



Testimony to Joint Committee on TEFFI's December 7, 2021

Members of the Joint Committee on Fiduciary Financial Institutions Oversight:

My name is David Herndon. I am the Kansas State Bank Commissioner and appear before you to update you on the operations of our first Technology-Enabled Fiduciary Financial Institution, known as a "TEFFI" in the state of Kansas, from the perspective of my office, the Office of the State Bank Commissioner ("OSBC").

I am joined in person today by OSBC General Counsel Melissa Wangemann and OSBC staff attorney Matt Shoger. Each of them is available for questions by the committee.

Joining us virtually from OSBC is Deputy Commissioner Tim Kemp and TEFFI examiner Aaron Emerson. We are also joined today by three members of the State Banking Board: Chairman Leonard Wolfe, and board members Lea Tatum-Haskell and Justin Nichols. These three board members comprise the ad hoc committee charged with overseeing the TEFFI application and chartering process by The Beneficient Company Group, LP, the entity granted the pilot program in the 2021 legislation.

Today, I intend to report on the status of implementation of the TEFFI Act requirements, the timeline of implementation, the status of OSBC's enactment of rules and regulations, proposed legislative changes, the status of the pilot program's anticipated start date, and the timeframe for the first examination by OSBC before issuance of the formal charter.

When this legislation was introduced last session, I appeared as a neutral commenter on the legislation. That neutrality continues today. However, during my testimony, I expressed concerns with particular regulatory components contained in the law. My concerns were interpreted by some as being testimony opposing the legislation. As I just said, we are neither proponents nor opponents to this law. And I am pleased to report that, by working closely with Beneficient, several of our concerns have been allayed.

The law establishes OSBC as the sole regulatory body for TEFFI's chartered in Kansas. There is no federal counterpart in the regulatory field for TEFFI's. OSBC is a financial regulator. We regulate

banks, trust companies, mortgage companies, consumer credit companies and other financial entities that are licensed in Kansas. And as required by Kansas law, we will be prepared for the regulation of TEFFI's.

In addition to working with Beneficient on their application, we have sought guidance and fielded questions from legal, accounting, academic, regulatory and industry professionals. Anecdotally, someone suggested that writing the rules and regulations for TEFFI's is like building the plane while in flight. I agreed with the analogy but added we were also taking pilot lessons. Fortunately, we have a good ground crew and a willing co-pilot as our applicant.

In terms of implementing the TEFFI Act requirements, the OSBC has so far complied and met all deadlines imposed by Senate Sub for HB 2074. A conditional charter was granted on June 30, 2021, meeting the deadline of July 1 set in the bill. And since that time, several, but not all, of the application requirements contained in the Act and also noted on the conditional charter have been satisfied.

Numerous phone calls, texts, e-mails and in-person meetings have taken place, all of which have been productive. Staff members from OSBC traveled to Beneficient's Dallas headquarters in November. A letter over my signature, dated November 18, summarized and memorialized the discussions and agreements reached between us in our joint efforts to obtain, analyze, and process that information for Beneficient to establish a TEFFI. Certain members of this committee were copied on that letter, but I'd like to summarize it here to establish the current state of the application.

A significant issue was the affiliation between Beneficient and GWG Holdings, a publicly traded company that we determined from our due diligence to be facing potentially severe adverse actions by the Securities and Exchange Commission and/or NASDAQ. We first became aware of these issues last spring and were assured this issue would resolve itself through severance of the relationship between Beneficient and GWG. That action--severing the relationship--was completed November 15, 2021, pursuant to actions of each company's board of directors and GWG's subsequent filing of a Form 8-K establishing a November 29th effective date. Severing the relationship between Beneficient and GWG has overcome a major impediment to the application process.

Next, a key component creating delay is the applicant's lack of complete and final financial statements. No financial analysis or due diligence can be conducted until those statements are received. The applicant submitted unaudited "managerial" statements to OSBC on December 1. I repeat, these are not audited financial statements, nor do they contain footnotes or supporting schedules. It will then take us some time to analyze them appropriately and third-party accounting assistance may be required.

We have successfully resolved, exclusively for this applicant, the issue of the law allowing intangible assets as capital adequacy, this applicant's funding sources for fidfin transactions, the

type of trust powers this applicant needs to conduct fidfin transactions, and the type of consideration used for those transactions.

However, we and the applicant remain stymied by Section 2(f) of HB 2074 requiring federal background checks for all of the applicant's officers and directors, conducted by the FBI. To date, OSBC has only received five of these background checks. I have requested assistance from Senator Jerry Moran to expedite this process, but no positive results have been realized to date. We are exploring appropriate alternatives that may be available to complete this step without the help of the FBI.

Consequently, although our goal remains to provide the applicant authority to conduct business in an expeditious manner, it may be necessary for OSBC to extend the time in which the applicant can begin the pilot program and commence transactions pursuant to Section 25(d) of the Act.

In the meantime, regulations for TEFFI's have been drafted and submitted for review by OSBC's third-party legal counsel. That review is relatively complete with comments and suggestions by outside counsel being reviewed by internal counsel. We expect that process to be complete within the next week. Through discussions with Beneficient, we've also gained clarity regarding some of the economic development provisions contained in the Act and how the applicant plans to comply with those. We included the departments of commerce and revenue in our discussions.

OSBC's examination staff anticipates conducting the first examination prior to issuance of the formal charter within 12 weeks of the TEFFI conducting fidfin transactions. We believe that within this 12-week timeframe, Beneficient will have booked sufficient transactions for OSBC to conduct a meaningful examination. Obviously, if Beneficient's book of business grows faster or slower than this timeframe, we will move the examination date accordingly.

Any examination conducted—whether before or after issuance of a formal charter—will address only compliance with state law as presented in HB 2074, information technology standards and the applicable federal requirements such as Anti Money Laundering (AML) and Bank Secrecy Act (BSA) rules and regulations. The examination standards given in HB 2074 preclude any Safety and Soundness determination that would meet our internally-accepted regulatory examination protocols for Safety and Soundness exams for banks and depository institutions. Those standards and protocols require a regulatory examination to establish a rating of 1-5—with 1 being the highest rating—on Capital Adequacy, Asset Quality, Management Capability, Earnings, Liquidity, and Interest Rate Sensitivity. This rating is known by the acronym CAMELS.

Allow me to provide an example on how we would normally apply the CAMELS ratings. Even though the applicant and OSBC have resolved our concerns about Capital Adequacy, the new law allows intangible assets to be included in the capital. A TEFFI exchanges an alternative, illiquid asset for a liquid asset by taking ownership and holding this illiquid asset in the form of a loan that is repaid with the illiquid asset's maturation. No repayment schedule is established, and no recourse exists to any party in the transaction. Therefore, Asset Quality would fail a standard

examination. Also, the Act specifically disallows Earnings to be considered, and Liquidity and Interest Rate Sensitivity are not considered because no customer deposits are held, thereby reducing the Liquidity need to only meet current operating expenses. No interest rate risk is present because there are no liabilities under pressure of interest rate movements.

Similarly, trust companies are examined using rating components for Management, Operations, Internal Controls & Audits, Earnings, Compliance and Asset Management. For the same reasons given above, a trust examination cannot be conducted to accurately reflect an industry accepted standard.

Therefore, OSBC's examination activities will very likely be limited to a "Pass/Fail" conclusion based on compliance with HB 2074 and the applicable federal requirements for financial institutions.

Section 29(f)(3) of the TEFPI Act charges the OSBC with the duty to provide recommendations to this committee for "any legislation necessary to implement the provisions of" the TEFPI Act. The agenda of this committee meeting directed us to provide recommended legislation for the 2022 session. Therefore, I have attached to my written testimony a bill draft, which includes our recommended changes. These changes clarify some issues unique to TEFPI's, specifically:

1. what the OSBC will evaluate during an exam,
2. when the pilot program will end,
3. what happens if a TEFPI fails or stops operating,
4. that certain required notifications to the OSBC must be prompt and in writing,
5. that a fidfin transaction is a sale from the perspective of the customer, and
6. when the first yearly assessment will be due.

One recommended change adds authority for the OSBC to set concentration limits for fidfin transactions based on asset class, geography, or industry sector, based on the unique risk portfolio for each category of transactions.

Our recommended changes also harmonize some provisions with existing approaches for banks and trust companies, specifically:

1. that initial fees are received at the time of application,
2. how fees and assessments will be paid,
3. the grounds for which an application can be denied,
4. that the OSBC can examine a TEFPI's service providers,
5. that the OSBC can require insurance and extra capital,

6. that the OSBC can require disclosures to consumers,
7. that assessments are allocated and paid in July,
8. to what extent a TEFPI can engage in traditional trust business, and
9. that TEFPI's are mandatory reporters for purposes of elder abuse.

Our recommended changes also make a handful of technical corrections and some minor wording improvements to better fit the TEFPI context. Beneficient has agreed to several of the technical corrections and also #7-9 listed above.

Again, thank you for the opportunity to address this Committee, Mr. Chairman. I hope my comments have reflected all the work of Beneficient and OSBC to reach the common goal of receiving, reviewing, and analyzing the information that will lead to Beneficient receiving its authority to conduct business in Kansas, successfully operating the pilot program, and our state attracting subsequent TEFPI's. We look forward to a long and respectful relationship with Beneficient, and appreciate the opportunity this morning to update the committee on the current status of our first TEFPI in the state of Kansas.

My staff and I will stand for questions from you or members of the Committee.

Senate Substitute for HOUSE BILL No. 2074

AN ACT concerning financial institutions; enacting the technology-enabled fiduciary financial institutions act; relating to requirements, fiduciary powers, duties, functions and limitations for such fiduciary financial institutions; pilot program; prescribing administrative powers and duties for the state banking board and the state bank commissioner; establishing the technology-enabled fiduciary financial institutions development and expansion fund; providing an income and privilege tax credit for technology-enabled fiduciary financial institutions making certain qualified charitable distributions; creating the joint committee on fiduciary financial institutions oversight.

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

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

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

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

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

(3) "alternative asset custody account" means an account created by the owner of an alternative asset that designates a fiduciary financial institution as custodian or agent and into which the ~~client~~-owner transfers, electronically or otherwise, content, materials, data, information, documents, reports and contracts in any form, including, without limitation, evidence of ownership, subscription agreements, private placement memoranda, limited partnership agreements, operating agreements, financial statements, annual and quarterly reports, capital account statements, tax statements, correspondence from the general partner, manager or investment advisor of the alternative asset, an investment contract as defined in K.S.A. 17-12a102(28)(E), and amendments thereto, and any digital asset as defined in K.S.A. 584802, and amendments thereto, whether such information is in hard copy form or a representation of such information that is stored in a computer readable format;

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

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

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

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

(8) "fidfin," "fidfin services" or "fidfin transactions" means the financing of a fidfin trust and the acquisition of alternative assets on behalf of and through the fidfin trust as provided in section 11, and amendments thereto, ~~including loans, extensions of credit and direct investments;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

board and any application made to the state banking board shall contain such information as the state banking board shall require. Except as provided in section 25, and amendments thereto, the state banking board shall not approve any application until the Beneficient conditional charter has been converted to a full charter and the commissioner has completed a regulatory examination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. (a) ~~Every fiduciary financial institution shall be assessed an initial fee of \$500,000 to be remitted concurrently with the issuance of such fiduciary financial institution's charter.~~ An application for a fiduciary financial institution charter shall include a nonrefundable fee of \$500,000 to be remitted in a manner prescribed by the commissioner. The expense of every annual regular fiduciary financial institution examination, together with the expense of administering fiduciary financial institution laws, including salaries, travel expenses, third-party fees for consultants or other entities necessary to assist the commissioner, supplies and equipment, shall be paid by the fiduciary financial institutions of this state. Prior to the beginning of each fiscal year, the commissioner shall make an estimate of the ~~trust~~ fiduciary financial institution expenses to be incurred by the office of the state bank commissioner during such fiscal year in an amount not less than \$1,000,000. The commissioner shall allocate and assess each fiduciary financial institution in this state on the basis of such fiduciary financial institution's total fidfin transaction balances, consisting of the aggregate fidfin financing balances of the fiduciary financial institution reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto. If a fiduciary financial institution has no

fidfin transaction balances, but such fiduciary financial institution is otherwise providing custodial services or trust services, the commissioner shall allocate and assess such fiduciary financial institution in a manner the commissioner deems reasonable and appropriate. A fiduciary financial institution that has no fidfin transaction balances and no alternative asset custody accounts reflected in the last December 31 report filed with the commissioner may be granted inactive status by the commissioner. The annual assessment shall not exceed \$10,000 for such an inactive fiduciary financial institution. The annual fee shall be first assessed for the year immediately following the year the fiduciary financial institution received ~~a certificate of~~ authority to engage in fidfin transactions, custodial services and trust business and for each year thereafter.

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

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

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

- (1) "Capital stock" includes membership capital and partner capital;
- (2) "stock" includes membership units and partnership interests;
- (3) "common stock" includes common units and common interests;
- (4) "preferred stock" includes preferred units and preferred interests;
- (5) "stockholders" includes members and partners;
- (6) "articles of incorporation" includes articles of organization and articles of limited partnership;
- (7) "incorporation" includes organization;
- (8) "corporation" includes company and partnership;
- (9) "corporate" includes company and partnership;
- (10) "trust business" and "business of a trust company" includes fidfin and fiduciary financial institution

business; ~~and~~

(11) K.S.A. 9-901a(a), and amendments thereto, means section 5, and amendments thereto; ~~and~~

(12) "insolvent" means the definition in K.S.A. 9-1902(b).

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

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

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

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

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

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

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

(c) The commissioner may require a fiduciary financial institution to maintain financial institution bonds and insurance policies regarding its operations in amounts the commissioner deems appropriate for the fiduciary financial institution's size or the nature of the business of the fiduciary financial institution.

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

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

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

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

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

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

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

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

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

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

(j) Every fiduciary financial institution shall notify the commissioner of any change in the chief executive officer, president or directors, including in such fiduciary financial institution's report a statement of

the past and current business and professional affiliations of the new chief executive officer, president or directors.

Sec. 7. (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 ~~evaluating-examining the safety and soundness of~~ a fiduciary financial institution, the state banking board and the commissioner shall not evaluate safety and soundness but 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 ~~the soundness of a fiduciary financial institution based on~~ whether available capital, including the agreement of ~~the-a~~ fiduciary financial institution's members to contribute capital pursuant to section 5, and amendments thereto, exceeds the fiduciary financial institution's obligations, determined in accordance with generally accepted accounting principles;~~and~~

(4) evaluate ~~the safety of a fiduciary financial institution based on~~ the background and qualifications of ~~such-a~~ fiduciary financial institution's executive officers and directors~~and~~, the internal controls and audit processes enacted by the fiduciary financial institution, ~~and to ensure~~ 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 law; and

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

(c) Profitability ~~shall not be a consideration in evaluating the safety and soundness of~~ shall be reviewed to determine if a fiduciary financial institution ~~if-has~~ 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 section 5, and amendments thereto, to satisfy the fiduciary financial institution's obligations.

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

Sec. 8. 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.

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

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

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

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

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

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

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

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

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

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

(5) to the extent the fiduciary financial institution maintains hard copies of any documents required to be maintained under this chapter, have a secure fireproof file cabinet that contains all such hard copies; and

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

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

(1) Annual account reviews;

(2) annual investment reviews;

(3) trust or custodial accounting;

(4) account correspondence;

(5) reviewing and signing trust account or custodial account tax returns; or

(6) distributing account statements.

Sec. 10. (a) 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:

(1) To engage in fidfin transactions in accordance with section 11, and amendments thereto;

(2) to receive, retain and manage alternative asset custody accounts in accordance with section 13, and amendments thereto; and

(3) to engage in trust business as defined in K.S.A. 9-701, and amendments thereto, as incidental to the activities in paragraphs (a)(1) and (a)(2).

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

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

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

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

(C) the financing is nonrecourse as to the fiduciary financial institution's customer and is not otherwise guaranteed by such customer, who shall not be a party to the financing but shall only be involved in fidfin

transactions through a sale of one or more of the customer's alternative assets to a fidfin trust under paragraph (2);

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

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

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

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

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

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

(1) The borrower is a fidfin trust; and

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

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

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

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

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

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

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

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

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

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

(i) A fiduciary financial institution shall disclose to a customer the information required by rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2322, and amendments thereto, to ensure the customer is informed regarding the nature of the customer's transactions with the fiduciary financial institution.

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

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

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

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

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

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

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

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

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

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

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

(f) Whenever a fiduciary financial institution causes to be performed for itself, by contract or otherwise, any services authorized under the technology-enabled fiduciary financial institutions act or the state banking code:

(1) such performance shall be subject to regulation and examination by the commissioner to the same extent as if such services were being performed by the fiduciary financial institution itself; and

(2) the fiduciary financial institution shall notify the commissioner of the existence of the service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

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

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

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

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

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

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

(c) In performing custodial services under this section:

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

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

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

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

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

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

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

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

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

(d) Absent contrary provisions in the governing instrument, the actions of the excluded fiduciary, such as any communications with the trust advisor and others and carrying out, recording and reporting actions taken at the trust advisor's direction, pertaining to matters within the scope of authority of the trust advisor, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument. Such administrative

actions shall not constitute an undertaking by the excluded fiduciary to monitor, participate or otherwise take any fiduciary responsibility for actions within the scope of authority of the trust advisor.

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

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

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

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

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

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

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

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

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

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

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

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

(a) In bad faith;

(b) intentionally; or

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

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

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

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

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

Sec. 20. The privacy of those who have established a fidfin trust or alternative asset custody account shall be protected in any court proceeding concerning such trust if the acting trustee, custodian, trustor or any beneficiary so petition the court. Upon the filing of such a petition, the instrument, inventory, statement filed by

any trustee or custodian, annual verified report of the trustee or custodian, final report of the trustee or custodian and all petitions relevant to trust administration and all court orders thereon shall be sealed upon filing and shall not be made a part of the public record of the proceeding, except that such petition shall be available to the court, the trustor, the trustee, the custodian, any beneficiary, their attorneys and to such other interested persons as the court may order upon a showing of need.

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

- (1) An instrument as defined in section 1, and amendments thereto;
- (2) a transaction agreement between a fiduciary financial institution and a fidfin trust;
- (3) any other documents executed by a fiduciary financial institution or a fidfin trust in connection with a fidfin transaction; and
- (4) any document executed by a fiduciary financial institution or a customer in connection with the creation and management of an alternative asset custody account.

(b) The commissioner may, upon a written request from a fiduciary financial institution prior to a form submission, offer to review a form and reply with informational comments only. Such informational comments shall not, in any manner, constitute approval or endorsement of such form, and the fiduciary financial institution shall not represent that such form has been approved by the office of the state bank commissioner.

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

(b) The office of the state bank commissioner may enter into contracts for technical assistance and professional services as are necessary to administer the provisions of this act and to meet the deadline for the adoption of rules and regulations provided by this section. Such contracts shall be exempt from the requirements of K.S.A. 75-3739, 75-37,102 and 75-37,132, and amendments thereto, or any other statute relating to the procurement of such services.

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

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

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

- (1) The average daily balance of moneys in the technology-enabled fiduciary financial institutions development and expansion fund for the preceding month; and
- (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

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

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

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

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

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

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

(2) assesses the Beneficient company an initial fee of \$1,000,000 in lieu of the initial fee provided in section 3, and amendments thereto; and

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

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

(1) December 31, 2021; or

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

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

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

(f) After the commissioner has completed a regulatory examination of the Beneficient fiduciary financial institution, the Beneficient fiduciary financial institution may submit an application under K.S.A. 9-2302, which shall be considered as an application to convert its conditional charter to a full charter. If this application is granted, the Beneficient conditional charter shall be converted to a full charter, the pilot program shall immediately end, and the state banking board may begin to approve charters for new fiduciary financial institutions under K.S.A. 9-2302. If the application is not granted, the Beneficient fiduciary financial institution may resubmit its application after addressing any deficiencies and shall not be charged any additional application fees. If the Beneficient conditional charter is not converted to a full charter before six months have passed after a second regulatory examination and no conversion application remains pending, the commissioner shall revoke the Beneficient conditional charter, the pilot program shall immediately end, and the state banking board shall not approve any charters for new fiduciary financial institutions under K.S.A. 9-2302.

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

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

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

(b) For purposes of this section:

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

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

(A) 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) 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) agreed to provide an annual report to the department of commerce detailing qualified distributions received during such year, distributions made pursuant to subparagraph (B) and the remaining balance of qualified distributions as of the end of the reporting year. The requirements of subparagraph (A) shall not apply to a 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 section 25(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 section 11, 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 office pursuant to section 9, and amendments thereto; or

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

(f) If a fiduciary financial institution is a pass-through entity for Kansas tax purposes and the credit allowed by this section for a taxable year is greater than the fiduciary financial institution's tax liability against which the tax credit may be applied, a member of the entity or any other party who is required to report such income on a Kansas income tax return is entitled to a tax credit equal to the tax credit determined for the fiduciary financial institution for the taxable year in excess of the fiduciary financial institution's tax liability

under the Kansas income tax act or privilege tax under article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year multiplied by the percentage of the fiduciary financial institution's distributive income to which the member is entitled. Tax credits allowed and earned under this section shall not be sold, assigned, conveyed or otherwise transferred.

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

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

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

Sec. 29. (a) There is hereby created the joint committee on fiduciary financial institutions oversight, which shall be composed of four senators and five members of the house of representatives. The four senate members shall be the chairperson of the standing committee on financial institutions and insurance of the senate, or a member of such committee appointed by the chairperson, two members appointed by the president of the senate and one member appointed by the minority leader of the senate. The five representative members shall be the chairperson of the standing committee on financial institutions and rural development of the house of representatives, or a member of such committee appointed by the chairperson, two members appointed by the speaker of the house of representatives and two members appointed by the minority leader of the house of representatives.

(b) All members of the joint committee on fiduciary financial institutions oversight shall serve for terms ending on the first day of the regular legislative session in odd-numbered years. On and after the first day of the regular legislative session in odd-numbered years, the chairperson shall be one of the representative members of the joint committee selected by the speaker of the house of representatives, and the vice chairperson shall be one of the senate members selected by the president of the senate. On and after the first day of the regular legislative session in even-numbered years, the chairperson shall be one of the senate members of the joint committee selected by the president of the senate and the vice chairperson shall be one of the representative members of the joint committee selected by the speaker of the house of representatives. The chairperson and vice chairperson of the joint committee shall serve in such capacities until the first day of the regular legislative session in the ensuing year. The vice chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson.

(c) A quorum of the joint committee on fiduciary financial institutions oversight shall be a majority of the members. The joint committee on fiduciary financial institutions oversight shall meet at any time and at any place within the state on call of the chairperson. Members of the joint committee shall receive compensation, travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto, when attending meetings of such committee authorized by the legislative coordinating council.

(d) In accordance with K.S.A. 46-1204, and amendments thereto, the legislative coordinating council may provide for such professional services as may be requested by the joint committee on fiduciary financial institutions oversight.

(e) The joint committee on fiduciary financial institutions oversight may introduce such legislation as deemed necessary in performing such committee's functions.

(f) The joint committee on fiduciary financial institutions oversight shall:

(1) Monitor, review and make recommendations regarding fiduciary financial institutions' operations in the state of Kansas;

(2) monitor, review and make recommendations regarding the fiduciary financial institutions pilot program established in section 25, and amendments thereto; and

(3) receive a report from the office of the state bank commissioner prior to December 31, 2021, providing an update on the implementation of the technology-enabled fiduciary financial institutions act and the pilot program established in section 25, and amendments thereto. Such report shall include recommendations from the office of the state bank commissioner for any legislation necessary to implement the provisions of the technology-enabled fiduciary financial institutions act.

(g) The office of the state bank commissioner shall appear annually before the joint committee and shall present a report on the fiduciary financial institution industry.

Sec. 30. This act shall take effect and be in force from and after its publication in the statute book. I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body.

New. Sec. 31. If it shall appear upon the examination of any fiduciary financial institution or from any report made to the commissioner that any fiduciary financial institution is:

(a) Critically undercapitalized, the commissioner may:

(1) Enter an informal memorandum pursuant to K.S.A. 2015 Supp. 9-1810, and amendments thereto, to notify the fiduciary financial institution of the unsatisfactory condition and require the fiduciary financial institution to correct the condition within the time prescribed by the commissioner; or

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

(b) Insolvent, the commissioner may:

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

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

(c) The commissioner shall not appoint a receiver for a fiduciary financial institution and shall not be required to appoint a special deputy commissioner.

(d) If a fiduciary financial institution:

(1) appears critically undercapitalized under subsection (a);

(2) appears insolvent under subsection (b); or

(3) intends to voluntarily cease engaging in business as a fiduciary financial institution or appears to the commissioner to so intend;

then the commissioner, or any special deputy commissioner that has been appointed under subsections (a) or (b) for the fiduciary financial institution, may designate or may require the fiduciary financial institution to designate successor trustees who may be assigned the fiduciary financial institution's accounts and associated property and assets upon insolvency pursuant to paragraph (b)(2) or at the commissioner's direction when the fiduciary financial institution appears to have ceased engaging in business as a fiduciary financial institution.

(e) For purposes of this section, "insolvent" means the definition in K.S.A. 9-2304, and amendments thereto.

Reporting Abuse, Neglect or Exploitation of Certain Persons

K.S.A. 39-1401. As used in this act:

(a) "Resident" means:

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

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

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

(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923, and amendments thereto.

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

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

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

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

(1) Infliction of physical or mental injury;

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

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

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

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

(6) fiduciary abuse; or

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

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

(h) "Caretaker" means a person or institution who has assumed the responsibility, whether legally or not, for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

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

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

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

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

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

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

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

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

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

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

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