

HOUSE BILL No. 2489

By Committee on Financial Institutions and Rural Development

1-18

1 AN ACT concerning financial institutions; relating to technology-enabled
2 fiduciary financial institutions; pertaining to procedures when
3 undercapitalized or insolvent; fees and assessments; grounds for denial
4 of application; examinations; insurance and capital requirements;
5 disclosures to consumers; mandatory reporting of elder abuse;
6 amending K.S.A. 39-1401 and K.S.A. 2021 Supp. 9-2301, 9-2302, 9-
7 2303, 9-2304, 9-2305, 9-2306, 9-2307, 9-2310, 9-2311, 9-2312, 9-
8 2317, 9-2318 and 9-2325 and repealing the existing sections.
9

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

11 New Section 1. (a) If it appears upon the examination of any
12 fiduciary financial institution or from any report made to the commissioner
13 that any fiduciary financial institution is critically undercapitalized, the
14 commissioner may:

15 (1) Enter an informal memorandum pursuant to K.S.A. 2021 Supp. 9-
16 1810, and amendments thereto, to notify the fiduciary financial institution
17 of the unsatisfactory condition and require the fiduciary financial
18 institution to correct such condition within the period of time prescribed by
19 the commissioner; or

20 (2) take charge of such fiduciary financial institution and all of its
21 property and assets. In taking charge of a critically undercapitalized
22 fiduciary financial institution, the commissioner shall appoint a special
23 deputy commissioner to take charge of the affairs of the fiduciary financial
24 institution temporarily.

25 (b) If it appears upon the examination of any fiduciary financial
26 institution or from any report made to the commissioner that any fiduciary
27 financial institution is insolvent, the commissioner may:

28 (1) Take charge of the fiduciary financial institution and all property
29 and assets of such fiduciary financial institution. In taking charge of an
30 insolvent fiduciary financial institution, the commissioner shall appoint a
31 special deputy commissioner to take charge of the affairs of the fiduciary
32 financial institution temporarily; or

33 (2) assign any or all of the fiduciary financial institution's accounts,
34 associated property and associated assets to successor trustees designated
35 under subsection (d).

36 (c) Under either of the circumstances provided under subsection (a)

1 or (b), the commissioner shall not appoint a receiver for a fiduciary
2 financial institution nor be required to appoint a special deputy
3 commissioner.

4 (d) (1) The commissioner, or any special deputy commissioner that
5 has been appointed under subsection (a) or (b) for the fiduciary financial
6 institution, may designate or require such fiduciary financial institution to
7 designate successor trustees. Designation of successor trustees may be
8 required when such fiduciary financial institution:

9 (A) Appears critically undercapitalized under subsection (a);

10 (B) appears insolvent under subsection (b); or

11 (C) intends to voluntarily cease engaging in business as a fiduciary
12 financial institution or appears to the commissioner to so intend.

13 (2) Designated successor trustees may be assigned such fiduciary
14 financial institution's accounts, associated property and associated assets:

15 (A) Upon insolvency pursuant to subsection (b)(2); or

16 (B) at the commissioner's direction when such fiduciary financial
17 institution appears to have ceased engaging in business as a fiduciary
18 financial institution.

19 (e) For purposes of this section, "insolvent" means the same as
20 defined in K.S.A. 2021 Supp. 9-2304, and amendments thereto.

21 (f) This section shall be a part of and supplemental to the technology-
22 enabled fiduciary financial institutions act.

23 Sec. 2. K.S.A. 2021 Supp. 9-2301 is hereby amended to read as
24 follows: 9-2301. (a) The provisions of K.S.A. 2021 Supp. 9-2301 through
25 9-2327 *and section 1*, and amendments thereto, shall be known and may
26 be cited as the technology-enabled fiduciary financial institutions act. The
27 technology-enabled fiduciary financial institutions act shall be a part of
28 and supplemental to chapter 9 of the Kansas Statutes Annotated, and
29 amendments thereto.

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

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

34 (2) "alternative asset" means professionally managed investment
35 assets that are not publicly traded, including, but not limited to, private
36 equity, venture capital, leveraged buyouts, special situations, structured
37 credit, private debt, private real estate funds and natural resources,
38 including any economic or beneficial interest therein;

39 (3) "alternative asset custody account" means an account created by
40 the owner of an alternative asset that designates a fiduciary financial
41 institution as custodian or agent and into which the ~~client~~ *owner* transfers,
42 electronically or otherwise, content, materials, data, information,
43 documents, reports and contracts in any form, including, without

1 limitation, evidence of ownership, subscription agreements, private
2 placement memoranda, limited partnership agreements, operating
3 agreements, financial statements, annual and quarterly reports, capital
4 account statements, tax statements, correspondence from the general
5 partner, manager or investment advisor of the alternative asset, an
6 investment contract as defined in K.S.A. 17-12a102(28)(E), and
7 amendments thereto, and any digital asset as defined in K.S.A. 58-4802,
8 and amendments thereto, whether such information is in hard copy form or
9 a representation of such information that is stored in a computer readable
10 format;

11 (4) "charitable beneficiaries" means one or more charities,
12 contributions to which are allowable as a deduction pursuant to section
13 170 of the federal internal revenue code that are designated as
14 beneficiaries of a fidfin trust;

15 (5) "custodial services" means the safekeeping and management of an
16 alternative asset custody account, including the execution of customer
17 instructions, serving as agent, fund administrative services and overall
18 decision-making and management of the account by a fiduciary financial
19 institution and "custodial services" shall be deemed to involve the exercise
20 of fiduciary and trust powers;

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

33 (7) "excluded fiduciary" means a fiduciary financial institution in its
34 capacity as trustee of a fidfin trust, provided that a fiduciary financial
35 institution shall only be deemed an "excluded fiduciary" to the extent the
36 fiduciary financial institution is excluded from exercising certain powers
37 under the instrument that may be exercised by the trust advisor or other
38 persons designated in the instrument;

39 (8) "fidfin," "fidfin services" or "fidfin transactions" means the
40 financing of a fidfin trust *and the acquisition of alternative assets on*
41 *behalf of and through a fidfin trust* as provided in K.S.A. 2021 Supp. 9-
42 2311, and amendments thereto, ~~including loans, extensions of credit and~~
43 ~~direct investments;~~

1 (9) "fidfin trust" means a trust created to facilitate the delivery of
2 fidfin services by a fiduciary financial institution;

3 (10) "fiduciary" means a trustee, a trust advisor or a custodian of an
4 alternative asset custody account appointed under an instrument that is
5 acting in a fiduciary capacity for any person, trust or estate;

6 (11) "instrument" means any document creating a fidfin trust or
7 alternative asset custody account;

8 (12) (A) "qualified investment" means the purchase or development,
9 in the aggregate, of at least 10,000 square feet of commercial, industrial,
10 multiuse or multifamily real estate in the economic growth zone where the
11 fiduciary financial institution maintains its principal office pursuant to
12 K.S.A. 2021 Supp. 9-2309, and amendments thereto, provided that such
13 community has committed to develop the necessary infrastructure to
14 support a "qualified investment." A "qualified investment":

15 (i) May include, as part of satisfying the square footage requirements,
16 the suitable office space of such fiduciary financial institution, as provided
17 in K.S.A. 2021 Supp. 9-2309, and amendments thereto, if owned by the
18 fiduciary financial institution;

19 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-
20 1102, and amendments thereto;

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

23 (iv) may be sold, transferred or otherwise disposed of, including a
24 sale or transfer to an affiliate of the fiduciary financial institution, if the
25 fiduciary financial institution continues to maintain its principal office in
26 an economic growth zone pursuant to K.S.A. 2021 Supp. 9-2309, and
27 amendments thereto;

28 (B) notwithstanding the foregoing provisions, if a fiduciary financial
29 institution leases any portion of a qualified investment made by another
30 fiduciary financial institution as the lessee fiduciary financial institution's
31 suitable office space:

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

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

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

42 (13) "technology-enabled fiduciary financial institution" or "fiduciary
43 financial institution" means any limited liability company, limited

1 partnership or corporation that:

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

4 (B) has been authorized to conduct business as a fiduciary financial
5 institution under this chapter pursuant to the provisions of K.S.A. 2021
6 Supp. 9-2302, and amendments thereto;

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

9 (D) has committed, in or as a part of the application provided in
10 K.S.A. 2021 Supp. 9-2302, and amendments thereto, to conduct any fidfin
11 transactions in accordance with K.S.A. 2021 Supp. 9-2311, and
12 amendments thereto, including the distributions required therein;

13 (14) "trust" means a trust created pursuant to the Kansas uniform trust
14 code, K.S.A. 58a-101 et seq., and amendments thereto, or created pursuant
15 to the Kansas business trust act of 1961, K.S.A. 17-2707 et seq., and
16 amendments thereto;

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

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

25 Sec. 3. K.S.A. 2021 Supp. 9-2302 is hereby amended to read as
26 follows: 9-2302. (a) No fiduciary financial institution shall be organized
27 under the laws of this state nor engage in fidfin transactions, custodial
28 services or trust business in this state until the application for such
29 fiduciary financial institution's organization and the application for
30 certificate of authority have been submitted to and approved by the state
31 banking board. The form for making any such application shall be
32 prescribed by the state banking board and any application made to the state
33 banking board shall contain such information as the state banking board
34 shall require. Except as provided in K.S.A. 2021 Supp. 9-2325, and
35 amendments thereto, the state banking board shall not approve any
36 application until the Beneficient conditional charter has been converted to
37 a full charter and the commissioner has completed a regulatory
38 examination.

39 (b) No bank, trust company or fiduciary financial institution shall
40 engage in fidfin transactions in this state unless an application has been
41 submitted under this act and approved by the state banking board.

42 (c) The state banking board shall not accept an application for a
43 fiduciary financial institution unless the:

- 1 (1) Fiduciary financial institution is organized by at least one person;
- 2 (2) name selected for the fiduciary financial institution is different or
3 substantially dissimilar from any other bank, trust company or fiduciary
4 financial institution doing business in this state;
- 5 (3) fiduciary financial institutions' articles of organization contain the
6 names and addresses of the fiduciary financial institution's members and
7 the number of units subscribed by each. The articles of organization may
8 contain such other provisions as are consistent with the Kansas revised
9 limited liability company act, Kansas revised uniform limited partnership
10 act or Kansas general corporation code;
- 11 (4) fiduciary financial institution has made, committed to make or
12 caused to be made a qualified investment as defined in K.S.A. 2021 Supp.
13 9-2301, and amendments thereto;
- 14 (5) fiduciary financial institution has committed to structure any
15 fidfin transactions to ensure that qualified charitable distributions, as
16 defined in K.S.A. 2021 Supp. 79-32,274, and amendments thereto, are
17 made each calendar year that the fiduciary financial institution conducts
18 fidfin transactions; and
- 19 (6) fiduciary financial institution has consulted or agrees to consult
20 with the department of commerce regarding the economic growth zones to
21 be selected for purposes of paragraphs (4) and (5).
- 22 (d) The state banking board may deny the application if the state
23 banking board makes an unfavorable determination with regard to ~~the~~:
 - 24 (1) *The financial standing, general business experience and character*
25 *of the organizers;*~~or~~
 - 26 (2) *the character, qualifications and experience of the officers of the*
27 *proposed fiduciary financial institution;*
 - 28 (3) *the public need for the proposed fiduciary financial institution*
29 *and whether existing fiduciary financial institutions are meeting such*
30 *need;*
 - 31 (4) *the prospects for success of the proposed fiduciary financial*
32 *institution; or*
 - 33 (5) *any other criteria the state banking board may require.*
- 34 (e) The state banking board shall not make membership in any federal
35 government agency a condition precedent to the granting of the authority
36 to do business.
- 37 (f) The state banking board may require fingerprinting of any officer,
38 director, organizer or any other person of the proposed fiduciary financial
39 institution related to the application deemed necessary by the state banking
40 board. Such fingerprints may be submitted to the Kansas bureau of
41 investigation and the federal bureau of investigation for a state and
42 national criminal history record check. The fingerprints shall be used to
43 identify the person and to determine whether the person has a record of

1 arrests and convictions in this state or other jurisdictions. The state
 2 banking board may use information obtained from fingerprinting and the
 3 criminal history for purposes of verifying the identification of the person
 4 and in the official determination of the qualifications and fitness of the
 5 persons associated with the applicant fiduciary financial institution to be
 6 issued a charter. Whenever the state banking board requires fingerprinting,
 7 any associated costs shall be paid by the applicant or the parties to the
 8 application.

9 (g) The state banking board or the commissioner shall notify a
 10 fiduciary financial institution of the approval or disapproval of an
 11 application. Any final action of the state banking board approving or
 12 disapproving an application shall be subject to review in accordance with
 13 the Kansas judicial review act.

14 (h) (1) In the event such application is approved, the fiduciary
 15 financial institution shall be issued a charter upon compliance with any
 16 requirements of this act and upon demonstrating to the satisfaction of the
 17 commissioner that an applicable distribution has been made. For purposes
 18 of this section, "applicable distribution" means a distribution of cash,
 19 beneficial interests or other assets having an aggregate value equal to the
 20 greater of:

21 (A) 2.5% of the aggregate financing balances to be held by the
 22 fiduciary financial institution immediately upon issuance of the fiduciary
 23 financial institution's charter, as reflected in the fiduciary financial
 24 institution's application filed pursuant to this section; or

25 (B) \$5,000,000 in accordance with subsection (i), except that if a
 26 fiduciary financial institution is chartered to provide only custodial
 27 services, the applicable distribution amount shall be \$500,000.

28 (2) If the amount provided in paragraph (1)(B) exceeds the amount
 29 provided in paragraph (1)(A), the fiduciary financial institution shall be
 30 entitled to a credit against the amount distributable under K.S.A. 2021
 31 Supp. 9-2311(e)(f), and amendments thereto, in an amount equal to such
 32 excess.

33 (i) The applicable distribution required under subsection (h) shall be
 34 distributed as follows:

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

36 Applicable distribution amount	Percentage to department of commerce
37 \$0 to \$500,000	90%
38 \$500,001 to \$1,000,000	50%
39 Above \$1,000,000	10%

40 (B) the amounts specified in subparagraph (A) shall apply to
 41 fiduciary financial institutions chartered prior to January 1, 2023. For
 42 fiduciary financial institutions chartered after such date, the department of
 43 commerce may publish one or more schedules in the Kansas register as the

1 department of commerce deems reasonably necessary to facilitate
2 economic growth and development in one or more economic growth
3 zones. No such schedule shall be effective until after its publication in the
4 Kansas register. The department of commerce shall timely submit to the
5 commissioner any schedule published under this section. The
6 commissioner shall provide a copy of such schedule to any applicant for a
7 fiduciary financial institution charter prior to the issuance of such charter.
8 A fiduciary financial institution shall be subject to the schedule in
9 existence on the date such fiduciary financial institution's charter is issued
10 and shall not be subject to any schedules published after such date;

11 (C) the department of commerce shall remit all distributions under
12 this subsection to the state treasurer in accordance with the provisions of
13 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
14 remittance, the state treasurer shall deposit the entire amount in the state
15 treasury to the credit of the technology-enabled fiduciary financial
16 institutions development and expansion fund established in K.S.A. 2021
17 Supp. 9-2324, and amendments thereto; and

18 (2) the balance of the applicable distribution required under
19 subsection (h) shall be distributed to one or more qualified charities as
20 defined in K.S.A. 2021 Supp. 79-32,274, and amendments thereto, as shall
21 be selected by the fiduciary financial institution. Nothing in this section
22 shall preclude a distribution to one or more qualified charities in excess of
23 the amounts provided in this section. An economic growth zone or
24 qualified charity shall have no obligation to repay any distributions
25 received under this act or to make any contributions to a fiduciary
26 financial institution.

27 Sec. 4. K.S.A. 2021 Supp. 9-2303 is hereby amended to read as
28 follows: 9-2303. (a) ~~Every fiduciary financial institution shall be assessed~~
29 ~~an initial fee of \$500,000 to be remitted concurrently with the issuance of~~
30 ~~such fiduciary financial institution's charter~~ *An application for a fiduciary*
31 *financial institution charter shall include a nonrefundable fee of \$500,000*
32 *to be remitted in a manner prescribed by the commissioner.* The expense of
33 every annual regular fiduciary financial institution examination, together
34 with the expense of administering fiduciary financial institution laws,
35 including salaries, travel expenses, third-party fees for consultants or other
36 entities necessary to assist the commissioner, supplies and equipment, shall
37 be paid by the fiduciary financial institutions of this state. Prior to the
38 beginning of each fiscal year, the commissioner shall make an estimate of
39 the ~~trust~~ *fiduciary financial institution* expenses to be incurred by the
40 office of the state bank commissioner during such fiscal year in an amount
41 not less than \$1,000,000. The commissioner shall allocate and assess each
42 fiduciary financial institution in this state on the basis of such fiduciary
43 financial institution's total fidfin transaction balances, consisting of the

1 aggregate fidfin financing balances of the fiduciary financial institution
2 reflected in the last December 31 report filed with the commissioner
3 pursuant to K.S.A. 9-1704, and amendments thereto. If a fiduciary
4 financial institution has no fidfin transaction balances, but such fiduciary
5 financial institution *is* otherwise providing custodial services or trust
6 services, the commissioner shall allocate and assess such fiduciary
7 financial institution in a manner the commissioner deems reasonable and
8 appropriate. A fiduciary financial institution that has no fidfin transaction
9 balances and no alternative asset custody accounts reflected in the last
10 December 31 report filed with the commissioner may be granted inactive
11 status by the commissioner. The annual assessment shall not exceed
12 \$10,000 for such an inactive fiduciary financial institution. The annual fee
13 shall be first assessed for the year immediately following the year the
14 fiduciary financial institution received a certificate of authority to engage
15 in fidfin transactions, custodial services and trust business and for each
16 year thereafter.

17 (b) (1) A statement of each assessment made under the provisions of
18 subsection (a) shall be sent by the commissioner on ~~December~~ *July* 1 or
19 the next business day thereafter to each fiduciary financial institution. ~~The~~
20 ~~assessment may be collected by the commissioner as needed and in such~~
21 ~~installment periods as the commissioner deems appropriate, but not more~~
22 ~~frequently than monthly. When the commissioner issues an invoice to~~
23 ~~collect the assessment, payment shall be due within 15 business days of~~
24 ~~the date of such invoice. The commissioner may impose a penalty upon~~
25 ~~any fiduciary financial institution that fails to pay its annual assessment~~
26 ~~when it is more than 15 business days past due. The penalty shall be~~
27 ~~assessed in the amount of \$50 for each day the assessment is past due~~
28 *When the commissioner issues such a statement, payment shall be made*
29 *within 15 business days after the date the statement was sent in a manner*
30 *prescribed by the commissioner, which may include such installment*
31 *periods as the commissioner deems appropriate but not more frequently*
32 *than monthly.*

33 (2) The commissioner shall remit all moneys received from such fees
34 and assessments to the state treasurer in accordance with the provisions of
35 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
36 remittance, the state treasurer shall deposit the entire amount in the state
37 treasury and credit 75% of each remittance to the bank commissioner fee
38 fund and 25% to the technology-enabled fiduciary financial institutions
39 development and expansion fund established in K.S.A. 2021 Supp. 9-
40 2324, and amendments thereto.

41 Sec. 5. K.S.A. 2021 Supp. 9-2304 is hereby amended to read as
42 follows: 9-2304. (a) To the extent a conflict does not exist between this act
43 and chapter 9 of the Kansas Statutes Annotated, and amendments thereto,

1 the provisions of chapter 9 of the Kansas Statutes Annotated, and
2 amendments thereto, shall apply to a fiduciary financial institution in the
3 same manner as it applies to a trust company except that references in
4 chapter 9 to:

- 5 (1) "Capital stock" includes membership capital and partner capital;
- 6 (2) "stock" includes membership units and partnership interests;
- 7 (3) "common stock" includes common units and common interests;
- 8 (4) "preferred stock" includes preferred units and preferred interests;
- 9 (5) "stockholders" includes members and partners;
- 10 (6) "articles of incorporation" includes articles of organization and
11 articles of limited partnership;
- 12 (7) "incorporation" includes organization;
- 13 (8) "corporation" includes company and partnership;
- 14 (9) "corporate" includes company and partnership;
- 15 (10) "trust business" and "business of a trust company" includes
16 fidfin and fiduciary financial institution business;~~and~~
- 17 (11) K.S.A. 9-901a(a), and amendments thereto, means K.S.A. 2021
18 Supp. 9-2305, and amendments thereto; *and*
- 19 (12) *"insolvent" means the same as defined in K.S.A. 9-1902(b), and*
20 *amendments thereto.*

21 (b) If any conflict exists between any provisions of chapter 9 of the
22 Kansas Statutes Annotated, and amendments thereto, and this act, the
23 provisions of this act shall control.

24 Sec. 6. K.S.A. 2021 Supp. 9-2305 is hereby amended to read as
25 follows: 9-2305. (a) For purposes of this section, "capital" means the total
26 of the aggregate par value of a fiduciary financial institution's outstanding
27 membership units, its surplus and its undivided profits.

28 (b) (1) The required capital for fiduciary financial institutions shall at
29 all times be \$250,000 when:

30 (A) The fiduciary financial institution does not accept deposits, other
31 than alternative asset custody accounts;

32 (B) the fiduciary financial institution maintains no third-party debt
33 except debts owed to the members of the fiduciary financial institution or
34 affiliates of the fiduciary financial institution; and

35 (C) the fiduciary financial institution has secured an agreement from
36 its members whereby such members agree to contribute additional capital
37 to the fiduciary financial institution if needed to ensure the safety and
38 soundness of the fiduciary financial institution. A fiduciary financial
39 institution that fails to satisfy the foregoing requirements shall be subject
40 to the capitalization requirements of K.S.A. 9-901a, and amendments
41 thereto, applicable to trust companies.

42 (2) The capital of a fiduciary financial institution shall be divided,
43 with 60% of the amount as the aggregate par value of outstanding

1 membership units, 30% as surplus and 10% as undivided profits.

2 (c) *The commissioner may require a fiduciary financial institution to*
3 *maintain financial institution bonds and insurance policies regarding such*
4 *fiduciary financial institution's operations in amounts the commissioner*
5 *may deem appropriate for the fiduciary financial institution's size or the*
6 *nature of the business of the fiduciary financial institution.*

7 (d) *The state banking board may require that a fiduciary financial*
8 *institution have capital in excess of the amount specified in this section if*
9 *the commissioner determines that excess capital is necessary based on the*
10 *character and qualifications of the proposed board of directors and the*
11 *nature of the business of the fiduciary financial institution.*

12 Sec. 7. K.S.A. 2021 Supp. 9-2306 is hereby amended to read as
13 follows: 9-2306. (a) The business of any fiduciary financial institution
14 shall be managed and controlled by such fiduciary financial institution's
15 board of directors.

16 (b) The board shall consist of not less than five nor more than 25
17 members who shall be elected by the members at any regular annual
18 meeting to be held on the date specified in the fiduciary financial
19 institution's ~~operating agreement or bylaws~~ governing documents. At least
20 one director must be a resident of this state.

21 (c) If, for any reason, the meeting cannot be held on the date specified
22 in the ~~operating agreement or bylaws~~ governing documents, the meeting
23 shall be held on a subsequent day within 60 days of the day fixed, to be
24 designated by the board of directors or, if the directors fail to fix the day,
25 by the members representing $\frac{2}{3}$ of the membership units.

26 (d) In all cases, at least 10 days' notice of the date for the annual
27 meeting shall be given to the members.

28 (e) The annual meeting of a fiduciary financial institution shall be
29 held in this state. Any other meetings of the fiduciary financial institution's
30 management or directors, including the meeting required pursuant to
31 K.S.A. 9-1116, and amendments thereto, may be held in any location
32 determined by the fiduciary financial institution's officers or directors.

33 (f) Any newly created directorship shall be approved and elected by
34 the members in the manner provided in the fiduciary financial institution's
35 organizational documents or, in the absence of such provisions, in the
36 manner provided by the Kansas revised limited liability company act,
37 Kansas revised uniform limited partnership act or Kansas general
38 corporation code. A special meeting of the members may be convened at
39 any time for such purpose.

40 (g) Any vacancy in the board of directors may be filled by the board
41 of directors in the manner provided in the fiduciary financial institution's
42 organizational documents or, in the absence of such provisions, in the
43 manner provided by the Kansas revised limited liability company act,

1 Kansas revised uniform limited partnership act or Kansas general
2 corporation code.

3 (h) Within 15 days after the annual meeting, the president or cashier
4 of each fiduciary financial institution shall submit to the commissioner a
5 certified list of members and the number of units owned by each member.
6 This list of members shall be kept and maintained in the fiduciary financial
7 institution's main office and shall be subject to inspection by all members
8 during the business hours of the fiduciary financial institution. The
9 commissioner may require the list to be filed by electronic means.

10 (i) Each director shall take and subscribe an oath to administer the
11 affairs of such fiduciary financial institution diligently and honestly and to
12 not knowingly or willfully permit any of the laws relating to fiduciary
13 financial institutions to be violated. A copy of each oath shall be retained
14 by the fiduciary financial institution, in the fiduciary financial institution's
15 records after the election of any officer or director, for review by the
16 commissioner's staff during the next examination. The commissioner may
17 require the oath to be filed by electronic means.

18 (j) Every fiduciary financial institution shall notify the commissioner
19 of any change in the chief executive officer, president or directors,
20 including in such fiduciary financial institution's report a statement of the
21 past and current business and professional affiliations of the new chief
22 executive officer, president or directors.

23 Sec. 8. K.S.A. 2021 Supp. 9-2307 is hereby amended to read as
24 follows: 9-2307. (a) A fiduciary financial institution shall make a report to
25 the commissioner pursuant to the provisions of K.S.A. 9-1704, and
26 amendments thereto. In making such a report, a fiduciary financial
27 institution shall:

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

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

33 ~~(b) In evaluating the safety and soundness of~~ *examining* a fiduciary
34 financial institution, the state banking board and the commissioner shall
35 *not evaluate safety and soundness but shall*:

36 (1) Consider that the collateral or underlying assets associated with
37 fidfin transactions are volatile in nature and that such volatility has been
38 accepted by the members and customers of the fiduciary financial
39 institution;

40 (2) respect the form, treatment and character of fidfin transactions
41 under the laws of this state notwithstanding the treatment or
42 characterization of such transactions under generally accepted accounting
43 principles or for tax purposes;

1 (3) evaluate ~~the soundness of a fiduciary financial institution based on~~
 2 whether available capital, including the agreement of ~~the~~ a fiduciary
 3 financial institution's members to contribute capital pursuant to K.S.A.
 4 2021 Supp. 9-2305, and amendments thereto, exceeds the fiduciary
 5 financial institution's obligations, determined in accordance with generally
 6 accepted accounting principles; ~~and~~

7 (4) evaluate ~~the safety of a fiduciary financial institution based on the~~
 8 background and qualifications of ~~such~~ a fiduciary financial institution's
 9 executive officers and directors ~~and~~, the internal controls and audit
 10 processes enacted by the fiduciary financial institution ~~to ensure and~~
 11 adherence to its policies and procedures;

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

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

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

18 (c) Profitability shall ~~not be a consideration in evaluating the safety~~
 19 ~~and soundness of~~ *be reviewed to determine if* a fiduciary financial
 20 institution ~~if~~ *has* sufficient capital and equity ~~exist in the business,~~
 21 including, without limitation, membership capital, surplus, undivided
 22 profits and commitments by members to contribute additional capital to
 23 the fiduciary financial institution pursuant to K.S.A. 2021 Supp. 9-2305,
 24 and amendments thereto, to satisfy the fiduciary financial institution's
 25 obligations.

26 (d) *The state banking board and the commissioner may examine any*
 27 *aspect of a fiduciary financial institution, regardless of whether such*
 28 *aspect is enumerated in this section, to aid in understanding the fiduciary*
 29 *financial institution's business operations, financial status and effects on*
 30 *the state of Kansas or to help guide rules and regulations and proposals*
 31 *for legislative changes.*

32 Sec. 9. K.S.A. 2021 Supp. 9-2310 is hereby amended to read as
 33 follows: 9-2310. ~~(a)~~ Any fiduciary financial institution is hereby
 34 authorized to exercise by its board of directors or duly authorized officers
 35 or agents, subject to law, the following powers:

36 ~~(1)~~(a) To engage in fidfin transactions in accordance with K.S.A.
 37 2021 Supp. 9-2311, and amendments thereto;

38 ~~(2)~~(b) to receive, retain and manage alternative asset custody
 39 accounts in accordance with K.S.A. 2021 Supp. 9-2313, and amendments
 40 thereto; and

41 ~~(3)~~(c) to engage in trust business as defined in K.S.A. 9-701, and
 42 amendments thereto, *as incidental to the activities in subsections (a) and*
 43 *(b).*

1 Sec. 10. K.S.A. 2021 Supp. 9-2311 is hereby amended to read as
2 follows: 9-2311. (a) If authorized by the terms of an instrument as such
3 term is defined in K.S.A. 2021 Supp. 9-2301, and amendments thereto, a
4 fiduciary financial institution may:

5 (1) Extend financing~~or~~, *such as through loans*, extensions of credit
6 *or direct investments* to a fidfin trust when:

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

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

11 (C) the financing is nonrecourse as to the fiduciary financial
12 institution's customer and is not otherwise guaranteed by such customer,
13 *who shall not be a party to the financing but shall only be involved in*
14 *fidfin transactions through a sale of one or more of such customer's*
15 *alternative assets to a fidfin trust under paragraph (2);*

16 (D) the fiduciary financial institution agrees, in the applicable
17 financing agreement or other written document, that the fiduciary financial
18 institution is providing financing in a fiduciary capacity;

19 (E) the fiduciary financial institution agrees that such fiduciary
20 financial institution will manage the collateral or assets underlying the
21 financing in a fiduciary capacity; and

22 (2) acquire or invest in an alternative asset on behalf of and through a
23 fidfin trust.

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

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

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

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

34 (2) the fiduciary financial institution serves as trustee of the
35 borrowing fidfin trust.

36 (e) A fiduciary financial institution that engages in a fidfin transaction
37 shall be a fiduciary. Subject to the duties and standards of utmost care and
38 loyalty that are associated with serving as a fiduciary, a fiduciary financial
39 institution shall be deemed to be exercising fiduciary powers. All income
40 generated by such fidfin transactions, including interest and investment
41 income, shall be deemed to be income derived from the exercise of such
42 fiduciary powers.

43 (f) A fiduciary financial institution that engages in fidfin transactions

1 shall distribute, cause to be distributed or otherwise facilitate the
 2 distribution of the required distribution amount as provided by this section.
 3 For purposes of this section, "required distribution amount" means cash,
 4 beneficial interests or other assets with a value equal to 2.5% of such
 5 fiduciary financial institution's fidfin transactions originated during the
 6 calendar year. Such transactions shall exclude any renewals, extensions of
 7 credit or accruals associated with transactions made in a prior calendar
 8 year, less any credit available to such fiduciary financial institution
 9 pursuant to K.S.A. 2021 Supp. 9-2302, and amendments thereto. The
 10 required distribution amount shall be distributed as follows:

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

12 Required distribution amount	Percentage to department of commerce
13 \$0 to \$500,000	90%
14 \$500,001 to \$1,000,000	50%
15 Above \$1,000,000	10%

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

30 (C) the department of commerce shall remit all distributions under
 31 this subsection to the state treasurer in accordance with the provisions of
 32 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
 33 remittance, the state treasurer shall deposit the entire amount in the state
 34 treasury to the credit of the technology-enabled fiduciary financial
 35 institutions development and expansion fund established in K.S.A. 2021
 36 Supp. 9-2324, and amendments thereto; and

37 (2) the balance of the required distribution amount shall be distributed
 38 to one or more qualified charities as defined in K.S.A. 2021 Supp. 79-
 39 32,274, and amendments thereto, as shall be selected by the fiduciary
 40 financial institution. An economic growth zone or qualified charity shall
 41 have no obligation to repay any distributions received under this act or to
 42 make any contributions to a fiduciary financial institution.

43 (g) The form, treatment and character of fidfin transactions under the

1 laws of this state shall be respected for all purposes of this act
2 notwithstanding the treatment or characterization of such transactions
3 under generally accepted accounting principles or for tax purposes.

4 *(h) The commissioner shall adopt rules and regulations pursuant to*
5 *K.S.A. 2021 Supp. 9-2322, and amendments thereto, that enumerate*
6 *categories of fidfin transactions, which may include asset class categories,*
7 *geographic categories, industry sector categories and any other*
8 *categories the commissioner shall deem necessary to identify potential*
9 *concentrations of risk. Such rules and regulations shall specify a*
10 *concentration limit for each category commensurate with that category's*
11 *unique risk profile. A fiduciary financial institution shall not engage in any*
12 *fidfin transaction that would result in an asset concentration of greater*
13 *than the specified limit for any enumerated category.*

14 *(i) A fiduciary financial institution shall disclose to a customer the*
15 *information required by rules and regulations adopted by the*
16 *commissioner pursuant to K.S.A. 2021 Supp. 9-2322, and amendments*
17 *thereto, to ensure that the customer is informed regarding the nature of the*
18 *customer's transactions with the fiduciary financial institution.*

19 Sec. 11. K.S.A. 2021 Supp. 9-2312 is hereby amended to read as
20 follows: 9-2312. (a) Subject to the requirements of K.S.A. 2021 Supp. 9-
21 2309(d), and amendments thereto, a fiduciary financial institution may:

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

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

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

34 (4) license fidfin products and forms, as defined in K.S.A. 2021
35 Supp. 9-2321, and amendments thereto, to or from other fiduciary
36 financial institutions and their affiliates;

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

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

43 (b) A party engaged by a fiduciary financial institution pursuant to

1 subsection (a) shall not be deemed to have engaged in fidfin transactions,
2 custodial services or trust business in this state nor shall such party be
3 deemed a trust service office of the fiduciary financial institution under
4 K.S.A. 9-2108, and amendments thereto, or a trust facility or out-of-state
5 facility under K.S.A. 9-2111, and amendments thereto, by reason of
6 providing services to a fiduciary financial institution or licensing products,
7 platforms, systems or processes to such fiduciary financial institution.

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

12 (d) If a fiduciary financial institution offers its technology-enabled
13 platform to provide fidfin services to residents of other states, neither the
14 marketing, use and deployment of such platform by parties in other states
15 nor the origination of fidfin services through such platform shall constitute
16 an out-of-state trust facility under K.S.A. 9-2111, and amendments thereto,
17 if the fiduciary financial institution complies with the provisions of K.S.A.
18 2021 Supp. 9-2309, and amendments thereto.

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

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

29 Sec. 12. K.S.A. 2021 Supp. 9-2317 is hereby amended to read as
30 follows: 9-2317. (a) If an entity is appointed as a trust advisor, the
31 provisions of article 8 of chapter 9 of the Kansas Statutes Annotated, and
32 amendments thereto, shall not apply to such entity, if the entity:

33 (1) Is established for the exclusive purpose of acting as a trust
34 advisor;

35 (2) is acting in such capacity under an instrument that names a
36 fiduciary financial institution as trustee or custodian;

37 (3) is not engaged in trust business with the general public as a public
38 trust company or with any family as a private trust company;

39 (4) does not hold itself out as being in the business of acting as a
40 fiduciary for hire as either a public or private trust company; and

41 (5) agrees to be subject to examination by the office of the state bank
42 commissioner at the discretion of the commissioner.

43 (b) The governing documents of any such entity shall limit such

1 entity's authorized activities to those of a trust advisor and shall further
2 limit the performance of such functions to only fidfin trusts and alternative
3 asset custody accounts. An entity complying with this section shall
4 *promptly* notify the ~~director~~ *commissioner in writing* of its existence and
5 capacity to act.

6 Sec. 13. K.S.A. 2021 Supp. 9-2318 is hereby amended to read as
7 follows: 9-2318. An instrument may relieve and indemnify a trust advisor
8 and a fiduciary financial institution that serves as trustee of a fidfin trust or
9 alternative asset custody account from liability for a breach of fiduciary
10 duty ~~if any~~. *Any* such provision is unenforceable to the extent that it
11 relieves the trust advisor or fiduciary financial institution from liability for
12 a breach of fiduciary duty committed:

- 13 (a) In bad faith;
- 14 (b) intentionally; or
- 15 (c) with reckless indifference to the interest of a beneficiary.

16 Sec. 14. K.S.A. 2021 Supp. 9-2325 is hereby amended to read as
17 follows: 9-2325. (a) On July 1, 2021, the commissioner shall:

18 (1) Grant a conditional fiduciary financial institution charter to the
19 Beneficient company upon the Beneficient company:

- 20 (A) Filing an application with the commissioner;
- 21 (B) satisfying the requirements of K.S.A. 2021 Supp. 9-2302(c)(1)
22 through (5), and amendments thereto;
- 23 (C) satisfying the requirements of K.S.A. 2021 Supp. 9-2302(f), and
24 amendments thereto; and
- 25 (D) satisfying the capital requirements imposed under K.S.A. 2021
26 Supp. 9-2305, and amendments thereto; and

27 (2) designate a community within Harvey county, as selected by
28 Beneficient fiduciary financial institution, as the first economic growth
29 zone.

30 (b) On July 1, 2021, the commissioner shall establish a fidfin
31 fiduciary financial institution pilot program that:

32 (1) Includes the Beneficient company as a participant in such pilot
33 program;

34 (2) assesses the Beneficient company an initial fee of \$1,000,000 in
35 lieu of the initial fee provided in K.S.A. 2021 Supp. 9-2303, and
36 amendments thereto; and

37 (3) imposes a requirement for the Beneficient company to distribute,
38 cause to be distributed or otherwise facilitate a distribution of cash,
39 beneficial interests or other assets having an aggregate value of \$9,000,000
40 in accordance with the requirements of K.S.A. 2021 Supp. 9-2302(i), and
41 amendments thereto, and such amount shall be construed as the applicable
42 distribution amount for purposes of K.S.A. 2021 Supp. 9-2302, and
43 amendments thereto.

1 (c) Except as provided by subsection (d), upon issuance of the
2 conditional fiduciary financial institution charter, the Beneficient company
3 shall be subject to all requirements imposed on fiduciary financial
4 institutions under this act but may not commence fidfin transactions,
5 custodial services or trust business in this state until the earlier of:

6 (1) December 31, 2021; or

7 (2) the date the commissioner adopts rules and regulations pursuant
8 to K.S.A. 2021 Supp. 9-2322, and amendments thereto.

9 (d) The commissioner may extend the period that the Beneficient
10 company may not commence fidfin transactions, custodial services or trust
11 business in this state for a period not to exceed six months from the date
12 specified in subsection (c) if the commissioner submits a report to the
13 senate financial institutions and insurance committee and to the house of
14 representatives financial institutions and rural development committee
15 identifying the specific reasons for which such extension is necessary.
16 Such report shall be submitted on or before January 10, 2022.
17 Notwithstanding the provisions of this subsection, the Beneficient
18 company may satisfy the applicable distribution requirement of K.S.A.
19 2021 Supp. 9-2302(i), and amendments thereto, and the required
20 distribution amount in K.S.A. 2021 Supp. 9-2311(f), and amendments
21 thereto, by placing assets in escrow with one or more qualified charities,
22 except that such funds shall be released when the Beneficient company is
23 permitted to commence fidfin transactions, custodial services or trust
24 business.

25 (e) On or before January 10, 2022, the office of the state bank
26 commissioner shall provide a report to the house of representatives
27 financial institutions and rural development committee and the senate
28 financial institutions and insurance committee updating such committees
29 on the progress of such pilot program. Such report shall include
30 recommendations from the office of the state bank commissioner for any
31 legislation necessary to implement the provisions of this act.

32 (f) *After the commissioner has completed a regulatory examination of*
33 *the Beneficient fiduciary financial institution, the Beneficient fiduciary*
34 *financial institution may submit an application under K.S.A. 2021 Supp. 9-*
35 *2302, and amendments thereto, which shall be considered an application*
36 *to convert Beneficient's conditional charter to a full charter. If such*
37 *application is granted, the Beneficient conditional charter shall be*
38 *converted to a full charter; the pilot program shall immediately end and*
39 *the state banking board may begin to approve charters for new fiduciary*
40 *financial institutions under K.S.A. 2021 Supp. 9-2302, and amendments*
41 *thereto. If the application is not granted, the Beneficient fiduciary*
42 *financial institution may resubmit its application after addressing any*
43 *deficiencies and shall not be charged any additional application fees. If*

1 *the Beneficent conditional charter is not converted to a full charter before*
2 *six months have passed after a second regulatory examination and no*
3 *conversion application remains pending, the commissioner shall revoke*
4 *the Beneficent conditional charter, the pilot program shall immediately*
5 *end and the state banking board shall not approve any charters for new*
6 *fiduciary financial institutions under K.S.A. 2021 Supp. 9-2302, and*
7 *amendments thereto.*

8 Sec. 15. K.S.A. 39-1401 is hereby amended to read as follows: 39-
9 1401. As used in this act:

10 (a) "Resident" means:

11 (1) Any resident, as defined by K.S.A. 39-923, and amendments
12 thereto; or

13 (2) any individual kept, cared for, treated, boarded or otherwise
14 accommodated in a medical care facility; or

15 (3) any individual, kept, cared for, treated, boarded or otherwise
16 accommodated in a state psychiatric hospital or state institution for people
17 with intellectual disability.

18 (b) "Adult care home" ~~has the meaning ascribed thereto~~ means the
19 same as defined in K.S.A. 39-923, and amendments thereto.

20 (c) "In need of protective services" means that a resident is unable to
21 perform or obtain services which are necessary to maintain physical or
22 mental health, or both.

23 (d) "Services which are necessary to maintain physical and mental
24 health" include, but are not limited to, the provision of medical care for
25 physical and mental health needs, the relocation of a resident to a facility
26 or institution able to offer such care, assistance in personal hygiene, food,
27 clothing, adequately heated and ventilated shelter, protection from health
28 and safety hazards, protection from maltreatment the result of which
29 includes, but is not limited to, malnutrition, deprivation of necessities or
30 physical punishment and transportation necessary to secure any of the
31 above stated needs, except that this term shall not include taking such
32 person into custody without consent, except as provided in this act.

33 (e) "Protective services" means services provided by the state or other
34 governmental agency or any private organizations or individuals which are
35 necessary to prevent abuse, neglect or exploitation. Such protective
36 services shall include, but not be limited to, evaluation of the need for
37 services, assistance in obtaining appropriate social services and assistance
38 in securing medical and legal services.

39 (f) "Abuse" means any act or failure to act performed intentionally or
40 recklessly that causes or is likely to cause harm to a resident, including:

41 (1) Infliction of physical or mental injury;

42 (2) any sexual act with a resident when the resident does not consent
43 or when the other person knows or should know that the resident is

1 incapable of resisting or declining consent to the sexual act due to mental
2 deficiency or disease or due to fear of retribution or hardship;

3 (3) unreasonable use of a physical restraint, isolation or medication
4 that harms or is likely to harm a resident;

5 (4) unreasonable use of a physical or chemical restraint, medication
6 or isolation as punishment, for convenience, in conflict with a physician's
7 orders or as a substitute for treatment, except where such conduct or
8 physical restraint is in furtherance of the health and safety of the resident
9 or another resident;

10 (5) a threat or menacing conduct directed toward a resident that
11 results or might reasonably be expected to result in fear or emotional or
12 mental distress to a resident;

13 (6) fiduciary abuse; or

14 (7) omission or deprivation by a caretaker or another person of goods
15 or services which are necessary to avoid physical or mental harm or
16 illness.

17 (g) "Neglect" means the failure or omission by one's self, caretaker or
18 another person with a duty to provide goods or services which are
19 reasonably necessary to ensure safety and well-being and to avoid physical
20 or mental harm or illness.

21 (h) "Caretaker" means a person or institution who has assumed the
22 responsibility, whether legally or not, for the care of the resident
23 voluntarily, by contract or by order of a court of competent jurisdiction.

24 (i) "Exploitation" means misappropriation of resident property or
25 intentionally taking unfair advantage of an adult's physical or financial
26 resources for another individual's personal or financial advantage by the
27 use of undue influence, coercion, harassment, duress, deception, false
28 representation or false pretense by a caretaker or another person.

29 (j) "Medical care facility" means a facility licensed under K.S.A. 65-
30 425 et seq., and amendments thereto, but shall not include, for purposes of
31 this act, a state psychiatric hospital or state institution for people with
32 intellectual disability, including Larned state hospital, Osawatomie state
33 hospital and Rainbow mental health facility, Kansas neurological institute
34 and Parsons state hospital and training center.

35 (k) "Fiduciary abuse" means a situation in which any person who is
36 the caretaker of, or who stands in a position of trust to, a resident, takes,
37 secretes, or appropriates the resident's money or property, to any use or
38 purpose not in the due and lawful execution of such person's trust.

39 (l) "State psychiatric hospital" means Larned state hospital,
40 Osawatomie state hospital and Rainbow mental health facility.

41 (m) "State institution for people with intellectual disability" means
42 Kansas neurological institute and Parsons state hospital and training
43 center.

1 (n) "Report" means a description or accounting of an incident or
2 incidents of abuse, neglect or exploitation under this act and for the
3 purposes of this act shall not include any written assessment or findings.

4 (o) "Law enforcement" means the public office which is vested by
5 law with the duty to maintain public order, make arrests for crimes and
6 investigate criminal acts, whether that duty extends to all crimes or is
7 limited to specific crimes.

8 (p) "Legal representative" means an agent designated in a durable
9 power of attorney, power of attorney or durable power of attorney for
10 health care decisions or a court appointed guardian, conservator or trustee.

11 (q) "Financial institution" means any bank, trust company, escrow
12 company, finance company, saving institution~~or~~, credit union *or fiduciary*
13 *financial institution*, chartered and supervised under state or federal law.

14 (r) "Governmental assistance provider" means an agency, or
15 employee of such agency, which is funded solely or in part to provide
16 assistance within the Kansas senior care act, K.S.A. 75-5926 et seq., and
17 amendments thereto, including medicaid and medicare.

18 No person shall be considered to be abused, neglected or exploited or
19 in need of protective services for the sole reason that such person relies
20 upon spiritual means through prayer alone for treatment in accordance
21 with the tenets and practices of a recognized church or religious
22 denomination in lieu of medical treatment.

23 Sec. 16. K.S.A. 39-1401 and K.S.A. 2021 Supp. 9-2301, 9-2302, 9-
24 2303, 9-2304, 9-2305, 9-2306, 9-2307, 9-2310, 9-2311, 9-2312, 9-2317, 9-
25 2318 and 9-2325 are hereby repealed.

26 Sec. 17. This act shall take effect and be in force from and after its
27 publication in the statute book.