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REVISOR of STATUTES

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MEMORANDUM

To: Chairman Kelly and members of the House Financial Institutions and Rural Development Committee
From: Office of Revisor of Statutes
Date: January 26, 2022
Subject: **HB 2489; Amending provisions of the technology-enabled fiduciary financial institutions act relating to procedures when undercapitalized or insolvent, fees and assessments, applications, examinations, insurance and capital requirements and disclosures to consumers and requiring such institutions to be mandatory reporters for purposes of elder abuse.**

House Bill No. 2489 was requested by the office of the state bank commissioner as part of the agency's required report and recommended legislation under K.S.A. 9-2325 as part of the technology-enabled fiduciary financial institutions (TEFFI) act.

House Bill No. 2489 provides several amendments to the TEFFI act. In addition to making technical amendments to correct subsection references, grammatical errors and to provide consistent terminology throughout the act, the bill:

Adds a new section to the TEFFI act establishing procedures when a TEFFI is undercapitalized or insolvent. If critically undercapitalized the commissioner may:

1. Enter an informal memorandum to notify the TEFFI of the unsatisfactory condition and require correction within a period of time prescribed by the commissioner; or
2. take charge of such TEFFI and its property and assets. The commissioner shall appoint a special deputy commissioner to take charge of the affairs of the TEFFI temporarily.

If it appears that a TEFFI is insolvent, the commissioner may:

1. Take charge of the TEFFI; or
2. assign any or all of the TEFFI's accounts, associated property and associated assets to successor trustees.

Designated successor trustees may be required when a TEFFI:

1. Appears critically undercapitalized;
2. appears insolvent; or

3. intends to voluntarily cease engaging in business as a TEFFI or appears to the commissioner to so intend. **New Section 1, Pages 1-2.**

Amends the definition of "fidfin" to strike references to loans, extensions of credit and direct investments and adds "and the acquisition of alternative assets on behalf of and through a fidfin trust." **Sec. 2(b)(8), Page 3.**

Adds additional criteria for when the state banking board may deny a TEFFI charter application. The board may deny if the board makes an unfavorable determination with regard to:

1. The public need for the proposed TEFFI and whether existing TEFFIs are meeting such need;
2. the prospects for success of the proposed TEFFI; or
3. any other criteria board may require. **Sec. 3(d), Page 6.**

Amends language regarding the \$500,000 TEFFI initial fee. An application for a TEFFI charter shall include a nonrefundable fee of \$500,000 to be remitted in a manner prescribed by the commissioner. **Sec. 4(a), Page 8.**

Amends language regarding the sending of TEFFI assessment statements from the commissioner. The statement shall be sent on July 1 instead of December 1 as under current law and payment of such assessment shall be made by the TEFFI within 15 business days after the date the statement was sent in a manner prescribed by the commissioner. The commissioner may allow installment periods for payment but not more frequently than monthly. **Sec. 4(b)(1), Page 9.**

Adds a definition of "insolvent" as the same definition currently in the state banking code for banks and trust companies. **Sec. 5(a)(12), Page 10.**

Adds language giving the commissioner discretion to require a TEFFI to maintain bonds and insurance policies regarding such TEFFI's operations in amounts deemed appropriate by the commissioner and giving the board discretion to require a TEFFI to have excess capital based on the character and qualifications of the proposed TEFFI board of directors and the nature of such TEFFI's business. **Sec. 6(c) and (d), Page 11.**

Amends language relating to examination of TEFFIs. The commissioner would not evaluate the safety and soundness of a TEFFI but the commissioner shall:

1. Evaluate the profitability of a TEFFI;
2. evaluate a TEFFI's compliance with applicable state and federal laws; and
3. evaluate a TEFFI's information technology system, policies and practices.

The state banking board and the commissioner may examine any aspect of a TEFFI to aid in understanding the TEFFI's business operations, financial status and effects on the state or to help guide rules and regulations and proposal for legislative changes. **Sec. 8, Pages 12-13.**

Amends the powers of a TEFFI 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. **Sec. 9, Page 13.**

Adds language to state when a TEFFI may extend financing such as through loans or direct investments and to clarify that a TEFFI customer is not a party to the financing but shall only be involved in fidfin transactions through the sale of one or more of such customer's alternative assets to a fidfin trust. **Sec. 10, Page 14.**

Requires the commissioner to adopt rules and regulations that enumerate categories of fidfin transactions. Such rules and regulations shall specify concentration limits for each category based on such category's risk profile. A TEFFI shall not engage in any fidfin transactions that would result in an asset concentration of greater than the specified limit for a category. **Sec. 10(h), Page 16.**

Requires a TEFFI to disclose to a customer the information required by rules and regulations of the commissioner to ensure that the customer is informed regarding the nature of the customer's transactions with the TEFFI. **Sec. 10(i), Page 16.**

Requires a TEFFI to provide prompt written notice to the commissioner when engaging a party to provide services or when appointed as a trust advisor. **Sec. 11(e), Page 17 and Sec. 12(b), Page 18.**

Adds language that whenever a TEFFI, by contract or otherwise, causes any service authorized by the TEFFI act or the state banking code, to be performed for such TEFFI, the performance shall be subject to regulation and examination by the commissioner to the same extent as if such service was performed by the TEFFI itself. **Sec. 11(f), Page 17.**

Adds language concerning procedures to end the pilot program and convert Beneficient's conditional charter to a full charter. After the commissioner completes a regulatory exam of the Beneficient fiduciary financial institution, Beneficient may submit an application to the state banking board, which shall be considered an application to convert the conditional charter to a full charter. If the application is approved, the pilot program immediately ends and the board may begin approving other charter applications for TEFFIs. If the application is not granted, Beneficient may resubmit after addressing any deficiencies and shall not be charged any additional application fees. If the conditional charter is not converted before six months have passed after a second examination and no conversion application is pending, the commissioner shall revoke the Beneficient conditional charter, the pilot program shall immediately end and the board shall not approve any charters for new TEFFIs. **Sec. 14(f), Pages 19-20.**

Finally, the bill amends K.S.A. 39-1401 to add "fiduciary financial institution" to the definition of "financial institution" making a fiduciary financial institution a mandatory reporter of elder abuse. Under current law any bank, trust company, escrow company, finance company, saving institution or credit union, chartered and supervised under state or federal law is considered a financial institution and is required to report elder abuse. **Sec. 15(q), Page 22.**