

March 9, 2022

Chairman Steven Johnson
House Committee on Insurance and Pensions
Kansas State Capitol
300 SW 10th Ave.
Topeka, KS 66612

RE: Testimony in **SUPPORT** of SB 377

Chairman Johnson and members of the Committee:

Thank you for holding this hearing and for allowing me the opportunity to present written testimony in support of SB 377. This important piece of legislation authorizes captive insurance for “technology enabled fiduciary financial institutions” or “TEFFIs”. SB 377 is identical to HB 2547 which this committee has previously considered. Below, I have summarized some of the salient features of this legislation.

TEFFIs

As this committee will recall, TEFFIs are specialized trust companies subject to review and examination by the Office of the State Banking Commissioner. A TEFFI provides alternative asset investors with financing options, trust administration and custodial services, all delivered in a fiduciary capacity.

“Alternative assets” is a term referring to professionally managed investments which are not publicly traded. Examples include private equity, private real estate funds, venture capital funds, etc. - the same type of investments held by large institutional investors (such as KPERS).

These alternative assets are placed in Kansas trusts or in Kansas custodial accounts which are administered by a TEFFI as trustee or custodian. In fulfilling its fiduciary obligations to the trust beneficiaries or custodial account owners, a TEFFI often seeks to mitigate risk, often utilizing insurance to protect the trust estate. Some insurable events for which a TEFFI may desire to secure coverage include:

1. Breach of representations or warranties made by an investor in connection with a transfer of alternative assets;
2. Negligence or fraud of a manager of alternative assets;
3. Credit risks associated with the financing of alternative assets; and
4. Risks associated with the management of alternative assets in trust.

Captive Insurance

As this committee is aware, a captive insurance company is a subsidiary created to manage risk and provide insurance to an affiliated group. Once established, the captive operates like a commercial insurer in that it issues policies, collects premiums, and pays claims. However, while it is regulated by the Insurance Department, that regulatory process is somewhat different than that of an insurance company which sells policies to the general public.

In 2018, Kansas modernized its captive insurance laws in an effort to retain captive insurance business and prevent such business from migrating to other states or international jurisdictions. We believe that amending the Kansas Captive Act to accommodate the insurable needs of TEFFIs and the trusts they administer will positively contribute to the Kansas insurance industry and provide economic opportunities and expansion for the state.

Scope of legislation

TEFFIs finance and administer specialized assets. Those assets present unique risk management characteristics which can be best addressed by clear statutory captive insurance guidelines. SB 377 provides this statutory framework by specifically addressing the following topics:

1. Description of the forms of insurance which may be underwritten by TEFFI insurance companies.
2. Identification of fortuitous events covered by policies issued by TEFFI insurance companies.
3. Relationship between a TEFFI and a TEFFI insurance company, including dual employment of professionals, co-location of principal place of business, overlap of Kansas resident directors and shared services agreements.
4. Authorization and description of payment-in-kind policies, the associated reserves and the enforceability of such policies.

We believe that the statutory framework provided by SB 377 will encourage TEFFIs to form Kansas captives rather than domiciling those captives in other jurisdictions. Doing so will not only meet the needs of the industry but will also lead to the expansion of economic opportunities for the state of Kansas. We look forward to working with this committee and the Kansas Insurance Department on this important legislation and the benefits it provides.

Thank you again for your time and for permitting me to testify in favor of SB 377.



Sincerely,

A handwritten signature in blue ink that reads "Derek L. Fletcher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Derek L. Fletcher
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