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MEMORANDUM

To: Chairman Hoheisel and Members of the Joint Committee on Fiduciary Financial Institutions Oversight.

From: Office of Revisor of Statutes

Date: November 7, 2023

Subject: **TEFFI Legislation Introduced and Considered During the 2023 Session.**

2023 Technology-Enabled Fiduciary Financial Institution (TEFFI) Bills Enacted into Law

SB 44 – Enacting the Kansas financial institutions information security act.

TEFFIs were included along with other financial institutions as a covered entity to which the act applies. The bill required covered entities to set forth standards for developing, implementing and maintaining reasonable safeguards to protect the security, confidentiality and integrity of customer information pursuant to federal regulations.

The House Financial Institutions and Pensions Committee amended the effective date of the bill to publication in the Kansas Register and the House passed the bill by a vote of 114-9 on 3/27/23. The Senate concurred with the House amendment by a vote of 36-4 on 4/5/23 and the governor approved the bill on 4/20/23.

2023 TEFFI Bills with Legislative Consideration

SB 51 – Authorizing the state bank commissioner to accept state and national criminal history record checks from private entities.

The bill would amend provisions of the TEFFI act to add the bank commissioner to the entities permitted to require fingerprinting of officers, directors or organizers of a TEFFI. Under current law only the state banking board is allowed to require fingerprinting. The bill also added definitions for "director," "officer," "organizer" and "private entity." The bill provided that the state banking board or the commissioner shall not authorize receipt of a state and national criminal history record check from a private entity unless the KBI or FBI is unable to supply such record check. The bill also provided that the state banking board or the commissioner shall not disclose or use a criminal history record check except as provided for in the TEFFI act. Unauthorized use shall constitute a class A nonperson misdemeanor. Each criminal history record check shall be confidential and not subject to the open records act and shall not be disclosed to any fiduciary financial institution. The open records act exemption would expire in five years unless the legislature reviews and reenacts such exemption prior to the five-year expiration date in accordance with K.S.A. 45-229.

The Senate Financial Institutions and Insurance Committee held a hearing on SB 51 on 2/7/23 and recommended the bill be passed on 2/14/23. The bill was withdrawn from the calendar and referred

to Senate Ways and Means Committee on 2/16/23 before being rereferred to the Committee of the Whole. On 4/4/23 the bill was rereferred to the Senate FI&I Committee.

SB 204 – Replacing the definition of "charitable beneficiaries" with "qualified charities" in the technology-enabled fiduciary financial institutions act. (As amended by Senate Financial Institutions and Insurance)

The bill would replace the definition of "charitable beneficiaries" with "qualified charities" in the TEFFI act. The definition of "qualified charities" would be the same as in the TEFFI income tax credit statute, K.S.A. 79-32,283. The Senate Financial Institutions and Insurance Committee amended the bill to expand the definition of "qualified charities" for purposes of the income tax credit for charitable distributions of fiduciary financial institutions by including one or more Kansas nonprofit corporations, regardless of their federal income tax treatment. Under current law, only charities to which contributions are allowable as a deduction pursuant to section 170 of the federal internal revenue code are considered "qualified charties."

The Senate FI&I Committee held a hearing on SB 204 on 2/14/23. The FI&I Committee recommended the bill be passed as amended on 2/15/23. The bill was withdrawn from the calendar and referred to Senate Ways and Means on 2/23/23 before being referred to the Committee of the Whole on 3/1/23. On 4/4/23 the bill was rereferred to the Senate Financial Institutions and Insurance Committee.

HB 2133 – Providing that fiduciary financial institutions shall be overseen, supervised and examined by the office of the state bank commissioner as a chartered trust company, allowing a fiduciary financial institution to refer to itself as a trust company in legal or regulatory filings or disclosures to existing or prospective customers or investors and authorizing a fiduciary financial institution to exercise fiduciary powers and full trust powers and to engage as a trust company under state and federal law. (As amended by Senate Financial Institutions and Insurance)

House Bill No. 2133, as introduced, allowed a surcharge for the use of payments with credit or debit cards. The Senate Financial Institutions and Insurance Committee struck all the provisions of HB 2133 and inserted language concerning TEFFIs. The bill added language to the TEFFI act providing that a TEFFI shall be overseen, supervised and examined by the office of the state bank commissioner (OSBC) as a chartered trust company and shall be designated, recognized and referenced as a chartered trust company by the OSBC. The bill also added language that a TEFFI is a trust company for all purposes under federal and state law and that a TEFFI shall not be restricted from publishing or promulgating itself as a trust company in legal or regulatory filings or disclosures to existing or prospective customers or investors. The bill also added language to give TEFFIs the power to exercise fiduciary powers and full trust powers and to engage as a trust company in trust business in any manner that assists in the performance of engaging in fidfin transactions and to receive, retain and manage alternative asset custody accounts in accordance with the TEFFI act.

The Senate FI&I recommend the bill be passed as amended on 4/5/23. The bill remains on the Senate Calendar.

Other TEFFI or Joint Committee on Fiduciary Financial Institutions Oversight Bills and Resolutions Introduced During the 2023 Session

SB 199 – Authorizing the state banking board to deny, suspend or revoke a charter of a fiduciary financial institution in certain circumstances, requiring fiduciary financial institutions to purchase a surety bond and establishing a civil money penalty for violations of the technology-enabled fiduciary financial institutions act. *(Referred to Senate Financial Institutions and Insurance)*

SB 302 – Suspending fidfin transactions, custodial services and trust business of technology-enabled fiduciary financial institutions until the legislature expressly consents to and approves such activities by an act of the legislature and requiring the legislature to conduct a forensic audit of technology-enabled fiduciary financial institutions. *(Referred to Senate Financial Institutions and Insurance)*

HCR 5014 – Directing the joint committee on fiduciary financial institutions oversight to study and draft legislation relating to environmental, social and governance standards. *(Referred to House Financial Institutions and Pensions)*