

SENATE BILL No. 51

By Committee on Financial Institutions and Insurance

1-18

1 AN ACT concerning financial institutions; relating to the technology-
2 enabled fiduciary financial institutions act; definitions; authorizing the
3 state bank commissioner to accept state and national criminal history
4 record checks from private entities; amending K.S.A. 9-2301 and 9-
5 2302 and repealing the existing sections.
6

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

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

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

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

1 format;

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

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

12 (6) *"director" means a person designated as a member of the board*
13 *of directors pursuant to K.S.A. 9-2306, and amendments thereto;*

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

26 ~~(7)~~(8) "excluded fiduciary" means a fiduciary financial institution in
27 its capacity as trustee of a fidfin trust, provided that a fiduciary financial
28 institution shall only be deemed an "excluded fiduciary" to the extent the
29 fiduciary financial institution is excluded from exercising certain powers
30 under the instrument that may be exercised by the trust advisor or other
31 persons designated in the instrument;

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

37 ~~(9)~~(10) "fidfin trust" means a trust created to facilitate the delivery of
38 fidfin services by a fiduciary financial institution;

39 ~~(10)~~(11) "fiduciary" means a trustee, a trust advisor or a custodian of
40 an alternative asset custody account appointed under an instrument that is
41 acting in a fiduciary capacity for any person, trust or estate;

42 ~~(11)~~(12) "instrument" means any document creating a fidfin trust or
43 alternative asset custody account;

1 (13) "officer" means a person who participates or has authority to
2 participate, other than in the capacity of a director, in major policymaking
3 functions of the bank, trust company or fiduciary financial institution,
4 whether or not the officer has an official title or if the officer is serving
5 without salary or other compensation. "Officer" includes the chairperson
6 of the board, president, vice president, cashier, secretary and treasurer of
7 a bank, trust company or fiduciary financial institution;

8 (14) "organizer" means a person who filed the fiduciary financial
9 institution formation documents;

10 ~~(12)~~(15) "out-of-state bank" means a national or state bank, savings
11 and loan association or savings bank not incorporated under the laws of
12 Kansas;

13 ~~(13)~~(16) "out-of-state financial institution" means an out-of-state
14 bank or an out-of-state trust company;

15 ~~(14)~~(17) "out-of-state trust company" means a national or state trust
16 company not incorporated under the laws of Kansas;

17 (18) "private entity" means an entity other than the Kansas bureau of
18 investigation or the federal bureau of investigation that can provide a
19 state or national criminal history record check;

20 ~~(15)~~(19) (A) "qualified investment" means the purchase or
21 development, in the aggregate, of at least 10,000 square feet of
22 commercial, industrial, multiuse or multifamily real estate in the economic
23 growth zone where the fiduciary financial institution maintains its
24 principal office pursuant to K.S.A. 9-2309, and amendments thereto,
25 provided that such community has committed to develop the necessary
26 infrastructure to support a "qualified investment." A "qualified
27 investment":

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

32 (ii) shall be exempt from the provisions and limitations of K.S.A. 9-
33 1102, and amendments thereto;

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

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

41 (B) notwithstanding the foregoing provisions, if a fiduciary financial
42 institution leases any portion of a qualified investment made by another
43 fiduciary financial institution as the lessee fiduciary financial institution's

1 suitable office space:

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

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

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

12 ~~(16)~~(20) "technology-enabled fiduciary financial institution" or
13 "fiduciary financial institution" means any limited liability company,
14 limited partnership or corporation that:

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

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

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

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

26 ~~(17)~~(21) "trust" means a trust created pursuant to the Kansas uniform
27 trust code, K.S.A. 58a-101 et seq., and amendments thereto, or created
28 pursuant to the Kansas business trust act of 1961, K.S.A. 17-2707 et seq.,
29 and amendments thereto;

30 ~~(18)~~(22) "trust advisor" means a fiduciary granted authority by an
31 instrument to exercise, consent, direct, including the power to direct as
32 provided in K.S.A. 58a-808, and amendments thereto, or approve all or
33 any portion of the powers and discretion conferred upon the trustee of a
34 fidfin trust, including the power to invest the assets of a fidfin trust or
35 make or cause distributions to be made from such fidfin trust; and

36 ~~(19)~~(23) the definitions of K.S.A. 9-701, and amendments thereto,
37 apply to fiduciary financial institutions except as otherwise provided in
38 this act.

39 Sec. 2. K.S.A. 9-2302 is hereby amended to read as follows: 9-2302.

40 (a) No fiduciary financial institution shall be organized under the laws of
41 this state nor engage in fidfin transactions, custodial services or trust
42 business in this state until the application for such fiduciary financial
43 institution's organization and the application for certificate of authority

1 have been submitted to and approved by the state banking board. The form
2 for making any such application shall be prescribed by the state banking
3 board and any application made to the state banking board shall contain
4 such information as the state banking board shall require. Except as
5 provided in K.S.A. 9-2325, and amendments thereto, the state banking
6 board shall not approve any application until the Beneficient conditional
7 charter has been converted to a full charter and the commissioner has
8 completed a regulatory examination.

9 (b) (1) No Kansas-chartered state bank, Kansas-chartered state trust
10 company or fiduciary financial institution 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 (2) Except as otherwise provided by this subsection, any trust
14 company whose application has been approved in accordance with this
15 section and any out-of-state trust company engaging in fidfin transactions
16 in this state shall be considered a fiduciary financial institution for the
17 purposes of this act, shall have all rights and powers granted to a fiduciary
18 financial institution under this act and shall owe all duties and obligations
19 imposed on fiduciary financial institutions under this act, including, but
20 not limited to, the fiduciary duties imposed under K.S.A. 9-2311 and 9-
21 2313, and amendments thereto, and the requirements of K.S.A. 9-2302(c)
22 (5) and (6), and amendments thereto.

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

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

35 (A) A bank or trust company whose application has been approved in
36 accordance with this section or an out-of-state financial institution that
37 engages in fidfin transactions in this state shall not be subject to the
38 provisions of K.S.A. 9-2305, 9-2306 or 9-2308, and amendments thereto;
39 and

40 (B) the commissioner shall not examine or require applications,
41 reports or other filings from an out-of-state financial institution that is
42 subject to oversight of such financial institution's fidfin transactions by a
43 governmental agency of the jurisdiction that chartered the out-of-state

1 financial institution.

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

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

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

8 (3) fiduciary financial institutions' articles of organization contain the
9 names and addresses of the fiduciary financial institution's members and
10 the number of units subscribed by each. The articles of organization may
11 contain such other provisions as are consistent with the Kansas revised
12 limited liability company act, Kansas revised uniform limited partnership
13 act or Kansas general corporation code;

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

17 (5) fiduciary financial institution has committed to structure any
18 fidfin transactions to ensure that qualified charitable distributions, as
19 defined in K.S.A. 2022 Supp. 79-32,283, and amendments thereto, are
20 made each calendar year that the fiduciary financial institution conducts
21 fidfin transactions; and

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

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

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

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

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

34 (f) (1) The state banking board *or the commissioner* may require
35 fingerprinting of any officer, director or organizer of ~~the proposed a~~
36 fiduciary financial institution. Such fingerprints may be submitted to the
37 Kansas bureau of investigation and the federal bureau of investigation for
38 a state and national criminal history record check. The fingerprints shall be
39 used to identify the person and to determine whether the person has a
40 record of arrests and convictions in this state or other jurisdictions. The
41 state banking board *or the commissioner* may use information obtained
42 from fingerprinting and the criminal history for purposes of verifying the
43 identification of the person and in the official determination of the

1 qualifications and fitness of the persons associated with the applicant
2 fiduciary financial institution to be issued a charter. Whenever the state
3 banking board *or the commissioner* requires fingerprinting, any associated
4 costs shall be paid by the applicant or the parties to the application.

5 (2) (A) *The state banking board or the commissioner shall not*
6 *authorize receipt of a state and national criminal history record check*
7 *from a private entity unless the Kansas bureau of investigation or the*
8 *federal bureau of investigation is unable to supply such state and national*
9 *criminal history record check through the Kansas central repository of*
10 *criminal history records or any subsequent repository system provided for*
11 *by law. The state banking board or the commissioner shall not disclose or*
12 *use a state and national criminal history record check for any purpose*
13 *except as provided for in this section. Unauthorized use of a state or*
14 *national criminal history record check shall constitute a class A nonperson*
15 *misdemeanor.*

16 (B) *Each state and national criminal history record check shall be*
17 *confidential, not subject to the open records act, K.S.A. 45-215 et seq., and*
18 *amendments thereto, and shall not be disclosed to any fiduciary financial*
19 *institution. The provisions of this subparagraph providing for the*
20 *confidentiality of public records shall expire on July 1, 2028, unless the*
21 *legislature reviews and reenacts such provisions in accordance with K.S.A.*
22 *45-229, and amendments thereto, prior to July 1, 2028.*

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

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

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

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

42 (2) If the amount provided in paragraph (1)(B) exceeds the amount
43 provided in paragraph (1)(A), the fiduciary financial institution shall be

1 entitled to a credit against the amount distributable under K.S.A. 9-
2 2311(f), and amendments thereto, in an amount equal to such excess.

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

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

6 Applicable distribution amount Percentage to department of commerce

7 \$0 to \$500,000 90%

8 \$500,001 to \$1,000,000 50%

9 Above \$1,000,000 10%

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

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

31 (2) the balance of the applicable distribution required under
32 subsection (h) shall be distributed to one or more qualified charities as
33 defined in K.S.A. 2022 Supp. 79-32,283, and amendments thereto, as shall
34 be selected by the fiduciary financial institution. Nothing in this section
35 shall preclude a distribution to one or more qualified charities in excess of
36 the amounts provided in this section. An economic growth zone or
37 qualified charity shall have no obligation to repay any distributions
38 received under this act or to make any contributions to a fiduciary
39 financial institution.

40 Sec. 3. K.S.A. 9-2301 and 9-2302 are hereby repealed.

41 Sec. 4. This act shall take effect and be in force from and after its
42 publication in the Kansas register.