

HOUSE BILL No. 2489

AN ACT concerning financial institutions; relating to technology-enabled fiduciary financial institutions; out-of-state financial institutions; imposing certain fiduciary duties and charitable distribution requirements on financial institutions engaging in fiduciary financial institution business; requiring banks to conduct fidfin transactions through a separate department; exempting financial institutions from certain provisions of the technology-enabled fiduciary financial institutions act; establishing fees and assessments; examinations; disclosures to consumers; mandatory reporting of elder abuse; amending K.S.A. 39-1401 and K.S.A. 2021 Supp. 9-2301, 9-2302, 9-2303, 9-2304, 9-2306, 9-2307, 9-2310, 9-2311, 9-2312, 9-2317 and 9-2318 and repealing the existing sections.

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

Section 1. K.S.A. 2021 Supp. 9-2301 is hereby amended to read as follows: 9-2301. (a) The provisions of K.S.A. 2021 Supp. 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 credit, private debt, private real estate funds and natural resources, including any economic or beneficial interest therein;

(3) "alternative asset custody account" means an account created by the owner of an alternative asset that designates a fiduciary financial institution as custodian or agent and into which the ~~client~~ *owner* transfers, electronically or otherwise, content, materials, data, information, documents, reports and contracts in any form, including, without limitation, evidence of ownership, subscription agreements, private placement memoranda, limited partnership agreements, operating agreements, financial statements, annual and quarterly reports, capital account statements, tax statements, correspondence from the general partner, manager or investment advisor of the alternative asset, an investment contract as defined in K.S.A. 17-12a102(28)(E), and amendments thereto, and any digital asset as defined in K.S.A. 58-4802, and amendments thereto, whether such information is in hard copy form or a representation of such information that is stored in a computer readable format;

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

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

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

(7) "excluded fiduciary" means a fiduciary financial institution in its capacity as trustee of a fidfin trust, provided that a fiduciary financial institution shall only be deemed an "excluded fiduciary" to the extent the fiduciary financial institution is excluded from exercising

certain powers under the instrument that may be exercised by the trust advisor or other persons designated in the instrument;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(13)~~(16) "technology-enabled fiduciary financial institution" or "fiduciary financial institution" means any limited liability company, limited partnership or corporation that:

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

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

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

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

amendments thereto, including the distributions required therein;

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

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

~~(16)~~(19) the definitions of K.S.A. 9-701, and amendments thereto, apply to fiduciary financial institutions except as otherwise provided in this act.

Sec. 2. K.S.A. 2021 Supp. 9-2302 is hereby amended to read as follows: 9-2302. (a) No fiduciary financial institution shall be organized under the laws of this state nor engage in fidfin transactions, custodial services or trust business in this state until the application for such fiduciary financial institution's organization and the application for certificate of authority have been submitted to and approved by the state banking board. The form for making any such application shall be prescribed by the state banking board and any application made to the state banking board shall contain such information as the state banking board shall require. Except as provided in K.S.A. 2021 Supp. 9-2325, and amendments thereto, the state banking board shall not approve any application until the Beneficient conditional charter has been converted to a full charter and the commissioner has completed a regulatory examination.

(b) (1) No *Kansas-chartered state bank, Kansas-chartered state trust company or fiduciary financial institution* shall engage in fidfin transactions in this state unless an application has been submitted under this act and approved by the state banking board.

(2) *Except as otherwise provided by this subsection, any trust company whose application has been approved in accordance with this section and any out-of-state trust company engaging in fidfin transactions in this state shall be considered a fiduciary financial institution for the purposes of this act, shall have all rights and powers granted to a fiduciary financial institution under this act and shall owe all duties and obligations imposed on fiduciary financial institutions under this act, including, but not limited to, the fiduciary duties imposed under K.S.A. 2021 Supp. 9-2311 and 9-2313, and amendments thereto, and the requirements of K.S.A. 2021 Supp. 9-2302(c)(5) and (6), and amendments thereto.*

(3) *Any bank whose application has been approved in accordance with this section and any out-of-state bank that engages in fidfin transactions in this state shall have a separate department for handling fidfin transactions. Except as otherwise provided by this subsection, such separate department shall be considered a fiduciary financial institution for the purposes of this act, shall have all rights and powers granted to a fiduciary financial institution under this act and shall owe all duties and obligations imposed on fiduciary financial institutions under this act, including, but not limited to, the fiduciary duties imposed under K.S.A. 2021 Supp. 9-2311 and 9-2313, and amendments thereto, and the requirements of K.S.A. 2021 Supp. 9-2302(c)(5) and (6), and amendments thereto.*

(4) *Notwithstanding the provisions of paragraphs (2) and (3):*

(A) *A bank or trust company whose application has been approved in accordance with this section or an out-of-state financial institution that engages in fidfin transactions in this state shall not be subject to the provisions of K.S.A. 2021 Supp. 9-2305, 9-2306 or 9-2308, and amendments thereto; and*

(B) *the commissioner shall not examine or require applications, reports or other filings from an out-of-state financial institution that is subject to oversight of such financial institution's fidfin transactions by a governmental agency of the jurisdiction that chartered the out-of-state financial institution.*

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

(1) Fiduciary financial institution is organized by at least one

person;

(2) name selected for the fiduciary financial institution is different or substantially dissimilar from any other bank, trust company or fiduciary financial institution doing business in this state;

(3) fiduciary financial institutions' articles of organization contain the names and addresses of the fiduciary financial institution's members and the number of units subscribed by each. The articles of organization may contain such other provisions as are consistent with the Kansas revised limited liability company act, Kansas revised uniform limited partnership act or Kansas general corporation code;

(4) fiduciary financial institution has made, committed to make or caused to be made a qualified investment as defined in K.S.A. 2021 Supp. 9-2301, and amendments thereto;

(5) fiduciary financial institution has committed to structure any fidfin transactions to ensure that qualified charitable distributions, as defined in K.S.A. 2021 Supp. 79-32,274, and amendments thereto, are made each calendar year that the fiduciary financial institution conducts fidfin transactions; and

(6) fiduciary financial institution has consulted or agrees to consult with the department of commerce regarding the economic growth zones to be selected for purposes of paragraphs (4) and (5).

(d) The state banking board may deny the application if the state banking board makes an unfavorable determination with regard to the:

(1) Financial standing, general business experience and character of the organizers; or

(2) character, qualifications and experience of the officers of the proposed fiduciary financial institution.

(e) The state banking board shall not make membership in any federal government agency a condition precedent to the granting of the authority to do business.

(f) The state banking board may require fingerprinting of any officer, director; ~~or organizer or any other person~~ of the proposed fiduciary financial institution ~~related to the application deemed necessary by the state banking board~~. Such fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdictions. The state banking board may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the persons associated with the applicant fiduciary financial institution to be issued a charter. Whenever the state banking board requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.

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

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

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

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

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

equal to such excess.

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

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

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

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

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

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

Sec. 3. K.S.A. 2021 Supp. 9-2303 is hereby amended to read as follows: 9-2303. (a) ~~Every fiduciary financial institution shall be assessed an initial fee of \$500,000 to be remitted concurrently with the issuance of such fiduciary financial institution's charter.~~ *An application for a fiduciary financial institution charter shall include a nonrefundable fee to be remitted in a manner prescribed by the commissioner. Until July 1, 2025, the application fee shall be \$250,000. On and after July 1, 2025, the application fee shall be \$100,000.* The expense of every annual regular fiduciary financial institution examination, together with the expense of administering fiduciary financial institution laws, including salaries, travel expenses, third-party fees for consultants or other entities necessary to assist the commissioner, supplies and equipment, shall be paid by the fiduciary financial institutions of this state. Prior to the beginning of each fiscal year, the commissioner shall make an estimate of the ~~trust fiduciary financial institution~~ expenses to be incurred by the office of the state bank commissioner during such fiscal year in an amount not less than \$1,000,000. The commissioner shall allocate and assess each fiduciary financial institution in this state on the basis of such fiduciary financial institution's total fidfin transaction balances, consisting of the aggregate fidfin financing balances of the fiduciary financial institution reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto. If a fiduciary financial institution has no fidfin transaction balances, but such fiduciary financial institution *is* otherwise providing custodial services or trust services, the commissioner shall allocate and assess such fiduciary financial institution in a manner the commissioner deems reasonable and appropriate. A fiduciary financial institution that has no fidfin transaction balances and no alternative asset custody accounts reflected in the last December 31 report filed with the commissioner may be

granted inactive status by the commissioner. The annual assessment shall not exceed \$10,000 for such an inactive fiduciary financial institution. The annual fee shall be first assessed for the year immediately following the year the fiduciary financial institution received a certificate of authority to engage in fidfin transactions, custodial services and trust business and for each year thereafter.

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

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

Sec. 4. K.S.A. 2021 Supp. 9-2304 is hereby amended to read as follows: 9-2304. (a) To the extent a conflict does not exist between this act and chapter 9 of the Kansas Statutes Annotated, and amendments thereto, *except as provided in subsections (b), (c) and (e)*, the provisions of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall apply to a fiduciary financial institution in the same manner as it applies to a trust company except that references in chapter 9 *of the Kansas Statutes Annotated, and amendments thereto*, to:

- (1) "Capital stock" includes membership capital and partner capital;
- (2) "stock" includes membership units and partnership interests;
- (3) "common stock" includes common units and common interests;
- (4) "preferred stock" includes preferred units and preferred interests;
- (5) "stockholders" includes members and partners;
- (6) "articles of incorporation" includes articles of organization and articles of limited partnership;
- (7) "incorporation" includes organization;
- (8) "corporation" includes company and partnership;
- (9) "corporate" includes company and partnership;
- (10) "trust business" and "business of a trust company" includes fidfin and fiduciary financial institution business; and
- (11) K.S.A. 9-901a(a), and amendments thereto, means K.S.A. 2021 Supp. 9-2305, and amendments thereto.

(b) *For a Kansas-chartered state trust company that receives authority to engage in fidfin transactions under K.S.A. 2021 Supp. 9-2302(b), and amendments thereto, the provisions of subsection (a) shall not apply, however, references in chapter 9 of the Kansas Statutes Annotated, and amendments thereto, to "trust business" and "business of a trust company" include fidfin and fiduciary financial institution business.*

(c) *For a Kansas-chartered state bank that receives authority to engage in fidfin transactions under K.S.A. 2021 Supp. 9-2302(b), and amendments thereto, the provisions of subsection (a) shall not apply, however, the provisions of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall apply in the same manner as they would apply to a trust department of such bank, except that references in*

chapter 9 of the Kansas Statutes Annotated, and amendments thereto, to "trust business" and "business of a trust company" include fidfin and fiduciary financial institution business.

(d) (1) *Except as provided in paragraph (2), if any conflict exists between any provisions of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, and this act, the provisions of this act shall control.*

(2) *If the fiduciary financial institution is a bank department or trust company that received authority to engage in fidfin transactions under K.S.A. 2021 Supp. 9-2302(b), and amendments thereto, the provisions of this act shall only control with regard to fidfin transactions as authorized under K.S.A. 2021 Supp. 9-2302(b), and amendments thereto.*

(e) *The provisions of this section shall not apply to an out-of-state financial institution.*

Sec. 5. K.S.A. 2021 Supp. 9-2306 is hereby amended to read as follows: 9-2306. (a) The business of any fiduciary financial institution shall be managed and controlled by such fiduciary financial institution's board of directors.

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

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

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

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

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

(g) Any vacancy in the board of directors may be filled by the board of directors in the manner provided in the fiduciary financial institution's organizational documents or, in the absence of such provisions, in the manner provided by the Kansas revised limited liability company act, Kansas revised uniform limited partnership act or Kansas general corporation code.

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

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

(j) Every fiduciary financial institution shall notify the commissioner of any change in the chief executive officer, president or

directors, including in such fiduciary financial institution's report a statement of the past and current business and professional affiliations of the new chief executive officer, president or directors.

Sec. 6. K.S.A. 2021 Supp. 9-2307 is hereby amended to read as follows: 9-2307. (a) A fiduciary financial institution shall make a report to the commissioner pursuant to the provisions of K.S.A. 9-1704, and amendments thereto. In making such a report, a fiduciary financial institution shall:

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

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

~~(b) In evaluating the safety and soundness of examining a~~ fiduciary financial institution, the state banking board and the commissioner shall:

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

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

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

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

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

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

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

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

Sec. 7. K.S.A. 2021 Supp. 9-2310 is hereby amended to read as follows: 9-2310. ~~(a)~~ Any fiduciary financial institution is hereby authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, the following powers:

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

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

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

Sec. 8. K.S.A. 2021 Supp. 9-2311 is hereby amended to read as follows: 9-2311. (a) If authorized by the terms of an instrument as such term is defined in K.S.A. 2021 Supp. 9-2301, and amendments thereto, a fiduciary financial institution may:

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

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

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

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

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

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

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

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

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

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

(1) The borrower is a fidfin trust; and

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

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

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

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

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

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

(C) the department of commerce shall remit all distributions under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the

state treasury to the credit of the technology-enabled fiduciary financial institutions development and expansion fund established in K.S.A. 2021 Supp. 9-2324, and amendments thereto; and

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

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

(h) A fiduciary financial institution shall disclose to a customer the information required by rules and regulations adopted by the commissioner pursuant to K.S.A. 2021 Supp. 9-2322, and amendments thereto, to ensure that the customer is informed regarding the nature of the customer's transactions with the fiduciary financial institution, taking into account the level of sophistication of the customer.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 10. K.S.A. 2021 Supp. 9-2317 is hereby amended to read as follows: 9-2317. (a) If an entity is appointed as a trust advisor, the provisions of article 8 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall not apply to such entity, if the entity:

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

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

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

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

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

(b) The governing documents of any such entity shall limit such entity's authorized activities to those of a trust advisor and shall further limit the performance of such functions to only fidfin trusts and alternative asset custody accounts. An entity complying with this section shall notify the ~~director~~ *commissioner in writing* of its existence and capacity to act *within 30 days of the establishment of such capacity*.

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

(a) In bad faith;

(b) intentionally; or

(c) with reckless indifference to the interest of a beneficiary.

Sec. 12. K.S.A. 39-1401 is hereby amended to read as follows: 39-1401. As used in this act:

(a) "Resident" means:

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

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

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

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

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

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

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

(f) "Abuse" means any act or failure to act performed intentionally

or recklessly that causes or is likely to cause harm to a resident, including:

- (1) Infliction of physical or mental injury;
- (2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;
- (3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a resident;
- (4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the resident or another resident;
- (5) a threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;
- (6) fiduciary abuse; or
- (7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

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

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

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

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

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

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

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

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

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

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

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

(r) "Governmental assistance provider" means an agency, or employee of such agency, which is funded solely or in part to provide assistance within the Kansas senior care act, K.S.A. 75-5926 et seq.,

and amendments thereto, including medicaid and medicare.

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

Sec. 13. K.S.A. 39-1401 and K.S.A. 2021 Supp. 9-2301, 9-2302, 9-2303, 9-2304, 9-2306, 9-2307, 9-2310, 9-2311, 9-2312, 9-2317 and 9-2318 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.