

SENATE BILL No. 204

By Joint Committee on Fiduciary Financial Institutions Oversight

2-8

1 AN ACT concerning financial institutions; relating to the technology-
2 enabled fiduciary financial institutions act; replacing the definition of
3 "charitable beneficiaries" with "qualified charities" therein; ~~expanding~~
4 ~~the definition of "qualified charities" for purposes of the income tax~~
5 ~~credit for certain qualified charitable distributions of fiduciary~~
6 ~~financial institutions; amending K.S.A. 9-2301 and K.S.A. 2022~~
7 ~~Supp. 79-32,283 and repealing the existing section sections.~~
8

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

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

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

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

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

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

providing that fiduciary financial institutions shall be overseen, supervised and examined by the office of the state bank commissioner as a chartered trust company; allowing a fiduciary financial institution to publish or promulgate itself as a trust company in legal or regulatory filings or in disclosures to existing or prospective customers or investors; authorizing a fiduciary financial institution to exercise fiduciary powers and full trust powers and to engage as a trust company under state and federal law; amending K.S.A. 9-2307, 9-2308 and 9-2310 and repealing the existing sections.

Strike the contents of SB 204

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(3) (A) "qualified charities" means:~~

~~(i) One or more charities, in to which contributions are allowable as a deduction pursuant to section 170 of the federal internal revenue code if; or~~

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

~~(B) Such "qualified charities" shall have:~~

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

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

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

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

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

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

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

~~(1) Established such fiduciary financial institution's principal~~

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

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

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

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

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

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

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

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

Section 1. K.S.A. 9-2307 (Attachment #1)
Sec. 2. K.S.A. 9-2308 (Attachment #2)
Sec. 3. K.S.A. 9-2310 (Attachment #3)

Renumber sections accordingly

9-2307, 9-2308 and 9-2310

Kansas register

9-2307. Report to commissioner; examinations; requirements. (a) A fiduciary financial institution shall make a report to the commissioner pursuant to the provisions of K.S.A. 9-1704, and amendments thereto. In making such a report, a fiduciary financial institution shall:

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

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

(b) In examining a fiduciary financial institution, the state banking board and the commissioner shall:

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

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

(3) evaluate whether available capital, including the agreement of a fiduciary financial institution's members to contribute capital pursuant to K.S.A. 9-2305, and amendments thereto, exceeds the fiduciary financial institution's obligations, determined in accordance with generally accepted accounting principles;

(4) evaluate the background and qualifications of a fiduciary financial institution's executive officers and directors, the internal controls and audit processes enacted by the fiduciary financial institution and adherence to its policies and procedures;

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

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

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

(c) Profitability shall not be a consideration in evaluating a fiduciary financial institution if sufficient capital and equity exist in the business, including, without limitation, membership capital, surplus, undivided profits and commitments by members to contribute additional capital to the fiduciary financial institution pursuant to K.S.A. 9-2305, and amendments thereto, to satisfy the fiduciary financial institution's obligations.

History: L. 2021, ch. 80, § 7; L. 2022, ch. 55, § 6; July 1.

(d) A fiduciary financial institution shall be overseen, supervised and examined by the office of the state bank commissioner as a chartered trust company as defined in K.S.A. 9-701, and amendments thereto, exercising fiduciary powers and engaging in trust business pursuant to K.S.A. 9-2310 and rules and regulations adopted pursuant to Kansas state law by such office and shall be designated, recognized and referenced as a chartered trust company as defined in K.S.A. 9-701, and amendments thereto by the office of the state bank commissioner without exception.
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Attachment #2
SB 204 amendment
4/4/2023
Senate FI&I

9-2308. Name of institution; advertising; restrictions. A fiduciary financial institution may use in such fiduciary financial institution's business name or advertising the words "fiduciary financial institution" or any similar term or phrase, but may not use in such institution's name the words "bank" or "trust company" without reference to fidfin trusts or any other term that tends to imply that such fiduciary financial institution is a bank or trust company, unless the commissioner has approved the use in writing after finding that the use will not be misleading. While a fiduciary financial institution is a trust company for purposes of federal and state law and rules and regulations and possesses trust powers under this act, it is the intent of this section to impose restrictions on the name of such institution to avoid confusion with other banks and trust companies that operate in this state but that are not fiduciary financial institutions. The [naming] restrictions imposed under this section shall in no way reduce or eliminate the trust powers granted to a fiduciary financial institution as a trust company under this act. Other than indicating that the fiduciary financial institution is headquartered and chartered in Kansas, no fiduciary financial institution's name or advertising shall infer or imply that such fiduciary financial institution is endorsed by, an affiliate of or otherwise connected with the government of the state of Kansas.

A fiduciary financial institution is a chartered trust company as defined in K.S.A. 9-701, and amendments thereto, for all purposes under federal and state law as if authorized under K.S.A. 9-804(c), and amendments thereto.

business

on the business name

History: L. 2021, ch. 80, § 8; July 1.

Nothing herein or in K.S.A. 9-2011, and amendments thereto shall restrict a fiduciary financial institution from publishing or promulgating itself as a trust company as defined in K.S.A. 9-701, and amendments thereto, in legal or regulatory filings or in disclosures to existing or prospective customers or investors.

Attachment #3
SB 204 amendment
4/4/2023
Senate FI&I

9-2310. General powers. Any fiduciary financial institution is hereby authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, the following powers:

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

(b) to receive, retain and manage alternative asset custody accounts in accordance with K.S.A. 9-2313, and amendments thereto; ~~and~~

(c) to ~~engage in trust business as defined in K.S.A. 9-701, and amendments thereto, [as incidental to] the activities~~ in subsections (a) and (b).

exercise fiduciary powers and full trust powers and to

History: L. 2021, ch. 80, § 10; L. 2022, ch. 55, § 7; July 1.

as a trust company

and any other applicable federal or state law or rules and regulations, in any manner that assists in the performance of

; and
(d) to publish and promulgate itself as a chartered trust company as defined in K.S.A. 9-701, and amendments thereto, in legal or regulatory filings or in disclosures to existing or prospective customers or investors, subject only to the restriction on the business name as provided in K.S.A. 9-2308, and amendments thereto