

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.”

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

The bill amends 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 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.

Fees and Assessments (Section 3)

The bill removes 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 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.

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 (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.

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.

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 originally pertained to evaluation of safety and soundness to instead specify examination of, as it applies to the review of criteria, 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 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 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.

***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 (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 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 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 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.

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."