

Approved: _____

Date *March 1, 2000*

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on February 21 , 2000 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Dr. William Wolff, Legislative Research
Ken Wilke, Office of Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Senator Tim Emert
Deborah Pearlman, Uniform Law Commission, Chicago
Betty Corbin, Corbin Investments, Towanda
Doug Pringle, Commerce Bank, Wichita
Steve Harmon, Butler County Community College
Foundation
Jim Bush, Kansas Bar Association
Gary D. White, Kansas Trial Lawyer's Association

Others attending: (See Attached)

Hearing on SB 503 - Uniform Prudent Investors Act

Senator Tim Emert explained that the act reverses common law rules that restrict the investment powers of trustees and fiduciaries by allowing them to utilize modern portfolio theories to guide investment decisions (Attachment 1). Advantages of the act over common law include:

- Better return for beneficiaries
- Protection of the trust corpus through diversification of assets
- Trustees can invest to counter the effects of inflation
- Trustee can acquire investment services for enhancement of knowledge
- Lifts archaic restrictions on types of assets available for investment
- Overall performance of assets in a trust is used in setting performance standards
- Specific needs of each trust are addressed rather than be subordinate to generic investment rules
- Provides uniformity of law necessary in an interstate investment environment. Thirty-four states have adopted the Act.

Deborah Pearlman, Uniform Law Commission, explained their purpose is to discuss and redraft laws which need to be uniform in order to conduct business efficiently from state to state (Attachment 2). This bill merely cleans up the statutes and brings into uniformity (primarily numbering and order) what is already part of the statutes of Kansas. The Uniform Trust Act is the first comprehensive attempt at the national level to codify the law of trusts. The Act was crafted with the assistance and support of the National Banking Association and the American Bar Association. Kansas is one of the states which already has all the basics in their statutes but they are arranged differently than those in the Prudent Investors Act. However, this is not viewed as a contradiction.

Betty Corbin, Corbin Investments and member of the Butler County Community College Fund, explained how they have completely revised their investment portfolio to a fully diversified, risk-managed portfolio

CONTINUATION SHEET

(Attachment 3). They have used the Uniform Prudent Investor Act to formulate their current investment and spending policies. They have learned that diversification with accepted risk perimeters is acceptable. The BCCC Fund has grown considerably since they have adopted the practices formulated in the Uniform Prudent Investor Act.

Doug Pringle, Senior Vice-President and Trust Officer of the Commerce Bank of Wichita, spoke in support of this act and reviewed the following concepts addressed in the Act (Attachment 4):

- Provides that a corporate or other professional trustee who has greater than normal skills will be expected to use them in the performance of a trust.
- Incorporates the concept of the duty of loyalty owed by a trustee to the beneficiaries of a trust.
- Incorporates the duty of impartiality.
- Alters the concept of delegation of investment authority by a trustee by changing the legal relationship of the "investment agent" to the beneficiaries of a trust and by deleting the notice requirements contained in the statute.
- Act makes no reference to conservatorships.
- Act makes no reference to the concept of a trustee following written directions regarding trust property as does the statute.

Steve Harmon, Butler County Community College Foundation Director, attributed their success in maintaining and growing assets for their constituents to the investment management policy which was developed with the guidelines of the Uniform Prudent Investor Act (Attachment 5). The Uniform management of Institutional Funds Act needs updating to current investment standards due to its restrictive nature.

Jim Bush, Vice-President of the Kansas Bar Association, spoke in opposition to the bill because the current Prudent Investor Rule has served the state well since its inception in 1993 (Attachment 6). He presented a side-by-side comparison of the existing and proposed legislation and again reiterated that the current law contains aspects that are specifically designed with Kansas in mind.

Gary D. White, Jr., Kansas Trial Lawyer's Association, stated that the Uniform Prudent Investor Act would repeal K.S.A. 17-5004 and would be detrimental to beneficiaries in the following respects (Attachment 7):

- Proposed legislation makes it easier for a trustee to delegate his or her fiduciary duties and escape liability.
- Current law sets a fairly strict standard that a fiduciary must meet before delegating his or her duties to another investment agent.

Mr. White said that the changes suggested in the proposed legislation would violate the traditional high standard of care owed under the "prudent person" rule and make it easier for fiduciaries to escape liability.

Written testimony in opposition was presented by Daryl Craft on behalf of the Kansas Bankers Association Trust Division (Attachment 8).

The meeting was adjourned at 10:00 a.m. The next meeting will be held on February 22, 2000.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

GUEST LIST

DATE: Feb. 21, 2000

NAME	REPRESENTING
Bob Williams	Ks. Pharmacists Assoc.
Bryce Huber	" " "
Betty Corbin	Corbin Investments, Inc
Doug Pringle	Attorney
Steve Harmon	Ottawa County Comm. College Foundation
Paul Davis	Kansas Bar Assn.
Jim Bush	Kansas Bar Assn.
Edward Pomeroy	Uniform Law Commission
Shaun Moran	AARP
John R. Perelman	NCCUSL
Bill Sneed	HIAA
Kevin Berone	Hein/Weir chkd.
Bob Anderson	Ks. Pharmacists Assoc.
Kevin Davis	Am Family Ins
David Hanson	Ks Insur Assns
Stacy Kramer	Winton Room, Inc.
Tom Henderson	KS Facial Leverage Assoc.
Stacy White	KTLA
BARK Conant	KTRA
Danielle Nee	DFA

TIM EMERT

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 JOINT COMMITTEE ON STATE BUILDING
 CONSTRUCTION

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

KANSAS SENATE
 OFFICE OF THE MAJORITY LEADER

Testimony
Senator Tim Emert
Senate Financial Institutions and Insurance
February 21, 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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Senator Tim Emert
February 21, 2000
Testimony
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.

UNIFORM PRUDENT INVESTOR ACT

- A SUMMARY -

Trustees of trusts and like fiduciaries have been subject to rules severely restricting the types of investment modalities in which they can invest the assets of the trusts that they administer and manage. Interest-bearing instruments – safe income – of limited kinds (no junk bonds) are the limit of risk permitted or thought to be permitted under the traditional rules. Protect the paper value of the principal at all costs is the mandate for trustees. In addition, a trustee's performance is rated by the performance of each and every investment, singly, and not on the performance of the whole of the portfolio. And trustees have been precluded from obtaining professional investment help.

The result for trusts is modest income production at best without regard for the erosion of a trust's assets by inflation. Can it be that these rules miscalculate the real risk and actually jeopardize the assets of a trust rather than provide for their protection?

The answer is yes. And a remedy is now at hand in the Uniform Prudent Investor Act (UPIA), promulgated by the Uniform Law Commissioners in 1994. The adoption of this act by the state legislatures will correct the rules, based on false and damaging premises, that now govern the actions of trustees.

By no means does UPIA turn trustees into unrestrained speculators. It provides rules governing investment that, in fact, result in greater protection for the trust's assets while providing a prospect of better income. UPIA does not encourage irresponsible, speculative behavior, but requires careful assessment of investment goals, careful analysis of risk versus return, and diversification of assets to protect them. It gives the trustee the tools to accomplish these ends. UPIA requires trustees to become devotees of "modern portfolio theory" and to invest as a prudent investor would invest "considering the purposes, terms, distribution requirements, and other circumstances of the trust" using "reasonable care, skill, and caution."

The trustee has a list of factors which must be considered in making investment decisions, including "general economic conditions," "possible effect of inflation or deflation," "the expected total return from income and the appreciation of capital," and "other resources of the beneficiaries." The trustee must take tax consequences of investment decisions into account. There is a positive obligation to diversify assets "unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying." The trustee's obligations are significant, requiring sophisticated approaches to investment that really take into account the right risk-to-return ratio for the particular trust.

In addition, a trustee's performance in UPIA is measured by the performance of all the assets together. A loss with respect to a single asset does not mean that the trustee has violated his or her fiduciary responsibilities. The act takes the truly holistic approach to investment practices.

In return for these obligations, UPIA removes any restrictions upon the types of investment modalities which may be chosen in a trust's portfolio. It is quite possible, for example, to hold positions in high-interest bonds (junk bonds) or mutual funds investing in such bonds, in a diversified portfolio, if such an investment meets the needs of the particular trust in light of the risk/return analysis specific to that trust.

One of the boons to trustees of smaller trusts is the ability to invest in mutual funds. Mutual funds reduce investment risk by diversifying their portfolios. By using mutual funds, a trustee of a trust that does not have a large enough corpus to effectively diversify its assets can enhance diversification of the trust's portfolio to limit the trust's risk of loss.

UPIA also permits the trustee to delegate investment and management functions "that a prudent trustee of comparable skills could properly delegate under the circumstances." Careful selection of the agent and careful, periodic review of the agent's actions are part of the trustee's responsibility when delegating authority. An agent has a responsibility of reasonable care in conducting the delegated business of the trust.

Why is it that the prudent man rule of prior law may, in fact, jeopardize the assets in a trust? Some of the instruments in which trustees have been able to invest have become more volatile in price. Treasury bonds, for example, long thought to be safe investments, now fluctuate considerably in value with the fluctuation of interest rates. The former so-called safe investment may not be so safe anymore. In contrast, common stocks have shown consistently better returns over the years than bonds – yet trustees have been prevented from investing in common stocks. Stocks have been historically safer investments, therefore, in diversified portfolios than bonds have been. Trusts have been deprived of return at some greater risk by the antiquated rules that govern investment of their assets.

By far the most insidious damage to trust assets comes from inflation. If trustees cannot invest in modalities that exceed the rate of inflation in return, the inevitable result is diminution of the corpus of the trusts they manage. The beneficiaries of trusts so restricted lose in all ways, both with respect to income and principal.

The UPIA provides rules that can be modified or waived in the trust agreement. Any person who wishes to put property in trust and who wants to provide different standards of conduct for the trustee is permitted to do so under UPIA.

UPIA provides a reasonable approach to the investment of trust assets that better meets the needs of beneficiaries while preserving trust assets. It should become the law in every state as soon as possible.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership is comprised of 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.

BETTY A. CORBIN TESTIMONY

KANSAS SENATE COMMITTEE OF FINANCIAL INSTITUTIONS AND INSURANCE

February 21, 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 quantity 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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Testimony of Douglas S. Pringle, J.D. concerning Senate Bill No. 503 on Monday, February 21, 2000.

Senate Bill No. 503 would repeal K.S.A. 17-5004 (the "statute") and would adopt the Uniform Prudent Investor Act (the "act") which was adopted by the Commissioners of Uniform State Laws in 1994. Interestingly, most of the provisions of the act are already contained in the statute, as Kansas, in 1993, amended the statute to embody the principles established by the American Law Institute in its Restatement (Third) of Trusts: Prudent Investor Rule (1992). The act also draws upon the standards set forth in the restatement.

The act generally expounds upon the concepts contained in the statute. I would note the following:

1. Section 2(f) of the act provides that a corporate or other professional trustee who has greater than normal skills will be expected to use them in the performance of a trust. Kansas case law supports this change.
2. Section 5 of the act incorporates the concept of the duty of loyalty owed by a trustee to the beneficiaries of a trust. This is one of the most fundamental rules of trust law. A trustee must administer the affairs of a trust solely in the interests of the beneficiaries of the trust and exclude any semblance of self-interest.
3. Section 6 of the act incorporates the concept of the duty of impartiality. For example, a trustee must maintain an equitable balance between the interests of the income beneficiaries of a trust and the remaindermen of a trust who, of course, are ultimately to obtain the principal of a trust.
4. The act alters the concept of delegation of investment authority by a trustee by changing the legal relationship of the "investment agent" to the beneficiaries of a trust and by deleting the notice requirements contained in the statute.
5. The act makes no reference to conservatorships as does the statute.
6. The act makes no reference to the concept of a trustee following written directions regarding trust property as does the statute.

Subject to my comments as noted in 5 and 6 above, I am in support of the act. As I indicated above, Kansas was a forerunner in adopting many of the principles set forth in the act. I would urge the Kansas Legislature to begin to study the provisions of the Uniform Trust Act which is expected to be approved by the Commissioners of Uniform State Laws in July of this year. Other than the common law and case law, Kansas has very few statutes relating to the law of trusts. The Uniform Trust Act is the first comprehensive attempt at the national level to codify the law of trusts. States which have enacted the act will be encouraged to recodify it as part of the Uniform Trust Act.

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Testimony

Re: Uniform Prudent Investor Act
February 21, 2000

To: Banking and Finance Committee

From: Steve Harmon,
Butler County Community College Foundation Director

Thank you and good morning. I would like to add to the statements concerning the necessity of updating our codes on prudent investing and management of institutional and endowed funds for trusts and non-profit organizations such as college foundations.

As director of the BCCC Foundation, it is imperative that the Foundation Board Trustees I advise have the ability to maintain and grow our endowed funds with the utmost prudence and responsibility.

The BCCC Foundation has been successful in its endeavor to maintain and grow endowed assets for our constituents. Our success has been guided by a well-developed and researched investment management policy. This policy has been developed in conjunction with the guidelines of the Uniform Prudent Investor Act. *as our ethical compass.*

This act allows the board trustees to view the portfolio as a whole when determining risk versus return. It also allows our board to have full access to any and all appropriate gift vehicles to ensure our return is not gained with undo risk.

The current Uniform Management of Institutional Funds Act is a good one. However, it needs updating to current investment standards due to its restrictive nature.

→ express diversification → flexibility with gift vehicle → loyalty to beneficiaries
The trustees of the BCCC Foundation and I request that the committee consider the Uniform Prudent Investor Act. This act updates and improves on our current Article 36 UMIF Act.

importance

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This update would clarify the role a trustee plays when managing trusts and endowed funds.

The act strengths include:

- Identifying prudence in investing the portfolio as a whole.
- Strengthens the fiduciaries responsibility of balancing risk and return
- Eliminates the restrictions on type of gift vehicles and allows trustee to invest in appropriate gift vehicles that achieve our necessary risk/return objectives
- Strengthens the requirement that investments be diversified
- Strengthens the trustee's abilities to delegate investment management to appropriate professionals while still retaining responsibility with the trustees.

The form and concept of the Uniform Prudent Investor Act has been adopted by over 30 states since 1995. By not adopting the essential features of this act, KS Foundations and trusts officers may find themselves in violation of KS codes even if they are successful in maintaining excellent returns while managing low risks.

Thank you for reviewing the proposed Uniform Prudent Investor Act. The act is well researched and tested. I hope you will make the necessary changes to the current Article 36 using this act as a model.



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LEGISLATIVE TESTIMONY

February 21, 2000

TO: Chairman Don Steffes and Members of the Senate
Financial Institutions and Insurance Committee

FROM: Jim Bush, Vice President of the Kansas Bar Association

RE: Senate Bill 503

Mr. Chairman and Members of the Committee:

Thank you for allowing me to address the committee regarding Senate Bill 503. Senate Bill 503 represents an overhaul of the Kansas Prudent Investor Rule that was enacted in 1993. The Kansas Bar Association was heavily involved in the process of drafting the Prudent Investor Rule in 1993 and appears today to oppose Senate Bill 503. We do not believe that Senate Bill 503 has been introduced because there are problems with the current law that need to be corrected through legislation. Rather, we believe that the current Prudent Investor Rule, codified in K.S.A. 17-5004, has served us well. Furthermore, the KBA doesn't believe that any changes are necessary at this time. In 1994, an almost identical piece of legislation was introduced. The Kansas Bar Association opposed that bill for the same reasons.

The current Prudent Investor Rule was modeled after the Prudent Investor Rule as promulgated by the American Law Institute in its Restatement (Third) of Trusts (1992). In drafting the Kansas version, the KBA borrowed from the Illinois act as it contained some important differences that we felt were relevant and beneficial to Kansas. The most important of these being 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.

I believe it is helpful to understand the differences between the current Prudent Investor Rule and the Uniform Prudent Investor Act that is embodied in Senate Bill 503. Therefore, I have prepared a side-by-side comparison of the two below:

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<u>Section</u>	<u>Kansas Prudent Investor Rule</u>	<u>Uniform Prudent Investor Act</u>
1A	This states the general rule as to what factors should be considered under a “prudent investor rule”; the crux of the rule is based on modern portfolio theory which looks not at each investment in isolation, but at the portfolio as a whole.	These factors are outlined in sections 1 and 2 of the act. The uniform act does hold an expert (professional fiduciary) to a higher standard of care; this is mentioned at section 2(f).
1B	The rule that no specific investment or course of action, taken alone, is considered to be prudent or imprudent is mentioned. The Kansas rule adds the “business judgment” rule that is not a part of the uniform act.	These factors are outlined in section 2 of the act.
1C	The duty to diversity is stated in a separate paragraph in the act.	This principle is outlined in section 3 of the act.
1D	This explains the duty of the trustee to review portfolio assets at inception of the trust; the Kansas rule expands on this original asset rule by allowing the fiduciary to retain certain assets (such as a closely held business or farmland) that might not otherwise be considered to be prudent investments.	This principle is outlined in section 4 of the act.
1E	This section outlines the duty of the fiduciary to consider both the need for income and safety of principal.	This duty of impartiality is outlined in sections 5 and 6 of the act.
1F	The various factors that a trustee should consider in making investment decisions are outlined.	These factors are outlined in section 2, paragraph (c) of the act.
2	This allows a scrivener of a trust to change the application of the rule by way of expansion or restriction of the rule.	This is contained in section 1b of the act.

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| 3 | This allows the court to permit the fiduciary to deviate from the terms of the trust with respect to the investments. | This is not contained in the act. |
| 4 | This is the construction of terms and definitions with respect to the Prudent Investor rule. | This contained in section 10 of the act. |
| 5 | This contains the right of a trustee to delegate the investment responsibility. The Kansas act allows for such if requirements are met. | This is contained in section 9 of the act, but does not contain the added rules about delegation. |

The Kansas version also contains other aspects that are specifically designed with Kansas in mind. This includes 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 current Prudent Investor Rule has been tailored to the needs of Kansas trustees, grantors and beneficiaries. A great deal of time and careful thought was expended by the KBA and other interested parties when the current law was drafted in 1993. If the proponents of Senate Bill 503 have some specific complaints with the current law, we are more than happy to engage in a dialogue regarding how the law can be improved. However, it seems that by enacting this legislation, we would be scraping a law that has been specifically tailored to Kansas in favor of a uniform act only because the act is "uniform". The KBA believes it is poor public policy to require that all legislation be in compliance with uniform laws.

For the reasons stated above, the Kansas Bar Association respectfully opposes enactment of Senate Bill 503. I would be happy to stand for questions and I thank you for your time and consideration.

Jerry R. Palmer *
LJ Leatherman



Kirk W. Lowry
Gary D. White Jr.

TESTIMONY IN OPPOSITION TO SENATE BILL NO. 503

My name is Gary D. White, Jr. and I am testifying today on behalf of the Kansas Trial Lawyers Association in opposition to Senate Bill No. 503. We respectfully request that you oppose this legislation.

In 1993, Kansas adopted the Prudent Investor Rule, which established fairly specific duties of trustees and conservators in managing the assets of a beneficiary. (See K.S.A. 17-5004). The Uniform Prudent Investor Act (SB 503) would repeal K.S.A. 17-5004 and would be detrimental to beneficiaries in the following respects:

1. The proposed legislation makes it easier for a trustee to delegate his or her fiduciary duties and escape liability.
2. The current law sets a fairly strict standard that a fiduciary must meet before delegating his or her duties to another investment agent.

At common law, a trustee could *not* delegate his or her fiduciary duties. This general rule has been maintained with fairly strict requirements as to the limited circumstances and specific ways in which duties could be delegated. Under current Kansas law, the fiduciary must perform several acts before delegating his duties:

- a) Exercise reasonable care, skill and caution in the selection of the investment agent, in establishing the scope and specific terms of any delegation and in periodically reviewing the agent's actions in order to monitor overall performance and compliance with the scope and specific terms of the delegation.
- b) The fiduciary must conduct an inquiry into the experience, performance history, professional licensing or registration, if any, and financial stability of the investment agent.
- c) The investment agent shall be subject to jurisdiction of the courts of this state.
- d) The investment agent shall be subject to the same strict standards that are applicable to the fiduciary.

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- e) The investment agent shall be liable to the beneficiaries of the trust and to the designated beneficiary to the same extent as if the agent were a designated fiduciary in relation to the exercise or nonexercise of the investment function.
- f) If a trust, the trustee shall send written notice of his or her intention to begin delegating investment functions under this section to the beneficiaries eligible to receive income from the trust at least 30 days prior to the delegation.

Only if all of the above requirements are met does the fiduciary escape liability for the investment decisions or actions of the investment agent to which investment functions are delegated. K.S.A. 17-5004(b)(3).

Under the proposed legislation, it is much easier for a fiduciary to delegate his or her duties and much more difficult to assert liability against them. The proposed legislation does not repeat the common law rule that there is a duty not to delegate. Instead the legislation provides that a fiduciary may delegate such functions and only requires the exercise of reasonable care in doing so without consideration of many of the requirements that exist under current law. (Section 9)

This difference is important for several reasons. The trend in investment business is for trust departments or brokers to simply "corral" assets and to turn them over to an investment or brokerage firm for management. Unfortunately, if the legislation is enacted, the high standard of care expected of fiduciaries can be avoided by delegating the functions. The proposed legislation for example, does not require that the fiduciary check on the investment agent's registration or licensing, nor his or her investment performance, nor on his or her financial stability. This lessens the fiduciary's duties and increases the ease with which fiduciaries can hand off accounts to brokerage firms and unlicensed or judgment proof investment advisers. As such, the proposed legislation would have an adverse impact on beneficiaries and lessen the fiduciary duties owed to them.

Both at common law and under current Kansas law, a fiduciary has the ultimate liability for the management of assets entrusted to him or her. The changes suggested in the proposed legislation would violate the traditional high standard of care owed under the "prudent person" rule and make it easier for fiduciaries to escape liability. For these reasons, I ask you on behalf of the Kansas Trial Lawyers Association to oppose the subject legislation.

Testimony on Senate Bill No. 503

Daryl Craft
for the
Kansas Bankers Association Trust Division

The Kansas Bankers Association Trust Division wishes to go on record as being opposed to Senate Bill 503, which amends the Kansas Uniform Prudent Investor Act, KSA 17-5004, enacted during the 1993 legislative session.

The Kansas act was modeled after the Prudent Investor Rule promulgated by the American Law Institute, and tailored specifically to the needs of Kansas investors. Since it was enacted the existing statute has functioned as it was intended, and the Trust Division sees no need to adopt revisions contained in SB 503, simply because it represents a different "uniform" act. The current statute contains the basic content and advantages of the uniform act, and it meets the specific needs of our state.

We would respectfully ask that you vote against Senate Bill 503.

Legislative Chairperson
KBA Trust Division