



December 1, 2022

To: Joint Committee on Fiduciary Financial Institutions Oversight

From: Melissa Renick, Assistant Director for Research

Re: Overview of 2022 Fiduciary Financial Institutions' Legislation and Law

This memorandum summarizes and provides background information for legislation passed by the 2022 Legislature related to fiduciary financial institutions: SB 337, HB 2489, and HB 2547. In total, the Legislature considered six bills and three of the bills advanced to the Governor, who signed them. Relevant recommendations from the Joint Committee's inaugural meeting in December 2021 are also noted in the background comments. A concurrent resolution that would have directed a study by the Joint Committee on Fiduciary Financial Institutions Oversight on the topic of environment, social, and governance standards (ESG) is also summarized.

2022 CHANGES TO LAW

Conversion to Full Fiduciary Financial Institution Charter; SB 337

SB 337 amends provisions pertaining to the pilot program established within the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act to clarify and retroactively codify the intended date for the issuance of a full charter to the Beneficient Company. The bill specifies that, on December 31, 2021, the conditional charter granted under this pilot program shall be converted to a full fiduciary financial institution charter.

Background Information

- Companion bill (as introduced): HB 2554 (House Committee on Financial Institutions and Rural Development);
- Committee bill request for introduction: Introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Office of the State Bank Commissioner (OSBC);
- Committee hearings/action: 1/19/2022 Senate Committee hearing; Be Passed (1/20/2022); 2/07/2022 House Committee hearing (heard concurrent with HB 2554); Be Passed (2/09/2022);

- Committee of the Whole action: Senate (1/26/2022 – Be Passed – 39-0); House (2/16/2022 – Be Passed – 119-1);
- Effective Date: Publication in the *Kansas Register* (March 10, 2022); and
- Joint Committee on Fiduciary Financial Institutions’ Recommendation (December 2021): On the subject of legislative intent, the Committee recommends and clearly states, that a permanent charter be issued no later than December 31, 2021, so that practical actions can be taken with the FidFin Fiduciary Financial Institution Pilot Program and other requirements. Addressing such actions would allow requirements and processes associated with the Technology-enabled Fiduciary Financial Institutions Act, including those items that remain at the discretion of the Commissioner (e.g., promulgation of agency rules and regulations and the timing of the examination and conclusion of the pilot program), to move forward.

TEFFI Act—Amendments; Required Reporting of Elder Abuse; HB 2489

HB 2489 makes 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 amends 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 amends 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 adds definitions for the terms “out-of-state bank,” “out-of-state financial institution,” and “out-of-state trust company.” (KSA 2022 Supp. 9-2301)

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

The bill amends provisions that 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 clarifies 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 apply to state-chartered banks and trust companies.

The bill further specifies 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 TEFFI Act.

The bill requires 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 TEFFI Act.

The bill further provides 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 TEFFI 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. (KSA 9-2302)

Fees and Assessments (Section 3)

The bill removes language in the TEFFI Act relating to the assessment of an initial fee of \$500,000 required to be remitted concurrently with the fiduciary financial institution's charter and instead provides 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 further provides that until July 1, 2025, the application fee will be \$250,000. On and after July 1, 2025, the application fee will be \$100,000.

The bill updates the date for the assessment sent by the Commissioner to each fiduciary financial institution from December 1 to July 1 and removes language regarding the frequency of collection for the assessment, invoicing of, and an assessment penalty for failure to pay. The bill instead provides 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. (KSA 2022 Supp. 9-2303)

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

The bill amends language in the TEFFI Act pertaining to the application of the Kansas Banking Code (Chapter 9, *Kansas Statutes Annotated*) provisions to a fiduciary financial institution in the same manner those provisions apply to a trust company. The bill adds 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 specifies these exceptions:

- For a state-chartered trust company that receives authority to engage in fidfin transactions under the TEFFI Act (KSA 9-2302(b)), the application of the Kansas Banking Code provisions would not apply;

- The bill, however, further specifies 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, further specifies 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 also creates an exception to language relating to conflicts between Chapter 9 and the TEFFI Act. Specifically, the bill provides 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 applying to authorized fidfin transactions and Chapter 9 exceptions will not apply to an out-of-state financial institution. (KSA 2022 Supp. 9-2304)

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

The bill replaces 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. (KSA 2022 Supp. 9-2306)

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

The bill removes 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 updates criteria that had pertained to evaluation of safety and soundness to instead specify examination of the fiduciary financial institution, and further requires 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 modifies a provision that specifies profitability should be a consideration in evaluating the safety and soundness of fiduciary financial institutions if certain criteria have been met to instead specify profitability would not be a consideration in evaluating a fiduciary financial institution (although other criteria would still apply, *i.e.*, sufficient capital and equity must exist in the business). (KSA 2022 Supp. 8-2307)

Fiduciary Financial Institution Powers; Fidfin Transactions (Section 7)

The bill amends the powers of a fiduciary financial institution to engage in trust business by requiring such trust business to be incidental to engaging in fidfin transactions and to receiving, retaining, and managing alternative asset custody accounts. (KSA 2022 Supp. 9-2310)

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

The bill modifies 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 also adds 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 (as authorized in KSA 2021 Supp. 9-2322) 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. (KSA 2022 Supp. 9-2311)

Employment of Professionals; Professional Services (Section 9)

The bill adds 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 TEFPI 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 were being performed by the fiduciary financial institution itself. (KSA 2022 Supp. 9-2312)

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

The bill requires 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. (KSA 2022 Supp. 9-2317)

Reporting of Elder Abuse by Financial Institutions (Section 12)

The bill amends 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." (KSA 2022 Supp. 39-1401)

Background Information

- Companion bill (as introduced): SB 334;
- Committee bill request for introduction: Introduced by the House Committee on Financial Institutions and Rural Development at the request of the OSBC;
- Committee hearings/action: 1/26/2022 House Committee hearing; Be Passed as Amended (2/10/2022); 3/03/2022 Senate Committee hearing; Be Passed as Amended by Senate Committee (3/17/2022);
- Committee of the Whole action: House (2/16/2022 – Be Passed as Amended – 120-0); Senate (3/23/2022 – Be Passed as Amended – 37-0); House concurred with amendments in conference (3/31/2022: 117-0);
- Effective Date: Publication in the Statute Book (July 1, 2022); and
- Joint Committee on Fiduciary Financial Institutions' Recommendation (December 2021): The Committee recommended the draft legislation presented by the OSBC be introduced during the 2022 Session by the respective House and Senate financial institutions standing committees. The Committee further recommended its report be submitted to those standing committees to permit review and consideration of 2021 Senate Sub. for HB 2074 (Law) and its implementation.

Captive Insurance Law—TEFFI Insurance Companies; HB 2547

HB 2547 amends and enacts law supplemental to the Captive Insurance Act to allow a technology-enabled fiduciary financial institution (TEFFI) insurance company to operate as an authorized captive insurance company in Kansas.

TEFFI Insurance Companies Authorized (New Section 1)

Certificate of Authority

The bill provides that, in addition to the types of insurance permitted under the Captive Insurance Act, the certificate of authority issued to a TEFFI insurance company shall:

- Authorize the TEFFI insurance company to provide contracts of suretyship or credit insurance where the obligee or insured is:
 - An affiliated TEFFI;
 - An affiliated fidfin trust; or
 - Any other affiliated company;
- Provide the TEFFI insurance company with authorization to insure its affiliated companies that are investors in an investment fund against liability, loss, or damage (*i.e.*, fraud, theft, or conversion of assets by an investment fund

manager and breach of an obligation of a transferor, assignor, or investor in an investment fund);

- If such coverages are not included within the classes outlined in KSA 40-1102, such coverages will be deemed included, and the Commissioner of Insurance (Commissioner) will be required to assign these coverages to an appropriate line of business for reporting purposes;
- List events that will be considered, for the purpose of a policy or product offered by a TEFFI insurance company issue, as “fortuitous events” (*i.e.*, any action taken by an investment fund manager that affects the economic value of an investor’s interest in an investment fund in response to the attempted transfer of such interest in an investment fund to an affiliated fidfin trust); and
- Exempt a TEFFI insurance company from a naming requirement in the Captive Insurance Act;
 - The TEFFI insurance company will not be required to incorporate “captive” into its name if the company uses any of these identifiers in its name: “Technology-enabled fiduciary financial institution insurance company” or “TEFFI insurance company”; “Kansas e-commerce fidfin insurance company”; or “KEFFI.”

Place of business; board of directors and residency; service contracts; examination. The bill establishes requirements specific to the location of the principal place of business and membership of the board of directors for a TEFFI that receives a certificate of authority under the Captive Insurance Act and service contracts as follows:

- The principal place of business for a TEFFI insurance company may be located in the same or shared office premises with an affiliated TEFFI or other TEFFI insurance company;
- Any person who serves as a member of the board of directors of an affiliated TEFFI or other affiliated company may concurrently fulfill the Kansas residency requirement contained in the TEFFI Act (KSA 9-2306) and may:
 - Serve on the board of a directors of a TEFFI insurance company that is organized as a corporation or serve as a manager of a TEFFI that is organized as a limited liability company; and
 - Fulfill the applicable Kansas residency requirements of the Captive Insurance Act (KSA 40-4306(d));
- A TEFFI insurance company is permitted to enter into service contracts with any other TEFFI insurance company, an affiliated TEFFI, or affiliated companies that provide for services to be performed:
 - For the TEFFI insurance company, including insurance companies that operate with or without direct employees; or

- By the TEFFI insurance company;
- Personnel who perform services for a TEFFI insurance company, either as employees of the company or pursuant to service contracts, are permitted to concurrently perform services for any other TEFFI insurance company, an affiliated TEFFI or an affiliated company thereof, either as employees or pursuant to service contracts; and
- A TEFFI insurance company is not required to employ, engage, or contract more than one employee in Kansas to provide services for such company or to facilitate any examinations required by the Captive Insurance Act.

Payment-in-kind policies; financial statements. The bill also establishes criteria for TEFFI insurance companies that issue payment-in-kind policies (a summary of the definition for this term is provided below). Among the requirements, the bill provides:

- If the TEFFI insurance company issues payment-in-kind policies that expressly require it to hold a sufficient amount of in-kind assets to meet the full obligation of such payment-in-kind policies, the insurance company must hold in-kind assets in a total amount determined to be actuarially prudent to meet its obligations to make claim payments, but in no event may this amount be less than the sum of the aggregate obligations of and for such payment-in-kind policies;
 - If the TEFFI insurance company issues payment-in-kind policies that do not expressly require a certain amount of in-kind assets to be held, the bill requires the company to hold in-kind assets to the extent the company determines to be actuarially prudent and confirmed by a third-party actuary to meet the company's obligation to make claims payments;
- A TEFFI insurance company is required to satisfy the claims under a payment-in-kind policy by delivering to the qualified policyholder in-kind assets or a combination of in-kind assets pursuant to the schedules attached to the policy. The bill provides for the types of in-kind assets and combination of such assets permitted;
- Any in-kind assets held pursuant to the bill's provisions are required to be counted as part of the reserves, capital, and surplus of a TEFFI insurance company and reported as for the primary and predominant business activity of the writing of insurance or the reinsuring of risks, except that the TEFFI insurance company meeting the capital requirements in the Captive Insurance Act (KSA 40-4304) is not required to hold any other assets so long as such in-kind assets are sufficient to meet its obligations to make claim payments under payment-in-kind policies;
 - All revenue and income generated by the in-kind assets, whether realized or unrealized, will be deemed income derived from the business activity of the writing of insurance or the reinsuring of risks underwritten by the TEFFI insurance companies. The bill further provides for the reporting of net income and net loss in statutory financial statements. All payment-in-kind assets required to be held by the TEFFI insurance company are

required to be reported on the company's statutory balance sheet (satisfying the company's payment-in-kind obligations); and

- A TEFFI insurance company is required to report any required items in a statutory financial statement in the segment reporting section of the footnotes prepared in accordance with generally accepted accounting principles (GAAP) and is also required to include in its complete statutory financial statements' footnote reporting, other information prepared in accordance with GAAP;
- Any insurance company, regardless of its jurisdiction, is permitted to hold equity interests in an affiliated TEFFI and may utilize such equity interests as in-kind assets when issuing payment-in-kind policies to such affiliated TEFFI or other qualified policyholder; and
- A payment-in-kind policy issued to a qualified policyholder will be fully enforceable in accordance with the terms and conditions included in the definitions, as amended by the bill.

Organization; policy governance; legal forum. The bill includes provisions governing examination requirements, the organization of the TEFFI insurance company under the Captive Insurance Act and other Kansas law, and forum selection, as follows:

- A TEFFI insurance company or other insurance company organized under incorporation provisions of the Captive Insurance Act (KSA 40-4306) that has been issued a certificate of authority will be deemed an "insurance company" as defined in KSA 40-222c. An insurance company described under the bill's provisions is considered to have as its primary and predominant business activity the writing of insurance or the reinsuring of risks underwritten by insurance companies and is subject to the supervision of the Commissioner;
- A TEFFI insurance company that has been issued a certificate of authority will be permitted, subject to compliance with provisions relating to conditions under which insurance may be written (KSA 40-214), to do business in any other state or territory of the United States;
- A TEFFI policy is permitted to include a provision that such policy shall be governed by, and construed in accordance with, the laws of the state of Kansas and such policy provision shall control over any contrary provision of state law regarding conflict of laws;
- A TEFFI policy is permitted to also include a provision that any suit, action, or proceeding arising out of or relating to such policy shall be brought in any district court of Kansas or the U.S. District Court for the district of Kansas and such provision shall be fully enforceable; and
- A TEFFI policy issued in connection with an affiliated fidfin trust or fidfin transaction will be required to respect the form, treatment, and character of such affiliated trust or transactions under the laws of this state notwithstanding the

treatment or characterization of such transactions under GAAP or for tax purposes.

The bill also addresses the construction of provisions pertaining to the certificate of authority issued to a TEFFI insurance company to state the provisions shall be construed in a manner that shall not be disruptive to state efforts to establish a coherent policy with respect to a TEFFI insurance company, a TEFFI policy, payment-in-kind policies, TEFFIs, or any other matter of substantial public concern.

The provisions pertaining to the certificate of authority issued to a TEFFI insurance company are a part of and supplemental to the Captive Insurance Act.

Definitions—Captive Insurance Act (Section 2)

The bill creates several definitions in the Captive Insurance Act specific to TEFFIs and TEFFI insurance companies. Among the new definitions are:

- “Affiliated technology-enabled fiduciary financial institution” to mean a TEFFI;
- “In-kind asset” to mean:
 - Any loan, financing, or extension of credit, including to an affiliated fidfin trust, originated by a TEFFI;
 - One or more equity interests in one or more investment funds, each an interest in an investment fund, or one or more equity interests in one or more TEFFIs;
 - Any loan, financing, or extension of credit secured by the pledge of equity of one or more interests in an investment fund or the cash flow derived as a result;
 - Any other assets that serve as collateral securing such loans, equity, or debt financing or extension of credit described in this definition; and
 - Any beneficial interests in trusts that own assets described in this definition that are held by an insurance company for the purpose of enabling such insurance company to meet its obligations to make claim payments under payment-in-kind policies by delivering such assets;
- “Payment-in-kind policy” to mean a policy that, along with applicable schedules, is required to be in writing and which satisfies the following conditions:
 - The policyholder of such policy is a qualified policyholder;
 - Is issued by a TEFFI insurance company or an insurance company organized in a jurisdiction other than Kansas;
 - Provides that such insurance company has the option, in such company’s sole discretion, to make claim payments, in whole or in part, in cash, or in the form of in-kind assets rather than cash pursuant to schedules attached to the policy as required by this definition’s provisions, and agreed to in writing by the qualified policyholder;

- Provides for such payment-in-kind policy to be fully enforceable with such policy's terms and this definition's provisions;
- May provide for such payment-in-kind policy or provisions relating to in-kind assets and payments thereof to be governed by, and construed in accordance with, the laws of the state of Kansas and such policy or provisions shall control over any contrary provision of state law regarding conflict of laws and any such provision shall be fully enforceable;
- May provide that any suit, action, or proceeding arising out of or relating to such payment-in-kind policy shall be brought in any district court of this state or the U.S. District Court for the District of Kansas, and any such provision shall be fully enforceable;
- May be a contract of suretyship or credit insurance (as provided in New Section 1);
- Contains one or more schedules to such payment-in-kind policy that sets out a description of the specific in-kind assets that the insurance company may deliver to the qualified policyholder to make claim payments as agreed to in writing by the qualified policyholder;
- May include a copy of the governing documents in effect at the time of issuance of such payment-in-kind policy of any legal entity that is the issuer of or obligor under such in-kind assets;
- Includes a provision that the qualified policyholder agrees the insurance company has no obligation to provide, and the qualified policyholder has no additional rights to, any further disclosure regarding the in-kind assets and shall not rely on any other disclosures provided by the insurance company and the provisions within this definition;
- Includes a provision that the qualified policyholder agrees such insurance company has no obligation to make claim payments in any form other than the in-kind assets specified in such schedules;
- Requires the qualified policyholder to acknowledge that such insurance company has no obligation to deliver to such qualified policyholder any underlying assets in the chain of ownership below the in-kind assets specified in such schedules; and
- Requires the qualified policyholder to acknowledge that:
 - Such qualified policyholder has no recourse against the insurance company with respect to any in-kind assets other than those in-kind assets scheduled and attached to such payment-in-kind policy; and
 - Any such recourse shall be limited to only those scheduled in-kind assets that the insurance company, in its sole discretion, makes available to such qualified policyholder as an in-kind payment in response to a claim initiated by such qualified policyholder;
- “Technology-enabled fiduciary financial institution insurance company” to mean a pure captive insurance company that:

- Is related to a TEFFI by common ownership; and
- Owns, directly, indirectly, or beneficially, at least 5.0 percent of the equity interests of a TEFFI, including any equity interests in such TEFFI's holding company.

The bill requires, for the calculation of the TEFFI insurance company's ownership of a TEFFI, both voting and nonvoting equity interests to be included in the calculation, and any equity interests of the TEFFI owned by an affiliate of this TEFFI insurance company to be attributed to such insurance company.

Other terms newly defined by the bill include affiliated fidfin trust, common ownership, fidfin trust, interest in an investment fund, investment fund, investor in an investment fund, manager, qualified policyholder, technology-enabled fiduciary financial institution, technology-enabled fiduciary financial institution policy, and technology-enabled fiduciary financial institution policyholder. The bill also amends the definition of "affiliated company." (KSA 2022 Supp. 40-4301)

TEFFI Insurance Companies—Surety Services and Credit Insurance; Renewal Date; Privacy of Qualified Policyholders (Section 3)

The bill amends a prohibition in the Captive Insurance Act pertaining to certain lines of insurance and coverage that a captive could not provide, to specify an exception that would allow a TEFFI insurance company to be permitted to provide contracts of suretyship and credit insurance, in accordance with the certificate of authority provisions stated in the bill.

The bill also amends renewal provisions in this act to provide the certificate of authority renewal date for a TEFFI insurance company to be the later of March 1 or the maturity date of the last payment-in-kind asset held by that insurance company.

The bill further amends the law to provide for the privacy of both the qualified policyholder and those who have established an affiliated fidfin trust or alternative asset custody account in court proceedings, as follows:

- *Qualified policyholder* – the privacy of a qualified policyholder in any court proceeding shall be protected if the TEFFI insurance company so petitions the court. Upon the filing, any information including, but not limited to, an instrument, inventory, statement, or verified report produced by the TEFFI insurance company regarding a policy issued to a qualified policyholder or payment-in-kind assets held by the TEFFI insurance company to satisfy claims, all payment-in-kind policies, all relevant petitions, and all court orders thereon, shall be sealed upon filing and not made part of the public record of the proceeding;
 - Such petition would be available to the court, the Commissioner, the TEFFI insurance company, their attorneys, and to other persons as the court may order upon a showing of good cause; and
- *Affiliated fidfin trust or alternative asset custody account holder* – the privacy of the account holder in any court proceeding shall be protected if the acting trustee, custodian, trustor, or other beneficiary so petitions the court. Upon the

filing, any information, including the instrument, inventory, statement filed by any trustee or custodian, annual verified report of the trustee or custodian, and all relevant petitions, and all court orders thereon, shall be sealed upon filing and not made part of the public record of the proceeding;

- Such petition would be available to the court, the trustor, the trustee, the custodian, any beneficiary, their attorneys, and to other persons as the court may order upon a showing of good cause. (KSA 40-4302)

Naming of Captive Insurance Companies—Exemption from Use of “Captive” in Company Name (Section 4)

The bill amends provisions in the Captive Insurance Act pertaining to the use of the word “captive” into the name of every captive insurance company organized in Kansas to allow for an exception from this naming requirement as provided in the bill’s provisions pertaining to the certificate of authority for a TEFFI insurance company. (KSA 2022 Supp. 40-4303)

Investment Requirements; In-kind Assets (Section 5)

The bill amends provisions in the Captive Insurance Act pertaining to investment requirements to allow insurance companies organized in a jurisdiction other than Kansas and Kansas TEFFI insurance companies to hold in-kind assets in accordance with provisions of this bill. The bill further provides any such in-kind assets required to be held shall be counted as part of the reserves, capital, and surplus of such insurance companies required for the primary and predominant business activity of the writing of insurance or the reinsuring of risks underwritten by TEFFI insurance companies. The bill also permits a TEFFI insurance company to hold equity interests in an affiliated TEFFI. (KSA 2022 Supp. 40-4310)

Background Information:

- Companion bill (as introduced): SB 377;
- Committee bill request for introduction: Introduced by the House Committee on Insurance and Pensions at the request of the Beneficient Company Group, LP;
- Committee hearings/action: 1/31/2022 House Committee hearing; Be Passed as Amended (2/17/2022); 3/08/2022 Senate Committee hearing; Be Passed (3/16/2022);
- Committee of the Whole action: House (2/23/2022 – Be Passed as Amended – 120-1); Senate (3/23/2022 – Be Passed – 36-1);
- Effective Date: Publication in the *Kansas Register* (April 14, 2022); and
- Joint Committee on Fiduciary Financial Institutions’ Recommendation (December 2021): No recommendation on this topic.

OTHER LEGISLATION

ESG Standards

HCR 5034 would have provided several findings regarding environmental, social, and governance (ESG) standards and the intended uses and impact of these standards on the state, businesses, and families, as well as the broader role of state government. The concurrent resolution would have directed the Joint Committee on Fiduciary Financial Institutions Oversight, this resolution's sponsors, and the State Treasurer where appropriate, at the direction of the Kansas Legislature, "to work with concerned parties to study the topic of ESG standards and draft legislation that protects the State of Kansas and its citizens from the use of ESG standards." The Joint Committee would have been required to report its findings and recommendations, along with proposed legislation, to the Legislative Coordinating Council in November 2022 and to the Kansas Legislature on or before January 9, 2023.

Background Information

- Concurrent resolution sponsors: Murphy, Awerkamp, Bergquist, Blex, Collins, Ellis, Esau, French, Garber, Helmer, Hoffman, Howell, Jacobs, Lee, Neelly, Newland, Penn, Proctor, Resman, Rhiley, Seiwert, Sutton, Tarwater, Thomas, Waggoner, and Williams; and
- Status: Referred to Committee on Federal and State Affairs (3/23/2022); Died in Committee (5/23/2022).