

SENATE BILL No. 204

By Joint Committee on Fiduciary Financial Institutions Oversight

2-8

1 AN ACT concerning financial institutions; relating to the technology-
2 enabled fiduciary financial institutions act; replacing the definition of
3 "charitable beneficiaries" with "qualified charities" therein; amending
4 K.S.A. 9-2301 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 9-2301 is hereby amended to read as follows: 9-
8 2301. (a) The provisions of K.S.A. 9-2301 through 9-2327, and
9 amendments thereto, shall be known and may be cited as the technology-
10 enabled fiduciary financial institutions act. The technology-enabled
11 fiduciary financial institutions act shall be a part of and supplemental to
12 chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

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

1 ~~(4) "charitable beneficiaries" means one or more charities,~~
2 ~~contributions to which are allowable as a deduction pursuant to section~~
3 ~~170 of the federal internal revenue code that are designated as~~
4 ~~beneficiaries of a fidfin trust;~~

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

11 ~~(6)~~(5) "economic growth zone" means an incorporated community
12 with a population of not more than 5,000 people located within one of the
13 following counties: Allen, Anderson, Barber, Bourbon, Brown, Chase,
14 Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche,
15 Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray,
16 Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman,
17 Jackson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn,
18 Logan, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton,
19 Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt,
20 Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman,
21 Smith, Stafford, Stanton, Stevens, Sumner, Trego, Thomas, Wabaunsee,
22 Wallace, Washington, Wichita, Wilson or Woodson;

23 ~~(7)~~(6) "excluded fiduciary" means a fiduciary financial institution in
24 its capacity as trustee of a fidfin trust, provided that a fiduciary financial
25 institution shall only be deemed an "excluded fiduciary" to the extent the
26 fiduciary financial institution is excluded from exercising certain powers
27 under the instrument that may be exercised by the trust advisor or other
28 persons designated in the instrument;

29 ~~(8)~~(7) "fidfin," "fidfin services" or "fidfin transactions" means the
30 financing of a fidfin trust or the acquisition of alternative assets on behalf
31 of and through a fidfin trust, or both, as provided in K.S.A. 9-2311, and
32 amendments thereto, including loans, extensions of credit and direct
33 investments;

34 ~~(9)~~(8) "fidfin trust" means a trust created to facilitate the delivery of
35 fidfin services by a fiduciary financial institution;

36 ~~(10)~~(9) "fiduciary" means a trustee, a trust advisor or a custodian of
37 an alternative asset custody account appointed under an instrument that is
38 acting in a fiduciary capacity for any person, trust or estate;

39 ~~(11)~~(10) "instrument" means any document creating a fidfin trust or
40 alternative asset custody account;

41 ~~(12)~~(11) "out-of-state bank" means a national or state bank, savings
42 and loan association or savings bank not incorporated under the laws of
43 Kansas;

1 ~~(13)~~(12) "out-of-state financial institution" means an out-of-state
2 bank or an out-of-state trust company;

3 ~~(14)~~(13) "out-of-state trust company" means a national or state trust
4 company not incorporated under the laws of Kansas;

5 (14) "*qualified charities*" means the same as defined in K.S.A. 79-
6 32,283, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Sec. 2. K.S.A. 9-2301 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.