KANSAS OFFICE of
REVISOR of STATUTES
LEGISLATURE of THE STATE of KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ▪ SUITE 24-E ▪ TOPEKA, KS 66612 ▪ (785) 296-2321

MEMORANDUM

To: Chairman Longbine and members of the Senate Committee on Financial Institutions and Insurance
From: Office of Revisor of Statutes
Date: March 29, 2021
Subject: **SB 288 - Enacting the technology-enabled trust bank act, providing requirements, fiduciary powers, duties, functions and limitations for trust banks and the administration thereof by the bank commissioner and creating an income and privilege tax credit for certain qualified distributions from trust banks.**

Senate Bill No. 288 enacts the technology-enabled trust bank act. The act consists of 27 new sections of law that would be a part of and supplemental to chapter 9 of the Kansas Statutes Annotated (chapter governing banks and trust companies) and a new tax credit section that would be part of the Kansas income tax act. The act creates a new type of financial institution under Kansas law known as a technology-enabled trust bank or trust bank under the supervision of the office of the state bank commissioner.

Section 1 provides the citation and definitions of terms relating to the act.

Sec. 2 requires a trust bank to apply for a certificate of authority from the state banking board. This section also provides requirements a trust bank shall satisfy before a charter is issued by the state banking board. The state banking board may require fingerprinting and a criminal history record check of any officer, director or other person associated with the trust bank. Actions of the state banking board in approving or disapproving a trust bank application shall be subject to review in accordance with the Kansas judicial review act. Under this section a trust banks shall make a distribution of cash or other assets to the department of commerce and to one or more qualified charities.

Sec. 3 establishes the fee structure for trust banks, including for inactive trust banks. The initial fee for trust banks is $500,000 and for inactive trust banks it would be an amount not to exceed $10,000. Of such fees, 75% would be remitted to the bank commissioner fee fund and 25% to the technology-enabled trust bank development and expansion fund of the department of commerce created in section 24. This section also provides for the assessment of trust bank examination fees by the commissioner.

Sec. 4 states that except as provided by this act, the provisions of the state banking code apply to trust banks in the same manner as such provisions apply to trust companies. This section also incorporates certain terms specific to trust banks into the definitions of various terms already defined in the banking code.

Sec. 5 provides capitalization requirements for trust banks.

Sec. 6 provides that the business of any trust bank shall be managed and controlled by a board of directors. A trust bank's board shall consist of at least five and not more than 25 members. At least one director must be a resident of Kansas. This section also provides requirements relating to board meetings, director vacancies and director oaths.

Sec. 7 requires a trust bank to make a report to the commissioner concerning such trust bank's transaction pursuant to generally accepted accounting principles and calculating such trust bank's capital solvency. This section also provides standards for the commissioner to evaluate a trust bank's safety and soundness.

Sec. 8 allows a trust bank's business name or advertising to use the words "trust," "trust company," "trust bank" or any similar term or phrase, but not use the word "bank" or any term that tends to imply that the business is holding out to the public that the trust bank engages in the business of banking unless the commissioner approves any such use in writing after finding the use will not be misleading.

Sec. 9 requires a trust bank to maintain office space in an economic growth zone (defined as a community with a population of 5,000 or less located in a rural opportunity zone county or Harvey county) and to employ, engage or contract with at least three employees to provide services for the trust bank in Kansas and to facilitate the examinations required by the act.

Sec. 10 provides a trust bank with the authority to exercise powers relating to fidfin (fiduciary finance) transactions, receiving and managing alternative asset custody accounts and engaging in trust business.

Sec. 11 provides additional powers, duties and responsibilities for trust banks specifically relating to extending financing or credit to a fidfin trust. This section also requires distributions in an amount equal to 2.5% of such trust bank's fidfin transactions during the calendar year. The distributions shall be made to the department of commerce and to qualified charities in the same manner as provided in section 2.

Sec. 12 allows trust banks to employ various professionals to advice and assist the trust bank in performing such trust bank's business. Trust banks are also permitted under this section to employ agents to perform acts of fidfin transactions, custodial services or trust business and to license internet-related services, software, mobile applications, technology-enabled platforms and processes to or from affiliates, third parties or other trust banks.

Sec. 13 allows a trust bank to serve as a custodian of an asset custody account and establishes the requirements a trust bank shall satisfy in performing custodial services under this act.

Sec. 14 provides that 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 exempts an excluded fiduciary from liability, either individually or as a fiduciary, for any loss that results from compliance with a direction of the trust advisor or that results from a failure to take any action proposed by an excluded fiduciary that requires prior authorization of the trust advisor. In any action against an excluded fiduciary the burden of proof is on the person seeking to hold the excluded fiduciary liable under the clear and convincing evidence standard.

Sec. 16 provides that a trust advisor is presumed to be a fiduciary when exercising such trust advisor's authority under this act. This section also states that the trust advisor submits to the jurisdiction of Kansas and that an instrument may appoint an individual, corporation or LLC as the trust advisor.

Sec. 17 exempts an entity appointed as a trust advisor from the provisions of the article 8 of chapter 9 of the Kansas Statutes Annotated upon satisfaction of the specific conditions listed in this section.

Sec. 18 provides that an instrument may relieve and indemnify a trust bank serving as trustee from liability for a breach of fiduciary duty if any such provision is unenforceable to the extent that it relieves the trust advisor or trust bank from liability for a breach of fiduciary duty committed in bad faith, intentionally or with reckless indifference to the interest of a beneficiary.

Sec. 19 provides requirements governing the compensation of a trustee.

Sec. 20 protects the privacy of those who have established a fidfin trust or alternative asset custody account in any court proceeding upon petition to the court by the acting trustee, custodian, trustor or any beneficiary. Upon the filing of such petition, documents relating to such trust and all court orders issued thereon shall be sealed 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 provides that a trust bank may file forms relating to trust bank transactions under the act with the bank commissioner for examination, review and approval and describes the time frame for the commissioner to approve or disapprove such forms.

Sec. 22 requires the commissioner to adopt rules and regulations on or before January 1, 2022, as are necessary to administer this act.

Sec. 23 provides that no maximum interest rate or charge or usury rate restriction shall be applied between a trust bank and a fidfin trust if the interest rate is established by written agreement.

Sec. 24 establishes the technology-enabled trust bank development and expansion fund in the state treasury to be administered by the secretary of commerce. Expenditures from the fund shall be for the purpose of promoting and facilitating the development and growth of trust banks, fidfin activities and custodial services in Kansas and to locate trust banks' office space in an economic growth zone. The fund would also receive interest earnings.

Sec. 25 requires that on July 1, 2021, the commissioner shall grant a trust bank charter to Beneficient trust bank and shall establish a pilot program with Beneficient trust bank with specific initial fee and distribution requirements for Beneficient under such pilot program. A community in Harvey county, selected by Beneficient, would be the first economic growth zone.

Sec. 26 provides that 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 provides that for state tax purposes a trust bank that serves as trustee under the act 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 establish an income and privilege tax credit beginning tax year 2021 for trust banks in an amount equal to such trust bank's qualified charitable distributions during such taxable year if the trust bank maintained such trust bank's principal office in an economic growth zone. The credit could be carried forward for up to 14 taxable years following the years in which the credit if first allowed.

The bill takes effect upon publication in the statute book, July 1, 2021.