

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; **expanding**  
4 **the definition of "qualified charities" for purposes of the income tax**  
5 **credit for certain qualified charitable distributions of fiduciary**  
6 **financial institutions**; amending K.S.A. 9-2301 and K.S.A. 2022  
7 **Supp. 79-32,283** and repealing the existing ~~section~~ **sections**.

8  
9 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

1 and amendments thereto, whether such information is in hard copy form or  
2 a representation of such information that is stored in a computer readable  
3 format;

4 ~~(4) "charitable beneficiaries" means one or more charities,~~  
5 ~~contributions to which are allowable as a deduction pursuant to section~~  
6 ~~170 of the federal internal revenue code that are designated as~~  
7 ~~beneficiaries of a fidfin trust;~~

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

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

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

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

37 (9)(8) "fidfin trust" means a trust created to facilitate the delivery of  
38 fidfin services by a fiduciary financial institution;

39 (10)(9) "fiduciary" means a trustee, a trust advisor or a custodian of  
40 an alternative asset custody account appointed under an instrument that is  
41 acting in a fiduciary capacity for any person, trust or estate;

42 (11)(10) "instrument" means any document creating a fidfin trust or  
43 alternative asset custody account;

1       ~~(12)~~(11) "out-of-state bank" means a national or state bank, savings  
2 and loan association or savings bank not incorporated under the laws of  
3 Kansas;

4       ~~(13)~~(12) "out-of-state financial institution" means an out-of-state  
5 bank or an out-of-state trust company;

6       ~~(14)~~(13) "out-of-state trust company" means a national or state trust  
7 company not incorporated under the laws of Kansas;

8       (14) "*qualified charities*" means the same as defined in K.S.A. 79-  
9 32,283, and amendments thereto;

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

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

21       (ii) shall be exempt from the provisions and limitations of K.S.A. 9-  
22 1102, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ***Sec. 2. K.S.A. 2022 Supp. 79-32,283 is hereby amended to read as***  
28 ***follows: 79-32,283. (a) For taxable years commencing after December***  
29 ***31, 2020, there shall be allowed as a credit against the tax liability of a***  
30 ***fiduciary financial institution imposed pursuant to the Kansas income***  
31 ***tax act or the privilege tax imposed upon a fiduciary financial institution***  
32 ***pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated,***  
33 ***and amendments thereto, in an amount equal to the qualified charitable***  
34 ***distributions made in connection with the fiduciary financial***  
35 ***institution's fidfin activities during such taxable year if the fiduciary***  
36 ***financial institution maintained such fiduciary financial institution's***  
37 ***principal office in an economic growth zone during such taxable year in***  
38 ***accordance with the provisions of K.S.A.—2022—Supp. 9-2309, and***  
39 ***amendments thereto.***

40 (b) *For purposes of this section:*

41 (1) *"Economic growth zone" and "fidfin" means the same as*  
42 ***defined in K.S.A.—2022—Supp. 9-2301, and amendments thereto;***

43 (2) *"qualified charitable distributions" means distributions of cash,*

1 *beneficial interests or other assets to one or more qualified charities*  
 2 *having an aggregate value equal to at least 2.5% of the fiduciary*  
 3 *financial institution's transactions originated during the taxable year.*  
 4 *Such transactions shall exclude any renewals, extensions of credit or*  
 5 *accruals associated with transactions made in a prior taxable year;*

6 (3) (A) *"qualified charities" means:*

7 (i) *One or more charities, in to which contributions are allowable as*  
 8 *a deduction pursuant to section 170 of the federal internal revenue code*  
 9 *§; or*

10 (ii) *one or more Kansas nonprofit corporations, regardless of their*  
 11 *federal income tax treatment.*

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

13 ~~(A)~~(i) *Been organized pursuant to a charter promulgated by the*  
 14 *department of commerce for the purposes of making distributions for the*  
 15 *benefit of economic growth zones;*

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

21 ~~(C)~~(iii) *agreed to provide an annual report to the department of*  
 22 *commerce detailing qualified distributions received during such year,*  
 23 *distributions made pursuant to subparagraph (B) clause (ii) and the*  
 24 *remaining balance of qualified distributions as of the end of the*  
 25 *reporting year.*

26 *The requirements of subparagraph (A) clause (i) shall not apply to a*  
 27 *"qualified charity", contributions to which are allowable as a deduction*  
 28 *pursuant to section 170 of the federal internal revenue code, that has*  
 29 *committed in writing to utilize the entire amount of the qualified*  
 30 *charitable distributions, excluding reasonable administrative expenses,*  
 31 *exclusively for the benefit of the economic growth zone identified in*  
 32 *K.S.A. 2022 Supp. 9-2325(a)(2), and amendments thereto.*

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

36 (d) *A distribution or remittance to the department of commerce*  
 37 *pursuant to K.S.A. 2022 Supp. 9-2311, and amendments thereto, shall be*  
 38 *deemed a qualified charitable distribution for purposes of this section.*

39 (e) *A fiduciary financial institution shall not be required to ensure*  
 40 *that qualified charitable distributions are made solely for the benefit of*  
 41 *the economic growth zones where such fiduciary financial institution*  
 42 *has:*

43 (1) *Established such fiduciary financial institution's principal*

1 *office pursuant to K.S.A. ~~2022 Supp.~~ 9-2309, and amendments thereto;*  
2 *or*

3 *(2) made qualified investments as defined in K.S.A. ~~2022 Supp.~~ 9-*  
4 *2301, and amendments thereto. Qualified charitable distributions may*  
5 *be made for the benefit of any one or more economic growth zones.*

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

20 *(g) If the amount of a tax credit allowed a member or other party*  
21 *under this section exceeds the taxpayer's income tax liability for the*  
22 *taxable year in which the tax credit is allowed, the amount thereof that*  
23 *exceeds such tax liability may be carried over for deduction from the*  
24 *taxpayer's income or privilege tax liability in the next succeeding taxable*  
25 *year or years until the total amount of the tax credit has been deducted*  
26 *from tax liability, except that no such tax credit shall be carried over for*  
27 *deduction after the 5<sup>th</sup> taxable year succeeding the taxable year in which*  
28 *the tax credit is first allowed.*

29 *(h) In any taxable year, a fiduciary financial institution shall pay*  
30 *the greater of the qualified charitable distributions made during such*  
31 *taxable year or the tax liability of a fiduciary financial institution*  
32 *imposed pursuant to the Kansas income tax act or the privilege tax*  
33 *imposed upon a fiduciary financial institution pursuant to article 11 of*  
34 *chapter 79 of the Kansas Statutes Annotated, and amendments thereto.*

35 *(i) This section shall be a part of and supplemental to the Kansas*  
36 *income tax act.*

37 ~~Sec. 2.~~ 3. *K.S.A. 9-2301 is and K.S.A. 2022 Supp. 79-32,283 are*  
38 *hereby repealed.*

39 ~~Sec. 3.~~ 4. *This act shall take effect and be in force from and after its*  
40 *publication in the statute book.*