

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 31, 2001 in Room 527-S of the Capitol.

All members were present except: Representative Bob Tomlinson - Excused

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

Conferees appearing before the committee: Judi Stork, Office of the State Bank Commissioner
Kevin Glendening, Office of the State Bank Comm.
Chuck Stones, Kansas Bankers Association
Jerel Wright, Kansas Credit Union Department
Derl Treff - Pooled Money Investment Board
Whitney Damron, Kansas Payday Loan Assoc.

Association Others attending: See attached list

Representative Cox called for bill introductions.

Judi Stork, Deputy State Bank Commissioner, requested the committee introduce two conceptual bills. 1) The Senate Committee on Financial Institutions and Insurance challenged the Banking Board a year or so ago to a) look at and review the banking powers and b) come up with suggestions for change. The OSBC has spent a year coming up with changes and still have a few they want to add. It is a banking board bill and the banking board will testify for it.

Chairman Cox said without objection the bill would be introduced.

2) The second bill had to do with the lending limits statute. They have a conceptual amendment that would change the portion of the statute that deals with dealer loans and when they attribute a loan to a dealer that has dealer papers.

Chairman Cox said without objection the bill would be introduced.

Kevin Glendening, Deputy State Bank Commissioner, said he had one conceptual bill introduction with amendments to the Kansas Mortgage Business Act. The amendments deal with including some prohibited acts in the statute as well as implementing language that will allow for continuing education requirements for loan brokers.

Chairman Cox said without objection the bill would be introduced.

Chuck Stones, Kansas Bankers Association said he had a request for a bill introduction that would readdress a highly technical bill the committee looked at last year, The Prudent Investor Rule. There is a provision from the old law that needs to be reinserted plus there are several technical amendments. (**Attachment 1**)

Chairman Cox said without objection the bill would be introduced.

Jerel Wright, Kansas Credit Union Department, had a bill introduction request which has two parts to it and possibly other cleanup items. The first deals with Kansas statutes that deal with reserving requirements for Kansas Credit Unions. The changes are due to a federal law mandating minimum capital requirements for all federally insured credit unions in Kansas. They are making sure that state-chartered institutions are not required to reserve at a higher level than federally-chartered institutions. The second provision deals with the foreign credit union statute that deals with state-chartered credit unions, located outside the state of Kansas, coming into Kansas and doing business. They are asking for rule and regulatory authority so they can be more specific as to what is required of them.

Chairman Cox said without objection the bill would be introduced.

CONTINUATION SHEET

MINUTES OF THE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on January 31, 2001.

Chairman Cox opened the hearing on: HB 2169- Investment of state moneys, securities pledged

Proponent:

Derl Treff, Pooled Money Investment Board (PMIB), said HB 2169 proposes the amendment of two statutes. First, that K.S.A. 75-4221 be amended to require state agencies, rather than the Pooled Money Investment Board, to ensure that banks pledge sufficient collateral to secure deposits in the agency's bank accounts. The PMIB only receives a monthly statement whereas the agencies work with their banks on a daily basis and are in a much better position to ensure that adequate securities have been pledged. The bill also amends K.S.A. 75-4237 by replacing the word "bid" with the word "request." It relates to Kansas banks seeking to obtain investments of state moneys. Practically speaking, regardless of the rate "bid" by the banks, the rate paid on the deposit is determined by the market rate set by the PMIB, which is already established in Section 2.b of K.S.A. 75-4237. (Attachment 2)

Chairman Cox closed the hearing on: HB 2169 and opened the hearing on: HB 2193 - Payday loans, limitations on number of loans to same borrowers.

Proponents:

Kevin Glendening, Office of the State Bank Commissioner, said that under the Uniform Consumer Credit Code (UCCC), a lender may not use multiple loan agreements in order to increase the financial charge paid by a borrower. When examining payday loan operations, his office has found violations of the provision. For example, instead of making one loan for \$400 and collect a fee amount of \$29, the lender would instead make four \$100 loans and collect \$60 in fees. The loan may be made the same day or over a period of several days. HB 2193 would serve two purposes. First, by establishing a limit on the number of loans a payday lender could have outstanding to a consumer at any given time. The potential for the lender to increase fees by advancing funds through separate loans over several days would be restricted. Second, the disclosure notice will hopefully raise the awareness of consumers regarding multiple loan practices, and perhaps improve their selection of a payday lender. (Attachment 3)

Whitney B. Damron, representing the Kansas Payday Loan Association, appeared in support of HB 2193 which would provide greater information to the consumer and prohibit the practice of loan splitting by payday loan operators. The Kansas Payday Loan Association is comprised of approximately 15 store owners with approximately 25 locations in Kansas. The association was created several years ago when the Legislature last considered amendments to the payday loan statutes. (Attachment 4)

Chairman Cox closed the hearing on HB 2193 and said the committee would work the two bills.

HB 2169

Representative Minor made a motion to pass the bill out favorably. Representative Burroughs seconded the motion. The motion carried.

HB 2193

Representative Merrick made a motion to pass the bill out favorably. Representative Kauffman seconded the motion. The motion carried.

Chairman Cox presented the minutes for the January 29th meeting.

Representative Grant made a motion to approve the minutes as written. Representative Vickrey seconded the motion. The motion carried.

The meeting adjourned at 3:59 p.m.

The next meeting is scheduled for Monday, February 12, 2001.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: January 21, 2001 pg 1 of 2

NAME	REPRESENTING
<i>Molly [unclear]</i>	CREDIT UNION OF JO CO.
<i>Lee [unclear]</i>	" " " " "
<i>Sally Kasser</i>	KANSAS Dept. of CU'S
DAWN SMITH	CREDIT UNION OF JO. CTY
<i>John Beverlin</i>	CREDIT UNION OF JOHNSON COUNTY
DALE COLLINS	CREDIT UNION OF JOHNSON COUNTY
MARK KASSON	KANSAS CITY METROPOLITAN CREDIT UNION
Marla Goodrich	PMIB
SCOTT GATPS	PMIB
DERL TREFF	P m i B
Terel Wright	Ks Dept of Credit Unions
Greg Winkler	C.U. Service Center
Marilyn Wells	Catholic Family Fed. Cr. Union
Randall Wells	catholic Family Fed. cr. union
ERICH SCHAEFER	GOLDEN PLAINS CREDIT UNION
Mary Linstead	KC Filmore 7 CU
JOAN L. DAVIS	KANSAS CREDIT UNION
<i>Lee Williams</i>	Aviation Associates C. U.
Sonya Allen	Office of the State Bank Commissioner



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 31, 2001

TO: House Committee on Financial Institutions

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: Introduction of Bill: Prudent Investor Rule

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the KBA Trust Division to respectfully request introduction of a bill concerning the Uniform Prudent Investor Act.

As many of you will recall, the 2000 Kansas Legislature passed a newly revised version of the Uniform Prudent Investor Rule. Prior to the 2000 Legislative Session, there was a Prudent Investor Rule in the statutes that was found in Chapter 17. In the process of modifying the pre-2000 rule, members of the Kansas Bankers Association Trust Division and the Kansas Bar Association Real Estate, Probate and Trust Section discovered that an important section of the old Prudent Investor Rule had been omitted.

This bill would reinstate this section of the pre-2000 Prudent Investor Rule previously found in K.S.A. 17-5004(d), into the new Rule found at K.S.A. 58-24a02. In addition, it picks up technical amendments due to the change in statutory cite of the Prudent Investor Rule and moves related sections from Chapter 17 to Chapter 58.

Thank you for your time and we ask that you act favorably on this request for introduction.

Prudent Investor Rule: Proposed Amendments

16-324. Same; trust fund established in trust company or federally insured institution authorized to do business in state. A cemetery merchandise trust fund established pursuant to K.S.A. 16-321 or 16-322, and amendments thereto, shall at all times be in the custody of a trust company or a federally insured bank or savings and loan association which is authorized to do business in this state. Any cemetery merchandise trust funds may be invested, reinvested, exchanged, retained, sold and managed in the manner and subject to the requirements of K.S.A. ~~17-5004~~ **58-24a02**, and amendments thereto, and, at the election of the trustee, as a part of common trust funds. (L. 1994, ch. 34, § 2; July 1.)

17-1311. Permanent maintenance fund; requirements; use. Such corporation shall maintain, in a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas, a percentage of the purchase price of each burial lot sold by it, or any payment thereon, not less than 15% thereof, for the permanent maintenance of the cemetery within which the burial lot lies, but the total amount set aside shall not be less than \$25 for each burial lot at the time of conveyance of such lot. Deposits to the permanent maintenance fund shall be made within 45 days of receipt of moneys for which deposits are required to be made. Moneys placed in such fund under the provisions of K.S.A. 17-1308, and amendments thereto, shall be credited for the purposes of fulfilling such requirement. Moneys in such fund may be held and invested to the same extent as is provided in K.S.A. ~~17-5004~~ **58-24a02**, and amendments thereto, but the total amount of money invested in any mortgage upon real property shall not exceed an amount equal to 75% of the market value of such property at the time of such investment. The income of the permanent maintenance fund shall be used exclusively for the maintenance of the cemetery. No part of the principal of the fund shall ever be used for any purpose except for such investment. In no event shall any loan of the funds be made to any stockholder, officer or employee of such cemetery corporation, or to any person related, by blood or marriage, to a stockholder, officer or employee. The treasurer of such corporation may deposit, to the credit of such fund, donations or bequests for the fund and may retain property so acquired without limitation as to time and without regard to its suitability for original purchase. As used in this section, the term "burial lot" means a plotted space for one grave. Such maintenance shall include, but not be limited to, mowing, road maintenance and landscaping, but shall not include administrative costs, expense of audits or the portion of any capital expense for equipment used to maintain portions of a cemetery not sold for burial purposes or in use for grave sites. (L. 1994, ch. 229, § 4; July 1.)

Repeal. (Move to Chapter 58) 17-5002. Investment of certain funds in shares or deposits of savings and loan associations, savings banks and credit unions. (a) Administrators, executors, conservators, trustees, insurance companies and other financial institutions, charitable, educational, eleemosynary corporations and organizations are authorized, in addition to investments now authorized by law, to invest funds which they are authorized by law to invest, in shares or savings deposits of federally insured savings and loan associations or federally chartered savings banks with main or branch offices, as defined in K.S.A. 1998 Supp. 12-1675a, in the state of Kansas and in credit unions which are, in whole or in part, insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto, and such investment shall be deemed and held to be legal investments for such funds.

(b) The governing body of any municipal corporation or quasi-municipal corporation, county, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or division in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest the same subject to and as provided by K.S.A. 9-1401, 9-1402, 9-1405, 9-1407, 12-1675 and 12-1676 and amendments thereto. (L. 1997, ch. 180, § 19; April 17.)

17-5002a. Repealed.

Repeal. (Move to Chapter 58) 17-5003. Investment of fiduciary or trust funds in certain loans. That in addition to all other authority now provided by law for the investment of funds by executors, administrators, conservators, trustees, or other fiduciaries, all executors, administrators, conservators, trustees or other fiduciaries may legally invest fiduciary or trust funds in any loan which has insurance or guaranty under the servicemen's readjustment act of 1944 as from time to time in force, or as to which a commitment for any such insurance or guaranty has been made without regard to the limitations, restrictions and requirements of any other statutes, or of any rules of law respecting investments by executors, administrators, conservators, trustees, or other fiduciaries. (L. 1965, ch. 150, § 8; Jan. 1, 1966.)

17-5004. Repealed.

Repeal. (Move to Chapter 58) 17-5005. Standards for investments by fiduciaries; deviation from instrument or court order not authorized; investment in investment company or trust. Nothing contained in this act shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but:

(a) ~~The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of K.S.A. 17-5004 and amendments thereto; and~~

Prudent Investor Rule

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~~(b)~~ (a) Whenever any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, directs, requires, authorizes or permits the fiduciary to invest in securities of a certain kind or class, the fiduciary, in the absence of an express provision to the contrary, may buy, hold and sell such securities either directly or in the form of shares of or other interests in any open-end or closed-end management type investment company or investment trust registered under the investment company act of 1940, or any common trust fund of a state or national bank or trust company as authorized by K.S.A. 9-1609 and amendments thereto, if the portfolio of such investment company, investment trust or common trust fund is limited to securities of the designated kind or class and to repurchase agreements fully collateralized by such securities.

~~(e)~~ (b) The fact that such bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise and is receiving reasonable remuneration for those services, shall not preclude such bank or trust company from investing or reinvesting in the securities of an open-end or closed-end management investment company or investment trust registered under the investment company act of 1940 (15 U.S.C. section 80a-1 *et seq.*) as amended.

With respect to any fiduciary account funds so invested, the bank or trust company or an affiliate of the bank or trust company shall conspicuously disclose by statement, prospectus, or otherwise to all current income beneficiaries of a fiduciary account the rate, formula or other method by which the remuneration for those services, provided to the investment company or investment trust, is determined. The investment into such investment company or investment trust must be in the best interest of the beneficiary of the fiduciary account, must meet the prudent investor standard, as defined in K.S.A. 17-5004 58-24a02 and amendments thereto, and the total amount of all fees, charges and compensation derived from the fiduciary account, and remuneration for services provided to the investment company or investment trust, by the bank or trust company or an affiliate of the bank or trust company shall be reasonable. (L. 1994, ch. 27, § 1; July 1.)

Repeal. (Move to Chapter 58) 17-5006. Same; court's power to permit deviation not restricted. Nothing contained in this act shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property. (L. 1949, ch. 319, § 3; June 30.)

Repeal. 17-5007. Same; scope of act. The provisions of this act shall govern fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made. (L. 1949, ch. 319, § 4; June 30.)

Prudent Investor Rule

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58-9-104. Trustee's power to adjust. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, pursuant to K.S.A. 17-5004 2000 Supp. 58-24a02 and amendments thereto, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in subsection (a) of section 3, and amendments thereto, that the trustee is unable to comply with subsection (b) of section 3, and amendments thereto.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1) The nature, purpose, and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
- (9) the anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

- (1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- (4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
- (5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
- (6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

Prudent Investor Rule

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K.S.A. 58-9-104, cont.

(7) if the trustee is a beneficiary of the trust; or

(8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

58-1202. Powers of trustee conferred by trust or by law; prudent investor rule. (a)

The trustee has all powers conferred upon the trustee by the provisions of this act unless limited in the trust instrument.

(b) An instrument which is not a trust under subsection (1) of K.S.A. 58-1201 and amendments thereto may incorporate any part of the uniform trustees' powers act by reference.

(c) Unless the instrument expressly states otherwise the prudent investor rule, as expressed in K.S.A. ~~17-5004~~ **58-24a02**, shall apply as the standard for the exercise of the powers conferred upon a trustee by the uniform trustees' powers act. (L. 1993, ch. 238, § 2; July 1.)

58-1204. Trustee's office not transferable. Except as provided in K.S.A. 9-2107 and ~~17-5004~~ **58-24a02**, and amendments thereto, the trustee shall not transfer such trustee's office to another or delegate the entire administration of the trust to a cotrustee or another. (L. 1995, ch. 176, § 2; July 1.)

58-24a02. (a) A fiduciary shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the fiduciary shall exercise reasonable care, skill and caution.

(b) A fiduciary's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a fiduciary shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) the possible effect of inflation or deflation;

K.S.A. 58-24a02, cont.

- (3) the expected tax consequences of investment decisions or strategies;
 - (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
 - (5) the expected total return from income and the appreciation of capital;
 - (6) other resources of the beneficiaries who are eligible to receive discretionary payments of trust income or principal assets;
 - (7) needs for liquidity, regularity of income and preservation or appreciation of capital; and
 - (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- (d) A fiduciary shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (e) A fiduciary may invest in any kind of property or type of investment consistent with the standards of this act.
- (f) A fiduciary who has special skills or expertise or is placed in a fiduciary capacity in reliance upon the fiduciary's representation that the fiduciary has special skills or expertise, has a duty to use those special skills or expertise. (L. 2000, ch. 80, § 2; July 1.)

(g) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property of a trust which is revocable or amendable, a trustee following written directions regarding the property of the trust that are received by the trustee from the person or persons then having the power to revoke or amend the trust or from the person or persons, other than the trustee, to whom the grantor delegates the right to give such written directions to the trustee shall be deemed to have complied with the foregoing standards provided in subsections (a) through (d). The trustee is authorized to follow such written directions regardless of any fiduciary obligations to which the directing party may also be subject.

72-17,125. School district retirement systems; investment of fund with balance greater than \$50,000; prudent investor rule; certain investments authorized for funds with balance less than \$50,000.

(a) The board of education of any school district to which K.S.A. 72-1727, 72-1760, 72-1781, 72-1789, 72-17,100, 72-17,108 or 72-17,121, and amendments thereto, apply, and the retirement fund of which has a balance greater than \$50,000, may invest and reinvest moneys in the retirement fund of the school district and to acquire, retain, manage, including the exercise of any voting rights, and dispose of investments of such fund in accordance with this subsection and K.S.A. 72-17,126 to 72-17,131, inclusive, and amendments thereto. The provisions and standards provided in K.S.A. 47-5004 **58-24a02** and amendments thereto shall apply in investing or reinvesting moneys in such fund.

(b) The board of education of any school district to which K.S.A. 72-1727, 72-1760, 72-1781, 72-1789, 72-17,100, 72-17,108 or 72-17,121, and amendments thereto, apply, and the retirement fund of which has a balance of \$50,000 or less, may invest and reinvest moneys in such fund only in direct obligations of, or obligations the principal of which and interest on which are unconditionally guaranteed by, the United States of America, or in time deposit open accounts in any bank located in Kansas, except that the amount so invested in a bank shall be secured in the manner prescribed by subsections (a) to (e), inclusive, of K.S.A. 75-4218, and amendments thereto.

Prudent Investor Rule

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- 74-8316. Kansas technology enterprise corporation; technology-based venture-capital fund authorized; authorized investments fund limitations.** (a) The Kansas technology enterprise corporation is hereby authorized to facilitate the establishment of a technology-based venture-capital fund in which the corporation may invest only moneys from the economic development initiatives fund specifically so allocated. The corporation may credit also the fund with gifts, donations or grants received from any source other than state government and with proceeds from the fund. Investments in the fund shall qualify for the income tax credit allowed pursuant to K.S.A. 74-8304, and amendments thereto.
- (b) The technology-based venture-capital fund may invest the assets as follows:
- (1) To carry out the purposes of this act through investments in qualified securities and through the forms of financial assistance authorized by this act, including:
- (A) Loans, loans convertible to equity, and equity;
 - (B) leaseholds;
 - (C) management or consultant service agreements;
 - (D) loans with warrants attached that are beneficially owned by the fund;
 - (E) loans with warrants attached that are beneficially owned by a party other than the fund; and
 - (F) the fund, in connection with the provision of any form of financial assistance, may enter into royalty agreements with an enterprise.
- (2) To invest in such other investments as are lawful for Kansas fiduciaries pursuant to K.S.A. ~~17-5001 et seq.~~ 2000 Supp. 58-24a02 and amendments thereto.
- (c) Distributions received by the corporation may be reinvested in any fund consistent with the purposes of this act.
- (d) The corporation may invest only in a fund whose investment guidelines permit the fund's purchase of qualified securities issued by an enterprise as a part of a resource and technology project subject to the following:
- (1) Receipt of an application from the enterprise which contains:
- (A) A business plan including a description of the enterprise and its management, product and market;
 - (B) a statement of the amount, timing and projected use of the capital required;
 - (C) a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created; and
 - (D) such other information as the fund manager or the fund's board of directors shall request.
- (2) Approval of the investment by the fund may be made after the fund manager or the fund's board of directors finds, based upon the application submitted by the enterprise and such additional investigation as the fund manager or the fund's board of directors shall make and incorporate in its minutes, that:
- (A) The proceeds of the investment will be used only to cover the venture-capital needs of the enterprise except as authorized by this section;
 - (B) the enterprise has a reasonable possibility of success;
 - (C) the fund's participation is instrumental to the success of the enterprise because funding otherwise available for the enterprise is not available on commercially feasible terms;
 - (D) the enterprise has the reasonable potential to create a substantial amount of employment within the state;
 - (E) the entrepreneur and other founders of the enterprise have already made or are contractually committed to make a substantial financial and time commitment to the enterprise;
 - (F) the securities to be purchased are qualified securities;
 - (G) there is a reasonable possibility that the fund will recoup at least its initial investment; and
 - (H) binding commitments have been made to the fund by the enterprise for adequate reporting of financial data to the fund, which shall include a requirement for an annual report, or if required by the fund manager, an annual audit of the financial and operational records of the enterprise, and for such control on the part of the fund as the fund manager shall consider prudent over the management of the enterprise, so as to protect the investment of the fund, including in the discretion of the fund manager and without limitation, the right of access to financial and other records of the enterprise.
- (e) All investments made pursuant to this section shall be evaluated by the fund's investment committee and the fund shall be audited annually by an independent auditing firm.
- (f) The fund shall not make investments in qualified securities issued by enterprises in excess of the amount necessary to own more than 49% of the qualified securities in any one enterprise at the time of the purchase by the fund, after giving effect to the conversion of all outstanding convertible qualified securities of the enterprise, except that in the event of severe financial difficulty of the enterprise, threatening, in the judgment of the fund manager, the investment of the fund therein, a greater percentage of such securities may be owned by the fund.
- (g) At least 75% of the total investment of the fund must be in Kansas businesses.



POOLED MONEY INVESTMENT BOARD

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TESTIMONY ON HB 2169

by
Derl S. Treff
Director of Investments
Pooled Money Investment Board
January 31, 2001

The Honorable Ray L. Cox, Chairman
House Committee on Financial Institutions
Statehouse, Room 431-N
Topeka, Kansas 66612

Representative Cox and Committee Members:

This bill proposes the amendment of two statutes. First, K.S.A. 75-4221 to be amended to require state agencies to ensure that banks pledge sufficient collateral to secure deposits in the agency's bank accounts rather than the Pooled Money Investment Board. The agencies work with their banks on a daily basis and are in a much better position to ensure that adequate securities have been pledged. The PMIB receives only a monthly statement, which is not on a timely enough basis to track balances that fluctuate throughout the month.

We also request that K.S.A. 75-4237 be amended to replace the word "bid" with the word "request", relative to Kansas banks seeking to obtain investments of state moneys. Practically speaking, regardless of the rate "bid" by the banks the rate paid on the deposit is determined by the market rate set by the PMIB, which is already established in Section 2.b of K.S.A. 75-4237.

Adoption of these amendments would not require any additional personnel nor would it impact PMIB's operating expenses. It is expected that the fiscal impact on agencies with bank accounts would be minimal because confirming the level of securities pledged by the bank could be accomplished along with other activities required to monitor the accounts on a daily basis.

BILL GRAVES
GOVERNOR



Franklin W. Nelson
Bank Commissioner

Sonya L. Allen
General Counsel

Judi M. Stork
Deputy Bank Commissioner

Kevin C. Glendening
*Deputy Commissioner
Consumer and Mortgage*

OFFICE OF THE
STATE BANK COMMISSIONER

HOUSE COMMITTEE – FINANCIAL INSTITUTIONS

January 31, 2001

Testimony - HB 2193

Kevin Glendening, Deputy Commissioner

Mr. Chairman and Members of the Committee:

Under the Uniform Consumer Credit Code (16a-3-304) a lender may not use multiple loan agreements in order to increase the finance charges paid by a borrower. Our experiences in examining payday lending operations have shown that violations of this provision are a problem among some lenders. As an example, a consumer wants to borrow \$400, but rather than making one loan for the full amount and collecting a fee of \$29, the lender will instead make four \$100 loans and collect \$60 in fees. The loans may be made on the same day or over a period of several days. While on an individual basis the amounts may be small, a lender who systematically engages in this activity can profit considerably. In one case this past year, our examination revealed that over an approximate three month period one lender made multiple agreements with 145 borrowers which ultimately resulted in required refunds of \$10,000. In that case, the lender was also fined an additional \$10,000 for the violations. In other cases employees of some lenders, when questioned by our examiners, have said they were instructed to divide a consumer's loan request into \$100 incremental loans, or to advance the consumer the requested funds in separate loans over several days. Illegal multiple loans arranged in this fashion are the most difficult to prove.

HB 2193 would serve two purposes. First by establishing a limit on the number of loans a payday lender could have outstanding to a consumer at any given time, the potential for that lender to increase fees by advancing funds through separate loans over several days would be restricted. Second, the disclosure notice will hopefully raise the awareness of consumers regarding multiple loan practices, and perhaps improve their selection of a payday lender.

Finally, I should note that I am offering this amendment because I believe it would facilitate our enforcement of existing law regarding multiple loans, and probably represents the most conservative approach to addressing this problem.

Thank you Mr. Chairman, I will be happy to answer any questions of the committee.

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TESTIMONY

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

FROM: **Whitney Damron
On Behalf Of The
Kansas Payday Loan Association**

RE: **HB 2193 Payday Loans; Limitations on Number of Loans to
Same Borrowers.**

DATE: **January 31, 2001**

Good afternoon Chairman Cox and Members of the House Financial Institutions Committee. I am Whitney Damron and I appear before you this afternoon on behalf of my client, the Kansas Payday Loan Association, in support of HB 2193 which would provide greater information to the consumer and prohibit the practice of loan splitting by payday loan operators.

The Kansas Payday Loan Association is comprised of approximately 15 store owners with approximately 25 locations in Kansas. The Association was created several years ago when the Legislature last considered amendments to the payday loan statutes.

First of all, I would like to thank Mr. Glendening and the Office of the State Bank Commissioner for contacting me to discuss this legislation prior to its introduction. The Department has a history of providing helpful advice and service to payday loan operators in our state and we appreciate their courtesies.

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Following Mr. Glendening's call, I had the opportunity to visit with the officers of the Kansas Payday Loan Association and get their thoughts on this legislation prior to its introduction. All three officers thought the practice was currently prohibited and, if not, should be. We therefore informed the Department that we would support their bill.

In regards to the bill, the Kansas Payday Loan Association is not opposed to the notice provisions contained in HB 2193. Furthermore, the ultimate intent of the bill is to prohibit loan splitting and we are supportive of that prohibition.

I closing, I would note that many states have gone to a flat rate fee for all transactions, which would generally reduce the incentive for loan splitting and make enforcement simpler. If the Committee or the Department would like to one day move in this direction, we would be pleased to make some recommendations in this regard. Otherwise, we are pleased to stand with the office of the State Bank Commissioner today and support HB 2193.

Thank you.