5

AN ACT concerning financial institutions; relating to the technology-enabled fiduciary financial institutions act; prohibiting the office of the state bank commissioner or any other state agency from becoming a receiver for a technology-enabled fiduciary financial institution that becomes insolvent or declares bankruptcy; amending K.S.A. 2025 Supp. 9-2301 and repealing the existing section.

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

New Section 1. (a) The office of the state bank commissioner or any other state agency shall not become a receiver for any technology-enabled fiduciary financial institution that becomes insolvent or declares bankruptcy. For purposes of this section, "state agency" means the same as defined in K.S.A. 75-3701, and amendments thereto.

(b) A fiduciary financial institution shall be deemed to be insolvent if the:

(1) Actual cash market value of such fiduciary financial institution's assets is insufficient to pay such fiduciary financial institution's creditor liabilities; or

(2) fiduciary financial institution is unable to meet the demands of such fiduciary financial institution's creditors in the usual and customary manner.

(c) The provisions of this section shall be a part of and supplemental to the technology-enabled fiduciary financial institutions act.

Sec. 2. K.S.A. 2025 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, *and section 1, 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

1 equity, venture capital, leveraged buyouts, special situations, structured
2 credit, private debt, private real estate funds and natural resources,
3 including any economic or beneficial interest therein;

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, operating
11 agreements, financial statements, annual and quarterly reports, capital
12 account statements, tax statements, correspondence from the general
13 partner, manager or investment advisor of the alternative asset, an
14 investment contract as defined in K.S.A. 17-12a102(28)(E), and
15 amendments thereto, and any digital asset as defined in K.S.A. 58-4802,
16 and amendments thereto, whether such information is in hard copy form or
17 a representation of such information that is stored in a computer readable
18 format;

19 (4) "charitable beneficiaries" means one or more charities,
20 contributions to which are allowable as a deduction pursuant to section
21 170 of the federal internal revenue code that are designated as
22 beneficiaries of a fidfin trust;

23 (5) "custodial services" means the safekeeping and management of an
24 alternative asset custody account, including the execution of customer
25 instructions, serving as agent, fund administrative services and overall
26 decision-making and management of the account by a fiduciary financial
27 institution—and "Custodial services" shall be deemed to involve the
28 exercise of fiduciary and trust powers;

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

31 (7) "economic growth zone" means an incorporated community with
32 a population of not more than 5,000 people located within one of the
33 following counties: Allen, Anderson, Barber, Bourbon, Brown, Chase,
34 Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche,
35 Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray,
36 Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman,
37 Jackson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn,
38 Logan, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton,
39 Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt,
40 Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman,
41 Smith, Stafford, Stanton, Stevens, Sumner, Trego, Thomas, Wabaunsee,
42 Wallace, Washington, Wichita, Wilson or Woodson;

43 (8) "excluded fiduciary" means a fiduciary financial institution in its

1 capacity as trustee of a fidfin trust, ~~provided~~ *except* that a fiduciary
2 financial institution shall only be deemed an "excluded fiduciary" to the
3 extent the fiduciary financial institution is excluded from exercising
4 certain powers under the instrument that may be exercised by the trust
5 advisor or other persons designated in the instrument;

6 (9) "fidfin," "fidfin services" or "fidfin transactions" means the
7 financing of a fidfin trust or the acquisition of alternative assets on behalf
8 of and through a fidfin trust, or both, as provided in K.S.A. 9-2311, and
9 amendments thereto, including loans, extensions of credit and direct
10 investments;

11 (10) "fidfin trust" means a trust created to facilitate the delivery of
12 fidfin services by a fiduciary financial institution;

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

16 (12) "instrument" means any document creating a fidfin trust or
17 alternative asset custody account;

18 (13) "officer" means a person who participates or has authority to
19 participate, other than in the capacity of a director, in major policymaking
20 functions of a bank, trust company or fiduciary financial institution,
21 whether or not the officer has an official title or if the officer is serving
22 without salary or other compensation. "Officer" includes the chairperson
23 of the board, president, vice president, cashier, secretary and treasurer of a
24 bank, trust company or fiduciary financial institution;

25 (14) "organizer" means a person who filed the fiduciary financial
26 institution formation documents;

27 (15) "out-of-state bank" means a national or state bank, savings and
28 loan association or savings bank not incorporated under the laws of
29 Kansas;

30 (16) "out-of-state financial institution" means an out-of-state bank or
31 an out-of-state trust company;

32 (17) "out-of-state trust company" means a national or state trust
33 company not incorporated under the laws of Kansas;

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

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

1 financial institution;

2 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-
3 1102, and amendments thereto;

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

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

11 (B) notwithstanding the foregoing provisions, if a fiduciary financial
12 institution leases any portion of a qualified investment made by another
13 fiduciary financial institution as the lessee fiduciary financial institution's
14 suitable office space:

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

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

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

25 (19) "technology-enabled fiduciary financial institution" or "fiduciary
26 financial institution" means any limited liability company, limited
27 partnership or corporation that:

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

30 (B) has been authorized to conduct business as a fiduciary financial
31 institution under this chapter pursuant to the provisions of K.S.A. 9-2302,
32 and amendments thereto;

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

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

39 (20) "trust" means a trust created pursuant to the Kansas uniform trust
40 code, K.S.A. 58a-101 et seq., and amendments thereto, or created pursuant
41 to the Kansas business trust act of 1961, K.S.A. 17-2707 et seq., and
42 amendments thereto;

43 (21) "trust advisor" means a fiduciary granted authority by an

1 instrument to exercise, consent, direct, including the power to direct as
2 provided in K.S.A. 58a-808, and amendments thereto, or approve all or
3 any portion of the powers and discretion conferred upon the trustee of a
4 fidfin trust, including the power to invest the assets of a fidfin trust or
5 make or cause distributions to be made from such fidfin trust; and

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

8 Sec. 3. K.S.A. 2025 Supp. 9-2301 is hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.