

2023 Kansas Statutes

9-2311. Financing; required distribution amount; schedules; remittance of moneys; disclosure to customers. (a) If authorized by the terms of an instrument as such term is defined in K.S.A. 9-2301, and amendments thereto, a fiduciary financial institution may:

(1) Extend financing, such as through loans or extensions of credit 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;

(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 K.S.A. 9-2302, 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 K.S.A. 9-2324, and amendments thereto; and

(2) the balance of the required distribution amount 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. 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) 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 that the customer is informed regarding the nature of the customer's transactions with the fiduciary financial institution, taking into account the level of sophistication of the customer.

History: L. 2021, ch. 80, § 11; L. 2022, ch. 55, § 8; July 1.