

Senate Substitute for HOUSE BILL No. 2074

By Committee on Financial Institutions and Insurance

3-30

1 AN ACT concerning financial institutions; enacting the technology-
2 enabled fiduciary financial institutions act; relating to requirements,
3 fiduciary powers, duties, functions and limitations for such fiduciary
4 financial institutions; pilot program; prescribing administrative powers
5 and duties for the state banking board and the state bank commissioner;
6 establishing the technology-enabled fiduciary financial institutions
7 development and expansion fund; providing an income and privilege
8 tax credit for technology-enabled fiduciary financial institutions
9 making certain qualified charitable distributions.

10

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

12 Section 1. (a) The provisions of sections 1 through 27, and
13 amendments thereto, shall be known and may be cited as the technology-
14 enabled fiduciary financial institutions act. The technology-enabled
15 fiduciary financial institutions act shall be a part of and supplemental to
16 chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

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

1 amendments thereto, and any digital asset as defined in K.S.A. 58-4802,
2 and amendments thereto, whether such information is in hard copy form or
3 a representation of such information that is stored in a computer readable
4 format;

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

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

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

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

33 (8) "fidfin," "fidfin services" or "fidfin transactions" means the
34 financing of a fidfin trust as provided in section 11, and amendments
35 thereto, including loans, extensions of credit and direct investments;

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

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

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

43 (12) (A) "qualified investment" means the purchase or development,

1 in the aggregate, of at least 10,000 square feet of commercial, industrial,
2 multiuse or multifamily real estate in the economic growth zone where the
3 fiduciary financial institution maintains its principal office pursuant to
4 section 9, and amendments thereto, provided that such community has
5 committed to develop the necessary infrastructure to support a "qualified
6 investment." A "qualified investment":

7 (i) May include, as part of satisfying the square footage requirements,
8 the suitable office space of such fiduciary financial institution, as provided
9 in section 9, and amendments thereto, if owned by the fiduciary financial
10 institution;

11 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-
12 1102, and amendments thereto;

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

15 (iv) may be sold, transferred or otherwise disposed of, including a
16 sale or transfer to an affiliate of the fiduciary financial institution, if the
17 fiduciary financial institution continues to maintain its principal office in
18 an economic growth zone pursuant to section 9, and amendments thereto;

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

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

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

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

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

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

38 (B) has been authorized to conduct business as a fiduciary financial
39 institution under this chapter pursuant to the provisions of section 2, and
40 amendments thereto;

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

43 (D) has committed, in or as a part of the application provided in

1 section 2, and amendments thereto, to conduct any fidfin transactions in
2 accordance with section 11, and amendments thereto, including the
3 distributions required therein;

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

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

12 Sec. 2. (a) No fiduciary financial institution shall be organized under
13 the laws of this state nor engage in fidfin transactions, custodial services or
14 trust business in this state until the application for such fiduciary financial
15 institution's organization and the application for certificate of authority
16 have been submitted to and approved by the state banking board. The form
17 for making any such application shall be prescribed by the state banking
18 board and any application made to the state banking board shall contain
19 such information as the state banking board shall require.

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

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

25 (1) fiduciary financial institution is organized by at least one person;

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

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

35 (4) fiduciary financial institution has made, committed to make or
36 caused to be made a qualified investment as defined in section 1, and
37 amendments thereto;

38 (5) fiduciary financial institution has committed to structure any
39 fidfin transactions to ensure that qualified charitable distributions, as
40 defined in section 28, and amendments thereto, are made each calendar
41 year that the fiduciary financial institution conducts fidfin transactions;
42 and

43 (6) fiduciary financial institution has consulted or agrees to consult

1 with the department of commerce regarding the economic growth zones to
2 be selected for purposes of paragraphs (4) and (5).

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

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

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

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

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

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

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

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

43 (B) \$5,000,000 in accordance with subsection (i), except that if a

1 fiduciary financial institution is chartered to provide only custodial
2 services, the applicable distribution amount shall be \$500,000.

3 (2) If the amount provided in paragraph (1)(B) exceeds the amount
4 provided in paragraph (1)(A), the fiduciary financial institution shall be
5 entitled to a credit against the amount distributable under section 11(e),
6 and amendments thereto, in an amount equal to such excess.

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

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

10 Applicable distribution amount	Percentage to department of commerce
11 \$0 to \$500,000	90%
12 \$500,001 to \$1,000,000	50%
13 Above \$1,000,000	10%

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

28 (C) the department of commerce shall remit all distributions under
29 this subsection to the state treasurer in accordance with the provisions of
30 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
31 remittance, the state treasurer shall deposit the entire amount in the state
32 treasury to the credit of the technology-enabled fiduciary financial
33 institutions development and expansion fund established in section 24, and
34 amendments thereto; and

35 (2) the balance of the applicable distribution required under
36 subsection (h) shall be distributed to one or more qualified charities as
37 defined in section 28, and amendments thereto, as shall be selected by the
38 fiduciary financial institution. Nothing in this section shall preclude a
39 distribution to one or more qualified charities in excess of the amounts
40 provided in this section. An economic growth zone or qualified charity
41 shall have no obligation to repay any distributions received under this act
42 or to make any contributions to a fiduciary financial institution.

43 Sec. 3. (a) Every fiduciary financial institution shall be assessed an

1 initial fee of \$500,000 to be remitted concurrently with the issuance of
2 such fiduciary financial institution's charter. The expense of every annual
3 regular fiduciary financial institution examination, together with the
4 expense of administering fiduciary financial institution laws, including
5 salaries, travel expenses, supplies and equipment, shall be paid by the
6 fiduciary financial institutions of this state. Prior to the beginning of each
7 fiscal year, the commissioner shall make an estimate of the trust expenses
8 to be incurred by the office of the state bank commissioner during such
9 fiscal year in an amount not less than \$1,000,000. The commissioner shall
10 allocate and assess each fiduciary financial institution in this state on the
11 basis of such fiduciary financial institution's total fidfin transaction
12 balances, consisting of the aggregate fidfin financing balances of the
13 fiduciary financial institution reflected in the last December 31 report filed
14 with the commissioner pursuant to K.S.A. 9-1704, and amendments
15 thereto. If a fiduciary financial institution has no fidfin transaction
16 balances, but such fiduciary financial institution otherwise providing
17 custodial services or trust services, the commissioner shall allocate and
18 assess such fiduciary financial institution in a manner the commissioner
19 deems reasonable and appropriate. A fiduciary financial institution that has
20 no fidfin transaction balances and no alternative asset custody accounts
21 reflected in the last December 31 report filed with the commissioner may
22 be granted inactive status by the commissioner. The annual assessment
23 shall not exceed \$10,000 for such an inactive fiduciary financial
24 institution. The annual fee shall be first assessed for the year immediately
25 following the year the fiduciary financial institution received a certificate
26 of authority to engage in fidfin transactions, custodial services and trust
27 business and for each year thereafter.

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

39 (2) The commissioner shall remit all moneys received from such fees
40 and assessments to the state treasurer in accordance with the provisions of
41 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
42 remittance, the state treasurer shall deposit the entire amount in the state
43 treasury and credit 75% of each remittance to the bank commissioner fee

1 fund and 25% to the technology-enabled fiduciary financial institutions
2 development and expansion fund established in section 24, and
3 amendments thereto.

4 Sec. 4. (a) To the extent a conflict does not exist between this act and
5 chapter 9 of the Kansas Statutes Annotated, and amendments thereto, the
6 provisions of chapter 9 of the Kansas Statutes Annotated, and amendments
7 thereto, shall apply to a fiduciary financial institution in the same manner
8 as it applies to a trust company except that references in chapter 9 to:

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

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

26 Sec. 5. (a) For purposes of this section, "capital" means the total of
27 the aggregate par value of a fiduciary financial institution's outstanding
28 membership units, its surplus and its undivided profits.

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

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

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

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

43 (2) The capital of a fiduciary financial institution shall be divided,

1 with 60% of the amount as the aggregate par value of outstanding
2 membership units, 30% as surplus and 10% as undivided profits.

3 Sec. 6. (a) The business of any fiduciary financial institution shall be
4 managed and controlled by such fiduciary financial institution's board of
5 directors.

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

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

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

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

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

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

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

43 (i) Each director shall take and subscribe an oath to administer the

1 affairs of such fiduciary financial institution diligently and honestly and to
2 not knowingly or willfully permit any of the laws relating to fiduciary
3 financial institutions to be violated. A copy of each oath shall be retained
4 by the fiduciary financial institution, in the fiduciary financial institution's
5 records after the election of any officer or director, for review by the
6 commissioner's staff during the next examination. The commissioner may
7 require the oath to be filed by electronic means.

8 (j) Every fiduciary financial institution shall notify the commissioner
9 of any change in the chief executive officer, president or directors,
10 including in such fiduciary financial institution's report a statement of the
11 past and current business and professional affiliations of the new chief
12 executive officer, president or directors.

13 Sec. 7. (a) A fiduciary financial institution shall make a report to the
14 commissioner pursuant to the provisions of K.S.A. 9-1704, and
15 amendments thereto. In making such a report, a fiduciary financial
16 institution shall:

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

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

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

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

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

32 (3) evaluate the soundness of a fiduciary financial institution based on
33 whether available capital, including the agreement of the fiduciary
34 financial institution's members to contribute capital pursuant to section 5,
35 and amendments thereto, exceeds the fiduciary financial institution's
36 obligations, determined in accordance with generally accepted accounting
37 principles; and

38 (4) evaluate the safety of a fiduciary financial institution based on the
39 background and qualifications of such fiduciary financial institution's
40 executive officers and directors and the internal controls and audit
41 processes enacted by the fiduciary financial institution to ensure adherence
42 to its policies and procedures.

43 (c) Profitability shall not be a consideration in evaluating the safety

1 and soundness of a fiduciary financial institution if sufficient capital and
2 equity exist in the business, including, without limitation, membership
3 capital, surplus, undivided profits and commitments by members to
4 contribute additional capital to the fiduciary financial institution pursuant
5 to section 5, and amendments thereto, to satisfy the fiduciary financial
6 institution's obligations.

7 Sec. 8. A fiduciary financial institution may use in such fiduciary
8 financial institution's business name or advertising the words "fiduciary
9 financial institution" or any similar term or phrase, but may not use the
10 word "bank," "trust company" or any term that tends to imply that the
11 business is holding out to the public that such fiduciary financial
12 institution engages in the business of banking, or engages in the business
13 of a trust company, unless the commissioner has approved the use in
14 writing after finding that the use will not be misleading.

15 Sec. 9. (a) A fiduciary financial institution shall:

16 (1) Maintain suitable office space in an economic growth zone, as
17 defined in section 1, and amendments thereto, for fidfin transactions,
18 custodial services and trust business and for the storage of, and access to,
19 fiduciary financial institution records;

20 (2) employ, engage or contract with at least three employees to
21 provide services for the fiduciary financial institution in Kansas related to
22 the powers of the fiduciary financial institution and to facilitate the
23 examinations required by this act; and

24 (3) perform fidfin transactions, custodial services and trust business
25 in Kansas, and a fiduciary financial institution may also engage in fidfin
26 transactions, custodial services and trust business in other states to the
27 extent permitted by applicable law.

28 (b) As used in this section, the term "suitable office space" means at
29 least 2,000 square feet of class A office space located in an economic
30 growth zone selected by the fiduciary financial institution that the
31 fiduciary financial institution utilizes as such fiduciary financial
32 institution's principal office.

33 (c) The fiduciary financial institution's principal office shall:

34 (1) Be in premises distinct and divided from the office space of any
35 other entity;

36 (2) be located in an economic growth zone selected by the fiduciary
37 financial institution;

38 (3) have the name, charter and certificate of authority of the fiduciary
39 financial institution prominently displayed;

40 (4) have access to premises in or adjacent to the office space
41 sufficient to facilitate on-site examinations by the state banking board or
42 commissioner;

43 (5) to the extent the fiduciary financial institution maintains hard

1 copies of any documents required to be maintained under this chapter,
2 have a secure fireproof file cabinet that contains all such hard copies; and

3 (6) to the extent the fiduciary financial institution maintains any
4 record electronically, have a secure computer terminal or other secure
5 electronic device that provides access to such records, including account
6 information, as necessary to facilitate an efficient and effective
7 examination.

8 (d) Fidfin transactions, custodial services and trust business is
9 deemed to have been performed in Kansas for purposes of this section if
10 fidfin transaction or custodial service agreements are approved or signed
11 in this state on behalf of the fiduciary financial institution and at least three
12 of the following acts are performed by a technology platform wholly or
13 partly operated in this state:

- 14 (1) Annual account reviews;
- 15 (2) annual investment reviews;
- 16 (3) trust or custodial accounting;
- 17 (4) account correspondence;
- 18 (5) reviewing and signing trust account or custodial account tax
19 returns; or
- 20 (6) distributing account statements.

21 Sec. 10. (a) Any fiduciary financial institution is hereby authorized to
22 exercise by its board of directors or duly authorized officers or agents,
23 subject to law, the following powers:

- 24 (1) To engage in fidfin transactions in accordance with section 11,
25 and amendments thereto;
- 26 (2) to receive, retain and manage alternative asset custody accounts in
27 accordance with section 13, and amendments thereto; and
- 28 (3) to engage in trust business as defined in K.S.A. 9-701, and
29 amendments thereto.

30 Sec. 11. (a) If authorized by the terms of an instrument as such term
31 is defined in section 1, and amendments thereto, a fiduciary financial
32 institution may:

- 33 (1) Extend financing or extensions of credit to a fidfin trust when:
 - 34 (A) The fiduciary financial institution serves as trustee of the
35 borrowing fidfin trust;
 - 36 (B) the financing is collateralized or supported by the assets of such
37 fidfin trust;
 - 38 (C) the financing is nonrecourse as to the fiduciary financial
39 institution's customer and is not otherwise guaranteed by such customer;
 - 40 (D) the fiduciary financial institution agrees, in the applicable
41 financing agreement or other written document, that the fiduciary financial
42 institution is providing financing in a fiduciary capacity;
 - 43 (E) the fiduciary financial institution agrees that such fiduciary

1 financial institution will manage the collateral or assets underlying the
 2 financing in a fiduciary capacity; and

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

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

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

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

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

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

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

24 (f) A fiduciary financial institution that engages in fidfin transactions
 25 shall distribute, cause to be distributed or otherwise facilitate the
 26 distribution of the required distribution amount as provided by this section.
 27 For purposes of this section, "required distribution amount" means cash,
 28 beneficial interests or other assets with a value equal to 2.5% of such
 29 fiduciary financial institution's fidfin transactions originated during the
 30 calendar year. Such transactions shall exclude any renewals, extensions of
 31 credit or accruals associated with transactions made in a prior calendar
 32 year, less any credit available to such fiduciary financial institution
 33 pursuant to section 2, and amendments thereto. The required distribution
 34 amount shall be distributed as follows:

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

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

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

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

11 (C) the department of commerce shall remit all distributions under
12 this subsection to the state treasurer in accordance with the provisions of
13 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
14 remittance, the state treasurer shall deposit the entire amount in the state
15 treasury to the credit of the technology-enabled fiduciary financial
16 institutions development and expansion fund established in section 24, and
17 amendments thereto; and

18 (2) the balance of the required distribution amount shall be distributed
19 to one or more qualified charities as defined in section 28, and
20 amendments thereto, as shall be selected by the fiduciary financial
21 institution. An economic growth zone or qualified charity shall have no
22 obligation to repay any distributions received under this act or to make any
23 contributions to a fiduciary financial institution.

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

28 Sec. 12. (a) Subject to the requirements of section 9(d), and
29 amendments thereto, a fiduciary financial institution may:

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

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

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

42 (4) license fidfin products and forms, as defined in section 21, and
43 amendments thereto, to or from other fiduciary financial institutions and

1 their affiliates;

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

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

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

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

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

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

31 Sec. 13. (a) A fiduciary financial institution may serve as a custodian,
32 which may include serving as a qualified custodian, as defined by the
33 United States securities and exchange commission in 17 C.F.R. §
34 275.206(4)-2, of an asset custody account. In performing custodial
35 services under this section, a fiduciary financial institution shall:

36 (1) Implement all accounting, account statement, internal control,
37 notice and other standards specified by applicable state or federal law and
38 rules and regulations for custodial services;

39 (2) maintain information technology best practices relating to
40 alternative assets held in custody;

41 (3) fully comply with applicable federal anti-money laundering,
42 customer identification and beneficial ownership requirements; and

43 (4) take other actions necessary to comply with the requirements of

1 this section.

2 (b) Alternative asset custody accounts over which a fiduciary
3 financial institution serves as a custodian or qualified custodian are not
4 depository liabilities or assets of the fiduciary financial institution.

5 (c) In performing custodial services under this section:

6 (1) A fiduciary financial institution shall be a fiduciary and shall be
7 subject to the duties and standards of utmost care and loyalty that are
8 associated with serving as a fiduciary;

9 (2) a fiduciary financial institution shall be deemed to be exercising
10 fiduciary powers; and

11 (3) all income earned by a fiduciary financial institution and derived
12 from performing custodial services shall be deemed to be income derived
13 from the exercise of fiduciary powers.

14 Sec. 14. Any instrument providing for a trust advisor may also
15 provide such trust advisor with some, none or all of the rights, powers,
16 privileges, benefits, immunities or authorities available to a trustee under
17 Kansas law or under such instrument. Unless the instrument provides
18 otherwise, a trust advisor has no greater liability to any person than would
19 a trustee holding or benefiting from the rights, powers, privileges, benefits,
20 immunities or authority provided or allowed by the instrument to such
21 trust advisor.

22 Sec. 15. (a) An excluded fiduciary is not liable, either individually or
23 as a fiduciary, for any of the following:

24 (1) Any loss that results from compliance with a direction of the trust
25 advisor, including any loss from the trust advisor breaching fiduciary
26 responsibilities or acting beyond the trust advisor's scope of authority; or

27 (2) any loss that results from a failure to take any action proposed by
28 an excluded fiduciary that requires a prior authorization of the trust advisor
29 if such excluded fiduciary timely sought but failed to obtain such
30 authorization.

31 (b) Any excluded fiduciary is relieved from any obligation to review
32 or evaluate any direction from a trust advisor to make distributions or to
33 perform investment or suitability reviews, inquiries or investigations or to
34 make recommendations or evaluations with respect to any investments to
35 the extent the trust advisor had authority to direct the acquisition,
36 disposition or retention of the investment. If the excluded fiduciary offers
37 such recommendations or evaluations to the trust advisor or any
38 investment person selected by the trust advisor, such action shall not
39 constitute an undertaking by the excluded fiduciary to monitor or
40 otherwise participate in actions within the scope of the advisor's authority
41 or to constitute any duty to do so.

42 (c) Any excluded fiduciary is also relieved of any duty to
43 communicate with or warn or apprise any beneficiary or third party

1 concerning instances in which the excluded fiduciary would or might have
2 exercised the excluded fiduciary's own discretion in a manner different
3 from the manner directed by the trust advisor.

4 (d) Absent contrary provisions in the governing instrument, the
5 actions of the excluded fiduciary, such as any communications with the
6 trust advisor and others and carrying out, recording and reporting actions
7 taken at the trust advisor's direction, pertaining to matters within the scope
8 of authority of the trust advisor, shall be deemed to be administrative
9 actions taken by the excluded fiduciary solely to allow the excluded
10 fiduciary to perform those duties assigned to the excluded fiduciary under
11 the governing instrument. Such administrative actions shall not constitute
12 an undertaking by the excluded fiduciary to monitor, participate or
13 otherwise take any fiduciary responsibility for actions within the scope of
14 authority of the trust advisor.

15 (e) In any action against an excluded fiduciary pursuant to the
16 provisions of this section, the burden to prove the matter by clear and
17 convincing evidence is on the person seeking to hold the excluded
18 fiduciary liable.

19 Sec. 16. (a) A trust advisor shall be presumed to be a fiduciary when
20 exercising such trust advisor's authority under this act.

21 (b) By accepting an appointment to serve as a trust advisor of a fidfin
22 trust or an alternative asset custody account that is subject to the laws of
23 this state, the trust advisor submits to the jurisdiction of the courts of
24 Kansas even if investment advisory agreements or other related
25 agreements provide otherwise. The trust advisor may be made a party to
26 any action or proceeding relating to a decision or action of the trust
27 advisor.

28 (c) An instrument may appoint an individual, corporation or limited
29 liability company as the trust advisor of a fidfin trust or an alternative asset
30 custody account.

31 Sec. 17. (a) If an entity is appointed as a trust advisor, the provisions
32 of article 8 of chapter 9 of the Kansas Statutes Annotated, and amendments
33 thereto, shall not apply to such entity, if the entity:

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

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

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

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

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

1 (b) The governing documents of any such entity shall limit such
2 entity's authorized activities to those of a trust advisor and shall further
3 limit the performance of such functions to only fidfin trusts and alternative
4 asset custody accounts. An entity complying with this section shall notify
5 the director of its existence and capacity to act.

6 Sec. 18. An instrument may relieve and indemnify a trust advisor and
7 a fiduciary financial institution that serves as trustee of a fidfin trust or
8 alternative asset custody account from liability for a breach of fiduciary
9 duty if any such provision is unenforceable to the extent that it relieves the
10 trust advisor or fiduciary financial institution from liability for a breach of
11 fiduciary duty committed:

12 (a) In bad faith;

13 (b) intentionally; or

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

15 Sec. 19. (a) Notwithstanding the provisions of K.S.A. 58a-708, and
16 amendments thereto, if the terms of a fidfin trust specify the trustee's
17 compensation, such trustee is entitled to be compensated as provided in
18 such terms, except that compensation may be increased or decreased upon
19 approval by the trustee and by unanimous consent of the beneficiaries.

20 (b) If the terms of a fidfin trust specify the trustee's compensation, the
21 trustee is entitled to be compensated as specified, except that the court may
22 allow more compensation if:

23 (1) The duties of the trustee are substantially different from those
24 contemplated when the trust was created; or

25 (2) the compensation specified by the terms of the trust would be
26 unreasonably low.

27 Sec. 20. The privacy of those who have established a fidfin trust or
28 alternative asset custody account shall be protected in any court
29 proceeding concerning such trust if the acting trustee, custodian, trustor or
30 any beneficiary so petition the court. Upon the filing of such a petition, the
31 instrument, inventory, statement filed by any trustee or custodian, annual
32 verified report of the trustee or custodian, final report of the trustee or
33 custodian and all petitions relevant to trust administration and all court
34 orders thereon shall be sealed upon filing and shall not be made a part of
35 the public record of the proceeding, except that such petition shall be
36 available to the court, the trustor, the trustee, the custodian, any
37 beneficiary, their attorneys and to such other interested persons as the
38 court may order upon a showing of need.

39 Sec. 21. (a) For purposes of this section, "form" includes:

40 (1) An instrument as defined in section 1, and amendments thereto;

41 (2) a transaction agreement between a fiduciary financial institution
42 and a fidfin trust;

43 (3) any other documents executed by a fiduciary financial institution

1 or a fidfin trust in connection with a fidfin transaction; and

2 (4) any document executed by a fiduciary financial institution or a
3 customer in connection with the creation and management of an
4 alternative asset custody account.

5 (b) A fiduciary financial institution may, but shall not be required to,
6 file with the commissioner one or more forms for review, examination and
7 approval. Upon the expiration of 10 business days from the date of filing,
8 the form shall be deemed reviewed, examined and approved unless prior
9 thereto the commissioner has affirmatively approved or disapproved such
10 form.

11 (c) If the commissioner disapproves any form filed pursuant to this
12 section, the commissioner shall communicate the reasons for such
13 disapproval to the fiduciary financial institution that sought approval. The
14 commissioner shall use commercially reasonable efforts to suggest
15 modifications that may lead to the approval of such form.

16 (d) If a form is reviewed, examined and approved pursuant to the
17 provisions of subsection (b), the fiduciary financial institution may
18 represent that such form has been reviewed, examined and approved.

19 (e) A fiduciary financial institution is prohibited from representing
20 that a form has been approved or reviewed and examined unless the
21 fiduciary financial institution has complied with the provisions of this
22 section.

23 (f) If a fiduciary financial institution makes any material changes to a
24 form, such form shall no longer be considered approved or reviewed and
25 examined until the provisions of this section have been satisfied with
26 respect to such revised form.

27 (g) A fiduciary financial institution that has licensed a form from
28 another fiduciary financial institution pursuant to section 12, and
29 amendments thereto, may represent that such form is approved or
30 reviewed and examined, as the case may be, if the fiduciary financial
31 institution from which the license was acquired has satisfied the provisions
32 of this section and is entitled to make such representation with respect to
33 such form.

34 Sec. 22. Pursuant to K.S.A. 9-1713, and amendments thereto, the
35 commissioner shall adopt rules and regulations on or before January 1,
36 2022, as are necessary to administer this act.

37 Sec. 23. Notwithstanding the provisions of chapter 16 of the Kansas
38 Statutes Annotated, and amendments thereto, to the contrary, or any other
39 statute, there is no maximum interest rate or charge or usury rate
40 restriction between or among a fiduciary financial institution and a fidfin
41 trust if the interest rate or charge is established by written agreement. A
42 "written agreement" means a document in writing, whether in physical or
43 electronic form, in which the parties have demonstrated their agreement to

1 the terms and conditions of an extension of credit, including the rate of
2 interest.

3 Sec. 24. (a) There is hereby established in the state treasury the
4 technology-enabled fiduciary financial institutions development and
5 expansion fund to be administered by the secretary of commerce.
6 Expenditures from the fund shall be for the purposes of distributing to
7 economic growth zones for the purposes of economic development
8 projects or opportunities and promoting and facilitating the development,
9 growth and expansion of fiduciary financial institutions, fidfin activities
10 and custodial services in the state and to locate such fiduciary financial
11 institutions' office space in an economic growth zone as defined in section
12 1, and amendments thereto. All expenditures from the technology-enabled
13 fiduciary financial institutions development and expansion fund shall be
14 made in accordance with appropriation acts upon warrants of the director
15 of accounts and reports issued pursuant to vouchers approved by the
16 secretary of commerce or the secretary's designee.

17 (b) On or before the 10th day of each month, the director of accounts
18 and reports shall transfer from the state general fund to the technology-
19 enabled fiduciary financial institutions development and expansion fund
20 interest earnings based on:

21 (1) The average daily balance of moneys in the technology-enabled
22 fiduciary financial institutions development and expansion fund for the
23 preceding month; and

24 (2) the net earnings rate for the pooled money investment portfolio
25 for the preceding month.

26 Sec. 25. (a) On July 1, 2021, the commissioner shall:

27 (1) Grant a fiduciary financial institution charter to the Beneficient
28 company upon Beneficient company:

29 (A) Filing an application with the commissioner;

30 (B) satisfying the requirements of sections 2(c)(1) through (5), and
31 amendments thereto;

32 (C) satisfying the requirements of section 2(f), and amendments
33 thereto; and

34 (D) satisfying the capital requirements imposed under section 5, and
35 amendments thereto; and

36 (2) designate a community within Harvey county, as selected by
37 Beneficient fiduciary financial institution, as the first economic growth
38 zone.

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

41 (1) Includes the Beneficient company as a participant in such pilot
42 program;

43 (2) assesses the Beneficient company an initial fee of \$1,000,000 in

1 lieu of the initial fee provided in section 3, and amendments thereto; and

2 (3) imposes a requirement for the Beneficiary company to distribute,
3 cause to be distributed or otherwise facilitate a distribution of cash,
4 beneficial interests or other assets having an aggregate value of \$9,000,000
5 in accordance with the requirements of section 2(i), and amendments
6 thereto, and such amount shall be construed as the applicable distribution
7 amount for purposes of section 2, and amendments thereto.

8 (c) Except as provided by subsection (d), upon issuance of the
9 fiduciary financial institution charter, the Beneficiary company shall be
10 subject to all requirements imposed on fiduciary financial institutions
11 under this act but may not commence fidfin transactions, custodial services
12 or trust business in this state until the earlier of:

13 (1) December 31, 2021; or

14 (2) the date the commissioner adopts rules and regulations pursuant
15 to section 22, and amendments thereto.

16 (d) The commissioner may extend the period that the Beneficiary
17 company may not commence fidfin transactions, custodial services or trust
18 business in this state for a period not to exceed six months from the date
19 specified in subsection (c) if the commissioner submits a report to the
20 senate financial institutions and insurance committee and to the house of
21 representatives financial institutions and rural development committee
22 identifying the specific reasons for which such extension is necessary.
23 Such report shall be submitted on or before January 10, 2022.
24 Notwithstanding the provisions of this subsection, the Beneficiary
25 company may satisfy the applicable distribution requirement of section
26 2(i), and amendments thereto, and the required distribution amount in
27 section 11(f), and amendments thereto, by placing assets in escrow with
28 one or more qualified charities, except that such funds shall be released
29 when the Beneficiary company is permitted to commence fidfin
30 transactions, custodial services or trust business.

31 Sec. 26. Notwithstanding the provisions of K.S.A. 59-3401, and
32 amendments thereto, no interest held in a fidfin trust shall be void or
33 invalid by reason of any common law rule, including, but not limited to,
34 the rule against perpetuities or rule limiting the duration of trusts.

35 Sec. 27. Notwithstanding the provisions of K.S.A. 17-2035, and
36 amendments thereto, for purposes of any tax imposed by the state or any
37 instrumentality, agency or political subdivision of this state, a business
38 trust that is used in connection with fidfin transactions or custodial
39 services, as defined in section 1, and amendments thereto, and for which a
40 fiduciary financial institution, as defined in section 1, and amendments
41 thereto, serves as trustee shall be classified as a corporation, an
42 association, a partnership, a trust or otherwise, as shall be determined
43 under the federal internal revenue code.

1 Sec. 28. (a) For taxable years commencing after December 31, 2020,
2 there shall be allowed as a credit against the tax liability of a fiduciary
3 financial institution imposed pursuant to the Kansas income tax act or the
4 privilege tax imposed upon a fiduciary financial institution pursuant to
5 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
6 thereto, in an amount equal to the qualified charitable distributions made
7 in connection with the fiduciary financial institution's fidfin activities
8 during such taxable year if the fiduciary financial institution maintained
9 such fiduciary financial institution's principal office in an economic
10 growth zone during such taxable year in accordance with the provisions of
11 section 9, and amendments thereto.

12 (b) For purposes of this section:

13 (1) "Economic growth zone" and "fidfin" means the same as defined
14 in section 1, and amendments thereto;

15 (2) "qualified charitable distributions" means distributions of cash,
16 beneficial interests or other assets to one or more qualified charities having
17 an aggregate value equal to at least 2.5% of the fiduciary financial
18 institution's transactions originated during the taxable year. Such
19 transactions shall exclude any renewals, extensions of credit or accruals
20 associated with transactions made in a prior taxable year;

21 (3) "qualified charities" means one or more charities, in which
22 contributions are allowable as a deduction pursuant to section 170 of the
23 federal internal revenue code if such charities have:

24 (A) Been organized pursuant to a charter promulgated by the
25 department of commerce for the purposes of making distributions for the
26 benefit of economic growth zones;

27 (B) committed in writing to utilize the entire amount of the qualified
28 charitable distributions, excluding reasonable administrative expenses,
29 exclusively for the benefit of charitable causes located in one or more
30 economic growth zones or postsecondary educational institutions as
31 defined in K.S.A. 74-3201b, and amendments thereto; and

32 (C) agreed to provide an annual report to the department of
33 commerce detailing qualified distributions received during such year,
34 distributions made pursuant to subparagraph (B) and the remaining
35 balance of qualified distributions as of the end of the reporting year.

36 The requirements of subparagraph (A) shall not apply to a charity,
37 contributions to which are allowable as a deduction pursuant to section
38 170 of the federal internal revenue code, that has committed in writing to
39 utilize the entire amount of the qualified charitable distributions, excluding
40 reasonable administrative expenses, exclusively for the benefit of the
41 economic growth zone identified in section 25(a)(2), and amendments
42 thereto.

43 (c) No credit shall be allowed under this section if the fiduciary

1 financial institution's tax return on which the credit is claimed is not timely
2 filed, including any extension.

3 (d) A distribution or remittance to the department of commerce
4 pursuant to section 11, and amendments thereto, shall be deemed a
5 qualified charitable distribution for purposes of this section.

6 (e) A fiduciary financial institution shall not be required to ensure that
7 qualified charitable distributions are made solely for the benefit of the
8 economic growth zones where such fiduciary financial institution has:

9 (1) Established such fiduciary financial institution's principal office
10 pursuant to section 9, and amendments thereto; or

11 (2) made qualified investments as defined in section 1, and
12 amendments thereto. Qualified charitable distributions may be made for
13 the benefit of any one or more economic growth zones.

14 (f) If a fiduciary financial institution is a pass-through entity for
15 Kansas tax purposes and the credit allowed by this section for a taxable
16 year is greater than the fiduciary financial institution's tax liability against
17 which the tax credit may be applied, a member of the entity or any other
18 party who is required to report such income on a Kansas income tax return
19 is entitled to a tax credit equal to the tax credit determined for the fiduciary
20 financial institution for the taxable year in excess of the fiduciary financial
21 institution's tax liability under the Kansas income tax act or privilege tax
22 under article 11 of chapter 79 of the Kansas Statutes Annotated, and
23 amendments thereto, for the taxable year multiplied by the percentage of
24 the fiduciary financial institution's distributive income to which the
25 member is entitled.

26 (g) If the amount of a tax credit allowed a member or other party
27 under this section exceeds the taxpayer's income tax liability for the
28 taxable year in which the tax credit is allowed, the amount thereof that
29 exceeds such tax liability may be carried over for deduction from the
30 taxpayer's income or privilege tax liability in the next succeeding taxable
31 year or years until the total amount of the tax credit has been deducted
32 from tax liability, except that no such tax credit shall be carried over for
33 deduction after the 5th taxable year succeeding the taxable year in which
34 the tax credit is first allowed.

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

37 Sec. 29. This act shall take effect and be in force from and after its
38 publication in the statute book.