

Approved: January 24, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on January 22, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Delbert Crabb
Representative Tom Sawyer
Representative Ellen Samuelson

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Dave Hanson, General Electric Corporation
Jim Maag, Kansas Bankers Association
Meredith Williams, KPERS
Liz Miller, KPERS

Others attending: See attached list

Representative Vernon Correll presented a proposal which would restructure the Pooled Money Investment Board in conjunction with SB 476 (Attachment 1).

Representative Cox moved for the introduction of this proposed legislation as a committee bill. Motion was seconded by Representative Welshimer. Motion carried.

Dave Hanson, representing GE Capitol Mortgage Insurance and Kansas Association of Property and Casualty, requested the introduction of legislation which would allow them to write mortgage guaranty insurance for an affiliate, allow insurance companies to invest in financial future contracts, and allow property and casualty companies to establish clearing corporations (Attachments 2, 3, and 4).

Representative Humerickhouse moved for the introduction of the proposals as three committee bills. Motion was seconded by Representative Gilbert. Motion carried.

Jim Maag, Kansas Bankers Association, presented a redraft of the "opt out" banking legislation which would replace HB 2633 (Attachment 5). This draft contains no philosophical differences from the original proposal other than in definitions.

Representative Dawson moved for the introduction of this proposal as a committee bill. Motion was seconded by Representative Correll. Motion carried.

Hearing on HCR 5022 - Amending the Constitution relating to banks

Meredith Williams, KPERS, informed the Committee that the original Constitution forbid the investment of state funds in any banking institution (Attachment 6). This bill which was introduced at the request of the Board of Trustees of KPERS would allow for the investing in any publicly traded bank stock. He reviewed the membership of the Board and gave a brief overview of the financial portfolio of the pension plan. 93% of KPER's investments are in publicly traded entities. A declaratory judgment will not suffice in this instance and to change this existing law, an amendment to the Constitution is necessary.

Liz Miller, KPERS, explained the legislation passed in 1992 which disallows KPERS from investing in non-publicly traded stocks and the other restrictions involved. Should the amendment be passed, additional legislation would be necessary to clean up technicalities regarding how much bank stock could be owned, etc. Ms. Miller said there was no way to know how much money had been lost by not being allowed to invest in publicly traded bank stock.

The meeting adjourned at 4:12 p.m. The next meeting is scheduled for January 23, 1996.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 1-22-96

NAME	REPRESENTING
<i>Kimberly No</i>	<i>KCUA</i>
<i>David Hanson</i>	<i>Ks Assoc P+C / GE Cap Mortg Ins.</i>
<i>Val Peterson</i>	<i>" "</i>
<i>Allen KRSCH</i>	<i>Lt. Governor</i>
<i>Linda McCuskey</i>	<i>KF Insurance Dept.</i>
<i>Chuck Stokes</i>	<i>KBA</i>
<i>Pat McGill</i>	<i>CBA</i>
<i>Scott Peppard</i>	<i>KPERS</i>
<i>Bruce Johnson</i>	<i>KS Banking Dept</i>
<i>Roger Franville</i>	<i>FIC</i>
<i>Jack Hawn</i>	<i>KPERS</i>
<i>Roger Brazier</i>	<i>St. Treas.</i>
<i>BOB HAYES</i>	<i>HCSF</i>
<i>Meredith Williams</i>	<i>KPERS</i>
<i>LIZ MILLER</i>	<i>KPERS</i>
<i>ALAN STEPPAT</i>	<i>PETE MCGILL & Assoc.</i>
<i>Kelly Kuetala</i>	<i>KTLA</i>
<i>Josh Hoffmann</i>	<i>CBA</i>
<i>Kathy Olson</i>	<i>KBA</i>

BILL NO. _____

By _____

AN ACT relating to public funds; amending K.S.A. 40-3406, 44-712, 75-4204, 75-4210a, 75-4254 and 76-818 and K.S.A. 1995 Supp. 12-1677a, 40-3403, 75-4201, 75-4202, 75-4209, 75-4212a, 75-4218, 75-4220, 75-4228, 75-4232 and 79-4804 and repealing the existing sections; also repealing K.S.A. 1995 Supp. 12-1677c and 75-4213.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Except as provided in subsection (d), all moneys in the state treasury shall be invested as a single portfolio which is hereby designated as the pooled money investment portfolio. The portfolio shall be invested in accordance with article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto. The pooled money investment board shall compute daily the earnings of the portfolio, including realized gains and losses. The board by written policy may provide for allocation of unrealized gains and losses. The board shall deduct from earnings an administrative fee which shall be set by the board and applied as a fixed annual percentage of the book value of the assets in the portfolio, calculated on a daily basis. The annual administrative fee shall not exceed .25%. The board shall deposit the administrative fee in accordance with section 2. The gross earnings, after deduction of the administrative fee, shall be designated as the net earnings of the pooled money investment portfolio.

(b) A comparative investment performance review of the pooled money investment portfolio shall be contracted for periodically by the pooled money investment board. The costs of such review shall be paid from moneys appropriated to the state treasurer.

(c) The pooled money investment board shall contract for the

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services of an external investment advisor to provide advisory services concerning the investment policies and practices of the pooled money investment portfolio. Such investment advisor shall not be the person or firm contracted with under subsection (b).

(d) The following moneys shall not be invested in the pooled money investment portfolio:

(1) Moneys in the employment security fund established by K.S.A. 44-712, and amendments thereto, except as may be authorized by the secretary of human resources pursuant to subsection (e) of K.S.A. 44-712, and amendments thereto;

(2) moneys in the state highway fund, except that such moneys may be invested in the municipal investment pool if authorized by the secretary of transportation;

(3) moneys in the Kansas public employees retirement fund created by K.S.A. 74-4921, and amendments thereto, except that such moneys may be invested in the municipal investment pool if authorized by the board of trustees; and

(4) moneys relating to bonds and bond funds of state agencies and authorities, except that such moneys may be invested in the municipal investment pool if authorized by the bond documents or bond covenants.

New Sec. 2. (a) The administrative fee authorized by section 1 shall be credited to the municipal investment pool fund.

(b) When amounts credited to the municipal investment pool fund pursuant to subsection (a) total an amount equal to the net losses in the municipal investment pool as of July 1, 1996, the entire administrative fee assessed thereafter shall be credited to the state general fund.

Sec. 3. K.S.A. 1995 Supp. 12-1677a is hereby amended to read as follows: 12-1677a. (a) Moneys deposited by any municipality with the state treasurer for investment authorized in paragraph (6) of subsection (b) of K.S.A. 12-1675, and amendments thereto, shall be deposited in the municipal investment pool fund which is hereby created in the state treasury.

(b) The pooled money investment board may invest and reinvest moneys in the municipal investment pool fund in the following investments:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds, except that: (A) Not more than 10% of the moneys available for investment under this subsection may be invested in mortgage-backed securities of such enterprises and of the government national mortgage association; and (B) investments in other than direct obligations under this paragraph shall be rated at the time of investment, in the highest rating category by Moody's investors service or Standard and Poor's corporation;

(2) interest-bearing time deposits in any of the following which is doing business within the state of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank; or

(3) repurchase agreements with a Kansas bank, Kansas savings and loan association, a federally chartered savings bank having an office or offices in the state of Kansas or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds accordance with section 1 of this act and K.S.A. 75-4209, and amendments thereto.

(c) All interest earnings received from investments of money in the municipal investment pool fund shall be credited to the municipal investment pool fund. Interest earnings experienced by the fund on investments attributable to each participating municipality shall be prorated and applied to the individual

accounts--of--the--municipalities,--maintained---by---the---state treasurer,--Deferred--earnings--transferred--from--the--municipal investment--pool--reserve--fund--to--the--municipal--investment--pool fund--shall--be--prorated--and--applied--to--the--individual--accounts--of the--municipalities,--maintained--by--the--state--treasurer The board shall apportion earnings among the accounts of the depositors in the various investment options of the municipal investment pool in accordance with policies approved and published by the board. A statement for each municipality participating unit account showing deposits, withdrawals, earnings and losses distributions shall be provided monthly to the municipality. The state treasurer shall make comprehensive reports monthly to those municipalities participating in the municipal investment pool fund and to other interested parties requesting such reports. Such reports shall include a summary of transactions for the month, the current market value of the pool pooled money investment portfolio investments, the weighted average maturity ratio of the fund portfolio, the original costs of the investments in the fund portfolio, including any fees associated with such investments and such other relevant information the state treasurer may wish to include in such report.

(d) ~~The state treasurer may assess reasonable charges not to exceed 1% of the interest earned against the fund for reimbursement of expenses incurred in administering the fund. The state treasurer shall certify, periodically, the amount of the assessment and the director of accounts and reports shall transfer the amount certified from the municipal investment pool fund to the municipal investment pool fund fee fund, which is hereby created. All expenditures from the municipal investment pool fund fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or a person or persons designated by the state treasurer. Amounts of gains realized on disposition of investments of the municipal investment pool fund shall be periodically certified by the state~~

treasurer, and the director of accounts and reports shall transfer the amount certified from the municipal investment pool fund to the municipal investment pool reserve fund which is hereby created in the state treasury. The state treasurer shall make a determination of the amount needed for a reserve for possible losses to the municipal investment pool fund and shall certify periodically such amount, and the director of accounts and reports shall transfer the amount so certified from the municipal investment pool fund fee fund to the municipal investment pool reserve fund. If the state treasurer makes a determination that significant losses or gains have occurred to the municipal investment pool fund, the state treasurer shall certify the amount thereof to the director of accounts and reports, and the director of accounts and reports shall transfer the amount so certified from the municipal investment pool reserve fund to the municipal investment pool fund. The municipal investment pool reserve fund is abolished effective July 1, 1996, and any unencumbered balance remaining therein shall be applied to net losses in the municipal investment pool fund. The municipal investment pool fund fee fund is abolished on July 1, 1997, and any unencumbered balance remaining therein shall be applied to net losses in the municipal investment pool fund.

(e) The state treasurer may adopt rules and regulations necessary for the administration and operation of the municipal investment pool fund and may enter into agreements with any municipality as to methods of deposits, withdrawals and investments.

~~(f) Investments under subsection (b) shall be for a period of not to exceed four years, except for mortgage-backed securities.~~

~~(g) A comparative investment performance review shall be contracted for periodically by the pooled money investment board. The cost of such review shall be paid by the municipal investment pool fund from moneys in the municipal investment pool fund fee fund.~~

~~(h)~~ (f) Deposits in the municipal investment pool fund: (1) May only be made for the same maturity as the maturity which is offered under paragraphs (2) and (3) of subsection (b) of K.S.A. 12-1675 and amendments thereto; and (2) upon the maturity of such deposits, such moneys shall be offered for investment under paragraphs (2) or (3) of subsection (b) of K.S.A. 12-1675, and amendments thereto, and may be reinvested in such fund only if the conditions contained in subsection (c) of K.S.A. 12-1675, and amendments thereto, have been satisfied.

~~(i)~~ (g) Moneys and investments in the municipal investment pool fund ~~and--any-separate-portfolio-within-such-fund~~ shall be managed by the pooled money investment board in accordance with investment policies developed, approved, published and updated on an annual basis by such board. ~~Such investment policies shall include at a minimum guidelines which identify credit standards, eligible instruments, allowable maturity ranges, methods for valuing the portfolio, calculating earnings and yields and limits on portfolio concentration for each type of investment. Any changes in such investment policies shall be approved by the pooled money investment board~~ provided for in K.S.A. 75-4209, and amendments thereto. A copy of such published policies shall be distributed to all municipalities participating in the municipal investment pool fund and to other interested persons requesting a copy of such policies. The pooled money investment board shall not contract for management of investments by a money manager. ~~The pooled money investment board shall contract for the services of an external investment advisor to provide advisory services concerning the investment policies and practices for the municipal investment pool fund. Such investment advisor shall be different from the person or firm contracted with under subsection (g).~~

~~(j)~~ Investments in securities under paragraph (1) of subsection (b) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities, except for the 10%

limitation on mortgage-backed securities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

(k) On and after July 1, 1996:

(1) Except as provided in paragraph (2), the weighted average maturity of all investments in the municipal investment pool fund shall not exceed the weighted average maturity of all deposits in the municipal investment pool fund by more than 100%, except that the weighted average maturity of investments in such fund shall not exceed the weighted average maturity of deposits in such fund by more than 90 days.

(2) The pooled money investment board, for the purposes of insuring and maintaining the soundness of and the liquidity of the municipal investment pool fund, may increase the ninety-day limitation contained in paragraph (1), except that such increase shall not exceed 180 days. The increased limitations established by the board under this paragraph shall be effective for periods not exceeding 120 days. Upon the expiration of the limitations established pursuant to this paragraph (2), the limitations contained in paragraph (1) shall be applicable, unless the board establishes new limitations under the provisions of this paragraph (2).

(3) For the purpose of determining the weighted average maturity under this subsection, all deposits in the municipal investment pool fund without a stated maturity shall be assumed to have a maturity of one day.

(4) The pooled money investment board shall not be required to sell any investments at a loss held by the municipal investment pool fund on the effective date of this act in order to meet the requirements of paragraphs (1) or (2) of this subsection.

(l) The pooled money investment board shall not: (A) Invest moneys in the municipal investment pool fund in derivatives, except in direct obligations of the United States of America; (B) enter into reverse repurchase agreements, except for the purposes

authorized--under--subsection--(b)--of--K.S.A.--1995-Supp.--12-1677c,
and-amendments-thereto.

(m)--On-and-after-January-17--1996--investments--made--under
paragraph-(2)-of-subsection-(a)-of-K.S.A.-75-4209, and-amendments
thereto, shall-not-be-exchanged-with-investments-of-the-municipal
investment--pool--fund-without-prior-approval-of-the-pooled-money
investment-board-and-the-prior--approval--of--the--state--finance
council--acting-on-this-matter-which-is-hereby-characterized-as-a
matter-of-legislative-delegation-and-subject--to--the--guidelines
prescribed--in--subsection-(c)-of-K.S.A.-75-3711c, and-amendments
thereto.--All-such-exchanges-shall-be--made--in--accordance--with
generally-accepted-accounting-principles.

(n)--The--pooled--money-investment-board-may-adopt-such-rules
and-regulations-for-the-management-of-such-moneys-and-investments
in--the--municipal--investment--pool--fund--as--the--board--deems
necessary.

(o) (h) For the purpose of this section,

(1) "municipality" means those entities specified in
subsection (a) of K.S.A. 12-1675, and amendments thereto, and
K.S.A. 1995 Supp. 75-4263, and amendments thereto.

(2)--"derivatives"--means-a--financial--contract--whose--value
depends--on--the--value--of-an-underlying-asset-or-index-of-asset
values; and

(3)--"weighted-average-maturity"--means:--(A)--For--investments,
the--sum--of--the--total--number--of--days--to--maturity--for--each
individual--security--multiplied--by--the--par--value--of--each
individual--security--divided--by--the--sum--of--the--par--values--of--all
securities; and--(B)--for--deposits,--the--sum--of--the--total--number--of
days--for--each--individual--deposit--multiplied--by--the--dollar--value
of--each--individual--deposit--divided--by--the--sum--of--the--dollar
values--of--all--deposits.

Sec. 4. K.S.A. 1995 Supp. 40-3403 is hereby amended to read
as follows: 40-3403. (a) For the purpose of paying damages for
personal injury or death arising out of the rendering of or the
failure to render professional services by a health care

provider, self-insurer or inactive health care provider subsequent to the time that such health care provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the health care stabilization fund. The fund shall be held in trust ~~in--a~~ segregated---fund in the state treasury and accounted for separately from other state funds. The board of governors shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b) (1) On the effective date of this act, the board of governors in existence on the day preceding such effective date is hereby abolished. On the effective date of this act, there is hereby created a board of governors which shall be composed of such members and shall have such powers, duties and functions as are prescribed by this act. The board of governors shall:

(A) Administer the fund and exercise and perform other powers, duties and functions required of the board under the health care provider insurance availability act;

(B) provide advice, information and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a health care provider;

(C) prepare and publish, on or before October 1 of each year, a summary of the fund's activity during the preceding fiscal year, including but not limited to the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the amount in the fund at the end of the fiscal year; and

(D) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider temporarily leaves the state for the purpose of obtaining additional education or training or to participate in religious, humanitarian or government service programs. Whenever a health care provider has previously left the state for one of

the reasons specified in this paragraph and returns to the state and recommences practice, the board of governors may refund any amount paid by the health care provider pursuant to subsection (m) of this section if no claims have been filed against such health care provider during the provider's temporary absence from the state.

(2) The board shall consist of 10 persons appointed by the commissioner of insurance, as provided by this subsection (b) and as follows:

(A) Three members who are licensed to practice medicine and surgery in Kansas who are doctors of medicine and who are on a list of nominees submitted to the commissioner by the Kansas medical society;

(B) three members who are representatives of Kansas hospitals and who are on a list of nominees submitted to the commissioner by the Kansas hospital association;

(C) two members who are licensed to practice medicine and surgery in Kansas who are doctors of osteopathic medicine and who are on a list of nominees submitted to the commissioner by the Kansas association of osteopathic medicine;

(D) one member who is licensed to practice chiropractic in Kansas and who is on a list of nominees submitted to the commissioner by the Kansas chiropractic association;

(E) one member who is a licensed professional nurse authorized to practice as a registered nurse anesthetist who is on a list of nominees submitted to the commissioner by the Kansas association of nurse anesthetists.

(3) On and after the effective date of this act, whenever a vacancy occurs in the membership of the board of governors created by this act, the commissioner shall appoint a successor of like qualifications from a list of three nominees submitted to the commissioner by the professional society or association prescribed by this section for the category of health care provider required for the vacant position on the board of governors. Except as otherwise provided by this section, all

appointments made shall be for a term of office of four years, but no member shall be appointed for more than two successive four-year terms. Each member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs in the membership of the board of governors created by this act for any reason other than the expiration of a member's term of office, the commissioner shall appoint a successor of like qualifications to fill the unexpired term. In each case of a vacancy occurring in the membership of the board of governors, the commissioner shall notify the professional society or association which represents the category of health care provider required for the vacant position and request a list of three nominations of health care providers from which to make the appointment.

(4) (A) The persons serving as members of the board of governors on the day preceding the effective date of this act, except the commissioner of insurance and the persons appointed from the public at large or to represent the unspecified category of health care providers under the provisions of this section as it existed on the day preceding the effective date of this act, shall be the initial members of the board of governors created by this act and shall hold such office in accordance with and subject to the provisions of this section. The commissioner shall designate the terms of office of such initial members of the board of governors created by this act as follows:

(i) One member who is licensed to practice medicine and surgery in Kansas who is a doctor of medicine shall be designated for a term expiring on July 1, 1995;

(ii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of medicine shall be designated for a term expiring on July 1, 1996;

(iii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of medicine shall be designated for a term expiring on July 1, 1997;

(iv) one member who is a representative of a Kansas hospital shall be designated for a term expiring on July 1, 1995;

(v) one member who is a representative of a Kansas hospital shall be designated for a term expiring on July 1, 1996;

(vi) one member who is a representative of a Kansas hospital shall be designated for a term expiring on July 1, 1997;

(vii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of osteopathic medicine shall be designated for a term expiring on July 1, 1995;

(viii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of osteopathic medicine shall be designated for a term expiring on July 1, 1996;

(ix) the member who is licensed to practice chiropractic in Kansas shall be designated for a term expiring on July 1, 1995; and

(x) the member who is a licensed professional nurse authorized to practice as a registered nurse anesthetist in Kansas shall be designated for a term expiring on July 1, 1996.

(B) If there was a vacancy in the membership of the board of governors abolished by this act on the day preceding the effective date of this act, the commissioner shall appoint a person of like qualifications in accordance with this subsection (b) and shall designate the term of such member in accordance with this subsection (b) as though such member had been a member on the day preceding the effective date of this act. In any such case, the commissioner shall notify the professional society or association representing the category of health care provider required for the vacant position and request a list of nominations of health care providers from which to make the appointment.

(5) The board of governors shall organize at its first meeting in January of 1995, and at its first meeting subsequent to July 1, 1995, and July 1 of each year thereafter and shall elect a chairperson and vice-chairperson from among its membership. Meetings shall be called by the chairperson or by a written notice signed by three members of the board.

(6) The board of governors, in addition to other duties

imposed by this act, shall study and evaluate the operation of the fund and make such recommendations to the legislature as may be appropriate to ensure the viability of the fund.

(7) On and after January 1, 1995, and prior to July 1, 1995, the board of governors shall be attached to the insurance department in accordance with this section and all staff, other than the executive director, budgeting, personnel, purchasing and related management functions of the board shall be provided by the commissioner of insurance. The commissioner shall include the budget estimates of the board of governors, as approved by the board, with the budget estimates for the insurance department which are submitted to the division of the budget under K.S.A. 75-3717 and amendments thereto. All vouchers for expenditures of the board shall be approved by the chairperson of the board or a person designated by the chairperson and, upon such approval, shall be paid from the fund. On and after January 1, 1995, the board shall appoint an executive director who shall be in the unclassified service of the Kansas civil service act. On and after July 1, 1995, the board may appoint such additional employees, and provide all office space, services, equipment, materials and supplies, and all budgeting, personnel, purchasing and related management functions required by the board in the exercise of the powers, duties and functions imposed or authorized by the health care provider insurance availability act or may enter into a contract with the commissioner of insurance for the provision, by the commissioner, of all or any part thereof.

(8) The commissioner shall:

(A) Provide technical and administrative assistance to the board of governors with respect to administration of the fund upon request of the board;

(B) provide such expertise as the board may reasonably request with respect to evaluation of claims or potential claims; and

(C) On and after January 1, 1995, and prior to July 1, 1995,

provide such staff, other than the executive director, office space, services, equipment, materials and supplies and all budgeting, personnel, purchasing and related management functions as may be required by the board in the exercise of its powers, duties and functions imposed or authorized by the health care provider insurance availability act; and on and after July 1, 1995, provide all or any part thereof required by any contract entered into between the board and the commissioner therefor.

(9) On the effective date of this act, all of the powers, duties, functions, records and property of the board of governors that is abolished by this section, which are prescribed for the board of governors by this act are hereby transferred to and conferred and imposed upon the board of governors that is created by this section, except as is otherwise specifically provided by this act. On the dates prescribed for the transfer of the powers, duties and functions by this act, all of the powers, duties, functions, records and property of the commissioner of insurance or the insurance department, which relate to or are required for the performance of powers, duties or functions which are prescribed for the board of governors by this act, including the power to expend funds now or hereafter made available in accordance with appropriation acts, are hereby transferred to and conferred and imposed upon the board of governors that is created by this section, except as is otherwise specifically provided by this act.

(10) The board of governors created by this act shall be the successor in every way to the powers, duties and functions of the board of governors and the commissioner of insurance in which such powers, duties and functions were vested prior to the dates prescribed for the transfer of such powers, duties and functions to the board in accordance with this act, except as otherwise specifically provided by this act. Every act performed under the authority of the board of governors created by this act shall be deemed to have the same force and effect as if performed by the board of governors and the commissioner of insurance in which

such powers, duties and functions were vested prior to the transfer of such powers, duties and functions.

(11) Subject to the provisions of this act, whenever the board of governors that is abolished by this act or the commissioner of insurance, or words of like effect, is referred to or designated by a statute, contract, or other document, and such reference or designation relates to a power, duty or function which is transferred to and conferred and imposed upon the board of governors that is created by this act, such reference or designation shall be deemed to apply to the board of governors created by this act.

(12) All rules and regulations and all orders or directives of the board of governors that is abolished by this act and all rules and regulations of the commissioner of insurance, which are in existence on the date prescribed for the transfer of powers, duties and functions to such board under this act and which relate to powers, duties and functions that were vested in such board of governors or the commissioner of insurance prior to such date, shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the board of governors created by this act, until revised, amended or revoked or nullified pursuant to law. The board of governors created by this act shall be deemed to be a continuation of the board of governors abolished by this act.

(13) On July 1, 1995, all employees who were engaged prior to such date in the performance of duties and functions under the health care provider insurance availability act, and who, in the opinion of the board, are necessary to perform the duties and functions required under such act by the board shall become employees of the board, and shall retain all retirement benefits and rights of civil service which such employee had prior to July 1, 1995, and their services shall be deemed to have been continuous.

(c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o) and (p), the fund shall be liable to pay: (1) Any amount

due from a judgment or settlement which is in excess of the basic coverage liability of all liable resident health care providers or resident self-insurers for any personal injury or death arising out of the rendering of or the failure to render professional services within or without this state;

(2) subject to the provisions of subsection (m), any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable nonresident health care providers or nonresident self-insurers for any such injury or death arising out of the rendering or the failure to render professional services within this state but in no event shall the fund be obligated for claims against nonresident health care providers or nonresident self-insurers who have not complied with this act or for claims against nonresident health care providers or nonresident self-insurers that arose outside of this state;

(3) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a resident inactive health care provider, an optometrist or pharmacist who purchased coverage pursuant to subsection (n) or a physical therapist who purchased coverage pursuant to subsection (o), for any such injury or death arising out of the rendering of or failure to render professional services;

(4) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a nonresident inactive health care provider, an optometrist or pharmacist who purchased coverage pursuant to subsection (n) or a physical therapist who purchased coverage pursuant to subsection (o), for any injury or death arising out of the rendering or failure to render professional services within this state, but in no event shall the fund be obligated for claims against: (A) Nonresident inactive health care providers who have not complied with this act; or (B) nonresident inactive health care providers for claims that arose outside of this state, unless such health care provider was a resident health care provider or resident self-insurer at the time such act occurred;

(5) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees incurred in defending the fund against claims;

(6) any amounts expended for reinsurance obtained to protect the best interests of the fund purchased by the board of governors, which purchase shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, but shall not be subject to the provisions of K.S.A. 75-4101 and amendments thereto;

(7) reasonable and necessary actuarial expenses incurred in administering the act, including expenses for any actuarial studies contracted for by the legislative coordinating council, which expenditures shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto;

(8) periodically to the plan or plans, any amount due pursuant to subsection (a)(3) of K.S.A. 40-3413 and amendments thereto;

(9) reasonable and necessary expenses incurred by the board of governors in the administration of the fund or in the performance of other powers, duties or functions of the board under the health care provider insurance availability act;

(10) return of any unearned surcharge;

(11) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center from claims for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider;

(12) notwithstanding the provisions of subsection (m), any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency

training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center;

(13) reasonable and necessary expenses for the development and promotion of risk management education programs;

(14) notwithstanding the provisions of subsection (m), any amount, but not less than the required basic coverage limits, owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in clause (12) of this subsection (c), who was engaged in a postgraduate program of residency training approved by the state board of healing arts but who, at the time the claim was made, was no longer engaged in such residency program;

(15) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in clause (14) of this subsection (c);

(16) expenses incurred by the commissioner in the performance of duties and functions imposed upon the commissioner by the health care provider insurance availability act, and expenses incurred by the commissioner in the performance of duties and functions under contracts entered into between the board and the commissioner as authorized by this section; and

(17) periodically to the state general fund reimbursements of amounts paid to members of the health care stabilization fund oversight committee for compensation, travel expenses and subsistence expenses pursuant to subsection (e) of K.S.A. 40-3403b, and amendments thereto.

(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid promptly and in full except that, if the amount for which the fund is liable is \$300,000 or more, it shall be paid, by installment payments of \$300,000 or 10% of the amount of the judgment including interest thereon, whichever is greater, per fiscal year, the first installment to be paid within

60 days after the fund becomes liable and each subsequent installment to be paid annually on the same date of the year the first installment was paid, until the claim has been paid in full. Any attorney fees payable from such installment shall be similarly prorated.

(e) In no event shall the fund be liable to pay in excess of \$3,000,000 pursuant to any one judgment or settlement against any one health care provider relating to any injury or death arising out of the rendering of or the failure to render professional services on and after July 1, 1984, and before July 1, 1989, subject to an aggregate limitation for all judgments or settlements arising from all claims made in any one fiscal year in the amount of \$6,000,000 for each health care provider.

(f) The fund shall not be liable to pay in excess of the amounts specified in the option selected by the health care provider pursuant to subsection (1) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such health care provider on or after July 1, 1989.

(g) A health care provider shall be deemed to have qualified for coverage under the fund:

(1) On and after July 1, 1976, if basic coverage is then in effect;

(2) subsequent to July 1, 1976, at such time as basic coverage becomes effective; or

(3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

(h) A health care provider who is qualified for coverage under the fund shall have no vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render professional services inside or outside this state by any other health care provider who is also qualified for coverage under the fund. The provisions of this subsection shall apply to all claims filed on or after July 1, 1986.

(i) Notwithstanding the provisions of K.S.A. 40-3402 and amendments thereto, if the board of governors determines due to the number of claims filed against a health care provider or the outcome of those claims that an individual health care provider presents a material risk of significant future liability to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, to terminate the liability of the fund for all claims against the health care provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection, shall notify the licensing or other disciplinary board having jurisdiction over the health care provider involved of the name of the health care provider and the reasons for the termination.

(j) (1) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) of this subsection (j), from the state general fund to the health care stabilization fund.

(2) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(12), the board of governors shall certify to the director of accounts and reports the amount of such payment which is equal to the basic coverage liability of self-insurers, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) of this subsection (j), from the state general fund to the health

care stabilization fund.

(3) The university of Kansas medical center private practice foundation reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than \$500,000 on July 1 of any year, the private practice corporations or foundations referred to in subsection (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount necessary to increase such balance to \$500,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any private practice corporation or foundation or any of its full-time physician faculty employed by the university of Kansas, the director of accounts and reports shall transfer an amount equal to the amount paid from the university of Kansas medical center private practice foundation reserve fund to the health care stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(4) Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(14) or (c)(15), the board of governors shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified from the state general fund to the health care

stabilization fund.

(k) Notwithstanding any other provision of the health care provider insurance availability act, no psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto shall be assessed a premium surcharge or be entitled to coverage under the fund if such hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404 and amendments thereto prior to January 1, 1988.

(l) On or after July 1, 1989, every health care provider shall make an election to be covered by one of the following options provided in this subsection (l) which shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. Such election shall be made at the time the health care provider renews the basic coverage in effect on July 1, 1989, or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the board of governors and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. Such options shall be as follows:

(1) OPTION 1. The fund shall not be liable to pay in excess of \$100,000 pursuant to any one judgment or settlement for any

party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$300,000 for such provider.

(2) OPTION 2. The fund shall not be liable to pay in excess of \$300,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$900,000 for such provider.

(3) OPTION 3. The fund shall not be liable to pay in excess of \$800,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$2,400,000 for such health care provider.

(m) The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive health care providers who first qualify as an inactive health care provider on or after July 1, 1989, unless such health care provider has been in compliance with K.S.A. 40-3402, and amendments thereto, for a period of not less than five years. If a health care provider has not been in compliance for five years, such health care provider may make application and payment for the coverage for the period while they are nonresident health care providers, nonresident self-insurers or resident or nonresident inactive health care providers to the fund. Such payment shall be made within 30 days after the health care provider ceases being an active health care provider and shall be made in an amount determined by the board of governors to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles. The provisions of this subsection shall not be applicable to any health care provider which becomes inactive through death or retirement, or through disability or circumstances beyond such health care provider's control, if such

health care provider notifies the board of governors and receives approval for an exemption from the provisions of this subsection. Any period spent in a postgraduate program of residency training approved by the state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto.

(n) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1991, against a licensed optometrist or pharmacist relating to any injury or death arising out of the rendering of or failure to render professional services by such optometrist or pharmacist prior to July 1, 1991, unless such optometrist or pharmacist qualified as an inactive health care provider prior to July 1, 1991, and obtained coverage pursuant to subsection (m). Optometrists and pharmacists not qualified as inactive health care providers prior to July 1, 1991, may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1991, and payment within 30 days from notice of the calculated amount as determined by the board of governors to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

(o) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1995, against a physical therapist registered by the state board of healing arts relating to any injury or death arising out of the rendering of or failure to render professional services by such physical therapist prior to July 1, 1995, unless such physical therapist qualified as an inactive health care provider prior to July 1, 1995, and obtained coverage pursuant to subsection (m). Physical therapists not qualified as inactive health care providers prior to July 1, 1995, may purchase coverage from the fund for periods of prior

compliance by making application prior to August 1, 1995, and payment within 30 days from notice of the calculated amount as determined by the board of governors to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

(p) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall in no event be liable for any claims against any health care provider based upon or relating to the health care provider's sexual acts or activity, but in such cases the fund may pay reasonable and necessary expenses for attorney fees incurred in defending the fund against such claim. The fund may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

Sec. 5. K.S.A. 40-3406 is hereby amended to read as follows:
 40-3406. The pooled money investment board may invest and reinvest moneys in the fund in ~~obligations-of-the-United-States-of-America-or-obligations-the-principal-and-interest-of-which-are-guaranteed-by-the-United-States-of-America-or-in-interest-bearing-time-deposits-in-any-commercial-bank-located-in--Kansas,--or,--if-the-board-determines-that-it-is-impossible-to-deposit-such-moneys-in--such--time-deposits,--in-repurchase-agreements-of-less-than-30-days--duration-with-a-Kansas-bank-or-with--a--primary--government-securities-dealer-which-reports-to-the-market-reports-division-of-the--federal--reserve-bank-of-New-York-for-direct-obligations-of,--or-obligations-that-are-insured-as-to-principal-and-interest--by,--the--United--States-government-or-any-agency-thereof.--Any-income-or-interest-earned-by-such-investments-shall-be-credited--to--the~~ fund the pooled money investment portfolio.

Sec. 6. K.S.A. 44-712 is hereby amended to read as follows:
 44-712. (a) Establishment and control. There is hereby established as a special fund in the state treasury, separate and apart from all public moneys or funds of this state, an

employment security fund, which shall be administered by the secretary as provided in this act. This fund shall consist of: (1) All contributions collected under this act; (2) interest earned upon any moneys in the fund; (3) all moneys credited to this state's account in the federal unemployment trust fund, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended; (4) any property or securities acquired through the use of moneys belonging to the fund, and all other moneys received for the fund from any other source; (5) all earnings of such property or securities. All moneys in this fund shall be mingled and undivided.

(b) Accounts and deposits. The state treasurer shall be ex officio custodian of the fund. Payments from the fund, and for the purposes of this act deposits with the secretary of the treasury of the United States shall not be deemed to be payments from the fund, shall be made upon warrants drawn upon the state treasurer by the director of accounts and reports upon vouchers approved by the secretary. There shall be maintained within the fund three separate accounts: (1) A clearing account; (2) an unemployment trust fund account, and (3) a benefit account. All money payable to the fund upon receipt thereof by the secretary, shall be forwarded to the state treasurer, who shall immediately deposit them in the state treasury to the credit of the clearing account of the fund. Refunds payable pursuant to K.S.A. 44-717 and amendments thereto may be paid from the clearing account of the fund by warrants drawn by the director of accounts and reports upon the state treasurer upon vouchers approved by the secretary. After clearance thereof, all other moneys in the clearing account of the fund shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the federal unemployment trust fund established and maintained pursuant to section 904 of the social security act, 42 U.S.C.A. § 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in

the possession or custody of this state to the contrary notwithstanding. The benefit account of the fund shall consist of all moneys requisitioned from this state's account in the federal unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts of the fund may be deposited by the state treasurer in any bank or public depository as is now provided by law for the deposit of general funds of the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds, ~~but~~ and shall be maintained in separate ~~accounts-on-the-books-of-the depository-banks~~ bank accounts.

(c) Withdrawals. Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and warrants for the payment of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding

periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812 and amendments thereto shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) Administrative use. (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged.

(2) Money credited to the account of this state pursuant to

section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment trust fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(e) Management of funds upon discontinuance of federal unemployment trust fund. The provisions of subsections (a), (b), (c) and (d) of this section, to the extent that they relate to the federal unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the employment security fund of this state, shall be transferred to the state treasurer, to be administered by the secretary as a trust fund for the purpose of paying benefits under this act, and the pooled money investment board upon the direction of the secretary shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an

incident to such administration.

Sec. 7. K.S.A. 1995 Supp. 75-4201 is hereby amended to read as follows: 75-4201. As used in this act, unless the context otherwise requires:

(a) "Treasurer" means state treasurer.

(b) "Controller" means director of accounts and reports.

(c) "Board" means the pooled money investment board.

(d) "Bank" means a state bank incorporated under the laws of Kansas or a national bank having such bank's home office within the state of Kansas.

(e) "State moneys" means all moneys in the treasury of the state or coming lawfully into the possession of the treasurer.

~~(f) "Custodial moneys" means state moneys deposited with the treasurer which, in the written opinion of the attorney general, are required by contract, bequest or law to be segregated from other bank accounts.~~

~~(g) "Special moneys" means moneys which are required to be or are deposited in a custodial bank account or a fee agency account by the state or any agency thereof.~~

~~(f)~~ (f) "State bank account" means state moneys or special fee agency account moneys deposited in accordance with the provisions of this act.

~~(g)~~ (g) "Operating account" means a state bank account which is payable or withdrawable, in whole or in part, on demand.

~~(h)~~ (h) "Investment account" means a state bank account which is not payable on demand ~~but shall not include custodial accounts.~~

~~(i)~~ (i) "Market rate" means the average of the average equivalent yields, with equivalent maturities, of: (1) United States government securities; and (2) debt obligations of the following United States government agencies, federal home loan banks, federal national mortgage association and federal farm credit bank.

~~(j)~~ (j) "Investment rate" means a rate which is the equivalent yield for United States government securities having a

maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. ~~For-liquidity investments,~~ The 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.

~~(m) "Custodial account" means a state bank account of custodial moneys.~~

~~(n)~~ (k) "Fee agency account" means a state bank account of any state agency consisting of fees, tuition or charges authorized by law prior to remittance to the state treasurer.

~~(o)~~ (l) "Disbursement" means a payment of any kind whatsoever made from the state treasury or from any operating account, except transfer of ~~state-or-special~~ moneys between or among operating accounts and investment accounts or either or both of them.

~~(p)~~ (m) "Securities" means, for the purposes of K.S.A. 75-4218, and amendments thereto, any one or more of the following, which may be accepted or rejected by the pooled money investment board:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations, letters of credit and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds.

(2) Kansas municipal bonds which are general obligations of the municipality issuing the same.

(3) Revenue bonds of any agency or arm of the state of Kansas.

(4) Revenue bonds of any municipality, as defined by K.S.A. 10-101, and amendments thereto, within the state of Kansas or bonds issued by a public building commission as authorized by K.S.A. 12-1761, and amendments thereto, if approved by the state bank commissioner, except (A) bonds issued under the provisions of K.S.A. 12-1740 et seq., and amendments thereto, unless such bonds are rated at least MIG-1 or Aa by Moody's Investors Service

or AA by Standard & Poor's Corp. and (B) bonds secured by revenues of a utility which has been in operation for less than three years. Any expense incurred in connection with granting approval of revenue bonds shall be paid by the applicant for approval.

(5) Temporary notes of any municipal corporation or quasi-municipal corporation within the state of Kansas which are general obligations of the municipal corporation or quasi-municipal corporation issuing the same.

(6) Warrants of any municipal corporation or quasi-municipal corporation within the state of Kansas the issuance of which is authorized by the state board of tax appeals and which are payable from the proceeds of a mandatory tax levy.

(7) Bonds of any municipal or quasi-municipal corporation of the state of Kansas which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America. A copy of such escrow agreement shall be furnished to the treasurer.

(8) Securities listed in paragraph (13) of subsection (d) of K.S.A. 9-1402 and amendments thereto within limitations of K.S.A. 9-1402 and amendments thereto.

(9) A corporate surety bond guaranteeing deposits in a bank, savings or savings and loan association in excess of federal deposit insurance corporation insurance, underwritten by an insurance company authorized to do business in the state of Kansas.

(10) All of such securities shall be current as to interest according to the terms thereof.

(11) Whenever a bond is authorized to be pledged as a security under this section, such bond shall be accepted as a security if: (i) In the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for

security; (ii) in the case of an uncertificated bond, registration of a pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered; or (iii) in a form approved by the attorney general, which assures the availability of the bond proceeds pledged as a security for public deposits.

(q) (n) "Savings bank" means a federally chartered savings bank insured by the federal deposit insurance corporation and doing business within the state of Kansas.

(r) (o) "Savings and loan association" means a state or federally chartered savings and loan association insured by the federal deposit insurance corporation and doing business within the state of Kansas.

(s) (p) "Custodial bank" means a bank designated to keep safely collateral pledged as security for state bank accounts.

(t) (q) "Centralized securities depository" means a clearing agency registered with the securities and exchange commission which provides safekeeping and book-entry settlement services to its participants.

(u) (r) "Depository bank" means a bank, savings bank or savings and loan association authorized and eligible to receive state moneys.

Sec. 8. K.S.A. 1995 Supp. 75-4202 is hereby amended to read as follows: 75-4202. All state moneys and credits received by the treasurer shall be deposited daily in one or more operating accounts, ~~except custodial moneys which shall be so deposited in custodial accounts.~~ All disbursements shall be drawn from operating accounts. All banks having a state bank account shall service all warrants, drafts or checks of the state or its agencies. The board shall determine the compensation for services rendered that banks may receive on state bank accounts. Such compensation may be either compensating balances or fees.

Sec. 9. K.S.A. 75-4204 is hereby amended to read as follows: 75-4204. All orders of the treasurer transferring ~~state or special~~ moneys from one state bank account to another shall be

signed both by the treasurer or ~~his-or-her~~ the treasurer's duly authorized deputy and director of accounts and reports or ~~his--er~~ her the director's duly authorized assistant.

Sec. 10. K.S.A. 1995 Supp. 75-4209 is hereby amended to read as follows: 75-4209. (a) After the board determines the liquidity needs for the state, and determines the varying maturities of the investment accounts to be offered and the amount of state moneys to be invested in each of the maturities offered, in accordance with rules and regulations adopted pursuant to K.S.A. 1995 Supp. 75-4232, and amendments thereto, the board shall make available state moneys eligible for investment accounts in the following manner:

(1) (A) The board shall offer to qualified banks, on a competitive bid basis, state moneys for deposit in investment accounts at maturities of not more than four years and such bids shall be at a rate of at least the market rate, as defined in subsection (k) of K.S.A. 75-4201, and amendments thereto.

(B) As part of the offering under subparagraph (A) the board shall offer to qualified banks, on a twelve-month average, 50% of the amount of state moneys available for investment or \$350,000,000, whichever amount is greater, at maturities of not more than four years and at the investment rate as defined in subsection (1) of K.S.A. 75-4201, and amendments thereto. Such accounts shall be apportioned by the board among the banks which propose to receive such accounts and which qualify therefor on the basis of the ratio of each bank's combined capital, undivided profits and surplus to the total capital, undivided profits and surplus of all such banks.

(C) Qualified banks shall be determined in accordance with requirements established by rules and regulations adopted pursuant to K.S.A. 1995 Supp. 75-4232, and amendments thereto.

(2) The board may invest and reinvest state moneys eligible for investment which are not invested in accordance with paragraph (1), in the following investments:

(A) Direct obligations of, or obligations that are insured

as to principal and interest by, the United States of America or any agency thereof and obligations and securities of the United States sponsored enterprises which under federal law may be accepted as security for public funds, except that not more than 10% of the moneys available for investment under this subsection may be invested in mortgage-backed securities of such enterprises and of the government national mortgage association;

(B) repurchase agreements with a Kansas bank or a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds;

(C) investments in SKILL act projects and bonds pursuant to K.S.A. 1995 Supp. 74-8920, and amendments thereto, and investments in any state agency bonds or bond project; or

(D) until July 1, 1996, in the municipal investment pool fund, created under K.S.A. 1995 Supp. 12-1677a, and amendments thereto, in accordance with the policies adopted by the board on January 30, 1995. Any investment of such state moneys in such fund prior to the effective date of this act are hereby authorized, confirmed and validated. On July 1, 1996, all state moneys invested in the municipal investment pool fund under this paragraph shall be removed from such fund;

(E) bankers' acceptances eligible for discounting with the federal reserve system which do not exceed 270 days to maturity and which are issued by commercial banks or trust companies which have a short-term rating in one of the two highest rating categories by a nationally recognized investment rating firm, so long as such issuing bank or trust company is either a bank or trust company organized and operating in the United States or a foreign branch thereof or a United States branch of a foreign bank;

(F) commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm; or

(G) negotiable certificates of deposit issued by commercial banks which have a short-term deposit rating in one of the two highest rating categories by a nationally recognized investment rating firm, so long as such issuing bank or trust company is either a bank or trust company organized and operating in the United States or a foreign branch thereof or a United States branch of a foreign bank domiciled in the United States which is subject to United States government regulation.

(b) At any time moneys are available for deposits or investments for a period of time which is insufficient to permit deposit in investment accounts or to provide for the liquidity needs for the state, the board may invest such moneys in repurchase agreements as authorized in subparagraph (B) of paragraph (2) of subsection (a).

(c) When moneys are available for deposits or investments, the board may invest in preferred stock of Kansas venture capital, inc., under terms and conditions prescribed by K.S.A. 74-8203, and amendments thereto, but such investments shall not in the aggregate exceed a total amount of \$10,000,000.

(d) When moneys are available for deposits or investments, the board may invest in loans pursuant to legislative mandates, except that not more than the lesser of 10% or \$80,000,000 of the state moneys shall be invested.

(e) Interest on investment accounts in banks is to be paid at maturity, but not less than annually.

(f) Investments made by the board under the provisions of this section shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable

income to be derived.

(g) Investments under subsection (a) shall be for a period not to exceed four years, except for investments in mortgage-backed securities.

(h) Investments in securities under subparagraph (A) of paragraph (2) of subsection (a) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities except for the 10% limitation on mortgage-backed securities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

(i) On and after July 1, 1996, the board shall not invest state moneys eligible for investment under paragraph (2) of subsection (a), in the municipal investment pool fund, created under K.S.A. 1995 Supp. 12-1677a, and amendments thereto.

(j) The pooled money investment board shall not invest moneys in the pooled money investment portfolio in derivatives. As used in this subsection, "derivatives" means a financial contract whose value depends on the value of an underlying asset or index of asset values.

(k) Moneys and investments in the pooled money investment portfolio shall be managed by the pooled money investment board in accordance with investment policies developed, approved, published and updated on an annual basis by such board. Such investment policies shall include at a minimum guidelines which identify credit standards, eligible instruments, allowable maturity ranges, methods for valuing the portfolio, calculating earnings and yields and limits on portfolio concentration for each type of investment. Any changes in such investment policies shall be approved by the pooled money investment board.

Sec. 11. K.S.A. 75-4210a is hereby amended to read as follows: 75-4210a. ~~Any-moneys-received-from~~ Interest earned on state moneys shall be credited to the state general fund, unless required by law, contract or bequest to be credited to a fund other than the state general fund. When interest earnings are

required by law, contract or bequest to be credited to a fund other than the state general fund, such earnings shall be based on the average daily balance in the fund for each month and the net earnings rate of the pooled money investment portfolio for such month unless such law, contract or bequest provides a different method of computing interest earnings.

Sec. 12. K.S.A. 1995 Supp. 75-4212a is hereby amended to read as follows: 75-4212a. Whenever the balance in operating accounts is insufficient to meet the state's obligations or withdrawals from the municipal investment pool fund, and there are state moneys in authorized investments, the treasurer, with approval of the board, may:

(a) Borrow upon the security of any one or more investment accounts an amount sufficient to meet the state's or the municipal investment pool fund's obligations. Any such loan shall be repaid in full within 60 days or prior to July 1, whichever occurs first. Interest payment by the state for any loan under this section shall be made only by way of setoff from interest obligations to the state from the bank making such loan. The amount borrowed under this section from any bank, shall never exceed an amount equal to the amount of state moneys on deposit in such bank; or

(b) enter into reverse repurchase agreements utilizing securities purchased by the board pursuant to subsection (a)(2)(A) of K.S.A. 75-4209 and amendments thereto. Such reverse repurchase agreements may be entered into with Kansas banks or primary government securities dealers which report to the market reports division of the federal reserve bank of New York. Expenses of reverse repurchase agreements shall be paid by deducting such expenses against other interest income to the state.

Sec. 13. K.S.A. 1995 Supp. 75-4218 is hereby amended to read as follows: 75-4218. (a) All state bank accounts shall be secured by pledge of securities as provided in this section.

(b) The bank, savings bank or savings and loan association

receiving or having a state bank account shall deposit or cause its affiliate bank to deposit securities acceptable to the board and owned by it or by its affiliate bank, in one of the following ways:

(1) Deposit with the treasurer.

(2) Deposit with a custodial bank having adequate modern facilities for the safekeeping of securities which shall have had the prior approval of the board. Any such custodial bank receiving securities for safekeeping shall be liable to the state for any loss suffered by the state in the event such custodial bank relinquishes the custody of any such securities contrary to the provisions of this act or rules and regulations adopted thereunder. This section shall not prohibit any custodial bank receiving securities for safekeeping from issuing a joint custody receipt and placing those securities in such bank's account with any bank chartered in Kansas or any other state, any trust company chartered in Kansas or any other state, any national bank, or any centralized securities depository wherever located within the United States. No bonds or securities pledged to secure public deposits shall be left for safekeeping in any bank, trust company, or national bank which is owned directly or indirectly by any parent corporation of the depository bank, or with any bank, trust company, or national bank, having common controlling shareholders, having a common majority of the board of directors or having common directors with the ability to control or influence directly or indirectly the acts or policies of the bank, state or federally chartered savings and loan association or federally chartered savings bank securing such public deposits.

(3) Deposit with the federal reserve bank of Kansas City, Missouri.

(4) Deposit with the federal home loan bank of Topeka, Kansas.

(5) Any combination of (1), (2), (3) and (4).

(c) The depository bank shall obtain a written agreement

from its affiliate bank that the affiliate bank grants a security interest to the state of Kansas in securities owned by the affiliate bank which are pledged on behalf of the depository bank to secure payment of deposits made with the depository bank pursuant to this section. Such agreement shall be approved by the board of directors of the affiliate bank and reflected in its minutes. From the time of execution of such agreement, the agreement shall remain continuously an official record of the affiliate bank. Any such deposit of securities, except with the treasurer, shall have a joint custody receipt which shall constitute a perfected security interest taken therefor with one copy going to the treasurer and one copy going to the bank, savings bank or savings and loan association which deposits such securities. In lieu of the initial deposit of securities provided for in this subsection (c), the treasurer or the treasurer's duly authorized deputy, for a period of not to exceed 10 calendar days, may accept the telephone assurance of a bank qualified as provided in (2) or (3) of subsection (b), that the depository bank has requested the issuance of a joint custody receipt with the state of Kansas, specifying the securities pledged, for the purpose of compliance with this section and that such joint custody receipt will be forthcoming.

(d) The depository bank, the board and the custodial bank shall enter into a written agreement for the safekeeping of securities and the agreement shall be maintained in the records of the depository bank.

(e) Securities deposited to comply with this section may be withdrawn on application of the bank, savings bank or savings and loan association depositing the securities, if such application is approved by the treasurer or the treasurer's duly authorized deputy for the reason that such deposit of securities is no longer needed to comply with this section or are required for collection by virtue of their maturity or for exchange. Securities withdrawn for collection by virtue of their maturity or for exchange shall be replaced within 15 calendar days, but

until replaced the state shall retain a first lien on the withdrawn security or the proceeds therefrom.

(f) Operating accounts, investment accounts, and fee agency accounts ~~and-custodial-accounts~~ shall be secured by pledge of securities, the market value of which is equal to 100% of the amount of the deposits in the account plus accrued interest, less the amount of deposits in the account protected by the federal deposit insurance corporation. Any agency responsible for a fee agency account shall transfer immediately all moneys not so secured to the state treasurer for deposit in the state treasury.

Sec. 14. K.S.A. 1995 Supp. 75-4220 is hereby amended to read as follows: 75-4220. (a) Each depository or its affiliate bank pledging securities for such depository pursuant to K.S.A. 75-4218, and amendments thereto, shall be liable for payment if: (1) The depository bank fails to: (A) Pay any check, draft or warrant drawn by the treasurer and director of accounts and reports; or (B) account for any check, draft, warrant, order, or certificate of deposit, or any money entrusted to such bank by the treasurer; or (2) a conservator or receiver is appointed for the depository bank.

Any loss incurred by the state by reason of failure by any depository bank to safely keep and account for ~~state-or-special~~ moneys and interest thereon shall be recovered by the state from the depository bank and a sale of the securities pledged under this act. The attorney general is authorized to prosecute in the name of the state any and all actions for recovery of any loss incurred by the state under this act.

In case of default by any depository bank having a state bank account of any type, the securities pledged under this act, if not in the possession of the treasurer, shall be transferred to the treasurer by the custodial bank to be sold by the treasurer and payment of the proceeds of such sale shall be made to the state to the extent of the state's interest, subject to the provisions of K.S.A. 75-4221, and amendments thereto.

Sec. 15. K.S.A. 1995 Supp. 75-4228 is hereby amended to read

as follows: 75-4228. The making of profit by the treasurer or director of accounts and reports out of any moneys in the state treasury, the custody of which the treasurer or director of accounts and reports is charged with, by lending, depositing, or otherwise using, or disposing of the same in any manner whatsoever not provided in this act, or the removal by the treasurer or director of accounts and reports or by such official's consent, of any securities deposited by any bank under the provisions of this act out of the treasury, or failing to return or dispose of any securities as provided by law, shall be deemed a felony, and on conviction thereof, the treasurer or director of accounts and reports shall be punished by imprisonment in the custody of the secretary of corrections for a term of not less than two nor more than five years. In addition to such criminal liability the treasurer or director of accounts and reports and the surety thereof shall also be liable, on official bond, for all profits realized from such unlawful use of any ~~state-or-special~~ moneys. It shall be the duty of the attorney general to enter and prosecute to final termination all actions for violation of this act.

Sec. 16. K.S.A. 1995 Supp. 75-4232 is hereby amended to read as follows: 75-4232. State moneys shall be managed by the pooled money investment board in accordance with investment policies provided by law and, by rules and regulations and published policies of such board. The pooled money investment board shall not contract for management of investments by a money manager. In administering the functions of the pooled money investment board, the board shall adopt rules and regulations or published policies pursuant to K.S.A. 75-4209, and amendments thereto establishing investment policies and procedures. Such policies and procedures shall address liquidity, diversification, safety of principal, yield, maturity and quality and capability of investment management, with primary emphasis on safety and liquidity. Such investment policy shall specify when or under what circumstances securities may be disposed of prior to maturity. Such investment

policies and procedures shall be reviewed annually by the pooled money investment board.

Sec. 17. K.S.A. 75-4254 is hereby amended to read as follows: 75-4254. The pooled money investment board may invest and reinvest the moneys of surplus proceeds and surplus reserves in:

(a) ~~Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America;~~ Investments enumerated in K.S.A. 10-131, and amendments thereto; or

(b) ~~in interest-bearing time deposits in any commercial bank located in Kansas, except that the amount so invested in any such bank shall not exceed an amount equal to the total capital and surplus of such bank and shall be secured in the manner prescribed by subsections (a) to (e), inclusive, of K.S.A. 75-4218, and amendments thereto;~~

(c) ~~if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or~~

(d) ~~in shares or accounts in savings and loan associations insured by the federal savings and loan insurance corporation, or other federal agency, to the extent covered by such insurance~~ the pooled money investment portfolio.

Sec. 18. K.S.A. 76-818 is hereby amended to read as follows: 76-818. All funds received pursuant to the provisions of this act, whether as proceeds from the sale of bonds, sale of property, insurance or condemnation awards, as revenues, proceeds or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this act and as provided in the resolution authorizing the issuance of the bonds or the trust

agreement. The resolution of the board authorizing the issuance of the bonds or the trust agreement securing any bonds may provide that any of such moneys, including the proceeds of the bonds, the sinking fund and any reserve account or accounts, may be invested by the pooled money investment board, pending the disbursement thereof, in obligations--of--the--United--States--of--America--or--obligations--the--principal--and--interest--of--which--are--guaranteed--by--the--United--States--of--America--or--in--interest--bearing--time--deposits--in--any--commercial--bank--located--in--Kansas,--or,--if--the--board--determines--that--it--is--impossible--to--deposit--such--moneys--in--such--time--deposits,--in--repurchase--agreements--of--less--than--30--days¹--duration--with--a--Kansas--bank--or--with--a--primary--government--securities--dealer--which--reports--to--the--market--reports--division--of--the--federal--reserve--bank--of--New--York--for--direct--obligations--of,--or--obligations--that--are--insured--as--to--principal--and--interest--by--the--United--States--government--or--any--agency--thereof: (a) investments enumerated in K.S.A. 10-131, and amendments thereto; or (b) the pooled money investment portfolio.

Whenever such moneys are invested in interest-bearing deposits in any commercial bank, such deposits shall be secured by pledge of securities as provided in K.S.A. 75-4218, and amendments thereto.

Sec. 19. K.S.A. 1995 Supp. 79-4804 is hereby amended to read as follows: 79-4804. (a) ~~Before July 17, 1995, an amount equal to 90% of all moneys credited to the state gaming revenues fund shall be transferred and credited to the state economic development initiatives fund which is hereby created in the state treasury. On and after July 17, 1995,~~ An amount equal to 85% of all moneys credited to the state gaming revenues fund shall be transferred and credited to the state economic development initiatives fund. Expenditures from the state economic development initiatives fund shall be made in accordance with appropriations acts for the financing of such programs supporting and enhancing the existing economic foundation of the state and fostering growth through the expansion of current, and the

establishment and attraction of new, commercial and industrial enterprises as provided by this section and as may be authorized by law and not less than 1/2 of such money shall be distributed equally among the congressional districts of the state. Except as provided by subsection (g), all moneys credited to the state economic development initiatives fund shall be credited within the fund, as provided by law, to an account or accounts of the fund which are created by this section.

(b) There is hereby created the Kansas capital formation account in the state economic development initiatives fund. All moneys credited to the Kansas capital formation account shall be used to provide, encourage and implement capital development and formation in Kansas.

(c) There is hereby created the Kansas economic development research and development account in the state economic development initiatives fund. All moneys credited to the Kansas economic development research and development account shall be used to promote, encourage and implement research and development programs and activities in Kansas and technical assistance funded through state educational institutions under the supervision and control of the state board of regents or other Kansas colleges and universities.

(d) There is hereby created the Kansas economic development endowment account in the state economic development initiatives fund. All moneys credited to the Kansas economic development endowment account shall be accumulated and invested as provided in this section to provide an ongoing source of funds which shall be used for economic development activities in Kansas, including but not limited to continuing appropriations or demand transfers for programs and projects which shall include, but are not limited to, specific community infrastructure projects in Kansas that stimulate economic growth.

(e) Except as provided in subsection (f), the pooled money investment board may invest and reinvest moneys credited to the state economic development initiatives fund in obligations-of-the

United--States--of--America--or--obligations--the--principal--and interest--of--which--are--guaranteed--by--the--United--States--of--America or--in--interest-bearing--time--deposits--in--any--commercial--bank located--in--Kansas,--or,--if--the--board--determines--that--it--is impossible--to--deposit--such--moneys--in--such--time--deposits,--in repurchase--agreements--of--less--than--30--days'--duration--with--a Kansas--bank--or--with--a--primary--government--securities--dealer--which reports--to--the--market--reports--division--of--the--federal--reserve bank--of--New--York--for--direct--obligations--of,--or--obligations--that are--insured--as--to--principal--and--interest--by,--the--United--States government--or--any--agency--thereof the pooled money investment portfolio. All moneys received as interest earned by the investment of the moneys credited to the state economic development initiatives fund shall be deposited in the state treasury and credited to the Kansas economic development endowment account of such fund.

(f) Moneys credited to the Kansas economic development endowment account of the state economic development initiatives fund may be invested in government guaranteed loans and debentures as provided by law in addition to the investments authorized by subsection (e) or in lieu of such investments. All moneys received as interest earned by the investment under this subsection of the moneys credited to the Kansas economic development endowment account shall be deposited in the state treasury and credited to the Kansas economic development endowment account of the state economic development initiatives fund.

(g) In each fiscal year, the director of accounts and reports shall make transfers in equal amounts on July 15 and January 15 which in the aggregate equal \$2,000,000 from the state economic development initiatives fund to the state water plan fund created by K.S.A. 82a-951, and amendments thereto. No other moneys credited to the state economic development initiatives fund shall be used for: (1) Water-related projects or programs, or related technical assistance; or (2) any other projects or

programs, or related technical assistance, which meet one or more of the long-range goals, objectives and considerations set forth in the state water resource planning act.

Sec. 20. K.S.A. 40-3406, 44-712, 75-4204, 75-4210a, 75-4254 and 76-818 and K.S.A. 1995 Supp. 12-1677a, 12-1677c, 40-3403, 75-4201, 75-4202, 75-4209, 75-4212a, 75-4213, 75-4218, 75-4220, 75-4228, 75-4232 and 79-4804 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

AN ACT concerning mortgage guaranty insurance; limitations on underwriting activities; amending K.S.A. 40-3515 and repealing the existing section.

Be in enacted by the legislature of the State of Kansas:

1 Section 1. K.S.A. 40-3515 is hereby amended to read as follows: 40-3515.

2 (a) If it is a member of a holding company system as defined in K.S.A. 40-3302, a
3 mortgage guaranty insurance company licensed to transact business in this state shall not,
4 as a condition of its certificate of authority, knowingly underwrite mortgage guaranty
5 insurance on mortgages originated by the holding company system or an affiliate or on
6 mortgages originated by any mortgage lender to which credit is extended, directly or
7 indirectly, by the holding company system or any affiliate, unless such insurance is
8 underwritten on the same basis, for the same consideration and subject to the same
9 insurability requirements as insurance provided to nonaffiliated lenders.

10 (b) A mortgage guaranty insurance company, the holding company system of
11 which it is a part or any affiliate shall not as a condition of the mortgage guaranty
12 insurance company's certificate of authority, pay any commissions, remuneration,
13 rebates or engage in activities proscribed in K.S.A. 40-3513 and 40-3514.

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Financial Inst. & Ins.
Attachment 2
1-22-96

1 AN ACT concerning insurance; property and casualty insurance company investments;
2 financial futures contracts; amending K.S.A. 40-2a24 and repealing the existing section.

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. K.S.A. 40-2a24 is hereby amended to read as follows: 40-2a24. ~~(a) Any~~
5 ~~insurance company other than life organized under any law of this state shall not enter into~~
6 ~~financial futures contracts except as part of a hedging transaction. The use of financial~~
7 ~~futures contracts for hedging purposes must be authorized by the insurer's board of~~
8 ~~directors.~~

9 ~~—— (b) As used in this section:~~

10 ~~—— (1) "Commodity futures trading commission" means the federal regulatory agency~~
11 ~~charged and empowered under the commodity futures trading commission act of 1974 (7~~
12 ~~U.S.C. *et seq.*) with regulation of the exchanges, or any other agency of the federal~~
13 ~~government which succeeds to or shares such power.~~

14 ~~—— (2) "Deferred gains and losses" means the amounts of unrecognized increase and~~
15 ~~decrease in the value of financial futures contracts related to uncompleted hedging~~
16 ~~transactions. These deferred amounts may, in some cases, result from terminated futures~~
17 ~~contracts.~~

18 ~~—— (3) "Exchange traded" means traded on an exchange designed as a contract market~~
19 ~~regulated by the commodity futures trading commission.~~

20 ~~—— (4) "Financial futures contracts" means an exchange-traded agreement to make or~~
21 ~~take delivery of, or to make a cash settlement in lieu thereof, a specified amount of~~
22 ~~financial instruments on a specified date or period of time, under terms and conditions~~
23 ~~regulated by the commodity futures trading commission.~~

24 ~~—— (5) "Financial instrument" means a security, currency or index of a group of~~
25 ~~securities or currencies authorized or permitted under law.~~

26 ~~—— (6) "Hedge" means a positioning of a hedged item with one or more hedging~~
27 ~~transactions.~~

28 ~~—— (7) "Hedged item" means a company asset or liability, group of company assets or~~

Financial Future Ins.
Attachment 3
Jan. 22, 1996

1 liabilities, or assets or liabilities or group of assets or liabilities reasonably expected to be
2 acquired or incurred by the company in the normal course of business. Such assets or
3 liabilities must bear price or interest rate risk.

4 ~~—— (8) "Hedging transaction" means the opening or closing, as such transaction may
5 be adjusted from time to time, of one or more financial futures contracts which can
6 reasonably be expected to minimize or reduce the price or interest rate risk of the hedged
7 item.~~

8 ~~—— (9) "Margin" includes initial and maintenance margins and means any type of
9 deposit or settlement made or required to be made with a futures commission merchant,
10 clearinghouse or safekeeping agent to ensure performance of the terms of the financial
11 futures contract.~~

12 ~~—— (c) An insurer shall not have initial or maintenance margins outstanding of more
13 than 10% of the excess of such insurer's capital and surplus over the minimum
14 requirements of a new stock or mutual company to qualify for a certificate of authority to
15 write the kind of insurance which the insurer is authorized to write.~~

16 ~~—— (d) Prior to engaging in transactions in financial futures contracts, an insurer shall
17 develop and adequately document policies and procedures regarding investment strategies
18 and objectives, record keeping needs and reporting matters. Such policies and procedures
19 shall address authorized investments, investment limitations, authorization and approval
20 procedures, accounting and reporting procedures and controls and shall provide for review
21 of activity in financial futures contracts by the insurer's board of directors or such board's
22 designee.~~

23 ~~—— Record keeping systems must be sufficiently detailed to permit internal auditors and
24 insurance department examiners to determine whether operating personnel have acted in
25 accordance with established policies and procedures, as provided in this act. Insurer
26 records must identify for each hedging transaction the related financial futures contracts
27 and the hedged items. Transactions in financial futures must be evidenced by a trade
28 confirmation or other evidence of ownership issued to the insurer by an entity authorized~~

1 to do so as provided in subsection (b)(3):

2 ~~—— (e) Gains and losses from hedged transactions may be deferred for hedged items~~
3 ~~carried at amortized cost. Until a hedge is terminate, deferred gains and losses are contra-~~
4 ~~assets and contra-liabilities, respectively. After the hedge is terminated, deferred gains and~~
5 ~~losses shall be included in the amortized cost of the hedged item. If the hedged item is no~~
6 ~~longer anticipated to be acquired or incurred, the hedge must be terminated and the deferred~~
7 ~~gain or loss from the hedging transaction must be recognized currently. Allocation of gains~~
8 ~~or losses to the hedged item shall be recognized in a systematic and rational method, as set~~
9 ~~forth in accounting procedures required in subsection (d). For assets and liabilities carried~~
10 ~~at market value, gains and losses on open hedging transactions shall be recognized~~
11 ~~currently.~~

12 *(a) Any insurance company other than life organized under any law of this state*
13 *may use financial instruments under this section to engage in hedging transactions and*
14 *certain income generation transactions or as these terms may be further defined in*
15 *regulations promulgated by the commissioner. The insurance company shall be able to*
16 *demonstrate to the commissioner the intended hedging characteristics and the ongoing*
17 *effectiveness of the financial instrument transaction or combination of the transactions*
18 *through cash flow testing or other appropriate analysis.*

19 *(b) As used in this section:*

20 *(1) "Cap" means an agreement obligating the seller to make payments to the buyer,*
21 *each payment based on the amount by which a reference price or level or the performance*
22 *or value of one or more underlying interest exceeds a predetermined number, sometimes*
23 *called the strike rate or price.*

24 *(2) "Collar" means an agreement to receive payments as the buyer of an option,*
25 *cap or floor and to make payments as the seller of a different option, cap or floor.*

26 *(3) (A) "Financial instrument" means an agreement, option, instrument or any*
27 *series or combination thereof:*

28 *(i) To make or take delivery of, or assume or relinquish, a specified amount of one*

1 or more underlying interests, or to make a cash settlement in lieu thereof; or

2 (ii) which has a price, performance, value or cash flow based primarily upon the
3 actual or expected price, level, performance, value or cash flow of one or more underlying
4 interests.

5 (B) Financial instruments include options, warrants, caps, floors, collars, swaps,
6 forwards, future and any other agreements, options or instruments substantially similar
7 thereto, or any series or combination thereof.

8 (4) "Financial instrument transaction" means a transaction involving the use of
9 one or more financial instruments.

10 (5) "Floor" means an agreement obligating the seller to make payments to the
11 buyer in which each payment is based on the amount that a predetermined number,
12 sometimes called the floor rate or price, exceeds a reference price, level, performance or
13 value of one or more underlying interests.

14 (6) "Forward" means an agreement (other than a future) to make or take delivery
15 of, or effect a cash settlement based on the actual or expected price, level, performance or
16 value of one or more underlying interests.

17 (7) "Future" means an agreement traded on a qualified exchange, to make or take
18 delivery of, or effect a cash settlement based on the actual or expected price, level,
19 performance or value of one or more underlying interests.

20 (8) "Hedging transaction" means a financial instrument transaction which is
21 entered into and maintained to reduce:

22 (A) The risk of a change in the value, yield, price, cash flow or quantity of assets
23 or liabilities which the insurer has acquired or incurred or anticipates acquiring or
24 incurring; or

25 (B) the currency exchange-rate risk or the degree of exposure as to assets or
26 liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

27 (9) "Income generation transaction" means a financial instrument transaction
28 involving the writing of the covered call options which is intended to generate income or

1 enhance return.

2 (10) "Option" means an agreement giving the buyer the right to buy or receive, sell
3 or deliver, enter into, extend or terminate, or effect a cash sttlement based on the actual or
4 expected price, level, performance or value of one or more underlying interests.

5 (11) "Potential exposure" means:

6 (A) As to a futures position, the amount of the initial margin required for that
7 position; or

8 (B) as to swaps' collars and forwards, .5% times the notional amount times the
9 square root of the remaining years of maturity.

10 (12) "Swap" means an agreement to exchange for net payments at one or more
11 times based on the actual or expected price, level, performance or value of one or more
12 underlying interests.

13 (13) "Underlying interest" means the assests, other interests, or a combination
14 thereof, underlying a financial intrument, such as any one or more securities, currencies,
15 rates, indices, commodities or financial instruments.

16 (14) "Warrants" means an option to purchase or sell the underlying securities or
17 investments at a given price and time or at a series of prices and times outlined in the
18 warrent agreement. Warrants may be issued alone or in connection with the sale of other
19 securities, as part of a merger or recapitalization agreement, or to facilitate divestiture of
20 the securities of another corportion.

21 (c) An insurance company may enter into financil instrument transactions for the
22 purpose of hedging except that the transaction shall not cause any of the following limits
23 to be exceded:

24 (1) The aggregate statement value of options, caps, floors and warrants not
25 attached to any other security or investment purchase in hedging transactions may not not
26 exceed 110% of the excess of such insurer's capital and surplus as shown on the company's
27 last annual or quarterly report filed with the commissioner of insurance over the minimum
28 requirements of a new stock or mutual company to qualify for a certificate of authority to

1 write the kind of insurance which the insurer is authorized to write;

2 (2) the aggregate statement value of options, caps and floors written in hedging
3 transactions may not exceed 3% of the insurance company's admitted assets; and

4 (3) the aggregate potential exposure of collars, swaps, forwards and futures used
5 in hedging transactions may not exceed 5% of the insurance company's admitted assets.

6 (d) An insurance company may enter into the following types of income generation
7 transactions if:

8 (1) Selling covered call options on non-callable fixed income securities or financial
9 instruments based on fixed income securities, but the aggregate statement value of assets
10 subject to call during the complete term of the call options sold, plus the face value of fixed
11 income securities underlying any financial instrument subject to call, may not exceed 10%
12 of the insurance company's admitted assets; and

13 (2) selling covered call options on equity securities, if the insurance company holds
14 in its portfolio the equity securities subject to call during the complete term of the call
15 option sold.

16 (e) Upon request of the insurance company, the commissioner may approve
17 additional transactions involving the use of financial instruments in excess of the limits of
18 subsection (c) or for other risk management purposes, excluding replication transactions,
19 pursuant to regulations promulgated by the commissioner.

20 (f) For the purposes of this section, the value or amount of an investment acquired
21 or held under this section, unless otherwise specified in this code, shall be the value at
22 which assets of an insurer are required to be reported for statutory accounting purposes
23 as determined in accordance with procedures prescribed in published accounting and
24 valuation standards of the national association of insurance commissioners (NAIC),
25 including the purposes and procedures of the securities valuation office, the valuation of
26 securities manual, the accounting practices and procedures manual, the annual statement
27 instructions or any successor valuation procedures officially adopted by the NAIC.

28 (g) Prior to engaging in transactions in financial instruments, an insurer shall

1 *develop and adequately document policies and procedures regarding investment strategies*
2 *and objectives, recordkeeping needs and reporting matters. Such policies and procedures*
3 *shall address authorized investments, investment limitations, authorization and approval*
4 *procedures, accounting and reporting procedures and controls and shall provide for*
5 *review of activity in financial instruments by the insurer's board of directors or such*
6 *board's designee.*

7 *Recordkeeping systems must be sufficiently detailed to permit internal auditors and*
8 *insurance department examiners to determine whether operating personnel have acted in*
9 *accordance with established policies and procedures, as provided in this section. Insurer*
10 *records must identify for each transaction the related financial instruments contracts.*

11 Sec. 2. K.S.A. 40-2a24 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after its publication in the
13 statute book.

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1 AN ACT concerning insurance; property and casualty insurance company investments;
2 financial futures contracts; amending K.S.A. 40-2a24 and repealing the existing section.

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. K.S.A. 40-2a24 is hereby amended to read as follows: 40-2a24. ~~(a) Any~~
5 ~~insurance company other than life organized under any law of this state shall not enter into~~
6 ~~financial futures contracts except as part of a hedging transaction. The use of financial~~
7 ~~futures contracts for hedging purposes must be authorized by the insurer's board of~~
8 ~~directors.~~

9 ~~—— (b) As used in this section:~~

10 ~~—— (1) "Commodity futures trading commission" means the federal regulatory agency~~
11 ~~charged and empowered under the commodity futures trading commission act of 1974 (7~~
12 ~~U.S.C. et seq.) with regulation of the exchanges, or any other agency of the federal~~
13 ~~government which succeeds to or shares such power.~~

14 ~~—— (2) "Deferred gains and losses" means the amounts of unrecognized increase and~~
15 ~~decrease in the value of financial futures contracts related to uncompleted hedging~~
16 ~~transactions. These deferred amounts may, in some cases, result from terminated futures~~
17 ~~contracts.~~

18 ~~—— (3) "Exchange traded" means traded on an exchange designed as a contract market~~
19 ~~regulated by the commodity futures trading commission.~~

20 ~~—— (4) "Financial futures contracts" means an exchange traded agreement to make or~~
21 ~~take delivery of, or to make a cash settlement in lieu thereof, a specified amount of~~
22 ~~financial instruments on a specified date or period of time, under terms and conditions~~
23 ~~regulated by the commodity futures trading commission.~~

24 ~~—— (5) "Financial instrument" means a security, currency or index of a group of~~
25 ~~securities or currencies authorized or permitted under law.~~

26 ~~—— (6) "Hedge" means a positioning of a hedged item with one or more hedging~~
27 ~~transactions.~~

28 ~~—— (7) "Hedged item" means a company asset or liability, group of company assets or~~

Financial Inst. & Ins.
Attachment 4
1-22-96

1 ~~liabilities, or assets or liabilities or group of assets or liabilities reasonably expected to be~~
2 ~~acquired or incurred by the company in the normal course of business. Such assets or~~
3 ~~liabilities must bear price or interest rate risk.~~

4 ~~—— (8) "Hedging transaction" means the opening or closing, as such transaction may~~
5 ~~be adjusted from time to time, of one or more financial futures contracts which can~~
6 ~~reasonably be expected to minimize or reduce the price or interest rate risk of the hedged~~
7 ~~item.~~

8 ~~—— (9) "Margin" includes initial and maintenance margins and means any type of~~
9 ~~deposit or settlement made or required to be made with a futures commission merchant,~~
10 ~~clearinghouse or safekeeping agent to ensure performance of the terms of the financial~~
11 ~~futures contract.~~

12 ~~—— (c) An insurer shall not have initial or maintenance margins outstanding of more~~
13 ~~than 10% of the excess of such insurer's capital and surplus over the minimum~~
14 ~~requirements of a new stock or mutual company to qualify for a certificate of authority to~~
15 ~~write the kind of insurance which the insurer is authorized to write.~~

16 ~~—— (d) Prior to engaging in transactions in financial futures contracts, an insurer shall~~
17 ~~develop and adequately document policies and procedures regarding investment strategies~~
18 ~~and objectives, record keeping needs and reporting matters. Such policies and procedures~~
19 ~~shall address authorized investments, investment limitations, authorization and approval~~
20 ~~procedures, accounting and reporting procedures and controls and shall provide for review~~
21 ~~of activity in financial futures contracts by the insurer's board of directors or such board's~~
22 ~~designee.~~

23 ~~—— Record keeping systems must be sufficiently detailed to permit internal auditors and~~
24 ~~insurance department examiners to determine whether operating personnel have acted in~~
25 ~~accordance with established policies and procedures, as provided in this act. Insurer~~
26 ~~records must identify for each hedging transaction the related financial futures contracts~~
27 ~~and the hedged items. Transactions in financial futures must be evidenced by a trade~~
28 ~~confirmation or other evidence of ownership issued to the insurer by an entity authorized~~

1 to do so as provided in subsection (b)(3).

2 ~~——(e) Gains and losses from hedged transactions may be deferred for hedged items~~
3 ~~carried at amortized cost. Until a hedge is terminate, deferred gains and losses are contra-~~
4 ~~assets and contra liabilities, respectively. After the hedge is terminated, deferred gains and~~
5 ~~losses shall be included in the amortized cost of the hedged item. If the hedged item is no~~
6 ~~longer anticipated to be acquired or incurred, the hedge must be terminated and the deferred~~
7 ~~gain or loss from the hedging transaction must be recognized currently. Allocation of gains~~
8 ~~or losses to the hedged item shall be recognized in a systematic and rational method, as set~~
9 ~~forth in accounting procedures required in subsection (d). For assets and liabilities carried~~
10 ~~at market value, gains and losses on open hedging transactions shall be recognized~~
11 ~~currently.~~

12 (a) *Any insurance company other than life organized under any law of this state*
13 *may use financial instruments under this section to engage in hedging transactions and*
14 *certain income generation transactions or as these terms may be further defined in*
15 *regulations promulgated by the commissioner. The insurance company shall be able to*
16 *demonstrate to the commissioner the intended hedging characteristics and the ongoing*
17 *effectiveness of the financial instrument transaction or combination of the transactions*
18 *through cash flow testing or other appropriate analysis.*

19 (b) *As used in this section:*

20 (1) *“Cap” means an agreement obligating the seller to make payments to the buyer,*
21 *each payment based on the amount by which a reference price or level or the performance*
22 *or value of one or more underlying interest exceeds a predetermined number, sometimes*
23 *called the strike rate or price.*

24 (2) *“Collar” means an agreement to receive payments as the buyer of an option,*
25 *cap or floor and to make payments as the seller of a different option, cap or floor.*

26 (3) (A) *“Financial instrument” means an agreement, option, instrument or any*
27 *series or combination thereof:*

28 (i) *To make or take delivery of, or assume or relinquish, a specified amount of one*

1 or more underlying interests, or to make a cash settlement in lieu thereof; or

2 (ii) which has a price, performance, value or cash flow based primarily upon the
3 actual or expected price, level, performance, value or cash flow of one or more underlying
4 interests.

5 (B) Financial instruments include options, warrants, caps, floors, collars, swaps,
6 forwards, future and any other agreements, options or instruments substantially similar
7 thereto, or any series or combination thereof.

8 (4) "Financial instrument transaction" means a transaction involving the use of
9 one or more financial instruments.

10 (5) "Floor" means an agreement obligating the seller to make payments to the
11 buyer in which each payment is based on the amount that a predetermined number,
12 sometimes called the floor rate or price, exceeds a reference price, level, performance or
13 value of one or more underlying interests.

14 (6) "Forward" means an agreement (other than a future) to make or take delivery
15 of, or effect a cash settlement based on the actual or expected price, level, performance or
16 value of one or more underlying interests.

17 (7) "Future" means an agreement traded on a qualified exchange, to make or take
18 delivery of, or effect a cash settlement based on the actual or expected price, level,
19 performance or value of one or more underlying interests.

20 (8) "Hedging transaction" means a financial instrument transaction which is
21 entered into and maintained to reduce:

22 (A) The risk of a change in the value, yield, price, cash flow or quantity of assets
23 or liabilities which the insurer has acquired or incurred or anticipates acquiring or
24 incurring; or

25 (B) the currency exchange-rate risk or the degree of exposure as to assets or
26 liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

27 (9) "Income generation transaction" means a financial instrument transaction
28 involving the writing of the covered call options which is intended to generate income or

1 enhance return.

2 (10) "Option" means an agreement giving the buyer the right to buy or receive, sell
3 or deliver, enter into, extend or terminate, or effect a cash sttlement based on the actual or
4 expected price, level, performance or value of one or more underlying interests.

5 (11) "Potential exposure" means:

6 (A) As to a futures position, the amount of the initial margin required for that
7 position; or

8 (B) as to swaps' collars and forwards, .5% times the notional amount times the
9 square root of the remaining years of maturity.

10 (12) "Swap" means an agreement to exchange for net payments at one or more
11 times based on the actual or expected price, level, performance or value of one or more
12 underlying interests.

13 (13) "Underlying interest" means the assests, other interests, or a combination
14 thereof, underlying a financial intrument, such as any one or more securities, currencies,
15 rates, indices, commodities or financial instruments.

16 (14) "Warrants" means an option to purchase or sell the underlying securities or
17 investments at a given price and time or at a series of prices and times outlined in the
18 warrent agreement. Warrants may be issued alone or in connection with the sale of other
19 securities, as part of a merger or recapitalization agreement, or to facilitate divestiture of
20 the securities of another corportion.

21 (c) An insurance company may enter into financil instrument transactions for the
22 purpose of hedging except that the transaction shall not cause any of the following limits
23 to be exceded:

24 (1) The aggregate statement value of options, caps, floors and warrants not
25 attached to any other security or investment purchase in hedging transactions may not not
26 exceed 110% of the excess of such insurer's capital and surplus as shown on the company's
27 last annual or quarterly report filed with the commissioner of insurance over the minimum
28 requirements of a new stock or mutual company to qualify for a certificate of authority to

1 write the kind of insurance which the insurer is authorized to write;

2 (2) the aggregate statement value of options, caps and floors written in hedging
3 transactions may not exceed 3% of the insurance company's admitted assets; and

4 (3) the aggregate potential exposure of collars, swaps, forwards and futures used
5 in hedging transactions may not exceed 5% of the insurance company's admitted assets.

6 (d) An insurance company may enter into the following types of income generation
7 transactions if:

8 (1) Selling covered call options on non-callable fixed income securities or financial
9 instruments based on fixed income securities, but the aggregate statement value of assets
10 subject to call during the complete term of the call options sold, plus the face value of fixed
11 income securities underlying any financial instrument subject to call, may not exceed 10%
12 of the insurance company's admitted assets; and

13 (2) selling covered call options on equity securities, if the insurance company holds
14 in its portfolio the equity securities subject to call during the complete term of the call
15 option sold.

16 (e) Upon request of the insurance company, the commissioner may approve
17 additional transactions involving the use of financial instruments in excess of the limits of
18 subsection (c) or for other risk management purposes, excluding replication transactions,
19 pursuant to regulations promulgated by the commissioner.

20 (f) For the purposes of this section, the value or amount of an investment acquired
21 or held under this section, unless otherwise specified in this code, shall be the value at
22 which assets of an insurer are required to be reported for statutory accounting purposes
23 as determined in accordance with procedures prescribed in published accounting and
24 valuation standards of the national association of insurance commissioners (NAIC),
25 including the purposes and procedures of the securities valuation office, the valuation of
26 securities manual, the accounting practices and procedures manual, the annual statement
27 instructions or any successor valuation procedures officially adopted by the NAIC.

28 (g) Prior to engaging in transactions in financial instruments, an insurer shall

1 *develop and adequately document policies and procedures regarding investment strategies*
2 *and objectives, recordkeeping needs and reporting matters. Such policies and procedures*
3 *shall address authorized investments, investment limitations, authorization and approval*
4 *procedures, accounting and reporting procedures and controls and shall provide for*
5 *review of activity in financial instruments by the insurer's board of directors or such*
6 *board's designee.*

7 *Recordkeeping systems must be sufficiently detailed to permit internal auditors and*
8 *insurance department examiners to determine whether operating personnel have acted in*
9 *accordance with established policies and procedures, as provided in this section. Insurer*
10 *records must identify for each transaction the related financial instruments contracts.*

11 Sec. 2. K.S.A. 40-2a24 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after its publication in the
13 statute book.

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AN ACT

relating to a prohibition on merger transactions involving out-of-state banks and a prohibition on interstate branching by merger or acquisition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

SECTION 1. Notwithstanding any other law, pursuant to section 44(a)(2) of the Federal Deposit Insurance Act, 12 U.S.C. §1831u(a)(2), a Kansas bank may not engage in a merger transaction involving an out-of-state bank.

SECTION 2. For the purposes of this Act:

- (1) "Bank " means an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(h);
- (2) "Kansas Bank" means any bank, as defined in subsection (a), which, in the case of a state chartered bank, is a bank chartered under the authority of the State of Kansas, and, in the case of a national banking association, is a bank with its main office located in Kansas;
- (3) "Out-of-State bank" means a bank that is:
 - (A) a national bank having its main office in a state other than this state; or
 - (B) a state-chartered bank chartered by a state other than this state.
- (4) "Merger transaction" has the meaning defined in section 44(f)(7) of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u(f)(7), and includes 12 U.S.C. § 1828 (c)(1) and (2).

SECTION 3. EFFECTIVE DATE. This Act shall take effect and be in force from and after its publication in the Kansas Register.

*House File
Attachment 5
Jan. 22, 1996*



Kansas Public Employees Retirement System

January 22, 1996

Representative Bill Bryant, Chair
House Committee on Financial Institutions and Insurance
Room 112-S, Statehouse
Topeka, Kansas 66612

Dear Representative Bryant:

The Retirement System's Board of Trustees appreciates the opportunity to present House Concurrent Resolution No. 5022 for the Committee's consideration. This legislation, introduced at the request of the Trustees, calls for a constitutional amendment to allow the Retirement System to invest in the stock of banks and other financial institutions.

The Kansas Public Employees Retirement System serves the pension needs of over 1,400 participating Kansas public employers and just under 200,000 current and former Kansas public servants. Last month, 46,519 retired members and beneficiaries received monthly benefit checks totaling \$28.7 million, an average of \$618. These benefits are paid out of the assets held in trust for the members. Those assets totalled over \$6.4 billion at November 30, 1995.

Kansas law requires the Board of Trustees to invest the System's assets for the exclusive benefit of the members, using the "prudent expert" standard. Current law allows up to 60 percent of the assets to be invested in publicly traded stocks. Unfortunately, the Retirement System is also subject to a constitutional prohibition that prevents it from acquiring stock in any financial institution. This restriction, which dates back to the original Kansas Constitution, may have made great sense in 1859. However, as we rapidly approach the new millennium, it serves only as an impediment to the efficient and effective investment of the Retirement System's assets. In the management of the Retirement System's assets it is contrary to sound investment policy and decision making to arbitrarily exclude any prudent investment class from consideration. Higher fees, operating costs, and increased investment risk are the logical results of such a restriction.

I have attached an informational package on this very important issue. I had hoped to present this material in person at today's meeting. However, a prior commitment on behalf of the Kansas State University Foundation requires me to be in Manhattan. In my absence, I have asked Meredith Williams and Liz Miller of the KPERS staff to review these materials and respond to any questions that you might have. Of course, Trustees and their staff are always available should you wish any additional information.

Thank you for your consideration of this important issue.

Sincerely,

Jarold W. Boettcher
JW

Jarold W. Boettcher, Chair
Board of Trustees

Financial Institutions
Attachment 6

attachment

Capitol Tower ■ Suite 200 ■ 400 S.W. 8th Ave. ■ Topeka, Kansas 66603-3925 ■ Phone (913) 296-6666

KPERS Telephone Facsimile (913) 296-2422

Call Toll Free 1-800-228-0366

1-22-96

KPERS MEMBERSHIP

January 1, 1996

	<u>Active</u>	<u>Inactive</u>	<u>Retired</u>	<u>Total</u>
KPERS				
School	76,429	7,098	23,006	106,533
Non-School	<u>59,675</u>	<u>3,635</u>	<u>20,988</u>	<u>84,298</u>
Total	136,104	10,733	43,994	190,831
KP&F				
Tier I	1,250	55	2,184	3,489
Tier II	<u>4,521</u>	<u>145</u>	<u>221</u>	<u>4,887</u>
Total	5,771	200	2,405	8,376
Judges	<u>242</u>	<u>14</u>	<u>120</u>	<u>376</u>
System Total	142,117	10,947	46,519	199,583

KPERS

6-9

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

INVESTMENT PERFORMANCE REPORT

For The Period Ending November 30, 1995

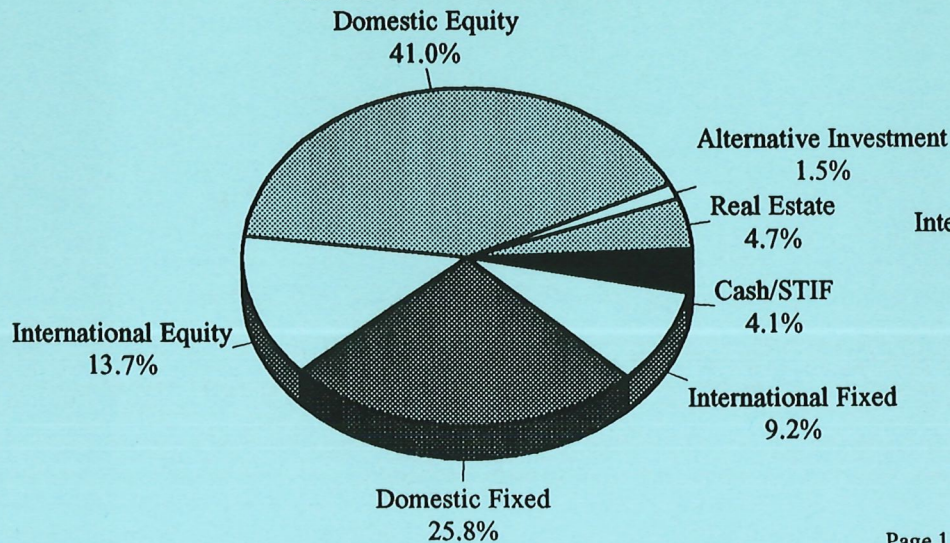
Time-Weighted Return	Latest Quarter*	Fiscal Year to Date (5 Months)*	Latest 12 Months	Latest 3 Years	Latest 5 Years
Total Portfolio	5.5%	9.2%	24.9%	12.6%	12.3%
Domestic Equity Portfolio	8.6%	15.5%	40.1%	16.3%	19.3%
Int'l Equity Portfolio	2.0%	7.1%	9.2%	15.3%	7.7%
Domestic Fixed Portfolio	4.5%	5.8%	20.0%	10.4%	12.4%
Int'l Fixed Portfolio	4.4%	2.0%	19.3%	12.5%	13.1%
Real Estate Portfolio	1.9%	3.5%	-3.0%	1.5%	-2.2%
Alternative Investment Portfolio	0.0%	3.8%	96.2%	36.7%	17.3%
Cash Equivalents Portfolio	2.4%	3.4%	10.4%	6.2%	6.9%

* Not Annualized

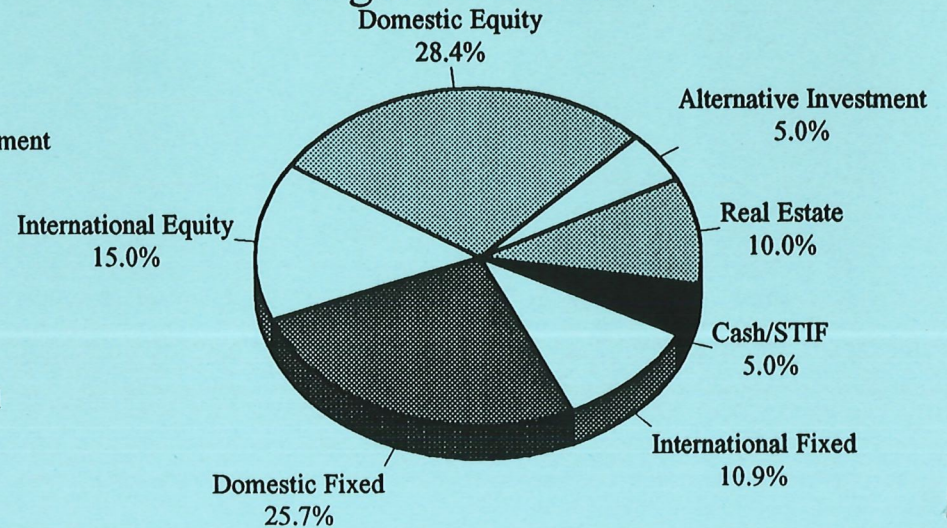
ASSET ALLOCATION

Total Portfolio Net Asset Value \$6,423.8 Million as of 11/30/95

Current Allocation



Target Allocation**



** Target Allocation As Of January 28, 1994

6-9

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM
ASSET CLASS, RELATIVE RETURN COMPARISON
 January 1996

	<u>11/30/95 Net Asset Value</u> (millions) (2)	<u>Time Weighted Total Return (1)</u>				
		<u>Latest Quarter</u>	<u>Fiscal YTD</u>	<u>Latest 12 Months</u>	<u>Latest 3 Years</u>	<u>Latest 5 Years</u>
TOTAL FUND	\$6,423.8 (4)	5.5%	9.2%	24.9%	12.6%	12.3%
Policy Index (3)		4.3%	5.6%	19.0%	11.0%	10.7%
Consumer Price Index		0.6%	0.9%	2.8%	2.7%	2.8%
Total Domestic Equity Portfolio	2,622.7	8.6%	15.5%	40.1%	16.3%	19.3%
KPERS Equity Benchmark (5)		8.2%	11.6%	35.7%	15.0%	16.8%
Total International Equity Portfolio	908.3	2.0%	7.1%	9.2%	15.3%	7.7%
KPERS International Equity Benchmark (6)		1.4%	4.1%	8.1%	15.4%	7.7%
Total Domestic Fixed Income Portfolio	1,671.2	4.5%	5.8%	20.0%	10.4%	12.4%
Lehman Brothers Aggregate Index		3.8%	4.8%	17.6%	8.1%	9.5%
Total International Fixed Income Portfolio	597.9	4.4%	2.0%	19.3%	12.5%	13.1%
Salomon Non-U.S. Government Bond Index		4.2%	-1.3%	18.6%	13.0%	12.1%
Total Real Estate Portfolio	295.4	1.9%	3.5%	-3.0%	1.5%	-2.2%
NCREIF Real Estate Index (7)		2.3%	NA	7.9%	2.7%	-0.1%
Total Alternative Investments Portfolio	93.4	0.0%	3.8%	96.2%	36.7%	17.3%
S&P 500 Index + 8%		NA	NA	44.8%	23.0%	24.7%
Total Cash Equivalents Portfolio (8)	234.2	2.4%	3.4%	10.4%	6.2%	6.9%
Merrill Lynch 1-3 Yr. Gov'ts. Index		2.2%	3.3%	10.4%	5.6%	7.0%

NOTES:

- (1) Time weighted total return includes income and changes in market value. The latest quarter and fiscal year to date results are not annualized.
- (2) Net Asset Value is the market value of investments plus accrued receivables less accrued payables. The cash portion of the portfolio is managed by Payden & Rygel.
- (3) The Policy Index reflects the asset allocation policies that have been in place since June 30, 1986. The current allocation is the allocation approved on January 28, 1994. This asset allocation mix is: 28.4% KPERS Equity Benchmark, 15% KPERS International Equity Benchmark, 25.7% Lehman Aggregate Bond Index, 10.9% Salomon Non-U.S. World Government Bond Index, 10% NCREIF Real Estate Index, and 10% U.S. Treasury Bills. The prior allocations and the associated indices are available upon request.
- (4) The total net asset value of the fund also includes miscellaneous assets of \$.7 million.
- (5) The KPERS Equity Benchmark is defined as the S&P 500 Index, less the stocks of companies classified as banking institutions, savings and loan associations, or credit unions. Prior to January 1, 1994, the stocks of companies engaged in business in South Africa were also excluded.
- (6) The KPERS International Equity Benchmark is defined as the Morgan Stanley EAFE Index, less the stocks of companies classified as banking institutions, savings and loan associations, or credit unions. Prior to January 1, 1994, the Benchmark only excluded the stocks of companies engaged in business in South Africa.
- (7) The NCREIF Real Estate Index is updated quarterly. The returns shown are for the period ending 6/30/95.
- (8) The Total Cash Equivalents return includes the real estate and direct placement funding accounts.

FINANCIAL INSTITUTIONS RESTRICTIONS HISTORY

The Prohibition on Bank Stock

The Retirement Act provides:

74-4921. Kansas public employees retirement fund, management and investment thereof; investment standards and objectives; alternative and real estate investments, conditions of investment; contracts with investment managers; custody of the fund; annual financial-compliance and performance audits.

(4) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund, the board shall exercise the judgment, care, skill, prudence and diligence under the circumstances then prevailing, which persons of prudence, discretion and intelligence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and not in regard to speculation but in regard to the permanent disposition of similar funds, considering the probable income as well as the probable safety of their capital.

(5) Notwithstanding subsection (4):

(d) the board shall not invest or reinvest moneys of the fund in any banking institution, savings and loan association or credit union which positions the system as a shareholder or owner of such banking institution, savings and loan association or credit union.

The above statutory prohibition on investing in banking institutions is based on a prohibition contained in the Constitution of the State of Kansas at Article 13, §2:

2. State not to be stockholder. The state shall not be a stockholder in any banking institution.

History: Originally adopted by convention as [section] 5, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 64; renumbered by revision as [section] 2, L. 1980, ch. 356; Nov. 4, 1980.

The Kansas Constitution of 1859 was based on a document called the Wyandotte Constitution, drafted earlier that same year, which in turn was adopted from earlier drafts, all apparently strongly modeled after the Constitution of the State of Ohio. Drury, *The Government of Kansas* 15-30 (1980). According to Drury, the Wyandotte Constitution has been described as "in keeping with the trends of the time." *Id.* At 19. As to the similarity to Ohio's constitution, Drury states: "It may not be without significance that fourteen of the fifty-two delegates had been born in Ohio." *Id.* Of the specific provisions concerning banks, however, all that is aid is that "Article 13, on banks and currency,

KPER

January 22, 1996

remains in the form approved by the Wyandotte Convention." *Id.* At 23-24. (The Drury text was published prior to the voters' November 1980 approval of the repeal of eight sections of Article 13, discussed below.)

In 1980, the Legislature considered, among other constitutional amendments, an amendment to revise the article on banks and banking. During their deliberations, the House Committee on Commercial and Financial Institutions received a report indicating that a Citizens' Committee had drafted a Commentary on proposed revisions to the banking article, concluding:

Since the federal government now regulates all currency, *it would appear that all nine sections of Article 13 are not obsolete and could be eliminated from the constitution without impairing its effectiveness.* [Emphasis added.]

Minutes of the House Committee on Commercial and Financial Institutions, March 25, 1980; see especially Commentary on Proposed Change of the Citizens' Committee on Constitutional Revision Report at page 106, attached to Committee Minutes.

Nevertheless, despite the Citizens' Committee's recommendation that the whole of Article 13 be repealed, the House Committee drafted the proposed amendment so as to retain the prohibition on the state's being a bank stockholder. The record of the House Committee states: "This amendment reflects the Committee's desire that the Constitution continue to explicitly prohibit the state from engaging in banking." See March 25, 1980 *Minutes of the House Committee on Commercial and Financial Institutions*. See also L. 1980, ch. 356, §1. In the event, the Constitutional amendment as proposed by the House Committee was approved by two-thirds of both houses of the Legislature and approved by a majority of the voters in the November 4, 1980 election. The prohibition on the state's owning bank stock was renumbered from section 5 to section 2 of Article 13, and continues in force to this day.

Amending the Constitution

Aside from convening a Constitutional Convention, as provided in Article 14, § 2 of the Kansas Constitution, the only other way to amend the Constitution is for a concurrent resolution of the legislature, originating in either house, to be adopted --

. . . and if two-thirds of all the members elected (or appointed) and qualified of each house shall approve such resolution, the [resolution shall be published] . . .

. . . At the next election for representatives or a special election called by concurrent resolution . . . , such proposition to amend the constitution shall be submitted . . . to the electors for their approval or rejection . . . If a majority of the electors voting on any such amendment shall vote for the amendment, the same shall become a part of the constitution.

Kans. Const. Art. 14, § 1.

Thus, both houses must approve the proposition by a two-thirds majority. Thereafter, a majority of voters in a general election must vote in favor.

Only after the Constitution is amended to eliminate the prohibition on bank stock ownership can the statutory prohibition at K.S.A. 74-4921(5)(d) be repealed.

FINANCIAL INSTITUTION RESTRICTIONS

Background:

Current constitutional and statutory restrictions prevent the Retirement System from investing in the securities of any "banking institution, savings and loan association or credit union which positions the system as a shareholder or owner of such banking institution, savings and loan association or credit union." (See K.S.A. 7404921(5)(d), and the Kansas constitution, Article 13, sec. 2: "State not to be stockholder. The state shall not be a stockholder in any banking institution.") According to a May 18, 1987, opinion from the Office of the Attorney General of the State of Kansas, the Retirement System is "the state" for the purposes of the Kansas constitution. In a December 15, 1992, letter, the Attorney General opined that the statute does not prohibit the Board of Trustees from investing in equity issues of non-banking financial institutions, acquiring debt securities of a banking institution, savings and loan association, or credit union, or from investing in a major corporation which is a parent company to a subsidiary banking institution, savings and loan association, or credit union.

Impact of the Restrictions on the Investable Universe:

Since January, 1994, the Retirement System has utilized benchmarks for performance evaluations which exclude banks, savings and loans, and credit unions. The impact of the financial institution restrictions can best be addressed by examining the impact on the domestic equity investable universe and the international equity investable universe separately.

Domestic Equity Investable Universe:

As of September 30, 1995, approximately 6.4% (33 issues out of a total of 500 issues) of the S&P 500 Stock Index were the restricted banking, savings and loan, or credit union issues. This is a relatively modest impact. However, the restrictions do have an impact on the risk and return of the available universe over time. For the ten years ending June 30, 1995, the unrestricted S&P 500 Index had an average annualized time-weighted return of 17.25%, while the S&P 500 Index ex-banks had an average annualized time-weighted return of 16.91%. This means that the restrictions reduced the available return by approximately .34% (34 basis points) per year. (While 34 basis points may sound like a small amount, when multiplied times \$2.5 billion of domestic equity assets, it amounts to \$8.5 million per year in opportunity cost.) For the ten year period ending June 30, 1995, the risk (defined as standard deviation) of the universe was actually reduced slightly by the restriction. The unrestricted S&P 500 Index had a standard deviation of 15.20%, while the restricted Index had a standard deviation of 15.07% for the ten year time period. The risk/return ratios for the two indexes were approximately equivalent for the ten year time period.

International Equity Investable Universe:

As of September 30, 1995, approximately 16.7% (84 issues out of a total of 1107 issues) of the Morgan Stanley Capital International (MSCI) Europe, Australia, and Far East (EAFE) International Stock Index were the restricted banking, savings and loan, or credit union issues. This is a more significant impact. In fact, in the international arena, the impact is felt most sharply in two countries--Japan and the U.K. The financial institution restriction means that 52.6% of the equity issues in Japan are not available for investment, while 11.6% of the British equity market is not available.

Return opportunities are also affected by the restriction. (Risk, or standard deviation, data were not available for EAFE, so the impact of the restriction on the risk of the universes could not be assessed.) For the fifteen years ending June 30, 1995, the unrestricted EAFE Index produced an average annualized time-weighted rate of return of 11.67%. The restricted EAFE Index produced a return of 11.32% for the same time period. Therefore, the restriction resulted in an opportunity cost of approximately 0.35% (35 basis points) per year. (35 basis points translates to approximately \$3.5 million opportunity cost for a \$1.0 billion international equity portfolio.)

Conclusions:

The risk and return results are extremely sensitive to the time period used. Over the long run, however, the financial institution restriction will have the impact of reducing the investable universe. Particularly in the case of international investments, this restriction is significant. The practical effect of this restriction is to limit the potential investable universe, which can impose an opportunity cost on the Retirement System that may lead to reduced returns and less efficient portfolios.

There are other costs associated with the restrictions. The System effectively pays a slightly higher management fee by virtue of the financial institution restrictions, if the restrictions prohibit the System from investing in the commingled equity funds of the System's passive equity managers. In addition, the restrictions increase the System's cost of investment management by requiring the construction of customized indexes for performance measurement purposes. These customized benchmarks can cost approximately \$3500 to \$4500 per year to construct and maintain, if constructed and maintained by an outside third party vendor such as Morgan Stanley Capital International.

In conclusion, the restrictions do not serve any useful purpose, they limit the investment opportunities available to the System, and they also increase the costs of investment management.

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

REPORT ON IMPACT OF FINANCIAL INSTITUTION RESTRICTIONS

Introduction

By constitutional provision, the Kansas Public Employees Retirement System is restricted from investing in the common stock of banks. In 1992, the statutes were expanded to preclude the Retirement System's investment in the common stock of savings & loans and credit unions. Since January 1, 1994, the Retirement System has utilized benchmarks for performance evaluations which exclude banks, savings & loans and credit unions. To assess the impact of these restrictions on the Retirement System, Mercer Investment Consulting, Inc., with additional information supplied by Bankers Trust Company and Wells Fargo Nikko Investment Advisors, reviewed KPERS' domestic and international equity portfolios. The objective was to quantify the performance and risk differentials between these benchmarks and unrestricted benchmarks.

Methodology

Mercer used two approaches to assess the impact of the restrictions. First, we analyzed the proportion of both the domestic and international equity benchmarks that were comprised of banks and financial services institutions to determine the relative importance of these sectors to the overall indices.

Second, we studied the contribution to performance and risk that the banking and financial services sectors had on the domestic and international equity benchmarks to determine the opportunity costs to the Retirement System from not investing in these sectors.

For the S&P 500 Stock Index five and ten year returns (both annualized and cumulative) and their standard deviations were evaluated. For the MSCI EAFE Stock Index five, ten and fifteen year returns (both annualized and cumulative) were also evaluated (note: standard deviations for the EAFE index minus the restricted issues were not available). All results were calculated using data ending June 30, 1995.

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

Sector Composition of the Indices

As of September 30, 1995, approximately 16.7% (84 issues out of a total 1107) of the MSCI EAFE Stock Index and 6.4% (33 issues out of a total 500) of the S&P 500 Stock Index were the restricted banking, savings & loans and credit union issues. The relatively modest impact of this restriction on the U.S. market and most of the international markets in the EAFE index is contrasted sharply by its effect on two countries, the U.K. and Japan. Restricting these financial issues from their respective equity markets means that 11.6% of the British market is off-limits while an even larger 52.6% of the Japanese market is unavailable for investment (see attached).

Historical Performance

The tables below detail the annualized and cumulative performance (as of June 30, 1995) of the EAFE index for the past five, ten and fifteen years and the S&P 500 index for the past five and ten years (along with standard deviations). The numbers are segregated to show the effects both with and without banks, savings & loans and credit unions (abbreviated "Banks" for short).

<u>EAFE (Annualized)*</u>	<u>W/Banks</u>		<u>Ratio</u>	<u>Ex-Banks</u>		<u>Ratio</u>	<u>Diff.</u>	
	<i>Return</i>	<i>Std Dev</i>		<i>Return</i>	<i>Std Dev</i>		<i>Return</i>	<i>Std Dev</i>
Five Years	2.59%	n/a	n/a	2.69%	n/a	n/a	0.11%	n/a
Ten Years	14.03%	n/a	n/a	14.11%	n/a	n/a	0.08%	n/a
Fifteen Years	11.67%	n/a	n/a	11.32%	n/a	n/a	-0.35%	n/a

<u>EAFE (Cumulative)*</u>	<u>W/Banks</u>		<u>Ex-Banks</u>		<u>Diff.</u>
	<i>Return</i>		<i>Return</i>		<i>Return</i>
Five Years	13.61%		14.19%		0.58%
Ten Years	271.60%		274.35%		2.75%
Fifteen Years	423.65%		399.48%		-24.18%

<u>S&P 500 (Annualized)**</u>	<u>W/Banks</u>		<u>Ratio</u>	<u>Ex-Banks</u>		<u>Ratio</u>	<u>Diff.</u>	
	<i>Return</i>	<i>Std Dev</i>		<i>Return</i>	<i>Std Dev</i>		<i>Return</i>	<i>Std Dev</i>
Five Years	22.58%	11.49%	1.97	22.47%	11.20%	2.01	-0.11%	-0.29%
Ten Years	17.25%	15.20%	1.13	16.91%	15.07%	1.12	-0.34%	-0.13%

<u>S&P 500 (Cumulative)**</u>	<u>W/Banks</u>		<u>Ex-Banks</u>		<u>Diff.</u>
	<i>Return</i>		<i>Return</i>		<i>Return</i>
Five Years	176.81%		175.54%		-1.27%
Ten Years	391.07%		376.92%		-14.15%

* The results for the international indices were provided by Bankers Trust Company.

** The results for the domestic equity indices were provided by Wells Fargo Nikko Investment Advisors.

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

Conclusion

The restrictions resulted in an opportunity cost of 35 basis points on an annualized basis on international returns over fifteen years while domestic returns experienced a similar cost of 34 basis points, but over a shorter timeframe. On a risk-adjusted basis, the results for domestic returns are inconclusive. Five year numbers suggest a slight improvement from excluding financial issues, while ten year numbers suggest just the opposite.

Bearing in mind that the results obtained above are time-period sensitive, the practical effect of this and any other restriction is to limit the potential investable universe which, as demonstrated, can impose an opportunity cost on KPERS that can lead to reduced returns.

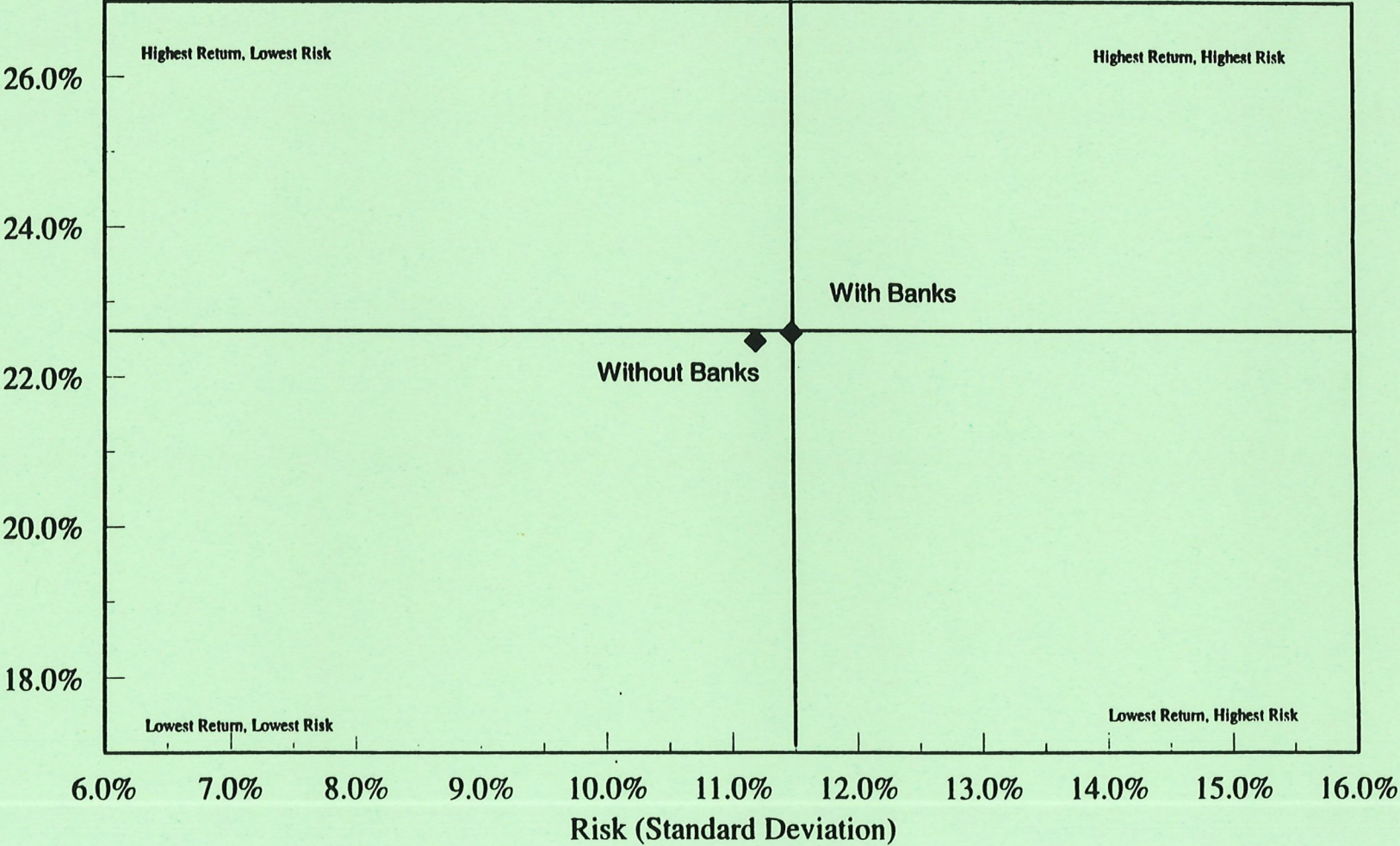
Kansas Public Employees Retirement System

S&P 500 Stock Index (Annualized)

Risk / Return Analysis

Rate of Return

For the Five Years Ending June 30, 1995



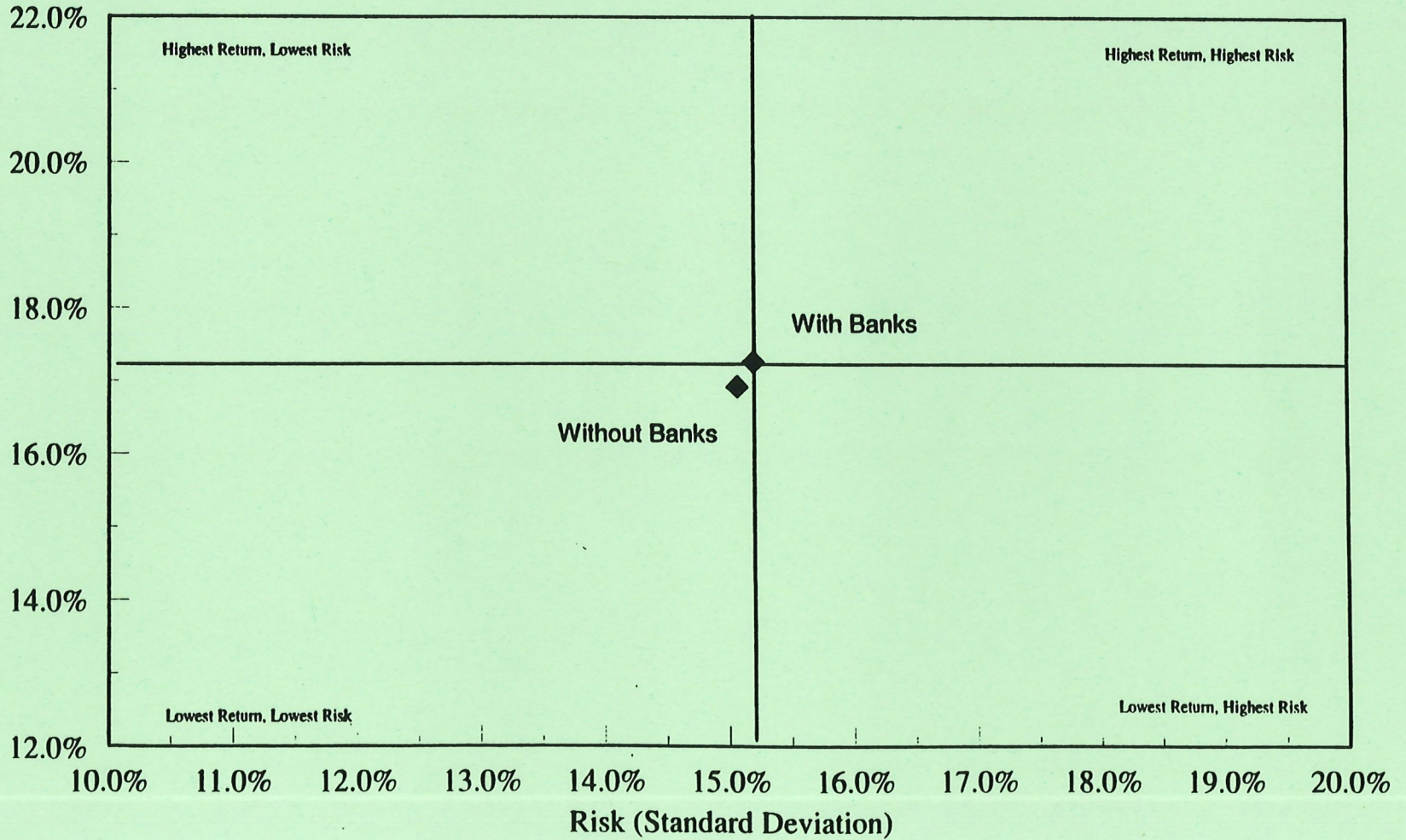
Kansas Public Employees Retirement System

S&P 500 Stock Index (Annualized)

Risk / Return Analysis

Rate of Return

For the Ten Years Ending June 30, 1995



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Bankers Trust Company

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August 23, 1995

Dear Liz:

It was a pleasure seeing you again the Friday before last. I am writing now to respond to the Board's question about how KPERS's custom index fund would have performed versus an unrestricted EAFE fund. The below table shows five, ten and 15-year annualized returns ending 6/30/95 for both EAFE and MSCI Japan (dividends not included).

	EAFE			Japan		
	w/Banks	ex-Banks	Diff.	w/Banks	ex-Banks	Diff.
5 Years	2.59%	2.69%	0.11%	-0.04%	-0.38%	-0.34%
10 Years	14.03%	14.11%	0.08%	13.95%	13.97%	0.02%
15 Years	11.67%	11.32%	-0.35%	14.18%	13.22%	-0.96%

The greatest opportunity cost occurred in the period between 1980 and 1985. This becomes more apparent by looking at total, instead of annualized, returns:

	EAFE			Japan		
	w/Banks	ex-Banks	Diff.	w/Banks	ex-Banks	Diff.
5 Years	13.61%	14.19%	0.58%	-0.21%	-1.91%	-1.70%
10 Years	271.60%	274.35%	2.75%	269.12%	269.87%	0.75%
15 Years	423.65%	399.48%	-24.18%	630.95%	544.32%	-86.63%

After examining the published index data and our proprietary database, we concluded the only avenue open to this performance analysis was through a stock-by-stock reconstruction of the indices. We took a snapshot of the current EAFE stock universe and researched how many of the names had been exchange listed five, ten and 15 years ago. The stocks that passed this screen became the working EAFE index universes for June 30, 1990, 1985 and 1980, respectively. We used a buy-and-hold assumption to calculate the performance of these universes and repeated the process (1) after removing bank, S&L, and credit union stocks, and (2) focusing on Japan only.

If you have any questions, please do not hesitate to call.

Sincerely,

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Steven Wetter

cc: Rick Vella
Ron Ernst
Carol Proffer, Mercer Investment Consulting, Inc.

EAFE Restricted Stocks - (Banks, Saving & Loans, Credit Unions)

Valued as of 9/30/95

Country	Company	Market Capitalization	% of total
Australia	NATIONAL AUSTRALIA BANK	\$ 12,072,108	1.5%
Australia	WESTPAC BANKING	\$ 7,509,861	0.9%
Austria	BANK AUSTRIA STAMM	\$ 4,093,069	0.5%
Austria	CREDITANSTALT STAMM	\$ 1,515,483	0.2%
Austria	CREDITANSTALT VORZUG	\$ 782,269	0.1%
Austria	BANK AUSTRIA VORZUG	\$ 344,314	0.0%
Austria	BANK AUSTRIA PART	\$ 229,006	0.0%
Belgium	GENERALE BANQUE GROUPE	\$ 4,645,202	0.6%
Belgium	KREDIETBANK	\$ 3,193,331	0.4%
Belgium	KREDIETBANK VVPR	\$ 408,397	0.0%
Denmark	DANSKE BANK	\$ 3,418,212	0.4%
Denmark	UNIDANMARK A	\$ 2,371,744	0.3%
Finland	KANSALLIS-YHTYMA (KOP)	\$ 1,869,982	0.2%
France	SOCIETE GENERALE	\$ 9,191,231	1.1%
France	BNP ORD	\$ 7,458,579	0.9%
France	PARIBAS(CIE FINANCIERE)A	\$ 6,300,574	0.8%
France	SUEZ (COMPAGNIE DE)	\$ 6,000,380	0.7%
France	CREDIT NATIONAL	\$ 829,600	0.1%
France	CREDIT FONCIER DE FRANCE	\$ 714,314	0.1%
Germany	DEUTSCHE BANK	\$ 22,162,454	2.7%
Germany	DRESDNER BANK	\$ 11,893,868	1.4%
Germany	BAYER VEREINSBANK STAMM	\$ 7,451,383	0.9%
Germany	BAYER HYPOTHEKEN BANK	\$ 6,202,371	0.7%
Hong Kong	HANG SENG BANK	\$ 15,927,200	1.9%
Hong Kong	BANK EAST ASIA	\$ 3,069,715	0.4%
Hong Kong	WING LUNG BANK	\$ 911,437	0.1%
Ireland	ALLIED IRISH BANKS	\$ 3,460,574	0.4%
Italy	SAN PAOLO DI TORINO ORD	\$ 4,279,751	0.5%
Italy	IMI ISTITUTO MOBILIARE	\$ 3,508,711	0.4%
Italy	MEDIOBANCA	\$ 3,419,391	0.4%
Italy	BANCA COMMERCIALE ORD	\$ 3,292,767	0.4%
Italy	CREDITO ITALIANO ORD	\$ 2,578,789	0.3%
Italy	BANCO AMBROSIANO VEN ORD	\$ 1,303,514	0.2%
Italy	BANCA POPOLARE MILANO	\$ 853,803	0.1%
Italy	BANCO AMBROSIANO VEN RNC	\$ 277,608	0.0%
Japan	INDUSTRIAL BANK OF JAPAN	\$ 66,333,768	8.0%
Japan	SUMITOMO BANK	\$ 58,032,032	7.0%

Mercer Investment Consulting, Inc.

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EAFE Restricted Stocks - (Banks, Saving & Loans, Credit Unions)

Valued as of 9/30/95

Country	Company	Market Capitalization	% of total
Japan	DAI-ICHI KANGYO BANK	\$ 55,796,032	6.7%
Japan	FUJI BANK	\$ 54,104,168	6.5%
Japan	SAKURA BANK	\$ 34,840,840	4.2%
Japan	BANK TOKYO	\$ 30,726,872	3.7%
Japan	ASAHI BANK	\$ 23,754,884	2.9%
Japan	TOKAI BANK	\$ 23,176,838	2.8%
Japan	MITSUBISHI TRUST	\$ 19,144,842	2.3%
Japan	mitsui TRUST & BANK CO	\$ 10,450,498	1.3%
Japan	SHIZUOKA BANK	\$ 10,069,374	1.2%
Japan	BANK YOKOHAMA	\$ 8,295,443	1.0%
Japan	CHIBA BANK	\$ 6,436,287	0.8%
Japan	JOYO BANK	\$ 5,798,618	0.7%
Japan	YASUDA TRUST & BANK CO	\$ 5,599,951	0.7%
Japan	GUNMA BANK	\$ 5,084,082	0.6%
Japan	HOKURIKU BANK	\$ 4,293,481	0.5%
Japan	ASHIKAGA BANK	\$ 3,725,645	0.5%
Japan	SEVENTY-SEVEN BANK	\$ 3,462,434	0.4%
Japan	YAMAGUCHI BANK	\$ 3,297,740	0.4%
Japan	HIGO BANK	\$ 2,002,562	0.2%
Japan	HOKKAIDO BANK	\$ 1,115,374	0.1%
Malaysia	MALAYAN BANKING	\$ 8,973,137	1.1%
Malaysia	DCB HOLDINGS	\$ 2,116,898	0.3%
Malaysia	PUBLIC BANK	\$ 1,656,023	0.2%
Malaysia	COMMERCE ASSET-HOLDING	\$ 1,247,900	0.2%
Netherlands	ABN AMRO HOLDING	\$ 12,734,932	1.5%
Singapore	OCBC BANK	\$ 6,477,629	0.8%
Singapore	UNITED OVERSEAS BANK	\$ 5,463,918	0.7%
Singapore	DEVELOPMENT BK SINGAPORE	\$ 4,508,946	0.5%
Spain	BANCO BILBAO VIZCAYA	\$ 6,989,574	0.8%
Spain	BANCO SANTANDER	\$ 6,712,566	0.8%
Spain	ARGENTARIA CORP BANCARIA	\$ 4,536,329	0.5%
Spain	BANCO CENTRAL HISPANO	\$ 3,522,296	0.4%
Sweden	SVENSKA HANDELSBK A	\$ 3,650,775	0.4%
Sweden	SKAND. ENSKILDA BANKEN A	\$ 3,370,296	0.4%
Sweden	SVENSKA HANDELSBK B	\$ 347,956	0.0%
Switzerland	SCHWEIZ BANKGESELL INH	\$ 22,151,418	2.7%
Switzerland	CS HOLDING	\$ 18,212,214	2.2%

Mercer Investment Consulting, Inc.

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EAFE Restricted Stocks - (Banks, Saving & Loans, Credit Unions)

Valued as of 9/30/95

Country	Company	Market Capitalization	% of total
Switzerland	SCHWEIZ BANKVEREIN INH	\$ 9,363,026	1.1%
Switzerland	SCHWEIZ BANKVEREIN NAMEN	\$ 5,378,803	0.6%
Switzerland	SCHWEIZ BANKGESELL NAMEN	\$ 4,942,043	0.6%
U.K.	HSBC HOLDINGS (HKD 10)	\$ 25,898,402	3.1%
U.K.	BARCLAYS	\$ 19,188,154	2.3%
U.K.	LLOYDS BANK	\$ 15,825,002	1.9%
U.K.	HSBC HOLDINGS (GBP 0.75)	\$ 12,680,221	1.5%
U.K.	ABBEY NATIONAL	\$ 11,795,221	1.4%
U.K.	ROYAL BANK OF SCOTLAND	\$ 6,549,894	0.8%
U.K.	SCHRODERS	\$ 4,171,067	0.5%
Total Companies: 84		\$ 827,547,397	

Percentage of EAFE Index comprised of restricted stocks: 16.7%

Summary Table

Country	%
Australia	2.4%
Austria	0.8%
Belgium	1.0%
Denmark	0.7%
Finland	0.2%
France	3.7%
Germany	5.8%
Hong Kong	2.4%
Ireland	0.4%
Italy	2.4%
Japan	52.6%
Malaysia	1.7%
Netherlands	1.5%
Singapore	2.0%
Spain	2.6%
Sweden	0.9%
Switzerland	7.3%
U.K.	11.6%
Total	100.0%

FINANCIAL

		SHARES	PRICE	MARKET VALUE	% OF GROUP	% OF 500	CUSIP
Money Center Banks		810					
BAC	BankAmerica Corp.	374.288	59.875	22410.494	21.8	.52	066050105
BT	Bankers Trust N.Y.	78.384	70.250	5506.476	5.4	.13	066365107
CMB	Chase Manhattan	174.458	61.125	10663.745	10.4	.25	161610100
CHL	Chemical Banking Corp.	252.110	60.875	15347.196	14.9	.36	163722101
CCI	Citicorp	397.468	70.750	28120.861	27.4	.65	173034109
FNB	First Chicago Corp.	89.719	68.625	6156.966	6.0	.14	319455101
JPM	Morgan (J.P.) & Co.	187.889	77.375	14537.911	14.1	.34	616880100
<i>Total Market Value</i>				102743.650			2.38
<i>Base (Divisor)</i>		447.0987					
<i>Index</i>						229.80	
Major Regional Banks		815					
ONE	Banc One Corp.	394.564	36.500	14401.586	8.7	.33	059438101
BKB	Bank of Boston	111.682	47.625	5318.855	3.2	.12	060716107
BK	Bank of New York	192.080	46.500	8931.720	5.4	.21	064057102
BBI	Barnett Banks Inc.	97.127	56.625	5499.816	3.3	.13	068055102
BOAT	Boatmen's Bancshares	125.854	37.000	4656.598	2.8	.11	096650106
CFL	CoreStates Financial	139.452	36.625	5107.430	3.1	.12	218695104
FFB	First Fidelity Bancorp	80.130	67.500	5408.775	3.3	.13	320195100
I	First Interstate Bancorp	75.985	100.750	7655.489	4.6	.18	320548100
FTU	First Union Corp.	171.852	51.000	8764.452	5.3	.20	337358105
FLT	Fleet Financial Group	141.356	37.750	5336.189	3.2	.12	338915101
KEY	KeyCorp	227.537	34.250	7793.142	4.7	.18	493267108
MEL	Mellon Bank Corp.	146.487	44.625	6536.982	4.0	.15	585509102
NBD	NBD Bancorp Inc.	155.000	38.250	5928.750	3.6	.14	628900102
NCC	National City Corp.	147.320	30.875	4548.505	2.7	.11	635405103
NB	NationsBank	271.405	67.250	18251.986	11.0	.42	638585109
NOB	Norwest Corp.	325.291	32.750	10653.280	6.4	.25	669380107
PNC	PNC Bank Corp.	230.061	27.875	6412.950	3.9	.15	693475105
RNB	Republic New York	56.096	58.500	3281.616	2.0	.08	760719104
SNC	Shawmut National	128.741	33.625	4328.916	2.6	.10	820484103
STI	SunTrust Banks	114.216	66.125	7552.533	4.6	.18	867914103
USBC	U.S. Bancorp	98.203	28.250	2774.235	1.7	.06	911596104
WB	Wachovia Corp.	171.207	43.125	7383.302	4.5	.17	929771103
WFC	Wells Fargo & Co.	48.259	185.625	8958.077	5.4	.21	949740104
<i>Total Market Value</i>				165485.185			3.84
<i>Base (Divisor)</i>		737.4916					
<i>Index</i>						224.39	
Insurance Brokers		330					
AAL	Alexander & Alexander	44.307	24.250	1074.445	14.4	.02	014476105
MMC	Marsh & McLennan	72.613	87.875	6380.867	85.6	.15	571748102
<i>Total Market Value</i>				7455.312			.17
<i>Base (Divisor)</i>		23.9760					
<i>Index</i>						310.95	
Investment Banking/Brokerage		822					
DWD	Dean Witter, Discover & Co.	168.900	56.250	9500.625	19.4	.22	24240V101
MER	Merrill Lynch	176.006	62.500	11000.375	22.5	.26	590188108
MS	Morgan Stanley	76.778	96.125	7380.285	15.1	.17	617446109
SB	Salomon Inc.	106.387	38.250	4069.303	8.3	.09	79549B107
TRV	Travelers Inc.	319.726	53.125	16985.444	34.7	.39	894190107
<i>Total Market Value</i>				48936.032			1.14
<i>Base (Divisor)</i>		262.9899					
<i>Index</i>						186.08	

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		SHARES	PRICE	MARKET VALUE	% OF GROUP	% OF 500	CUSIP
Life Insurance		825					
JP	Jefferson-Pilot	47.464	64.250	3049.562	15.4	.07	475070108
LNC	Lincoln National	103.924	47.125	4897.419	24.8	.11	534187109
PVN	Providian Corp.	95.279	41.500	3954.079	20.0	.09	744061102
TMK	Torchmark Corp.	71.579	42.125	3015.265	15.3	.07	891027104
UNM	UNUM Corp.	72.584	52.750	3828.806	19.4	.09	903192102
USH	USLIFE Corp.	34.370	29.250	1005.323	5.1	.02	917318107
<i>Total Market Value</i>				19750.453		.46	
<i>Base (Divisor)</i>		13.2611					
<i>Index</i>					1489.35		
Multi-Line Insurance		830					
AET	Aetna Life & Casualty	113.220	73.375	8307.518	14.8	.19	008140105
AIG	American Int'l. Group	474.194	85.000	40306.490	71.8	.94	026874107
CI	CIGNA Corp.	72.537	104.125	7552.915	13.4	.18	125509109
<i>Total Market Value</i>				56166.923		1.30	
<i>Base (Divisor)</i>		559.6630					
<i>Index</i>					100.36		
Property-Casualty Insurance		835					
ALL	Allstate Corp.	448.360	35.375	15860.735	28.1	.37	020002101
CB	Chubb Corp.	86.953	96.000	8347.488	14.8	.19	171232101
GRN	General Re Corp.	82.028	151.000	12386.228	22.0	.29	370563108
LTR	Loews Corp.	58.916	145.500	8572.278	15.2	.20	540424108
SAFC	SAFECO Corp.	62.992	65.625	4133.850	7.3	.10	786429100
SPC	St. Paul Cos.	84.539	58.375	4934.964	8.8	.11	792860108
FG	USF&G Corp.	111.648	19.375	2163.180	3.8	.05	903290104
<i>Total Market Value</i>				56398.723		1.31	
<i>Base (Divisor)</i>		94.6310					
<i>Index</i>					595.99		
Savings & Loan Companies		840					
AHM	Ahmanson (H.F.) & Co.	117.111	25.375	2971.692	32.4	.07	008677106
GDW	Golden West Financial	58.694	50.500	2964.047	32.3	.07	381317106
GWF	Great Western Financial	135.918	23.750	3228.053	35.2	.07	391442100
<i>Total Market Value</i>				9163.791		.21	
<i>Base (Divisor)</i>		116.4895					
<i>Index</i>					78.67		
Personal Loans		845					
BNL	Beneficial Corp.	52.975	52.250	2767.944	31.4	.06	081721102
HI	Household International	97.495	62.000	6044.690	68.6	.14	441815107
<i>Total Market Value</i>				8812.634		.20	
<i>Base (Divisor)</i>		17.0648					
<i>Index</i>					516.42		
Financial (Miscellaneous)		850					
AXP	American Express	487.717	44.375	21642.442	26.7	.50	025816109
AGC	American General	204.860	37.375	7656.643	9.4	.18	026351106
FRE	Federal Home Loan Mtg.	180.762	69.125	12495.173	15.4	.29	313400301
FNM	Federal Natl. Mtg.	272.802	103.500	28235.007	34.8	.66	313586109
KRB	MBNA Corp.	148.500	41.625	6181.313	7.6	.14	55262L100
TA	Transamerica Corp.	68.618	71.250	4889.033	6.0	.11	893485102
<i>Total Market Value</i>				81099.610		1.88	
<i>Base (Divisor)</i>		1102.3133					
<i>Index</i>					73.57		

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