

Approved: February 10, 1999  
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 3, 1999 in Room 527-S of the Capitol.

All members were present except: Representative Cindy Empson - Excused

Committee staff present: Dr. Bill Wolff, Legislative Research  
Bruce Kinzie, Office of Revisor  
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Sonya Allen, General Counsel, Bank Commissioner's Ofc.  
Kathy Olsen, Kansas Bankers Association  
Chris McKinzie, League of Kansas Municipalities  
Whitney Dameron, Unified Government of Kansas City,  
Kansas/Wyandotte County

Others attending: See Attached List

Chairman Cox recognized **Sonya Allen**, General Counsel - Bank Commissioner's Office, who requested the introduction of a bill that would amend K.S.A. 9-2107, referred to as the contracting trustee statute. It gives state banks and trust companies authority to, among other things, contract fiduciary responsibilities to another trustee. The general rule is that such contracts can only be entered into with other banks or trust companies having an office in the state. There is an exception which would allow them to contract with an affiliate bank, owned by the same holding company, regardless of where the affiliate is located. An oversight in drafting resulted in the exclusion of a trust company affiliate from that exception. It was an oversight when the original bill was drafted and the proposed bill would correct that oversight. (**Attachment 1**)

Representative Tomlinson made a motion for the committee to introduce this legislation. Representative Dryer seconded the motion. The motion carried.

Chairman Cox recognized **Kathy Olsen**, Kansas Bankers Association, who asked the committee to introduce a bill for legislation which was introduced last year then sat on, as no one was convinced there was a need for it. The KBA is still working with the Department of Revenue awaiting an answer. Since today is the deadline, she requested a bill to re-introducing the legislation, in the event it is needed. It has to do with rollovers of IRA's from state employee's retirement plans. (**Attachment 2**)

Representative Humerickhouse moved for the committee to introduction the legislation. Representative Minor seconded the motion. The motion carried.

**Kathy Olsen** presented her second request which was from the Kansas Bankers Association Trust Division. The request deals with language dealing with liability of trustees to third persons. Specifically, they are trying to place some limits on when a trustee can be held personally liable for actions taken in the capacity as a trustee. The proposed language is modeled after similar laws in Missouri and Oklahoma. (**Attachment 3**)

Representative Grant moved that the committee introduce the legislation. Representative McCreary seconded the motion. The motion carried.

Chairman Cox opened the hearing on:

**SB 41 - KPERS, amortization of payments for costs to employer for benefits of employees**

**Proponents:**

**Chris McKenzie**, League of Kansas Municipalities, appeared in favor of **SB 41**. (**Attachment 4**) Last session, as part of **SB 11**, the omnibus KPERS bill, a provision was inserted that required that if, the final average salary of a particular employee exceeded 15%, the employer would have to make a lump sum payment to the retirement system for that particular amount. The requirement, that it be paid in one lump sum,

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on February 3, 1999.

has raised some very serious questions among some of the political subdivisions. **SB 41** would address these questions. While the League itself does not disagree with the 15% threshold and the policy of putting that burden on the employer, they do support the language in **SB 41** that would allow the employer to amortize those payments, over a maximum of 15 years, to the retirement system. So the retirement system would be made whole, but the political subdivision would have an opportunity to spread the cost out. So far, the following have been faced with various amounts which will be due in one lump sum without this legislation: Unified Government of Kansas City, Kansas/Wyandotte County - \$279,000; Topeka - \$26,000 (will go up soon); City of Shawnee - \$56,000; Chanute - \$11,000; Salina - \$3,500; Leawood - \$4,000; Riley County - \$16,000; and Shawnee County - \$11,000. More are expected to follow.

**Whitney Dameron**, Unified Government of Wyandotte County/Kansas City, Kansas, appeared in strong favor of **SB 41. (Attachment 5)** It came about as a result of a 1998 KPERS' statute. The legislation passed late in the session and had an implementation date of July 1, 1998. This left a very short period of time for the Unified Government and other municipalities to address some shortfalls in their retirement programs. The supplement note on the bill indicates that if all 74 employees of the Unified Government were to retire in 1998, it would create a significant hardship. The Unified Government did in fact contact KPERS and the League of Kansas Municipalities and they were able to come up with the provisions in the bill. He urged the committee to pass **SB 41.**

Per Meredith Williams, KPERS, provisions were made to allow the payment of an actuarial value over a 15 year period. The period runs through 2015. The whole thing goes away in 2015. The municipalities may pay now or have a 15 years mortgage with an 8% add on expense.

Chairman Cox closed the hearing on **SB 41** and opened the hearing on:

**HB 2192 - Providing notice to creditors of decedent by trustee**

**Proponent:**

**Daryl Craft**, Kansas Bankers Association Trustee Division, testified on behalf of **HB 2192. (Attachment 6)** The bill creates a creditors' claim statute for decedents dying with some, or all, of their assets held in a living trust. Currently, KSA 59-709 creates a creditors notice requirement for Kansas estates. The executor or administrator of the estate must publish notice of death in the county of the decedent's death to give creditors notice of the death and time to prepare and file any claims against the estate. **HB 2192** would create a similar statute to be used by the trustee of a living trust. This bill has been requested by numerous trust officers. More and more Kansas residents are utilizing trusts as part of their estate plans. Currently, there is no means to limit when a creditor may file a claim against a trustee. It's possible that a claim could be made upon a trustee years after all assets have been distributed. The bill corrects this problem. He asked the committee to vote in favor **HB 2192.**

Chairman Cox closed the hearing on **HB 2192.**

Chairman Cox stated the committee would work both **SB 41** and **HB 2192.**

Representative Sharp moved that **SB 41** be moved out favorably. Representative Burroughs seconded the motion. The motion carried.

Representative McCreary moved that **HB 2192** be passed and placed on the consent calendar Representative Dreher seconded the motion. The motion carried.

Chairman Cox presented the committee minutes for the January 27 meeting to the committee for approval. Representative Boston made a motion to approved the minutes as presented. Representative Grant seconded the motion. The motion carried.

The meeting adjourned at 4:03 p.m.

The next meeting is scheduled for February 10.



STATE OF KANSAS  
BILL GRAVES  
GOVERNOR

Judi M. Stork  
*Acting Bank Commissioner*

Kevin C. Glendening  
*Assistant Deputy Commissioner*



Sonya L. Allen  
*General Counsel*

Louise A. Monell  
*Administrative Officer*

OFFICE OF THE  
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

February 3, 1999

Mr. Chairman and Members of the Committee:

My name is Sonya Allen. I am General Counsel for the Office of the State Bank Commissioner. I am here today to request introduction of a bill amending K.S.A. 9-2107. In part, K.S.A. 9-2107 gives authority for state banks and trust companies to contract away their fiduciary responsibilities to another trustee. The general rule is such contracts can only be entered into with other banks or trust companies having an office in this state. There is an exception which would allow them to contract with an affiliate bank, owned by the same holding company, regardless of where the affiliate is located. It has come to our attention that an oversight in drafting resulted in the exclusion of a trust company affiliate from that exception. It was not our intent to exclude trust company affiliates, and the proposed amendment would clarify that point.

*House Financial Institutions*  
*2-3-99*  
*Attachment 1*

**9-2107. Allowing for the contracting for trust services; definitions; notice filing; authority of commissioner; fees; examination; branches. (a) As used in this section:**

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the state bank commissioner under K.S.A. 9-1602, and amendments thereto, or any national bank chartered to do business in Kansas that has been granted trust authority by the comptroller of the currency under 12 USC 92a, or any bank that has been granted trust authority or any trust company, regardless of where located, ~~that has been granted trust authority~~ and which is controlled, as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, which accepts or succeeds to any fiduciary responsibility as provided in this section;

(2) "originating trustee" means any trust company, bank, national banking association, savings and loan association or savings bank which has trust powers and its principal place of business is in this state and which places or transfers any fiduciary responsibility to a contracting trustee as provided in this section;

(3) "financial institution" means any bank, national banking association, savings and loan association or savings bank which has its principal place of business in this state but which does not have trust powers.

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, no contracting trustee as defined in K.S.A. 9-2107(a)(1) and amendments thereto, having its home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) The contracting trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills and court orders, which pertain to the affected fiduciary accounts;

(2) the originating trustee is absolved from all fiduciary duties and obligations arising under such writings and shall discontinue the exercise of any fiduciary duties with respect to such writings, except that the originating trustee is not absolved or discharged from any duty to account required by K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule of law, rules and regulations or court order, nor shall the originating trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may authorize the contracting trustee:

(1) To establish a trust service desk at any office of the originating trustee at which the contracting trustee may conduct any trust business and any business incidental thereto and which the contracting trustee may otherwise conduct at its principal place of business; and





The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

February 3, 1999

To: House Committee on Financial Institutions  
From: Kathy Taylor Olsen, Kansas Bankers Association  
Re: Introduction of bill

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee today, to request introduction of a bill on behalf of the Kansas Bankers Association Trust Division.

The need for this bill arose as those in our Trust Division believe that when Kansas state employees try to roll over their retirement funds to a private investment advisor, the tax exempt status of those funds is lost. So that when funds are paid out from a KPERS plan, a Police and Fire plan or other tax exempt plan, the tax exempt status would not carryover to the replacement asset (whether it be an IRA, an annuity, or some other investment).

We believe that state employees should have the same ability to maximize their retirement investments as employees in the private sector.

For these reasons, we ask that the attached bill be introduced for further discussion. Thank you.

*House Financial Institutions*  
*2-3-99*  
*Attachment 2*

**12-111a. Exemption of certain annuities, pensions and benefits of policemen and firemen from taxes and civil liability; exception, qualified domestic relations order.** Except as provided further, all annuities, pensions and benefits paid, which arise from services of a policeman or fireman, by a pension and benefit plan of a city of the first or second class under a charter ordinance related to K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.*, and amendments thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof and shall not be subject to execution, garnishment or attachment. Any pension benefit or annuity accruing to services of a policeman or fireman by a charter ordinance under this section shall not be exempt from claims of an alternate payee under a qualified domestic relations order. As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this section shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

**History:** L. 1974, ch. 345, § 3; L. 1994, ch. 231, § 1; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

active members of local plans made special members of KP&F system; employee contributions; preservation of local plan entitlements for special members, exceptions; exemption from taxes and legal claims and process and nonassignable, exception for decrees for support and maintenance and qualified domestic relations orders and lump-sum death benefit assigned to a funeral establishment; employer pickup of member contributions. (a) Every retired member of a local police or fire pension plan and every active member of the plan who is entitled to make an election to become a member of the Kansas police and firemen's retirement system pursuant to K.S.A. 12-5003 or 74-4955 and amendments thereto and who does not so elect shall become a special member of the Kansas police and firemen's retirement system on the entry date of the city which is affiliating with the Kansas police and firemen's retirement system with regard to all active members and retired members of the local police or fire pension plan under K.S.A. 74-4954 and amendments thereto.

(b) Beginning with the first payroll for services as a policeman or fireman after an active member of a local police or fire pension plan becomes a special member of the Kansas police and firemen's retirement system under this section, the city shall deduct from the compensation of each special member the greater of 7% or the percentage rate of contribution which the active member was required to contribute to the local police or fire pension plan preceding the entry date of the city, as employee contributions. The deductions shall be remitted quarterly, or as the board of trustees otherwise provides, to the executive secretary of the Kansas public employees retirement system for credit to the Kansas public employees retirement fund. All deductions shall be credited to the special members' individual accounts beginning on July 1 of the year following the entry date of the city for purposes of all active and retired members of the local police and fire pension plan.

(c) Except as otherwise provided in this act, each active member of a local police or fire pension plan who becomes a special member of the Kansas police and firemen's retirement system under this section shall be subject to the provisions of and entitled to pensions and other benefits, rights and privileges to the extent provided under the local police and fire pension plan on the day immediately preceding the entry date of the city which is affiliating with the Kansas police and firemen's retirement system with regard to all active members and retired members of the plan.

(d) Each retired member of a local police or fire pension plan who becomes a special member of the Kansas police and firemen's retirement system under this section shall be entitled to receive from the Kansas police and firemen's retirement system a pension or any other benefit to the same extent and subject to the same conditions as existed under the local police or fire pension plan on the day immediately preceding the entry date of the city which is affiliating with the system with



ed to all active members and retired members  
 e plan under K.S.A. 74-4954 and amend-  
 ments thereto, except no retired special member  
 shall be appointed in or to a position or office for  
 which compensation is paid for service to the  
 same state agency, or the same police or fire de-  
 partment of a city, township, special district or  
 county or the same sheriff's office of a county.  
 This subsection shall not apply to service rendered  
 by a retiree as a juror, as a witness in any legal  
 proceeding or action, as an election board judge  
 or clerk or in any other office or position of a sim-  
 ilar nature. Any retiree employed by a participat-  
 ing employer in the Kansas police and firemen's  
 retirement system shall not make contributions or  
 receive additional credit under the system for that  
 service. This subsection, except as it relates to  
 contributions and additional credit, shall not apply  
 to the employment of any retiree by the state of  
 Kansas, or any county, city, township, special dis-  
 trict, political subdivision or instrumentality of any  
 one or several of the aforementioned for a period  
 of not exceeding 30 days in any one calendar year.

(e) (1) Every pension or other benefit re-  
 ceived by any special member pursuant to sub-  
 section (c) or (d) is hereby made and declared  
 exempt from any tax of the state of Kansas or any  
 political subdivision or taxing body of this state;  
 shall not be subject to execution, garnishment, at-  
 tachment or any other process or claim whatso-  
 ever, except such pension or benefit or any ac-  
 cumulated contributions due and owing from the  
 system to such special member are subject to de-  
 crees for child support or maintenance, or both,  
 as provided in K.S.A. 60-1610 and amendments  
 thereto; and shall be unassignable, except that  
 within 30 days after the death of a retirant the  
 lump-sum death benefit payable to a retirant pur-  
 suant to the provisions of K.S.A. 74-4989 and  
 amendments thereto may be assignable to a fu-  
 neral establishment providing funeral services to  
 such retirant by the beneficiary of such retirant.  
 The Kansas public employees retirement system  
 shall not be a party to any action under article 16  
 of chapter 60 of the Kansas Statutes Annotated,  
 and amendments thereto, and is subject to orders  
 from such actions issued by the district court of  
 the county where such action was filed. Such or-  
 ders from such actions shall specify either a spe-  
 cific amount or specific percentage of the amount  
 of the pension or benefit or any accumulated con-  
 tributions due and owing from the system to be  
 distributed by the system pursuant to this act.

(and on identifiable proceeds therefrom in an  
 individual retirement account or annuity  
 qualified under section 408 of the federal  
 internal revenue code of 1986, as amended)

Every pension or other benefit received by special member pursuant to subsection (c) or (d) is hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body of this state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, except such pension or benefit or any accumulated contributions due and owing from the system to such special members are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this subsection shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

(f) (1) Each participating employer, pursuant to the provisions of section 414(h)(2) of the United States internal revenue code, shall pick up and pay the contributions which would otherwise be payable by members as prescribed in subsection (a) commencing with the third quarter of 1984. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(2) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer, provided that such deduction shall not reduce the member's compensation for purposes of computing benefits under K.S.A. 12-5001 to 12-5007, inclusive, and amendments thereto.

(3) Member contributions picked up by the employer shall be remitted quarterly, or as the board may otherwise provide, to the executive secretary for credit to the Kansas public employees retirement fund. Such contributions shall be credited to a separate account within the member's individual account so that amounts contributed by the member commencing with the third quarter of 1984 may be distinguished from the member contributions picked up by the employer. Interest shall be added annually to members' individual accounts.

**History:** L. 1976, ch. 348, § 5; L. 1981, ch. 77, § 1; L. 1982, ch. 152, § 19; L. 1984, ch. 289, § 1; L. 1990, ch. 282, § 1; L. 1991, ch. 238, § 1; L. 1992, ch. 321, § 25; L. 1994, ch. 231, § 2; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

**13-14a10. Exemption of certain pension and benefit funds from taxes and civil liability; exceptions, qualified domestic relations orders.** Except as provided further, any annuity, benefits, funds, property, or rights created by or accruing to any person under the provisions of K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.*, and amendments thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by law.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

Any pension benefits or annuities accruing under the provisions of K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.*, and amendments thereto, shall not be exempt from claims of an alternate payee under a qualified domestic relations order. As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this section shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

**History:** L. 1945, ch. 111, § 10; L. 1974, ch. 345, § 1; L. 1994, ch. 231, § 4; July 1.

**14-10a10. Certain pension benefits and rights nonassignable and exempt from taxes and legal process.** Any annuity, benefits, funds, property, or rights created by or accruing to any person under the provisions of K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.* and any acts amendatory thereof or supplemental thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by law.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

**History:** L. 1945, ch. 144, § 10; L. 1974, ch. 345, § 2; L. 1977, ch. 68, § 1; July 1.

**74-4923. Rights of members and beneficiaries not affected by change or repeal of act, option; benefits and rights exempt from taxes and legal process and nonassignable, exceptions for decrees for support and maintenance and qualified domestic relations orders and lump-sum death benefit assigned to a funeral establishment; recovery of arrearage obligations and debts owed state agencies.** (a) No alteration, amendment or repeal of this act shall affect the then existing rights of members and beneficiaries but shall be effective only as to rights which would otherwise accrue under this act as a result of services rendered by an employee after the alteration, amendment or repeal. This subsection shall not apply to any alteration or amendment of this act which provides greater benefits to members or beneficiaries, but any increase of benefits shall only be applicable to benefits payable on the first day of the month coinciding with or following the effective date of the alteration or amendment.

(b) Any annuity, benefits, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 *et seq.* or 74-4951 *et seq.*, and amendments thereto, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment or attachment, or, except as otherwise provided, any other process or claim whatsoever; and shall be unassignable, except that within 30 days after the death of a retirant the lump-sum death benefit payable to a retirant's beneficiary pursuant to the provisions of K.S.A. 74-4989 and amendments thereto may be assignable to a funeral establishment providing funeral services to the retirant by the beneficiary of such retirant. Any annuity or benefit or accumulated contributions due and owing to any person under the provisions of K.S.A. 74-4901 *et seq.* or 74-4951 *et seq.* and amendments thereto are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this act shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994. The Kansas public employees retirement system shall not be a party to any action under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this subsection from courts having jurisdiction of such actions outside the state of Kansas. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due

and owing from the system to be distributed by the system pursuant to this act.  
(c) In any case where a state agency owed a debt or where a participating employer under the Kansas public employees retirement system or under the Kansas police and firemen's retirement system has been required to pay and has paid an arrearage obligation of the amount of contributions of a member which were not paid at the time required and where the employment of the member by the state agency or participating employer has been terminated and the member is eligible to withdraw accumulated contributions in accordance with K.S.A. 74-4917 and 74-4963, and amendments thereto, the state agency or participating employer shall be paid from the member's account in the fund an amount equal to the debt or the amount of contributions of the member paid by the participating employer pursuant to an arrearage obligation, upon application to the board therefor accompanied by certification of the amount to be paid to the state agency or participating employer. If any application and certification under this subsection are not received by the board prior to the withdrawal of accumulated contributions by the member, the board shall not be liable to pay and shall not pay any amount from the fund pursuant to any such application and certification.

**History:** L. 1961, ch. 427, § 23; L. 1963, ch. 412, § 15; L. 1970, ch. 325, § 1; L. 1974, ch. 338, § 1; L. 1977, ch. 274, § 1; L. 1981, ch. 342, § 15; L. 1982, ch. 152, § 24; L. 1990, ch. 282, § 11; L. 1991, ch. 238, § 3; L. 1992, ch. 321, § 10; L. 1994, ch. 231, § 5; L. 1995, ch. 267, § 19; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

78g. Preservation of entitlement to pension or other benefit from state highway patrol pension fund; benefits for minor children of certain deceased members; conditions for payments; termination of payments; exemption of pension and benefits from taxes and civil liability. Any person receiving or entitled to receive a pension or any other benefit, or who will become entitled to receive a pension or any other benefit, from the state highway patrol pension fund as it existed prior to April 1, 1972, shall be entitled to receive from the Kansas police and firemen's retirement system such pension or any other benefit to the same extent and subject to the same conditions as existed on April 1, 1972. Any minor child of a member of the state highway patrol pension system or special member of the Kansas police and firemen's retirement system who died by reason of injuries received or disease contracted by such member while in the performance of such member's duties as a member of the highway patrol and whose spouse's pension was terminated because of such spouse's remarriage shall receive a monthly amount equal to the pension which was terminated due to such remarriage. Such benefits shall accrue from April 1, 1973, or the date of the spouse's remarriage, whichever is later and shall be terminated on the first day of the month in which the child dies, marries or attains the age of 18 years or in which the child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117. All pensions and benefits received by any person under this act, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever.

**History:** L. 1972, ch. 292, § 7; L. 1973, ch. 328, § 1; L. 1974, ch. 345, § 4; L. 1989, ch. 232, § 23; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

**74-49,106.** Benefit entitlement of special members under 74-4999; recalculation for reduced benefit; exemption from taxes and legal process. (a) Each person who is a special member of the Kansas public employees retirement system under subsection (c) of K.S.A. 74-4999 shall be entitled to receive from the Kansas public employees retirement system a retirement benefit, annuity, pension or other benefit to the same extent and subject to the same conditions as existed under the laws in effect on the day immediately preceding the effective date of this act, except that each person who is a special member of the Kansas public employees retirement system pursuant to subsection (c) of K.S.A. 74-4999 shall have such person's retirement benefit, annuity, pension or other benefit recalculated under subsection (c) of K.S.A. 74-49,104 and amendments thereto. If such recalculation results in an increase in such special member's retirement benefit, annuity, pension or other benefit, such increase shall accrue and be payable to such special member on and after July 1, 1982.

(b) Every retirement benefit, annuity, pension or other benefit received by any person pursuant to subsection (a) shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, including decrees for support or maintenance; and shall be unassignable.

**History:** L. 1975, ch. 191, § 8; L. 1982, ch. 319, § 45; L. 1982, ch. 152, § 26; Jan. 1, 1983.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)





The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

February 3, 1999

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen

Re: Introduction of a Bill

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee to request the introduction of a bill on behalf of the Kansas Bankers Association Trust Division.

The attached proposed language is all new and is modeled after similar laws in Missouri and Oklahoma. There is concern that Kansas law does not currently address the liability of trustees to third persons. This bill attempts to define that liability and to place limits on when a trustee can be held personally liable for actions taken in the capacity as a trustee.

I hope you will agree that this is an issue that deserves further discussion and that you will vote favorably for the introduction of this bill.

*House Financial Institutions  
2-3-99  
Attachment 3*

## Liability of trustee to third persons.

1. Unless otherwise provided by the terms of the contract, a trustee is not individually liable on a contract properly entered into in its fiduciary capacity in the course of administration of the trust, unless it fails to reveal its fiduciary capacity and identify the trust in the contract.
2. A trustee is individually liable for obligations arising from ownership or control of the trust assets or for torts committed in the course of administration of the trust only if it is personally at fault.
3. Claims based on contracts entered into by a trustee in its fiduciary capacity, on obligations arising from ownership or control of the trust assets, or on torts committed in the course of trust administration may be asserted against the trustee by proceeding against the trustee in its fiduciary capacity, whether or not the trustee is individually liable therefor.
4. Issues of liability as between the trust and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification, or other appropriate proceeding.
5. A trustee who is a member of a partnership in its fiduciary capacity only is not individually liable for the obligations of the partnership but claims based upon such obligations may be asserted against the trust by proceeding against the trustee in its fiduciary capacity.



**League  
of Kansas  
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

**TO:** House Committee on Financial Institutions and Insurance  
**FROM:** ✓ Chris McKenzie, Executive Director  
**DATE:** February 3, 1999  
**SUBJECT:** Support for SB 41

Thank you for the opportunity to appear today in support of SB 41, which addresses the subject of payments by KPERS participating employers for certain retirement related costs. In October, 1998 the League's Convention of Voting Delegates endorsed a change in the provisions of 1998 SB 11 which require KPERS participating employers to pay any actuarial liability incurred when reporting termination pay that increases a member's final average salary by 15.0 percent or more when computing retirement benefits.

SB 41 represents a fair attempt to slightly modify the legislative policy in this area by allowing employers with enriched early retirement incentives that may increase final average salary to amortize the cost of the employer's responsibility over no more than 15 years. In testifying last interim on this issue, the League endorsed such a plan. Furthermore, I shared with the Senate Committee that while I believe the vast majority of the League's membership supports the 15% policy, we recognize that requiring affected cities to pay the entire actuarial amount in one lump sum may be unduly burdensome.

Attached to my testimony is a letter which I received from the Budget and Research Director of the City of Topeka which reinforces these concerns. As you can see, the City of Topeka expects to face a financial challenge due to this policy, beginning in 1999. I also have secured information from KPERS concerning the growing number of governmental units that can be expected to be affected by this policy change. As of February 2, 1999 the 15% rule has triggered lump sum payments by Topeka, Shawnee, Chanute, Salina, Leawood, Riley County, Shawnee County, and the Unified Government of Wyandotte County/Kansas City. Both KPERS and the League expect this number to grow in the future.

Thank you for your consideration on this issue.

RECOMMENDATION: We recommend support for 1999 SB 41.

*House Financial Institutions  
2-3-99  
Attachment 4*

President: John R. Zutavern, Commissioner, Abilene \* Vice President: Carol Marinovich, CEO/Mayor, Wyandotte County/Kansas City \* Past Presidents: Donald L. Anderson, Mayor, Lindsborg \* Chris Cherches, City Manager, Wichita \* Ed Eilert, Mayor, Overland Park \* Irene French, Mayor, Merriam \* Ralph T. Goodnight, Mayor, Lakin \* Directors: James Arnold, Mayor, Scott City \* Joan Bowman, Mayor, Lenexa \* Delores Dalke, Mayor, Hillsboro \* Tony Fiedler, Commissioner, McPherson \* Rod Franz, Finance Director, Salina \* Warren C. Hixson, Mayor, Colby \* Don J. Knappenberger, City Attorney, St. John \* J. Patrick Lawless, Jr., Mayor, Osage City \* Ralph Soelter, Mayor, Paxico \* Joan Wagnon, Mayor, Topeka \* Glen Welden, City Manager, Parsons \* Ed Wiltse, Councilmember, Ulysses \* Executive Director: Christopher K. McKenzie



# CITY OF TOPEKA

Attachment A

Chief Administrative Officer  
215 S.E. 7th Street Room 355  
Topeka, Kansas 66603-3914  
785-368-3725

October 13, 1998

Chris McKenzie  
Executive Director  
League of Kansas Municipalities  
300 SW Eighth  
Topeka, Kansas 66603

Dear Chris:

The purpose of this letter is to respond to your request for information regarding the impact on the City of Topeka of the KPERS final average compensation issue. I hope the following will assist in your testimony preparation.

Approximately 30 Topeka police officers and 50 Topeka firefighters will become eligible to retire between 1998 and 2001. We, in fact, anticipate 11 police officers and 18 firefighters to retire in 1999 alone. The cost of these retirement pay-outs in 1999 is projected at \$900,000, with an additional \$1 million needed over the subsequent two years for the remainder of the retirements.

According to our payroll coordinator, the 15% issue is typically not a problem for our regular KPERS members. We will, however, run into the 15% issue with *almost all* of our police and fire retirements.

Our challenge at this point is three-fold: (1) we have already completed our budget for 1999; (2) due to council action during budget deliberations, we may not have enough in our retirement reserve fund to adequately cover the costs of our anticipated retirements (any excess costs will fall back on the shoulders of the police and fire operating budgets); and, (3) *we have not received any information from KPERS indicating what the fiscal impact of the 15% issue will mean to us.*

We certainly understand KPERS' need to anticipate actuarially its financing requirements and the challenges excessive final pay-outs present to those calculations. At the same time, we are simply unable to finance additional cash payments at retirement without adversely affecting our ability to provide police and fire services in 1999.

I hope this information is helpful to you and apologize that we cannot be represented on Thursday. Please let me know if you require additional information.

Cordially,

Jeff White  
Budget and Research Director

c: Mayor Joan Wagnon

**WHITNEY B. DAMRON, P.A.**  
**1100 MERCANTILE BANK TOWER**  
**800 SW JACKSON STREET**  
**TOPEKA, KANSAS 66612-2205**  
**(785) 354-1354 ♦ 354-8092 (FAX)**

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**TESTIMONY**

**TO: The Honorable Ray Cox, Chairman  
And Members Of The  
House Financial Institutions Committee**

**FROM: Whitney Damron  
On Behalf Of The  
Unified Government of Wyandotte County/Kansas City, Kansas**

**RE: SB 41 KPERs; amortization of payments for costs to employer for  
benefits of employees.**

**DATE: February 3, 1999**

Good afternoon Chairman Cox and Members of the House Financial Institutions Committee. My name is Whitney Damron and I appear before you today on behalf of my client, the Unified Government of Wyandotte County/Kansas City, Kansas in support of SB 41.

As you have likely heard before my testimony, SB 41 would allow local units of government to pay actuarial costs over an extended time period for sick leave, annual and vacation time, severance and other payments to KPERs which increases the final average salary of an employee greater than fifteen percent.

The Unified Government was significantly impacted by the adoption of SB 11 during the 1998 session and has worked with KPERs towards a plan which would allow the Unified Government to minimize the impact upon their finances due to the significant number of long-term employees affected by this change. The Unified Government is supportive of SB 41 and believes the flexibility granted to KPERs and local units of government will lessen the impact upon the Unified Government and allow us to meet our obligations without a significant hardship upon our financial stability.

In closing, I would note that corrective measures have been taken by the Unified Government regarding such retirement issues and these scenarios should not repeat themselves in future years.

On behalf of the Unified Government, we would like to express our appreciation to KPERs and the League of Kansas Municipalities for their generous assistance on this matter. We urge your passage of SB 41. Thank you.

*House Financial Institutions*  
*2-3-99*  
*Attachment 5*

## Testimony on House Bill No. 2192

Daryl Craft  
Kansas Bankers Association Trust Division

I am here today on behalf of the Kansas Bankers Association Trust Division to testify for House Bill No. 2192. This bill creates a creditors claim statute for decedents dying with some or all of their assets held in a living trust.

Currently, KSA 59-709 creates a creditors notice requirement for Kansas estates. The executor or administrator of the estate must publish notice of death in the county of the decedent's death to give creditors notice of the death and time to prepare and file any claims against the estate. Proper utilization of the claims notice will limit the time that qualified claims can be filed, and protect the executor or administrator from claims that were not filed in a timely manner. HB No. 2192 would create a similar statute to be used by trustees of a living trust. The introduction of this bill is a result of request from numerous trust officers.

More and more Kansas residents are utilizing living trusts as part of their estate plans. Using a properly executed and funded living trust, there normally will not be a probate proceeding. Under current Kansas law, there is no means to limit when a creditor may file a claim against a trustee. It is possible that a claim could be made upon a trustee years after all assets had been distributed. If the trustee was unable to collect from the beneficiaries it might be held personally liable to pay the claim. This bill would create a protection for trustees similar to that which has existed under the Probate Code for executors and administrators for years. The bill would not make it mandatory that a trustee utilize the claims notice, but it would give those trustees who so desire the means to do so.

This is the same bill that the KBA Trust Division supported in the last legislative session. I believe last year there was some concern that this bill would overlap or conflict with work currently being done by the Kansas Judicial Council as it drafts the Kansas Uniform Trust Act. The matter of a creditors claim statute is not included in the Kansas Uniform Trust Act, nor is it included in the Uniform Trust Act, which the Judicial Council is using as a guide to draft the Kansas act.

We ask that the committee vote in favor of this bill.

*House Financial Institutions*  
*2-3-99*  
*Attachment 6*