

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2489

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

HB 2489, as amended, would make several amendments to the Technology-enabled Fiduciary Financial Institutions Act (TEFFI Act) pertaining to an updated definition, fingerprinting requirement, existing application fee, governing documents, evaluation and examination, customer disclosure, and services and authorized activities. The bill also would amend the definition of “financial institution” within a statute requiring the reporting of abuse, neglect, or exploitation of certain individuals to include fiduciary financial institutions.

Definitions (Section 1)

The bill would amend the terms “fidfin,” “fidfin services,” or “fidfin transactions” to mean the financing of a fidfin trust or the acquisition of alternative assets on behalf of and through a fidfin trust or both, as provided in TEFFI Act provisions pertaining to the extension of financing or extensions of credit by a fidfin trust, including loans, extensions of credit, and direct investments. The bill would add definitions for the terms “out-of-state bank,” “out-of-state financial institution,” and “out-of-state trust company.”

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Certificate of Authority and Charter; State Banking Board; Certain Financial Institutions, Engaging in FidFin Transactions (Section 2)

The bill would amend provisions that currently permit the State Banking Board to require fingerprinting of any officer, director, organizer, or any other person of the proposed fiduciary financial institution to remove the reference to “any other person” and remove discretion granted to the Board related to fingerprinting associated with certain applications.

The bill would clarify provisions relating to approval by the State Banking Board of applications of banks, trust companies, and fiduciary financial institutions to engage in fidfin transactions to specify the provisions would apply to state-chartered banks and trust companies.

The bill would further specify any trust company whose application has been approved and any out-of-state trust company engaging in fidfin transactions in Kansas would be considered a fiduciary financial institution, have all rights and powers granted to a fiduciary financial institution, and owe all duties and obligations imposed on fiduciary financial institutions as provided in the TEFPI Act.

The bill would require any bank whose application has been approved and any out-of-state bank engaging in fidfin transactions in Kansas to have a separate department for handling fidfin transactions. This separate department would be considered a fiduciary financial institution, have all rights and powers granted to a fiduciary financial institution, and owe all duties and obligations imposed on fiduciary financial institutions as provided in the TEFPI Act.

The bill would further provide that banks or trust companies whose applications have been approved or an out-of-state financial institution engaging in fidfin transactions in Kansas would not be subject to TEFPI Act provisions pertaining to capitalization requirements, organization and control, and naming restrictions. The State Bank

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

Fees and Assessments (Section 3)

The bill would remove language in the TEFFI Act relating to the assessment of an initial fee of \$500,000 that is required to be remitted concurrently with the fiduciary financial institution's charter and would instead provide that an application for a fiduciary financial institution charter must include a nonrefundable fee that would be remitted in a manner prescribed by the Commissioner. The bill would further provide that until July 1, 2025, the application fee will be \$250,000. On and after July 1, 2025, the application fee would be \$100,000.

The bill would update the date for the assessment sent by the Commissioner to each fiduciary financial institution from December 1 to July 1 and would remove language regarding the frequency of collection for the assessment, invoicing of, and an assessment penalty for failure to pay. The bill would instead provide that when the Commissioner issues an assessment statement, payment must be made within 15 days after the date the statement was sent in a manner prescribed by the Commissioner, which may include such installment periods as the Commissioner deems appropriate, but not more frequently than monthly.

Application of Provisions, Chapter 9; Exceptions (Section 4)

The bill would amend language in the TEFFI Act pertaining to the application of the Kansas Banking Code (Chapter 9, *Kansas Statutes*) provisions to a fiduciary

financial institution in the same manner those provisions apply to a trust company, The bill would add clarifying language to address fidfin and fiduciary financial institution business, including the ability to conduct fidfin transactions by state-chartered banks and trust companies. The bill would specify these exceptions:

- For a state-chartered trust company that receives authority to engage in fidfin transactions under the TEFFI Act (9-2302(b)), the application of the Kansas Banking Code provisions would not apply;
 - The bill, however, would further specify that references in Chapter 9 to “trust business” and “business of a trust company” include fidfin and fiduciary financial institution business;
- For a state-chartered bank that receives authority to engage in fidfin transactions under the TEFFI Act, the application of the Kansas Banking Code provisions would not apply;
 - The bill, however, would further specify the provisions of Chapter 9 would apply in the same manner as they would apply to a trust department of such bank, except that references in Chapter 9 to “trust business” and “business of a trust company” include fidfin and fiduciary financial institution business.

The bill would also create an exception to language relating to conflicts between Chapter 9 and the TEFFI Act. Specifically, the bill would provide if the fiduciary financial institution is a bank department or trust company that received authority to engage in fidfin transactions, the provisions of the TEFFI Act shall only control with regard to fidfin transactions as authorized by that act.

The provisions apply to authorized fidfin transactions and Chapter 9 exceptions would not apply to an out-of-state financial institution.

***Business of Fiduciary Financial Institutions,
Management and Control (Section 5)***

The bill would replace references to a fiduciary financial institution's operating agreement or bylaws with the term "governing documents" in provisions applying to the management and control by the institution's board of directors.

***Reporting to the Bank Commissioner; Evaluation of
Fiduciary Financial Institutions (Section 6)***

The bill would remove references to evaluating the safety and soundness of a fiduciary financial institution in provisions pertaining to reports submitted to the Commissioner, as required in the State Banking Code. The bill would update criteria that originally pertained to evaluation of safety and soundness to instead specify examination of, as it applies to the review of criteria, and would further require the following to be evaluated:

- The profitability of a fiduciary financial institution, in accordance with other provisions pertaining to profitability (described below);
- A fiduciary financial institution's compliance with applicable state and federal laws; and
- A fiduciary financial institution's information technology systems, policies, and practices.

Profitability

The bill would modify a provision that specifies profitability should be a consideration in evaluating the safety and soundness of fiduciary financial institutions if certain criteria has been met to instead specify profitability would not be a consideration in evaluating a fiduciary financial institution (existing criteria would still be applicable; *i.e.*, sufficient capital and equity must exist in the business).

Fiduciary Financial Institution Powers; Fidfin Transactions (Section 7)

The bill would amend the powers of a fiduciary financial institution to engage in trust business by requiring such trust business be incidental to engaging in fidfin transactions and to receiving, retaining, and managing alternative asset custody accounts.

Additional Powers, Duties, and Responsibilities— Extension of Credit and Financing (Section 8)

The bill would modify a provision that permits a fiduciary financial institution to extend financing to a fidfin trust to permit extension of financing through loans or extensions of credit. The bill would also add a disclosure requirement on fiduciary financial institutions. Under the bill, these institutions must disclose to a customer the information required by rules and regulations adopted by the Commissioner (existing authorization in the TEFFI Act) 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.

***Employment of Professionals; Professional Services
(Section 9)***

The bill would add language to provide that whenever a fiduciary financial institution causes to be performed for this institution, by contract or other means, any service under the TEFFI Act or the State Banking Code, that performance will be subject to regulation and examination by the Commissioner to the same extent as if the service was being performed by the fiduciary financial institution itself.

***Exemption from Article 8 of the State Banking Code
(Section 10)***

The bill would require a fiduciary financial institution, when engaging an appointed trust advisor, to notify the Commissioner in writing of its existence and capacity to act within 30 days of the establishment of the capacity.

***Reporting of Elder Abuse by Financial Institutions
(Section 12)***

The bill would amend provisions pertaining to the mandatory reporting of abuse, neglect, or exploitation of certain individuals to include fiduciary financial institutions in the definition of "financial institution."

Technical Amendments

The bill would also make technical and conforming amendments.

Background

The bill was introduced by the House Committee on Financial Institutions and Rural Development at the request of the Office of the State Bank Commissioner (OSBC).

[*Note:* The Joint Committee on Technology-enabled Fiduciary Financial Institutions (Joint Committee) met on December 7, 2021, and included this recommendation in its report: “The draft legislation presented by the OSBC be introduced during the 2022 Session by the respective House and Senate Financial Institutions standing committees.” The 2021 TEFFI Act required the OSBC to include in its report to the Joint Committee recommendations for legislation necessary to implement provisions of the Act. A companion bill, SB 334, has been introduced in the Senate.]

House Committee on Financial Institutions and Rural Development

In the House Committee hearing, a representative of the OSBC provided **proponent** testimony, highlighting several areas of agreement with the TEFFI participating in the pilot program under the TEFFI Act (Beneficient Company Group, LP, or “Beneficient”) on the draft legislation originally presented to the Joint Committee in December 2021. The OSBC conferee noted provisions of the bill would clarify issues unique to the regulation of TEFFIs, harmonize TEFFI provisions with existing approaches for banks and trust companies, and make technical corrections and wording improvements. The conferee identified areas where agreement was not yet reached, noting these items might be better addressed following the initial examination of Beneficient.

Two representatives of Beneficient provided **opponent** testimony on the bill, as introduced. The conferees highlighted the collaborative work with the OSBC and efforts to reach agreement on provisions of the bill. The conferees noted it would be premature to make some of the proposed substantive changes to the TEFFI Act, and the pilot program created under the Act should be allowed to run its course. The representatives said this approach would better facilitate the review, implementation, and evaluation of the Act from an operational standpoint and to enable fidfin transactions to

occur and be examined, which would assist in possible improvements to the TEFFI statutory and regulatory framework.

No other testimony was provided.

The House Committee adopted several amendments to the bill, which would:

- Remove provisions that would have established a regulatory process under the auspices of the Commissioner in the event an examination or report made to the Commissioner determines a TEFFI is critically undercapitalized or insolvent;
- Make clarifying changes in a definition;
- Remove additional criteria relating to the State Banking Board's determination of an application, including reasons for denial, and modify the existing applicant fingerprinting requirement;
- Modify the initial application fee of \$500,000, established as a nonrefundable fee in the bill, as introduced, to specify a fee amount before (\$250,000) and after (\$100,000) July 1, 2025;
- Remove language pertaining to the application of the Kansas Banking Code (Chapter 9, *Kansas Statutes Annotated*) and the TEFFI Act, which would have added a definition for the term "insolvent";
- Remove language pertaining to capital standards, which would have permitted the Commissioner to require a fiduciary financial institution to maintain financial institution bonds and insurance policies in amounts deemed appropriate for the institution's size or nature of its business and permitted the State Banking Board to require a fiduciary financial

institution to have capital in excess of the standard contained in the TEFFI Act;

- Clarify provisions pertaining to the examination of and the existing profitability exception pertaining to evaluations of a TEFFI and remove a provision that would have permitted the State Banking Board and Commissioner to examine any aspect of the fiduciary financial institution to aid in understanding the institution's business operations, financial status and effects on the state, or to help guide rules and regulations for legislative changes;
- Clarify a provision pertaining to the extension of financing to a fidfin trust by removing reference to direct investments and remove language that would have specified the customer's relationship to the financing and remove a provision that would have required the Commissioner to adopt rules and regulations that enumerate categories of fidfin transactions and specify a concentration limit (a provision regarding disclosure of information required by rules and regulations to customers is retained and modified to permit the institution to take into account the customer's level of sophistication);
- Remove reference to prompt written notice (retaining notice) as it applies to notification of the Commissioner regarding employment of certain professionals;
- Update a notification requirement in provisions pertaining to entities appointed as trust advisors to remove a prompt notification requirement and instead specify written notification to the Commissioner within 30 days of the establishment of the entities acting in specified capacities; and

- Remove language that would have provided for the conversion of Beneficient's conditional charter to a full charter, provide the pilot program would immediately cease, and allow the State Banking Board to begin to approve new TEFFI charters (and remove language to address the instance where such charter would not be converted).

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, representatives of Beneficient and the OSBC provided **proponent** testimony, highlighting support for the compromise language contained the bill, as amended by House Committee.

The Senate Committee amended the bill to add definitions pertaining to out-of-state financial institutions, create requirements pertaining to state-chartered and out-of-state financial institutions engaging in fidfin transactions, clarify the application of TEFFI Act provisions with the Kansas Banking Code regarding authorized fidfin and fiduciary financial institution business by certain state-chartered financial institutions, and make technical amendments.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the OSBC and the Department of Revenue state the bill would have no fiscal effect.

Financial institutions; Technology-enabled Fiduciary Financial Institutions Act; TEFFI; State Bank Commissioner; State Banking Board; authority to engage in fidfin transactions; mandatory reporters, elder abuse