

Approved: March 20, 2000
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on March 13, 2000 in Room 527-S of the Capitol.

All members were present except: Representative Boston - Excused
Representative Dreher - Excused
Representative Flora - Excused
Representative Grant - Excused
Representative Humerickhouse - Excused

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

Conferees appearing before the committee: Senator Tim Emert
Senator David Corbin
Nancy Goodall, Kansas Bar Association

Others attending: See Attached

Chairman Cox opened the hearing on **SB 503 - Enacting the Kansas uniform prudent investor act.**

Proponents

Senator Emert, testified in support of **SB 503**. The bill basically reverses a common law practice which restricts the investment powers of fiduciaries. We're dealing with how conservators, trustees, executors, and all people who operate in fiduciary relationships, are able to invest assets. The common law practice has been that you do the most conservative thing possible. Consequently, many times the money ends up in CD's. Most trust documents will determine how assets are invested; this bill applies only when there is an absence of guidelines. If there are no other guidelines, as to how the fiduciary is to make investments, this is the fallback or default. The bill says that the fiduciary will be prudent when making investments. When determining whether that fiduciary acted in a prudent manner, the entire portfolio will be taken into consideration. Originally, there was a lot of opposition, but amendments have resolved differences. He understands there will be a couple of additional amendments today and he has no objection to them. (**Attachment 1**)

Senator Corbin, testified in support of **SB 503**. He handed out written testimony from his wife, Betty Corbin. (**Attachment 2**) He said Mrs. Corbin was the one who instigated this bill and appeared when it was heard in the Senate. It came about because she was chairman of the Butler County Community College Endowment Association for a number of years. They embarked on a different way to invest money as they had their money in a bank invested in CD's and short term instruments. They had \$400,000 to \$500,000 but it really wasn't growing any, as all the interest earned was put back into scholarships. The principal stayed stagnant unless someone gave a new grant. The college decided it wanted to invest in other instruments. They looked at K.S.A. 17-5004 and had difficulty as laymen, even though there were some attorneys on the board, understanding exactly what their responsibilities were. They happened upon a bank representative who suggested they looked at the Uniform Code that's nation wide. They did so and it became much clearer to them what their responsibilities were. The \$500,000 was invested in a manner where it grew to \$5,000,000. **SB 503** would reflect what's in the Uniform code making the responsibilities of fiduciary much clearer.

Nancy Goodall, Kansas Bar Association, said she was heavily involved in the drafting of the current Prudent Investor Rule found in K.S.A. 17-5004. They tried to present a guideline to Kansas investors. Since then, the uniform bill, which is a little different than what we have, has come into play. Kansas law has a provision for the right to hold property if the grantor agrees in writing. She thinks that is important to protect Kansas farms. Also, Kansas conservatorship laws dictate that a Kansas conservator should invest a little more conservatively than a general fiduciary. These differences have been incorporated into **SB 503**. She did

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MINUTES OF THE FINANCIAL INSTITUTION, Room 527-S Statehouse, at 3:30 p.m. on March 13, 2000.

present additional amendments which came about after working with the Kansas Trail Lawyers Association and the Kansas Bankers Association. The three amendments requested were 1) on page 1, line 32, Sec. 2 (c) to change the word "shall" to "should", and 2) on page 2, line 1, Sec. 2, (c)(6) add the words "who are eligible to receive discretionary payments of trust income or principal assets", and 3) on page 3, line 9, Sec. 9(a)(2) to add "errors and omissions coverage." (**Attachment 3**)

Kathy Olsen, Kansas Bankers Association, written testimony only from Trust Division. (**Attachment 4**)

Chairman Cox closed the hearing on **SB 503** and opened the hearing on **SB 445 - Uniform consumer credit code; concerning appraised value and appraisals.**

Proponent:

George Barbee, Kansas Association of Financial Services, said that **SB 445** had some cleanup items from some bills passed last year. The bill clarifies that only one appraisal is necessary. The second change appears on page 9, lines 1 through 5. It has to do with the right of rescission. Currently, in the federal regulations a borrower has 3 days to make up their mind if they really want to go ahead with the loan or not. In the Kansas law last year, 5 days was inserted. They are now asking for it be changed to 3 days to be consistent with federal law. In the federal law, it's known as "Reg Z." Some language was taken out of the bill and then reinstated, thus it looks a little more complicated than it really is. He asked for the committee's adoption of the bill. (**Attachment 5**)

Chairman Cox closed the hearing on **SB 445** and said the committee would work **SB 503**.

Bruce Kinzie said there was a little technical amendment which was needed on **SB 503**. On page one, lines 20 and 21 the word "trustee" was left in and needs to be changed to "fiduciary."

Representative Empson made a motion to adopt the cleanup item presented by Bruce Kinzie as well as the amendments presented by Nancy Goodall. Representative Sharp seconded the motion. The motion carried.

Representative Empson made a motion to pass **SB 503** out favorably as amended. Representative Sharp seconded the motion. The motion carried.

Chairman Cox said the committee would work **SB 445**.

Bruce Kinzie said that on pages 8 and 9, when they reinserted the paragraph back in, they forgot to change the internal references.

Representative Minor made a motion to adopt the technical amendment mentioned by Bruce Kinzie. Representative Tomlinson seconded the motion. The motion carried.

Representative Minor made a motion to pass **SB 445** out favorably as amended. Representative Tomlinson seconded the motion. The motion carried.

Chairman Cox asked for a motion on the minutes.

Representative Empson made a motion to approve the March 8, 2000 committee minutes as presented. Representative Merrick seconded the motion. The motion carried.

The meeting adjourned at 4:10 p.m. The date of the next meeting will be announced later.

TIM EMERT

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COMMITTEE ASSIGNMENT

CHAIRMAN:
 CONFIRMATION OVERSIGHT
 JUDICIARY

VICE-CHAIRMAN:
 ORGANIZATION, CALENDAR & RULES
 JOINT COMMITTEE ON STATE BUILDING
 CONSTRUCTION

MEMBER:
 EDUCATION
 INTERSTATE COOPERATION COMMISSION
 LEGISLATIVE COORDINATING COUNCIL
 STATE FINANCE COUNCIL
 UNIFORM LAW COMMISSION

KANSAS SENATE
 OFFICE OF THE MAJORITY LEADER

Testimony
Senator Tim Emert
House Financial Institutions
March 13, 2000
SB 503

Mr. Chairman, thank you for the opportunity to appear today on SB 503 commonly known as the Uniform Prudent Investor Act. This is a bill that has previously been passed by the Senate and it did not get worked in the House.

The bill is not lengthy, as most Uniform Acts are, and is very straightforward. The Uniform Prudent Investor Act reverses common law rules that restrict the investment powers of trustees and other fiduciaries. It is often called a default law. Much of this law would apply only to fiduciary relationships where a trust document or other document that created the relationship was silent as to the powers and duties of the fiduciary.

This act requires a trustee to invest as a prudent investor using reasonable care, skill and caution in light of the objectives and risk of tolerance of the individual trust.

It also allows fiduciaries to utilize modern portfolio theories to guide investment decisions. A fiduciary's performance is measured on the performance of the whole portfolio, not upon the performance of each investment singly. Here are some specific advantages of this act:

1. Trusts are likely to achieve a better return for beneficiaries than is the case under the common law rules.
2. Trustees can protect the trust corpus better through diversification of assets than is the case under the common law rules.
3. Trustees can invest to counter the effects of inflation, something that the common rules do not allow.

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SB 503

4. A trustee no longer is forced to rely upon his or her own knowledge and expertise, but can acquire investment services to enhance his or her own knowledge and skill.
5. Trustees can take into account the changing character and kinds of assets available for investment, free of archaic restrictions.
6. Trustees are judged on overall performance of the assets in a trust, rather than on the performance of specific assets.
7. The specific needs of each trust can be taken into account in devising investment strategy, rather than be subordinate to generic investment rules treating all trusts as the same.
8. The Act will provide uniformity of law, necessary in an interstate investment environment.

Mr. Chairman, I would stand for any questions.

BETTY A. CORBIN TESTIMONY

KANSAS HOUSE OF REPRESENTATIVES FINANCIAL INSTITUTIONS COMMITTEE

March 13, 2000

Senate Bill 503

I urge you to enact Senate Bill 503. I am a member of the Butler County Community College Foundation. I have served on the Foundation for over ten years. I am not a lawyer; I come before you as a lay person impressed with the tenants of this bill.

In the last four years we have completely revised our investment portfolio at the BCCC Foundation. This was not an easy task. We needed to come from a heavily weighted fixed income portfolio to a fully diversified, risk managed portfolio.

This process was long, arduous, and enlightening. In our search for more information, we discovered the recommended for enactment Uniform Prudent Investor Act. We used this information, along with our consultants, to formulate our current investment and spending policies.

Through this information we learned that diversification within accepted risk perimeters was acceptable. We learned to qualify and to quantify the different assets within our portfolio versus what had been the practice for the previous twenty years. In short we learned to manage a portfolio for the return needed to continue to grow the corpus, beyond inflation rates, and meet the current needs of the students of Butler County Community College.

I don't pretend to know the legal intricacies of this bill. What I do know is that the proposed bill has many commonsense aspects to it; many of which lend themselves to today's more highly sophisticated investment strategies.

I believe that we have moved the investments practices of our institution to the next level higher with the help of these proposed rules. I urge you to enact the Uniform Prudent Investor Act.

Thank you for the opportunity to speak to this bill. I would be happy to answer any questions.

Betty A. Corbin

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LEGISLATIVE TESTIMONY

March 13, 2000

TO: Chairman Ray Cox and Members of the House Financial
Institutions Committee

FROM: Nancy Goodall

RE: Senate Bill 503 (Uniform Prudent Investor Act)

Mr. Chairman and Members of the Committee:

My name is Nancy Goodall and I am a trust officer with Central National Bank. I am appearing today on behalf of the Kansas Bar Association. Several members of the Kansas Bar Association, including myself, and the Kansas Bankers Association were heavily involved in the drafting of the current Prudent Investor Rule that is found in K.S.A. 17-5004. This law was modeled after the Prudent Investor Rule as promulgated by the American Law Institute in its Restatement (Third) of Trusts (1992), but was modified to include several provisions in Illinois law that we believed to be relevant and beneficial for Kansas trustees and beneficiaries. These modifications include an expansion of the original asset rule, an expansion on the delegation of investment responsibility and an increase in emphasis on the exercise of business judgment. Also included were some special rules on investments for conservatorships and the right of a grantor of a revocable trust to give a trustee written directions with respect to investments.

The Kansas Bar Association originally opposed the enactment of Senate Bill 503 because we felt that the Uniform Prudent Investor Act would take away many of the Kansas-specific provisions that were written into the law in 1993. The Kansas Trial Lawyers Association and Kansas Bankers Association also joined us as opponents in the Senate Financial

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Institutions and Insurance Committee for similar reasons. We worked together with these two organizations to propose several amendments to the bill that would restore several provisions that are in current law. These provisions represent many of the Kansas-specific provisions that we wrote into the law in 1993 in collaboration with the Kansas Bankers Association. These amendments were adopted by the Senate Financial Institutions and Insurance Committee and are included in the current copy of the bill.

We have two additional amendments that we would like to offer.

1) Section 2 lists a variety of matters the fiduciary shall consider in investing trust assets. This mandates that a fiduciary obtain other resources of a beneficiary. Often times, this is not possible and there is no requirement that a beneficiary provide this information. We believe that most trust grantors would want a fiduciary to have the discretion to look at all the resources of a beneficiary as part of any decision to make discretionary distributions. Therefore, we suggest that the following amendment will allow the fiduciary to follow the intent of the prudent investor act while still allowing for flexibility in meeting the goals of trust grantors. The exact wording of the amendment is listed below:

Section 2. (c) Among circumstances that a fiduciary ~~shall~~ *should* in.....
(6) other resources of the beneficiaries *who are eligible to receive discretionary payments of trust income or principal assets;*

This amendment will strike a fair balance between providing the fiduciary flexibility to meet the intent of the grantor while protecting trust beneficiaries from arbitrary and poor fiduciary actions by a trustee.

2) In Section 9(a)(2), the fiduciary is required to conduct an inquiry into certain qualifications of the investment agent to whom the fiduciary is delegating investment and management functions. We believe that the question of whether the investment agent has errors and omissions coverage should be added to the list of qualifications that a fiduciary

shall consider. This does not require that an investment agent have errors and omissions coverage. It merely requires the fiduciary to make an inquiry and take this into consideration if he or she feels it is appropriate. There are frequently substantial amounts of money at stake in these situations and therefore we believe it is entirely appropriate to have errors and omissions coverage listed as one of criteria that a fiduciary has to examine when making a delegation. The exact wording of the amendment is below:

Section 9.(a)(2) conduct an inquiry into the experience, performance history, *errors and omissions coverage*, professional licensing or registration, if any, and financial stability of the investment agent; and

With these amendments, the Kansas Bar Association fully supports the enactment of Senate Bill 503. We have worked with the Kansas Trial Lawyers Association on these two amendments. They are supportive of both amendments.

It is our belief that the bill accomplishes what the proponents' desire in the bill while still retaining the Kansas-specific language that is in current law. I thank you for the opportunity to present this testimony and am happy to stand for questions.

Testimony on Senate Bill No. 503

Daryl Craft
for the
Kansas Bankers Association Trust Division

The Kansas Bankers Association Trust Division opposed Senate Bill 503 as it was originally introduced. The bill was amended substantially in the Senate Judiciary Committee, and now the KBA Trust Division generally supports the bill, but believes that a couple of changes need to be made.

First, Section 1(c) provides a series of items that a fiduciary *shall* consider when making investment decisions. It is our position that the word *shall* should be replaced with the word *should*. This will allow a fiduciary to follow the intent of the prudent investor act and yet allow for flexibility in meeting the goals of the trust grantors.

Second, Section 1(c)(6) needs to include language defining what degree of beneficiary a fiduciary would need to investigate the resources of. As amended the bill would require a review of all manner of beneficiaries...current, remainder, future, potential, etc. The KBA Trust Division proposes that the following language be added...(6) other resources of the beneficiaries *who are eligible to receive discretionary payments of trust income or principal assets.*

With the addition of the two changes detailed here, the KBA Trust Division supports Senate Bill 503. We would respectfully ask that you incorporate these changes and then vote in favor of the bill.

Daryl V. Craft

Legislative Chairperson
KBA Trust Division

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Statement to:
House Committee on Financial Institutions
Senate Bill 445
Monday, March 13, 2000

Mr. Chairman and members of the Committee, my name is George Barbee, and I am appearing today on behalf of the Kansas Association of Financial Services. KAFS membership is made up of rather large financial service companies, such as Household Finance, Norwest, Associates, American General, and others. These companies make loans under the statutes, rules, and regulations of the Uniform Consumer Credit Code (UCCC). You will recall that the UCCC received considerable attention last year under the 1999 Senate Bill 301.

The amendments of 1999 were many and balanced between consumer protection items, additional regulatory powers, and improvements to lending practices. It is not surprising that some fine-tuning would follow.

In Senate Bill 445 as amended there are two suggested changes proposed by the consumer credit industry. The first is found on page 2, line 4, of the bill. The bill defines: "appraised value" means, with respect to any real estate at any time, the greater of:

- (a) the total appraised value of the real estate, as reflected in the most recent records of the tax assessor of the county in which the real estate is located; or
- (b) the fair market value of the real estate, as reflected in the written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months.

The amendment would insert the word "either" in place of the words "the greater of," so that a lender is not required to acquire two appraisals.

The second amendment is found on page 8, line 43 and page 9, lines 1 through 4. It would change the notice referred to on line 29 to be given within three days instead of five days.

In line 39 the notice is often referred to as the "right of rescission." The borrower has the right to change their mind. If they do change their mind, they are allowed some refunds of the application fees paid to the lender. The Kansas five days requirement is not consistent with Federal law, which is three days, in a Federal regulation known as "Reg Z."

Mr. Chairman, thank you for the opportunity to request adoption of these amendments. I would be glad to stand for questions.

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