

## 2023 Kansas Statutes

**9-2302. Organization; application for certificate of authority; out-of-state banks and trust companies criteria for approval; applicable distribution.** (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 K.S.A. 9-2325, 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) (1) No Kansas-chartered state bank, Kansas-chartered state 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.

(2) Except as otherwise provided by this subsection, any trust company whose application has been approved in accordance with this section and any out-of-state trust company engaging in fidfin transactions in this state shall be considered a fiduciary financial institution for the purposes of this act, shall have all rights and powers granted to a fiduciary financial institution under this act and shall owe all duties and obligations imposed on fiduciary financial institutions under this act, including, but not limited to, the fiduciary duties imposed under K.S.A. 9-2311 and 9-2313, and amendments thereto, and the requirements of K.S.A. 9-2302(c)(5) and (6), and amendments thereto.

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

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

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

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

(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 K.S.A. 9-2301, and amendments thereto;

(5) fiduciary financial institution has committed to structure any fidfin transactions to ensure that qualified charitable distributions, as defined in K.S.A. 2023 Supp. 79-32,283, 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.

(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 or organizer of the proposed fiduciary financial institution. 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 K.S.A. 9-2311(f), 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 K.S.A. 9-2324, 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 K.S.A. 2023 Supp. 79-32,283, 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.

**History:** L. 2021, ch. 80, § 2; L. 2022, ch. 55, § 2; July 1.