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 (Attachment 3). They have used the Uniform Prudent Investor Act to formulate their current investment and

CONTINUATION SHEET

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 6):

- 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 7).

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