

SENATE BILL No. 288

By Committee on Ways and Means

3-10

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

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

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

16 (b) For purposes of technology-enabled trust bank act:

17 (1) "Act" means the technology-enabled trust bank act;

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

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

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

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

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

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

28 (7) "fidfin," "fidfin services" or "fidfin transactions" means the
29 financing of a fidfin trust as provided in section 11, and amendments
30 thereto, including loans, extensions of credit and direct investments;

31 (8) "fidfin trust" means a trust created to facilitate the delivery of
32 fidfin services by a trust bank;

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

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

38 (11) (A) "qualified investment" means the purchase or development,
39 in the aggregate, of at least 10,000 square feet of commercial, industrial,
40 multiuse or multifamily real estate in the economic growth zone where the
41 trust bank maintains its principal office pursuant to section 9, and
42 amendments thereto, provided that such community has committed to
43 develop the necessary infrastructure to support a "qualified investment." A

1 "qualified investment":

2 (i) May include, as part of satisfying the square footage requirements,
3 the suitable office space of such trust bank, as provided in section 9, and
4 amendments thereto, if owned by the trust bank;

5 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-
6 1102, and amendments thereto;

7 (iii) may be retained by a trust bank for as long as the trust bank
8 operates in this state; and

9 (iv) may be sold, transferred or otherwise disposed of, including a
10 sale or transfer to an affiliate of the trust bank, if the trust bank continues
11 to maintain its principal office in an economic growth zone pursuant to
12 section 9, and amendments thereto;

13 (B) notwithstanding the foregoing provisions, if a trust bank leases
14 any portion of a qualified investment made by another trust bank as the
15 lessee trust bank's suitable office space:

16 (i) The lessee trust bank shall make, or cause to be made, a qualified
17 investment in an economic growth zone other than the economic growth
18 zone where such trust bank maintains its principal office;

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

22 (iii) the square footage requirement otherwise applicable to a
23 qualified investment of the lessee trust bank shall be reduced from 10,000
24 square feet to 5,000 square feet;

25 (12) "technology-enabled trust bank" or "trust bank" means any
26 limited liability company, limited partnership or corporation that:

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

29 (B) has been authorized to conduct business as a trust bank under this
30 chapter pursuant to the provisions of section 2, and amendments thereto;

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

33 (D) has committed, in or as a part of the application provided in
34 section 2, and amendments thereto, to conduct any fidfin transactions in
35 accordance with section 11, and amendments thereto, including the
36 distributions required therein;

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

43 (14) the definitions of K.S.A. 9-701, and amendments thereto, apply

1 to trust banks except as otherwise provided in this act.

2 Sec. 2. (a) No trust bank shall be organized under the laws of this
3 state nor engage in fidfin transactions, custodial services or trust business
4 in this state until the application for such trust bank's organization and the
5 application for certificate of authority have been submitted to and
6 approved by the state banking board. The form for making any such
7 application shall be prescribed by the state banking board and any
8 application made to the state banking board shall contain such information
9 as the state banking board shall require.

10 (b) No bank, trust company or trust bank shall engage in fidfin
11 transactions in this state unless an application has been submitted under
12 this act and approved by the state banking board.

13 (c) The state banking board shall not accept an application for a trust
14 bank unless the:

15 (1) Trust bank is organized by at least one person;

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

19 (3) trust banks' articles of organization contain the names and
20 addresses of the trust bank's members and the number of units subscribed
21 by each. The articles of organization may contain such other provisions as
22 are consistent with the Kansas revised limited liability company act,
23 Kansas revised uniform limited partnership act or Kansas general
24 corporation code;

25 (4) trust bank has made, committed to make or caused to be made a
26 qualified investment as defined in section 1, and amendments thereto;

27 (5) trust bank has committed to structure any fidfin transactions to
28 ensure that qualified charitable distributions, as defined in section 28, and
29 amendments thereto, are made each calendar year that the trust bank
30 conducts fidfin transactions; and

31 (6) trust bank has consulted or agrees to consult with the department
32 of commerce regarding the economic growth zones to be selected for
33 purposes of paragraphs (4) and (5).

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

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

38 (2) character, qualifications and experience of the officers of the
39 proposed trust bank.

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

43 (f) The state banking board may require fingerprinting of any officer,

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

14 (g) The state banking board or the commissioner shall notify a trust
 15 bank of the approval or disapproval of an application. Any final action of
 16 the state banking board approving or disapproving an application shall be
 17 subject to review in accordance with the Kansas judicial review act.

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

24 (A) 2.5% of the aggregate financing balances to be held by the trust
 25 bank immediately upon issuance of the trust bank's charter, as reflected in
 26 the trust bank's application filed pursuant to this section; or

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

30 (2) If the amount provided in paragraph (1)(B) exceeds the amount
 31 provided in paragraph (1)(A), the trust bank shall be entitled to a credit
 32 against the amount distributable under section 11(e), and amendments
 33 thereto, in an amount equal to such excess.

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

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

| 37 Applicable distribution amount | Percentage to department of commerce |
|-----------------------------------|--------------------------------------|
| 38 \$0 to \$500,000 | 90% |
| 39 \$500,001 to \$1,000,000 | 50% |
| 40 Above \$1,000,000 | 10% |

41 (B) the amounts specified in subparagraph (A) shall apply to trust
 42 banks chartered prior to January 1, 2023. For trust banks chartered after
 43 such date, the department of commerce may publish one or more

1 schedules in the Kansas register as the department of commerce deems
2 reasonably necessary to facilitate economic growth and development in
3 one or more economic growth zones. No such schedule shall be effective
4 until after its publication in the Kansas register. The department of
5 commerce shall timely submit to the commissioner any schedule published
6 under this section. The commissioner shall provide a copy of such
7 schedule to any applicant for a trust bank charter prior to the issuance of
8 such charter. A trust bank shall be subject to the schedule in existence on
9 the date such trust bank's charter is issued and shall not be subject to any
10 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 trust bank development
16 and expansion fund established in section 24, and amendments thereto;
17 and

18 (2) the balance of the applicable distribution required under
19 subsection (h) shall be distributed to one or more qualified charities as
20 defined in section 28, and amendments thereto, as shall be selected by the
21 trust bank. Nothing in this section shall preclude a distribution to one or
22 more qualified charities in excess of the amounts provided in this section.

23 Sec. 3. (a) Every trust bank shall be assessed an initial fee of
24 \$500,000 to be remitted concurrently with the issuance of such trust bank's
25 charter. The expense of every annual regular trust bank examination,
26 together with the expense of administering trust laws, including salaries,
27 travel expenses, supplies and equipment, shall be paid by the trust banks of
28 this state. Prior to the beginning of each fiscal year, the commissioner shall
29 make an estimate of the trust expenses to be incurred by the office of the
30 state bank commissioner during such fiscal year in an amount not less than
31 \$1,000,000. The commissioner shall allocate and assess each trust bank in
32 this state on the basis of such trust bank's total fidfin transaction balances,
33 consisting of the aggregate fidfin financing balances of the trust bank
34 reflected in the last December 31 report filed with the commissioner
35 pursuant to K.S.A. 9-1704, and amendments thereto. If a trust bank has no
36 fidfin transaction balances, but such trust bank otherwise providing
37 custodial services or trust services, the commissioner shall allocate and
38 assess such trust bank in a manner the commissioner deems reasonable and
39 appropriate. A trust bank that has no fidfin transaction balances and no
40 alternative asset custody accounts reflected in the last December 31 report
41 filed with the commissioner may be granted inactive status by the
42 commissioner. The annual assessment shall not exceed \$10,000 for such an
43 inactive trust bank. The annual fee shall be first assessed for the year

1 immediately following the year the trust bank received a certificate of
2 authority to engage in fidfin transactions, custodial services and trust
3 business and for each year thereafter.

4 (b) (1) A statement of each assessment made under the provisions of
5 subsection (a) shall be sent by the commissioner on December 1 or the
6 next business day thereafter to each trust bank. The assessment may be
7 collected by the commissioner as needed and in such installment periods
8 as the commissioner deems appropriate, but not more frequently than
9 monthly. When the commissioner issues an invoice to collect the
10 assessment, payment shall be due within 15 business days of the date of
11 such invoice. The commissioner may impose a penalty upon any trust bank
12 that fails to pay its annual assessment when it is more than 15 business
13 days past due. The penalty shall be assessed in the amount of \$50 for each
14 day the assessment is past due.

15 (2) The commissioner shall remit all moneys received from such fees
16 and assessments to the state treasurer in accordance with the provisions of
17 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
18 remittance, the state treasurer shall deposit the entire amount in the state
19 treasury and credit 75% of each remittance to the bank commissioner fee
20 fund and 25% to the technology-enabled trust bank development and
21 expansion fund established in section 24, and amendments thereto.

22 Sec. 4. (a) To the extent a conflict does not exist between this act and
23 chapter 9 of the Kansas Statutes Annotated, and amendments thereto, the
24 provisions of chapter 9 of the Kansas Statutes Annotated, and amendments
25 thereto, shall apply to a trust bank in the same manner as it applies to a
26 trust company except that references in chapter 9 to:

- 27 (1) "Capital stock" includes membership capital and partner capital;
- 28 (2) "stock" includes membership units and partnership interests;
- 29 (3) "common stock" includes common units and common interests;
- 30 (4) "preferred stock" includes preferred units and preferred interests;
- 31 (5) "stockholders" includes members and partners;
- 32 (6) "articles of incorporation" includes articles of organization and
33 articles of limited partnership;
- 34 (7) "incorporation" includes organization;
- 35 (8) "corporation" includes company and partnership;
- 36 (9) "corporate" includes company and partnership;
- 37 (10) "trust business" and "business of a trust company" includes
38 fidfin and trust business; and
- 39 (11) K.S.A. 9-901a(a), and amendments thereto, means section 5, and
40 amendments thereto.

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

1 Sec. 5. (a) For purposes of this section, "capital" means the total of
2 the aggregate par value of a trust bank's outstanding membership units, its
3 surplus and its undivided profits.

4 (b) (1) The required capital for trust banks shall at all times be
5 \$250,000 when:

6 (A) The trust bank does not accept deposits, other than alternative
7 asset custody accounts;

8 (B) the trust bank maintains no third-party debt except debts owed to
9 the members of the trust bank or affiliates of the trust bank; and

10 (C) the trust bank has secured an agreement from its members
11 whereby such members agree to contribute additional capital to the trust
12 bank if needed to ensure the safety and soundness of the trust bank. A trust
13 bank that fails to satisfy the foregoing requirements shall be subject to the
14 capitalization requirements of K.S.A. 9-901a, and amendments thereto,
15 applicable to trust companies.

16 (2) The capital of a trust bank shall be divided, with 60% of the
17 amount as the aggregate par value of outstanding membership units, 30%
18 as surplus and 10% as undivided profits.

19 Sec. 6. (a) The business of any trust bank shall be managed and
20 controlled by such trust bank's board of directors.

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

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

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

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

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

43 (g) Any vacancy in the board of directors may be filled by the board

1 of directors in the manner provided in the trust bank's organizational
2 documents or, in the absence of such provisions, in the manner provided
3 by the Kansas revised limited liability company act, Kansas revised
4 uniform limited partnership act or Kansas general corporation code.

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

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

19 (j) Every trust bank shall notify the commissioner of any change in
20 the chief executive officer, president or directors, including in such trust
21 bank's report a statement of the past and current business and professional
22 affiliations of the new chief executive officer, president or directors.

23 Sec. 7. (a) A trust bank shall make a report to the commissioner
24 pursuant to the provisions of K.S.A. 9-1704, and amendments thereto. In
25 making such a report, a trust bank shall:

26 (1) Report the trust bank's fidfin transactions pursuant to generally
27 accepted accounting principles; and

28 (2) calculate such trust bank's capital solvency by including the value
29 of all tangible and intangible assets owned by the trust bank, regardless of
30 use.

31 (b) In evaluating the safety and soundness of a trust bank, the state
32 banking board and the commissioner shall:

33 (1) Consider that the collateral or underlying assets associated with
34 fidfin transactions are volatile in nature and that such volatility has been
35 accepted by the members and customers of the trust bank;

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

40 (3) evaluate the soundness of a trust bank based on whether available
41 capital, including the agreement of the trust bank's members to contribute
42 capital pursuant to section 5, and amendments thereto, exceeds the trust
43 bank's obligations, determined in accordance with generally accepted

1 accounting principles; and

2 (4) evaluate the safety of a trust bank based on the background and
3 qualifications of such trust bank's executive officers and directors and the
4 internal controls and audit processes enacted by the trust bank to ensure
5 adherence to its policies and procedures.

6 (c) Profitability shall not be a consideration in evaluating the safety
7 and soundness of a trust bank if sufficient capital and equity exist in the
8 business, including, without limitation, membership capital, surplus,
9 undivided profits and commitments by members to contribute additional
10 capital to the trust bank pursuant to section 5, and amendments thereto, to
11 satisfy the trust bank's obligations.

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

18 Sec. 9. (a) A trust bank shall:

19 (1) Maintain suitable office space in an economic growth zone, as
20 defined in section 1, and amendments thereto, for fidfin transactions,
21 custodial services and trust business and for the storage of, and access to,
22 trust bank records;

23 (2) employ, engage or contract with at least three employees to
24 provide services for the trust bank in Kansas related to the powers of the
25 trust bank and to facilitate the examinations required by this act; and

26 (3) perform fidfin transactions, custodial services and trust business
27 in Kansas, and a trust bank may also engage in fidfin transactions,
28 custodial services and trust business in other states to the extent permitted
29 by applicable law.

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

34 (c) The trust bank's principal office shall:

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

37 (2) be located in an economic growth zone selected by the trust bank;

38 (3) have the name, charter and certificate of authority of the trust
39 company 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 trust bank maintains hard copies of any

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

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

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

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

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

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

29 Sec. 11. (a) If authorized by the terms of an instrument as such term
30 is defined in section 1, and amendments thereto, a trust bank may:

- 31 (1) Extend financing or extensions of credit to a fidfin trust when:
 - 32 (A) The trust bank serves as trustee of the borrowing fidfin trust;
 - 33 (B) the financing is collateralized or supported by the assets of such
34 fidfin trust;
 - 35 (C) the financing is nonrecourse as to the trust bank's customer and is
36 not otherwise guaranteed by such customer;
 - 37 (D) the trust bank agrees, in the applicable financing agreement or
38 other written document, that the trust bank is providing financing in a
39 fiduciary capacity;
 - 40 (E) the trust bank agrees that such trust bank will manage the
41 collateral or assets underlying the 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 trust
4 bank shall be deemed to have a conflict of interest, to have violated a duty
5 to a fidfin trust or the beneficiaries thereof or to have engaged in self-
6 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 trust bank's fidfin transactions regardless
9 of the identity of the fidfin trust beneficiary if:

- 10 (1) The borrower is a fidfin trust; and
- 11 (2) the trust bank serves as trustee of the borrowing fidfin trust.

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

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

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

| 29 Required distribution amount | Percentage to department of commerce |
|---------------------------------|--------------------------------------|
| 30 \$0 to \$500,000 | 90% |
| 31 \$500,001 to \$1,000,000 | 50% |
| 32 Above \$1,000,000 | 10% |

33 (B) the amounts specified in subparagraph (A) shall apply to trust
34 banks chartered prior to January 1, 2023. For trust banks chartered after
35 such date, the department of commerce may publish one or more
36 schedules in the Kansas register as the department of commerce deems
37 reasonably necessary to facilitate economic growth and development in
38 one or more economic growth zones. No such schedule shall be effective
39 until after its publication in the Kansas register. The department of
40 commerce shall timely submit any schedule published under this section to
41 the commissioner. The commissioner shall provide a copy of such
42 schedule to any applicant for a trust bank charter prior to the issuance of
43 such charter. A trust bank shall be subject to the schedule in existence on

1 the date such trust bank's charter is issued and shall not be subject to any
2 schedules published after such date;

3 (C) the department of commerce shall remit all distributions under
4 this subsection to the state treasurer in accordance with the provisions of
5 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
6 remittance, the state treasurer shall deposit the entire amount in the state
7 treasury to the credit of the technology-enabled trust bank development
8 and expansion fund established in section 24, and amendments thereto;
9 and

10 (2) the balance of the required distribution amount shall be distributed
11 to one or more qualified charities as defined in section 28, and
12 amendments thereto, as shall be selected by the trust bank.

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

17 Sec. 12. (a) Subject to the requirements of section 9(d), and
18 amendments thereto, a trust bank may:

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

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

26 (3) license internet-related services, including web services, software,
27 mobile applications, technology-enabled platforms and processes to or
28 from affiliates, third parties, other trust banks and their affiliates;

29 (4) license fidfin products and forms, as defined in section 21, and
30 amendments thereto, to or from other trust banks and their affiliates;

31 (5) perform any services that a trust bank is authorized to perform
32 under the laws of this state on behalf of another trust bank; and

33 (6) employ another trust bank to perform any services that a trust
34 bank is authorized to perform under the laws of this state.

35 (b) A party engaged by a trust bank pursuant to subsection (a) shall
36 not be deemed to have engaged in fidfin transactions, custodial services or
37 trust business in this state nor shall such party be deemed a trust service
38 office of the trust bank under K.S.A. 9-2110, and amendments thereto, or a
39 trust facility or out-of-state facility under K.S.A. 9-2111, and amendments
40 thereto, by reason of providing services to a trust bank or licensing
41 products, platforms, systems or processes to such trust bank.

42 (c) A trust bank that provides services or licenses fidfin products or
43 forms pursuant to subsection (a) shall not be deemed a trust service office

1 of the trust bank that has acquired such services or licensed such products
2 or forms.

3 (d) If a trust bank offers its technology-enabled platform to provide
4 fidfin services to residents of other states, neither the marketing, use and
5 deployment of such platform by parties in other states nor the origination
6 of fidfin services through such platform shall constitute an out- of-state
7 trust facility under K.S.A. 9-2111, and amendments thereto, if the trust
8 bank complies with the provisions of section 9, and amendments thereto.

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

12 Sec. 13. (a) A trust bank may serve as a custodian, which may include
13 serving as a qualified custodian, as defined by the United States securities
14 and exchange commission in 17 C.F.R. § 275.206(4)-2, of an asset custody
15 account. In performing custodial services under this section, a trust bank
16 shall:

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

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

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

24 (4) take other actions necessary to comply with the requirements of
25 this section.

26 (b) Alternative asset custody accounts over which a trust bank serves
27 as a custodian or qualified custodian are not depository liabilities or assets
28 of the trust bank.

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

30 (1) A trust bank shall be a fiduciary and shall be subject to the duties
31 and standards of utmost care and loyalty that are associated with serving as
32 a fiduciary;

33 (2) a trust bank shall be deemed to be exercising fiduciary powers;
34 and

35 (3) all income earned by a trust bank and derived from performing
36 custodial services shall be deemed to be income derived from the exercise
37 of fiduciary powers.

38 Sec. 14. Any instrument providing for a trust advisor may also
39 provide such trust advisor with some, none or all of the rights, powers,
40 privileges, benefits, immunities or authorities available to a trustee under
41 Kansas law or under such instrument. Unless the instrument provides
42 otherwise, a trust advisor has no greater liability to any person than would
43 a trustee holding or benefiting from the rights, powers, privileges, benefits,

1 immunities or authority provided or allowed by the instrument to such
2 trust advisor.

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

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

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

12 (b) Any excluded fiduciary is relieved from any obligation to review
13 or evaluate any direction from a trust advisor to make distributions or to
14 perform investment or suitability reviews, inquiries or investigations or to
15 make recommendations or evaluations with respect to any investments to
16 the extent the trust advisor had authority to direct the acquisition,
17 disposition or retention of the investment. If the excluded fiduciary offers
18 such recommendations or evaluations to the trust advisor or any
19 investment person selected by the trust advisor, such action shall not
20 constitute an undertaking by the excluded fiduciary to monitor or
21 otherwise participate in actions within the scope of the advisor's authority
22 or to constitute any duty to do so.

23 (c) Any excluded fiduciary is also relieved of any duty to
24 communicate with or warn or apprise any beneficiary or third party
25 concerning instances in which the excluded fiduciary would or might have
26 exercised the excluded fiduciary's own discretion in a manner different
27 from the manner directed by the trust advisor.

28 (d) Absent contrary provisions in the governing instrument, the
29 actions of the excluded fiduciary, such as any communications with the
30 trust advisor and others and carrying out, recording and reporting actions
31 taken at the trust advisor's direction, pertaining to matters within the scope
32 of authority of the trust advisor, shall be deemed to be administrative
33 actions taken by the excluded fiduciary solely to allow the excluded
34 fiduciary to perform those duties assigned to the excluded fiduciary under
35 the governing instrument. Such administrative actions shall not constitute
36 an undertaking by the excluded fiduciary to monitor, participate or
37 otherwise take any fiduciary responsibility for actions within the scope of
38 authority of the trust advisor.

39 (e) In an action against an excluded fiduciary pursuant to the
40 provisions of this section, the burden to prove the matter by clear and
41 convincing evidence is on the person seeking to hold the excluded
42 fiduciary liable.

43 Sec. 16. (a) A trust advisor shall be presumed to be a fiduciary when

1 exercising such trust advisor's authority under this act.

2 (b) By accepting an appointment to serve as a trust advisor of a fidfin
3 trust or an alternative asset custody account that is subject to the laws of
4 this state, the trust advisor submits to the jurisdiction of the courts of
5 Kansas even if investment advisory agreements or other related
6 agreements provide otherwise. The trust advisor may be made a party to
7 any action or proceeding relating to a decision or action of the trust
8 advisor.

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

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

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

17 (2) is acting in such capacity under an instrument that names a trust
18 bank as trustee or custodian;

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

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

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

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

30 Sec. 18. An instrument may relieve and indemnify a trust advisor and
31 a trust bank that serves as trustee of a fidfin trust or alternative asset
32 custody account from liability for a breach of fiduciary duty if any such
33 provision is unenforceable to the extent that it relieves the trust advisor or
34 trust bank from liability for a breach of fiduciary duty committed:

35 (a) In bad faith;

36 (b) intentionally; or

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

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

43 (b) If the terms of a fidfin trust specify the trustee's compensation, the

1 trustee is entitled to be compensated as specified, except that the court may
2 allow more compensation if:

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

5 (2) the compensation specified by the terms of the trust would be
6 unreasonably low.

7 Sec. 20. The privacy of those who have established a fidfin trust or
8 alternative asset custody account shall be protected in any court
9 proceeding concerning such trust if the acting trustee, custodian, trustor or
10 any beneficiary so petition the court. Upon the filing of such a petition, the
11 instrument, inventory, statement filed by any trustee or custodian, annual
12 verified report of the trustee or custodian, final report of the trustee or
13 custodian and all petitions relevant to trust administration and all court
14 orders thereon shall be sealed upon filing and shall not be made a part of
15 the public record of the proceeding, except that such petition shall be
16 available to the court, the trustor, the trustee, the custodian, any
17 beneficiary, their attorneys and to such other interested persons as the
18 court may order upon a showing of need.

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

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

21 (2) a transaction agreement between a trust bank and a fidfin trust;

22 (3) any other documents executed by a trust bank or a fidfin trust in
23 connection with a fidfin transaction; and

24 (4) any document executed by a trust bank or a customer in
25 connection with the creation and management of an alternative asset
26 custody account.

27 (b) A trust bank may, but shall not be required to, file with the
28 commissioner one or more forms for review, examination and approval.
29 Upon the expiration of 10 business days from the date of filing, the form
30 shall be deemed reviewed, examined and approved unless prior thereto the
31 commissioner has affirmatively approved or disapproved such form.

32 (c) If the commissioner disapproves any form filed pursuant to this
33 section, the commissioner shall communicate the reasons for such
34 disapproval to the trust bank that sought approval. The commissioner shall
35 use commercially reasonable efforts to suggest modifications that may
36 lead to the approval of such form.

37 (d) If a form is reviewed, examined and approved pursuant to the
38 provisions of subsection (b), the trust bank may represent that such form
39 has been reviewed, examined and approved.

40 (e) A trust bank is prohibited from representing that a form has been
41 approved or reviewed and examined unless the trust bank has complied
42 with the provisions of this section.

43 (f) If a trust bank makes any material changes to a form, such form

1 shall no longer be considered approved or reviewed and examined until the
2 provisions of this section have been satisfied with respect to such revised
3 form.

4 (g) A trust bank that has licensed a form from another trust bank
5 pursuant to section 12, and amendments thereto, may represent that such
6 form is approved or reviewed and examined, as the case may be, if the
7 trust bank from which the license was acquired has satisfied the provisions
8 of this section and is entitled to make such representation with respect to
9 such form.

10 Sec. 22. Pursuant to K.S.A. 9-1713, and amendments thereto, the
11 commissioner shall adopt rules and regulations on or before January 1,
12 2022, as are necessary to administer this act.

13 Sec. 23. Notwithstanding the provisions of chapter 16 of the Kansas
14 Statutes Annotated, and amendments thereto, to the contrary, or any other
15 statute, there is no maximum interest rate or charge or usury rate
16 restriction between or among a trust bank and a fidfin trust if the interest
17 rate or charge is established by written agreement. A "written agreement"
18 means a document in writing, whether in physical or electronic form, in
19 which the parties have demonstrated their agreement to the terms and
20 conditions of an extension of credit, including the rate of interest.

21 Sec. 24. (a) There is hereby established in the state treasury the
22 technology-enabled trust bank development and expansion fund to be
23 administered by the secretary of commerce. Expenditures from the fund
24 shall be for the purpose of promoting and facilitating the development,
25 growth and expansion of trust banks, fidfin activities and custodial
26 services in the state and to locate such trust banks' office space in an
27 economic growth zone as defined in section 1, and amendments thereto.
28 All expenditures from the technology-enabled trust bank development and
29 expansion fund shall be made in accordance with appropriation acts upon
30 warrants of the director of accounts and reports issued pursuant to
31 vouchers approved by the secretary of commerce or the secretary's
32 designee.

33 (b) On or before the 10th day of each month, the director of accounts
34 and reports shall transfer from the state general fund to the technology-
35 enabled trust bank development and expansion fund interest earnings
36 based on:

37 (1) The average daily balance of moneys in the technology-enabled
38 trust bank development and expansion fund for the preceding month; and

39 (2) the net earnings rate for the pooled money investment portfolio
40 for the preceding month.

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

42 (1) Grant a trust bank charter to beneficent trust bank upon
43 beneficent trust bank:

- 1 (A) Filing an application with the commissioner;
- 2 (B) satisfying the requirements of sections 2(c)(1) through (5), and
3 amendments thereto;
- 4 (C) satisfying the requirements of section 2(f), and amendments
5 thereto; and
- 6 (D) satisfying the capital requirements imposed under section 5, and
7 amendments thereto; and

8 (2) designate a community within Harvey county, as selected by
9 beneficent trust bank, as the first economic growth zone.

10 (b) On July 1, 2021, the commissioner shall establish a fidfin trust
11 bank pilot program that:

12 (1) Includes beneficent trust bank as a participant in such pilot
13 program;

14 (2) assesses beneficent trust bank an initial fee of \$1,000,000 in lieu
15 of the initial fee provided in section 3, and amendments thereto; and

16 (3) imposes a requirement for beneficent trust bank to distribute,
17 cause to be distributed or otherwise facilitate a distribution of case,
18 beneficial interests or other assets having an aggregate value of \$9,000,000
19 in accordance with the requirements of section 2(i), and amendments
20 thereto, and such amount shall be construed as the applicable distribution
21 amount for purposes of section 2, and amendments thereto.

22 (c) Upon issuance of the trust bank charter, beneficent trust bank
23 shall be subject to all requirements imposed on trust banks under this act
24 but may not commence fidfin transactions, custodial services or trust
25 business in this state until the earlier of:

26 (1) December 31, 2021; or

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

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

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

42 Sec. 28. (a) For taxable years commencing after December 31, 2020,
43 there shall be allowed as a credit against the tax liability of a trust bank

1 imposed pursuant to the Kansas income tax act or the privilege tax
2 imposed upon a trust bank pursuant to article 11 of chapter 79 of the
3 Kansas Statutes Annotated, and amendments thereto, in an amount equal
4 to the qualified charitable distributions made in connection with the trust
5 bank's fidfin activities during such taxable year if the trust bank
6 maintained such trust bank's principal office in an economic growth zone
7 during such taxable year in accordance with the provisions of section 9,
8 and amendments thereto.

9 (b) For purposes of this section:

10 (1) "Economic growth zone" and "fidfin" mean the same as defined in
11 section 1, and amendments thereto;

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

18 (3) "qualified charities" means one or more charities, in which
19 contributions are allowable as a deduction pursuant to section 170 of the
20 federal internal revenue code if such charities have committed in writing to
21 utilize the entire amount of the qualified charitable distributions, excluding
22 reasonable administrative expenses, exclusively for the benefit of:

23 (A) Charitable causes located in one or more economic growth zones;
24 or

25 (B) postsecondary educational institutions as defined in K.S.A. 74-
26 3201b, and amendments thereto.

27 (c) No credit shall be allowed under this section if the trust bank's tax
28 return on which the credit is claimed is not timely filed, including any
29 extension.

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

33 (e) A trust bank shall not be required to ensure that qualified
34 charitable distributions are made solely for the benefit of the economic
35 growth zones where such trust bank has:

36 (1) Established such trust bank's principal office pursuant to section
37 9, and amendments thereto; or

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

41 (f) If a trust bank is a pass-through entity for Kansas tax purposes and
42 the credit allowed by this section for a taxable year is greater than the trust
43 bank's tax liability against which the tax credit may be applied, a member

1 of the entity or any other party who is required to report such income on a
2 Kansas income tax return is entitled to a tax credit equal to the tax credit
3 determined for the trust bank for the taxable year in excess of the trust
4 bank's tax liability under the Kansas income tax act or privilege tax under
5 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
6 thereto, for the taxable year multiplied by the percentage of the trust bank's
7 distributive income to which the member is entitled.

8 (g) If the amount of a tax credit allowed a member or other party
9 under this section exceeds the taxpayer's income tax liability for the
10 taxable year in which the tax credit is allowed, the amount thereof that
11 exceeds such tax liability may be carried over for deduction from the
12 taxpayer's income or privilege tax liability in the next succeeding taxable
13 year or years until the total amount of the tax credit has been deducted
14 from tax liability, except that no such tax credit shall be carried over for
15 deduction after the 14th taxable year succeeding the taxable year in which
16 the tax credit is first allowed.

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

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