

Chairman Jim Kelly
House Committee on Financial Institutions
and Rural Development
Kansas State Capitol
300 SW 10th Ave.
Topeka, KS 66612

RE: Testimony in opposition to HB 2489

Chairman Kelly and members of the Committee:

Thank you for holding this important hearing and for affording me the opportunity to present written testimony in opposition to HB 2489, a bill that would amend certain sections of the technology enabled fiduciary financial institutions act (the “TEFFI Act”). Some of those amendments are grammatical or administrative in nature while others represent more substantive revisions to the legislation.

One of the fundamental goals of the TEFFI Act was to encourage collaboration between Beneficient Fiduciary Financial (“BFF” - the pilot program TEFFI) and the Office of State Bank Commissioner (“OSBC”). I am pleased to report that this collaboration has occurred with respect to HB 2489. The OSBC has been open and willing to discuss the proposed amendments with us and to consider our views and positions regarding the same. We appreciate and value that collaboration.

This collaborative process has enabled BFF and the OSBC to identify the items on which they can agree as well as those amendments in which their views diverge. The areas of disagreement relate exclusively to substantive amendments proposed by HB 2489.

As this committee will recall, a TEFFI is a specialized trust company subject to review and examination by the OSBC. A TEFFI provides alternative asset investors with financing options, trust administration and custodial services, all delivered in a fiduciary capacity. TEFFI’s do not compete with other Kansas banks and trust companies. Specifically, (i) the products and services offered by TEFFIs are not offered by Kansas banks and trust companies, (ii) a TEFFI’s customers are located in wealth centers across the United States rather than in Kansas and (iii) TEFFIs do not accept deposits, do not provide financing other than financing related to alternative assets and do not offer trust administration services other than those related to alternative assets.

The TEFFI Act was crafted with this distinction in mind - recognizing that certain features of the Kansas banking code simply would not work if applied to the TEFFI industry. We are opposed to HB 2489 to the extent it seeks to apply those inapplicable features to the TEFFI industry. We do not believe such changes to the TEFFI Act are appropriate or warranted.

A critical feature of the TEFFI Act was the formation of a pilot program. That program was designed to achieve two fundamental purposes: (i) to encourage BFF to partner with the OSBC to develop appropriate regulations and examination standards and (ii) to facilitate coordination between BFF, the OSBC and the Legislature in amending the legislation as necessary to assure the optimal functioning and oversight of TEFFI operations prior to issuing charters to any new applicants. In other words, the pilot program was intended (i) to facilitate the review, implementation and evaluation of the TEFFI Act from an operative standpoint and (ii) to enable transactions to occur and be examined so that collectively, we could ascertain whether statutory or regulatory steps should be taken to improve the TEFFI framework. To date, this has not occurred.

On December 31, 2021, the OSBC authorized BFF to commence operations and BFF closed its first transactions on that date. Understandably, the OSBC has not reviewed any of those transactions. Nor has the OSBC examined BFF. It simply has not had time to do so. Accordingly, we believe it is premature to make certain substantive changes to the TEFFI Act and we oppose efforts to do so at this time. The pilot program should be allowed to run its course and serve its intended purpose. The results of that pilot program and the education it will provide to BFF, the OSBC and this committee will allow for an informed and appropriate dialogue on potential amendments to the TEFFI Act.

Until that process occurs, we are opposed to many of the substantive amendments to the TEFFI Act proposed by HB 2489. Again, I thank you for your time and permitting me to testify at today's hearing.

Sincerely,

A handwritten signature in blue ink that reads "Derek L. Fletcher". The signature is stylized and cursive.

Derek L. Fletcher
President and Chief Fiduciary Officer