

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; *out-of-state financial institutions;*~~  
4 *imposing certain fiduciary duties and charitable distribution*  
5 *requirements on financial institutions engaging in fiduciary financial*  
6 *institution business; requiring banks to conduct fidfin transactions*  
7 *through a separate department; exempting financial institutions from*  
8 *certain provisions of the technology-enabled fiduciary financial*  
9 *institutions act; establishing* fees and assessments; ~~grounds for denial~~  
10 ~~of application; examinations; insurance and capital requirements;~~  
11 disclosures to consumers; mandatory reporting of elder abuse;  
12 amending K.S.A. 39-1401 and K.S.A. 2021 Supp. 9-2301, 9-2302, 9-  
13 2303, ~~9-2304, 9-2305;~~ **9-2304**, 9-2306, 9-2307, 9-2310, 9-2311, 9-  
14 2312, 9-2317; **and** 9-2318 ~~and 9-2325~~ and repealing the existing  
15 sections.

16

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

18 New Section 1. ~~(a) If it appears upon the examination of any~~  
19 ~~fiduciary financial institution or from any report made to the commissioner~~  
20 ~~that any fiduciary financial institution is critically undercapitalized, the~~  
21 ~~commissioner may:~~

22 ~~(1) Enter an informal memorandum pursuant to K.S.A. 2021 Supp. 9-~~  
23 ~~1810, and amendments thereto, to notify the fiduciary financial institution~~  
24 ~~of the unsatisfactory condition and require the fiduciary financial~~  
25 ~~institution to correct such condition within the period of time prescribed by~~  
26 ~~the commissioner; or~~

27 ~~(2) take charge of such fiduciary financial institution and all of its~~  
28 ~~property and assets. In taking charge of a critically undercapitalized~~  
29 ~~fiduciary financial institution, the commissioner shall appoint a special~~  
30 ~~deputy commissioner to take charge of the affairs of the fiduciary financial~~  
31 ~~institution temporarily.~~

32 ~~(b) If it appears upon the examination of any fiduciary financial~~  
33 ~~institution or from any report made to the commissioner that any fiduciary~~  
34 ~~financial institution is insolvent, the commissioner may:~~

1       ~~(1) Take charge of the fiduciary financial institution and all property~~  
2 ~~and assets of such fiduciary financial institution. In taking charge of an~~  
3 ~~insolvent fiduciary financial institution, the commissioner shall appoint a~~  
4 ~~special deputy commissioner to take charge of the affairs of the fiduciary~~  
5 ~~financial institution temporarily; or~~

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

9       ~~(e) Under either of the circumstances provided under subsection (a)~~  
10 ~~or (b), the commissioner shall not appoint a receiver for a fiduciary~~  
11 ~~financial institution nor be required to appoint a special deputy~~  
12 ~~commissioner.~~

13       ~~(d) (1) The commissioner, or any special deputy commissioner that~~  
14 ~~has been appointed under subsection (a) or (b) for the fiduciary financial~~  
15 ~~institution, may designate or require such fiduciary financial institution to~~  
16 ~~designate successor trustees. Designation of successor trustees may be~~  
17 ~~required when such fiduciary financial institution:~~

18       ~~(A) Appears critically undercapitalized under subsection (a);~~

19       ~~(B) appears insolvent under subsection (b); or~~

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

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

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

25       ~~(B) at the commissioner's direction when such fiduciary financial~~  
26 ~~institution appears to have ceased engaging in business as a fiduciary~~  
27 ~~financial institution.~~

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

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

32       ~~See. 2.~~**Section 1.** K.S.A. 2021 Supp. 9-2301 is hereby amended to  
33 read as follows: 9-2301. (a) The provisions of K.S.A. 2021 Supp. 9-2301  
34 through 9-2327 ~~and section 1~~, and amendments thereto, shall be known  
35 and may be cited as the technology-enabled fiduciary financial institutions  
36 act. The technology-enabled fiduciary financial institutions act shall be a  
37 part of and supplemental to chapter 9 of the Kansas Statutes Annotated,  
38 and amendments thereto.

39       (b) For purposes of *the* technology-enabled fiduciary financial  
40 institutions act:

41       (1) "Act" means the technology-enabled fiduciary financial  
42 institutions act;

43       (2) "alternative asset" means professionally managed investment

1 assets that are not publicly traded, including, but not limited to, private  
2 equity, venture capital, leveraged buyouts, special situations, structured  
3 credit, private debt, private real estate funds and natural resources,  
4 including any economic or beneficial interest therein;

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

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

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

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

42 (7) "excluded fiduciary" means a fiduciary financial institution in its  
43 capacity as trustee of a fidfin trust, provided that a fiduciary financial

1 institution shall only be deemed an "excluded fiduciary" to the extent the  
2 fiduciary financial institution is excluded from exercising certain powers  
3 under the instrument that may be exercised by the trust advisor or other  
4 persons designated in the instrument;

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

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

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

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

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

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

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

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

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

36 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-  
37 1102, and amendments thereto;

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

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

1 amendments thereto;

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

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

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

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

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

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

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

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

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

30 ~~(14)~~(17) "trust" means a trust created pursuant to the Kansas uniform  
31 trust code, K.S.A. 58a-101 et seq., and amendments thereto, or created  
32 pursuant to the Kansas business trust act of 1961, K.S.A. 17-2707 et seq.,  
33 and amendments thereto;

34 ~~(15)~~(18) "trust advisor" means a fiduciary granted authority by an  
35 instrument to exercise, consent, direct, including the power to direct as  
36 provided in K.S.A. 58a-808, and amendments thereto, or approve all or  
37 any portion of the powers and discretion conferred upon the trustee of a  
38 fidfin trust, including the power to invest the assets of a fidfin trust or  
39 make or cause distributions to be made from such fidfin trust; and

40 ~~(16)~~(19) the definitions of K.S.A. 9-701, and amendments thereto,  
41 apply to fiduciary financial institutions except as otherwise provided in  
42 this act.

43 Sec. ~~3~~ 2. K.S.A. 2021 Supp. 9-2302 is hereby amended to read as

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

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

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

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

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

42 (A) *A bank or trust company whose application has been approved*  
43 *in accordance with this section or an out-of-state financial institution*

1 *that engages in fidfin transactions in this state shall not be subject to the*  
 2 *provisions of K.S.A. 2021 Supp. 9-2305, 9-2306 or 9-2308, and*  
 3 *amendments thereto; and*

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

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

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

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

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

21 (4) fiduciary financial institution has made, committed to make or  
 22 caused to be made a qualified investment as defined in K.S.A. 2021 Supp.  
 23 9-2301, and amendments thereto;

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

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

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

34 (1) ~~The~~ Financial standing, general business experience and character  
 35 of the organizers; ~~or~~ **or**

36 (2) ~~the~~ character, qualifications and experience of the officers of the  
 37 proposed fiduciary financial institution;

38 ~~(3) the public need for the proposed fiduciary financial institution~~  
 39 ~~and whether existing fiduciary financial institutions are meeting such~~  
 40 ~~need;~~

41 ~~(4) the prospects for success of the proposed fiduciary financial~~  
 42 ~~institution; or~~

43 ~~(5) any other criteria the state banking board may require.~~

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

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

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

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

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

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

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

43 (i) The applicable distribution required under subsection (h) shall be



1 distributed as follows:

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

3 Applicable distribution amount	Percentage to department of commerce
4 \$0 to \$500,000	90%
5 \$500,001 to \$1,000,000	50%
6 Above \$1,000,000	10%

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

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

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

37 **Sec. 4. 3.** K.S.A. 2021 Supp. 9-2303 is hereby amended to read as  
 38 follows: 9-2303. (a) ~~Every fiduciary financial institution shall be assessed~~  
 39 ~~an initial fee of \$500,000 to be remitted concurrently with the issuance of~~  
 40 ~~such fiduciary financial institution's charter. An application for a fiduciary~~  
 41 ~~financial institution charter shall include a nonrefundable fee of \$500,000~~  
 42 ~~to be remitted in a manner prescribed by the commissioner. **Until July 1,**~~  
 43 ~~**2025, the application fee shall be \$250,000. On and after July 1, 2025,**~~

1 **the application fee shall be \$100,000.** The expense of every annual  
2 regular fiduciary financial institution examination, together with the  
3 expense of administering fiduciary financial institution laws, including  
4 salaries, travel expenses, third-party fees for consultants or other entities  
5 necessary to assist the commissioner, supplies and equipment, shall be  
6 paid by the fiduciary financial institutions of this state. Prior to the  
7 beginning of each fiscal year, the commissioner shall make an estimate of  
8 the ~~trust~~ *fiduciary financial institution* expenses to be incurred by the  
9 office of the state bank commissioner during such fiscal year in an amount  
10 not less than \$1,000,000. The commissioner shall allocate and assess each  
11 fiduciary financial institution in this state on the basis of such fiduciary  
12 financial institution's total fidfin transaction balances, consisting of the  
13 aggregate fidfin financing balances of the fiduciary financial institution  
14 reflected in the last December 31 report filed with the commissioner  
15 pursuant to K.S.A. 9-1704, and amendments thereto. If a fiduciary  
16 financial institution has no fidfin transaction balances, but such fiduciary  
17 financial institution *is* otherwise providing custodial services or trust  
18 services, the commissioner shall allocate and assess such fiduciary  
19 financial institution in a manner the commissioner deems reasonable and  
20 appropriate. A fiduciary financial institution that has no fidfin transaction  
21 balances and no alternative asset custody accounts reflected in the last  
22 December 31 report filed with the commissioner may be granted inactive  
23 status by the commissioner. The annual assessment shall not exceed  
24 \$10,000 for such an inactive fiduciary financial institution. The annual fee  
25 shall be first assessed for the year immediately following the year the  
26 fiduciary financial institution received a ~~certificate~~ of authority to engage  
27 in fidfin transactions, custodial services and trust business and for each  
28 year thereafter.

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

1 *than monthly.*

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

10 ~~Sec. 5. K.S.A. 2021 Supp. 9-2304 is hereby amended to read as~~  
11 ~~follows: 9-2304. (a) To the extent a conflict does not exist between this act~~  
12 ~~and chapter 9 of the Kansas Statutes Annotated, and amendments thereto,~~  
13 ~~the provisions of chapter 9 of the Kansas Statutes Annotated, and~~  
14 ~~amendments thereto, shall apply to a fiduciary financial institution in the~~  
15 ~~same manner as it applies to a trust company except that referenes in~~  
16 ~~chapter 9 to:~~

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

33 (b) ~~If any conflict exists between any provisions of chapter 9 of the~~  
34 ~~Kansas Statutes Annotated, and amendments thereto, and this act, the~~  
35 ~~provisions of this act shall control.~~

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

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

42 (A) ~~The fiduciary financial institution does not accept deposits, other~~  
43 ~~than alternative asset custody accounts;~~

1       (B) ~~the fiduciary financial institution maintains no third-party debt~~  
2 ~~except debts owed to the members of the fiduciary financial institution or~~  
3 ~~affiliates of the fiduciary financial institution; and~~

4       (C) ~~the fiduciary financial institution has secured an agreement from~~  
5 ~~its members whereby such members agree to contribute additional capital~~  
6 ~~to the fiduciary financial institution if needed to ensure the safety and~~  
7 ~~soundness of the fiduciary financial institution. A fiduciary financial~~  
8 ~~institution that fails to satisfy the foregoing requirements shall be subject~~  
9 ~~to the capitalization requirements of K.S.A. 9-901a, and amendments~~  
10 ~~thereto, applicable to trust companies.~~

11       (2) ~~The capital of a fiduciary financial institution shall be divided,~~  
12 ~~with 60% of the amount as the aggregate par value of outstanding~~  
13 ~~membership units, 30% as surplus and 10% as undivided profits.~~

14       ~~(c) The commissioner may require a fiduciary financial institution to~~  
15 ~~maintain financial institution bonds and insurance policies regarding such~~  
16 ~~fiduciary financial institution's operations in amounts the commissioner~~  
17 ~~may deem appropriate for the fiduciary financial institution's size or the~~  
18 ~~nature of the business of the fiduciary financial institution.~~

19       ~~(d) The state banking board may require that a fiduciary financial~~  
20 ~~institution have capital in excess of the amount specified in this section if~~  
21 ~~the commissioner determines that excess capital is necessary based on the~~  
22 ~~character and qualifications of the proposed board of directors and the~~  
23 ~~nature of the business of the fiduciary financial institution.~~

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

32       **(1) "Capital stock" includes membership capital and partner**  
33 **capital;**

34       **(2) "stock" includes membership units and partnership interests;**

35       **(3) "common stock" includes common units and common interests;**

36       **(4) "preferred stock" includes preferred units and preferred**  
37 **interests;**

38       **(5) "stockholders" includes members and partners;**

39       **(6) "articles of incorporation" includes articles of organization and**  
40 **articles of limited partnership;**

41       **(7) "incorporation" includes organization;**

42       **(8) "corporation" includes company and partnership;**

43       **(9) "corporate" includes company and partnership;**

1       ***(10) "trust business" and "business of a trust company" includes***  
2 ***fidfin and fiduciary financial institution business; and***

3       ***(11) K.S.A. 9-901a(a), and amendments thereto, means K.S.A. 2021***  
4 ***Supp. 9-2305, and amendments thereto.***

5       ***(b) For a Kansas-chartered state trust company that receives***  
6 ***authority to engage in fidfin transactions under K.S.A. 2021 Supp. 9-***  
7 ***2302(b), and amendments thereto, the provisions of subsection (a) shall***  
8 ***not apply, however, references in chapter 9 of the Kansas Statutes***  
9 ***Annotated, and amendments thereto, to "trust business" and "business of a***  
10 ***trust company" include fidfin and fiduciary financial institution business.***

11       ***(c) For a Kansas-chartered state bank that receives authority to***  
12 ***engage in fidfin transactions under K.S.A. 2021 Supp. 9-2302(b), and***  
13 ***amendments thereto, the provisions of subsection (a) shall not apply,***  
14 ***however, the provisions of chapter 9 of the Kansas Statutes Annotated, and***  
15 ***amendments thereto, shall apply in the same manner as they would apply***  
16 ***to a trust department of such bank, except that references in chapter 9 of***  
17 ***the Kansas Statutes Annotated, and amendments thereto, to "trust***  
18 ***business" and "business of a trust company" include fidfin and fiduciary***  
19 ***financial institution business.***

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

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

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

31       ***Sec. 7-4.5. K.S.A. 2021 Supp. 9-2306 is hereby amended to read as***  
32 ***follows: 9-2306. (a) The business of any fiduciary financial institution***  
33 ***shall be managed and controlled by such fiduciary financial institution's***  
34 ***board of directors.***

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

40       ***(c) If, for any reason, the meeting cannot be held on the date specified***  
41 ***in the ~~operating agreement or bylaws~~ governing documents, the meeting***  
42 ***shall be held on a subsequent day within 60 days of the day fixed, to be***  
43 ***designated by the board of directors or, if the directors fail to fix the day,***

1 by the members representing  $\frac{2}{3}$  of the membership units.

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

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

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

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

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

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

37 (j) Every fiduciary financial institution shall notify the commissioner  
38 of any change in the chief executive officer, president or directors,  
39 including in such fiduciary financial institution's report a statement of the  
40 past and current business and professional affiliations of the new chief  
41 executive officer, president or directors.

42 ~~Sec. 8-5. 6.~~ K.S.A. 2021 Supp. 9-2307 is hereby amended to read as  
43 follows: 9-2307. (a) A fiduciary financial institution shall make a report to

1 the commissioner pursuant to the provisions of K.S.A. 9-1704, and  
2 amendments thereto. In making such a report, a fiduciary financial  
3 institution shall:

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

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

9 ~~(b) In evaluating the safety and soundness of~~ *examining* a fiduciary  
10 financial institution, the state banking board and the commissioner shall  
11 ~~not evaluate safety and soundness but shall.~~

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

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

20 ~~(3) evaluate the soundness of a fiduciary financial institution based on~~  
21 whether available capital, including the agreement of ~~the~~ *a* fiduciary  
22 financial institution's members to contribute capital pursuant to K.S.A.  
23 2021 Supp. 9-2305, and amendments thereto, exceeds the fiduciary  
24 financial institution's obligations, determined in accordance with generally  
25 accepted accounting principles; ~~and~~

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

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

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

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

37 ~~(c) Profitability shall not be a consideration in evaluating the safety~~  
38 ~~and soundness of~~ ~~be reviewed to determine if~~ **not be a consideration in**  
39 **evaluating** a fiduciary financial institution ~~if has~~ **if** sufficient capital and  
40 equity ~~exist in the business~~ **exist in the business**, including, without  
41 limitation, membership capital, surplus, undivided profits and  
42 commitments by members to contribute additional capital to the fiduciary  
43 financial institution pursuant to K.S.A. 2021 Supp. 9-2305, and

1 amendments thereto, to satisfy the fiduciary financial institution's  
2 obligations.

3 ~~(d) The state banking board and the commissioner may examine any~~  
4 ~~aspect of a fiduciary financial institution, regardless of whether such~~  
5 ~~aspect is enumerated in this section, to aid in understanding the fiduciary~~  
6 ~~financial institution's business operations, financial status and effects on~~  
7 ~~the state of Kansas or to help guide rules and regulations and proposals~~  
8 ~~for legislative changes.~~

9 Sec. ~~9-6~~, 7. K.S.A. 2021 Supp. 9-2310 is hereby amended to read as  
10 follows: 9-2310. (a) Any fiduciary financial institution is hereby  
11 authorized to exercise by its board of directors or duly authorized officers  
12 or agents, subject to law, the following powers:

13 (1)(a) To engage in fidfin transactions in accordance with K.S.A.  
14 2021 Supp. 9-2311, and amendments thereto;

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

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

21 Sec. ~~10-7~~, 8. K.S.A. 2021 Supp. 9-2311 is hereby amended to read as  
22 follows: 9-2311. (a) If authorized by the terms of an instrument as such  
23 term is defined in K.S.A. 2021 Supp. 9-2301, and amendments thereto, a  
24 fiduciary financial institution may:

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

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

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

31 (C) the financing is nonrecourse as to the fiduciary financial  
32 institution's customer and is not otherwise guaranteed by such customer;  
33 ~~who shall not be a party to the financing but shall only be involved in~~  
34 ~~fidfin transactions through a sale of one or more of such customer's~~  
35 ~~alternative assets to a fidfin trust under paragraph (2);~~

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

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

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



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

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

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

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

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

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

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

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

32 Required distribution amount	Percentage to department of commerce
33 \$0 to \$500,000	90%
34 \$500,001 to \$1,000,000	50%
35 Above \$1,000,000	10%

36 (B) the amounts specified in subparagraph (A) shall apply to  
 37 fiduciary financial institutions chartered prior to January 1, 2023. For  
 38 fiduciary financial institutions chartered after such date, the department of  
 39 commerce may publish one or more schedules in the Kansas register as the  
 40 department of commerce deems reasonably necessary to facilitate  
 41 economic growth and development in one or more economic growth  
 42 zones. No such schedule shall be effective until after its publication in the  
 43 Kansas register. The department of commerce shall timely submit any

1 schedule published under this section to the commissioner. The  
2 commissioner shall provide a copy of such schedule to any applicant for a  
3 fiduciary financial institution charter prior to the issuance of such charter.  
4 A fiduciary financial institution shall be subject to the schedule in  
5 existence on the date such fiduciary financial institution's charter is issued  
6 and shall not be subject to any schedules published after such date;

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

14 (2) the balance of the required distribution amount shall be distributed  
15 to one or more qualified charities as defined in K.S.A. 2021 Supp. 79-  
16 32,274, and amendments thereto, as shall be selected by the fiduciary  
17 financial institution. An economic growth zone or qualified charity shall  
18 have no obligation to repay any distributions received under this act or to  
19 make any contributions to a fiduciary financial institution.

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

24 ~~(h) The commissioner shall adopt rules and regulations pursuant to~~  
25 ~~K.S.A. 2021 Supp. 9-2322, and amendments thereto, that enumerate~~  
26 ~~categories of fidfin transactions, which may include asset class categories,~~  
27 ~~geographic categories, industry sector categories and any other~~  
28 ~~categories the commissioner shall deem necessary to identify potential~~  
29 ~~concentrations of risk. Such rules and regulations shall specify a~~  
30 ~~concentration limit for each category commensurate with that category's~~  
31 ~~unique risk profile. A fiduciary financial institution shall not engage in any~~  
32 ~~fidfin transaction that would result in an asset concentration of greater~~  
33 ~~than the specified limit for any enumerated category.~~

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

40 ~~Sec. ~~11-8~~ 9.~~ K.S.A. 2021 Supp. 9-2312 is hereby amended to read as  
41 follows: 9-2312. (a) Subject to the requirements of K.S.A. 2021 Supp. 9-  
42 2309(d), and amendments thereto, a fiduciary financial institution may:

43 (1) Employ attorneys, accountants, investment advisors, agents or

1 other persons, even if they are affiliated or associated with the fiduciary  
2 financial institution, to advise or assist the fiduciary financial institution in  
3 the performance of such fiduciary financial institution's fidfin transactions,  
4 custodial services and trust business and act without independent  
5 investigation upon such recommendations;

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

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

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

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

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

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

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

33 (d) If a fiduciary financial institution offers its technology-enabled  
34 platform to provide fidfin services to residents of other states, neither the  
35 marketing, use and deployment of such platform by parties in other states  
36 nor the origination of fidfin services through such platform shall constitute  
37 an out-of-state trust facility under K.S.A. 9-2111, and amendments thereto,  
38 if the fiduciary financial institution complies with the provisions of K.S.A.  
39 2021 Supp. 9-2309, and amendments thereto.

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

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

7       Sec. ~~12-9~~, **10**. K.S.A. 2021 Supp. 9-2317 is hereby amended to read  
 8 as follows: 9-2317. (a) If an entity is appointed as a trust advisor, the  
 9 provisions of article 8 of chapter 9 of the Kansas Statutes Annotated, and  
 10 amendments thereto, shall not apply to such entity, if the entity:

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

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

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

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

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

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

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

34       (a) In bad faith;

35       (b) intentionally; or

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

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

39       ~~(1) Grant a conditional fiduciary financial institution charter to the~~  
 40 ~~Beneficient company upon the Beneficient company:~~

41       ~~(A) Filing an application with the commissioner;~~

42       ~~(B) satisfying the requirements of K.S.A. 2021 Supp. 9-2302(e)(1)~~  
 43 ~~through (5), and amendments thereto;~~

1       (C) ~~satisfying the requirements of K.S.A. 2021 Supp. 9-2302(f), and~~  
2 ~~amendments thereto; and~~

3       (D) ~~satisfying the capital requirements imposed under K.S.A. 2021~~  
4 ~~Supp. 9-2305, and amendments thereto; and~~

5       (2) ~~designate a community within Harvey county, as selected by~~  
6 ~~Beneficient fiduciary financial institution, as the first economic growth~~  
7 ~~zone.~~

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

10       (1) ~~Includes the Beneficient company as a participant in such pilot~~  
11 ~~program;~~

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

15       (3) ~~imposes a requirement for the Beneficient company to distribute,~~  
16 ~~cause to be distributed or otherwise facilitate a distribution of cash,~~  
17 ~~beneficial interests or other assets having an aggregate value of \$9,000,000~~  
18 ~~in accordance with the requirements of K.S.A. 2021 Supp. 9-2302(i), and~~  
19 ~~amendments thereto, and such amount shall be construed as the applicable~~  
20 ~~distribution amount for purposes of K.S.A. 2021 Supp. 9-2302, and~~  
21 ~~amendments thereto.~~

22       (e) ~~Except as provided by subsection (d), upon issuance of the~~  
23 ~~conditional fiduciary financial institution charter, the Beneficient company~~  
24 ~~shall be subject to all requirements imposed on fiduciary financial~~  
25 ~~institutions under this act but may not commence fidfin transactions,~~  
26 ~~custodial services or trust business in this state until the earlier of:~~

27       (1) ~~December 31, 2021; or~~

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

30       (d) ~~The commissioner may extend the period that the Beneficient~~  
31 ~~company may not commence fidfin transactions, custodial services or trust~~  
32 ~~business in this state for a period not to exceed six months from the date~~  
33 ~~specified in subsection (e) if the commissioner submits a report to the~~  
34 ~~senate financial institutions and insurance committee and to the house of~~  
35 ~~representatives financial institutions and rural development committee~~  
36 ~~identifying the specific reasons for which such extension is necessary.~~  
37 ~~Such report shall be submitted on or before January 10, 2022.~~  
38 ~~Notwithstanding the provisions of this subsection, the Beneficient~~  
39 ~~company may satisfy the applicable distribution requirement of K.S.A.~~  
40 ~~2021 Supp. 9-2302(i), and amendments thereto, and the required~~  
41 ~~distribution amount in K.S.A. 2021 Supp. 9-2311(f), and amendments~~  
42 ~~thereto, by placing assets in escrow with one or more qualified charities,~~  
43 ~~except that such funds shall be released when the Beneficient company is~~

1 permitted to commence fidfin transactions, custodial services or trust  
2 business.

3 (e) ~~On or before January 10, 2022, the office of the state bank~~  
4 ~~commissioner shall provide a report to the house of representatives~~  
5 ~~financial institutions and rural development committee and the senate~~  
6 ~~financial institutions and insurance committee updating such committees~~  
7 ~~on the progress of such pilot program. Such report shall include~~  
8 ~~recommendations from the office of the state bank commissioner for any~~  
9 ~~legislation necessary to implement the provisions of this act.~~

10 (f) ~~After the commissioner has completed a regulatory examination of~~  
11 ~~the Beneficient fiduciary financial institution, the Beneficient fiduciary~~  
12 ~~financial institution may submit an application under K.S.A. 2021 Supp. 9-~~  
13 ~~2302, and amendments thereto, which shall be considered an application~~  
14 ~~to convert Beneficient's conditional charter to a full charter. If such~~  
15 ~~application is granted, the Beneficient conditional charter shall be~~  
16 ~~converted to a full charter, the pilot program shall immediately end and~~  
17 ~~the state banking board may begin to approve charters for new fiduciary~~  
18 ~~financial institutions under K.S.A. 2021 Supp. 9-2302, and amendments~~  
19 ~~thereto. If the application is not granted, the Beneficient fiduciary~~  
20 ~~financial institution may resubmit its application after addressing any~~  
21 ~~deficiencies and shall not be charged any additional application fees. If~~  
22 ~~the Beneficient conditional charter is not converted to a full charter before~~  
23 ~~six months have passed after a second regulatory examination and no~~  
24 ~~conversion application remains pending, the commissioner shall revoke~~  
25 ~~the Beneficient conditional charter, the pilot program shall immediately~~  
26 ~~end and the state banking board shall not approve any charters for new~~  
27 ~~fiduciary financial institutions under K.S.A. 2021 Supp. 9-2302, and~~  
28 ~~amendments thereto.~~

29 Sec. ~~15-11~~. 12. K.S.A. 39-1401 is hereby amended to read as  
30 follows: 39-1401. As used in this act:

31 (a) "Resident" means:

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

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

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

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

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

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

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

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

19 (1) Infliction of physical or mental injury;

20 (2) any sexual act with a resident when the resident does not consent  
21 or when the other person knows or should know that the resident is  
22 incapable of resisting or declining consent to the sexual act due to mental  
23 deficiency or disease or due to fear of retribution or hardship;

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

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

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

34 (6) fiduciary abuse; or

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

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

42 (h) "Caretaker" means a person or institution who has assumed the  
43 responsibility, whether legally or not, for the care of the resident

1 voluntarily, by contract or by order of a court of competent jurisdiction.

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

7 (j) "Medical care facility" means a facility licensed under K.S.A. 65-  
8 425 et seq., and amendments thereto, but shall not include, for purposes of  
9 this act, a state psychiatric hospital or state institution for people with  
10 intellectual disability, including Larned state hospital, Osawatomie state  
11 hospital and Rainbow mental health facility, Kansas neurological institute  
12 and Parsons state hospital and training center.

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

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

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

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

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

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

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

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

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



1       Sec. ~~16.~~**12.** **13.** K.S.A. 39-1401 and K.S.A. 2021 Supp. 9-2301, 9-  
2 2302, 9-2303, ~~9-2304~~, ~~9-2305~~, **9-2304**, 9-2306, 9-2307, 9-2310, 9-2311, 9-  
3 2312, 9-2317; **and** 9-2318 ~~and 9-2325~~ are hereby repealed.

4       Sec. ~~17.~~**13.** **14.** This act shall take effect and be in force from and  
5 after its publication in the statute book.