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HOUSE BILL NO. 140

Offered January 14, 2004

Prefiled December 29, 2003

A BILL to amend and reenact § 26-40.01 of the Code of Virginia, relating to those securities in which a fiduciary may invest.

 Patron—Kilgore

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 26-40.01 of the Code of Virginia is amended and reenacted as follows:**

§ 26-40.01. In what securities fiduciaries may invest; definitions.

A. As used in this section:

"Fiduciary" shall be defined as in § 8.01-2 and shall also include any attorney in fact or agent acting for a principal under a written power of attorney.

"National rating service" shall mean Standard & Poor's Corporation, Moody's Investors Service, Inc., Duff and Phelps, Inc., Fitch Investors Corporation and any successor to the rating business of any of them.

B. Notwithstanding any other provision of law designating as legal investments for fiduciaries the bonds, notes, obligations or other evidences of indebtedness issued by a governmental entity or political subdivision of the Commonwealth, including but not limited to agencies, authorities, commissions, districts, boards, or local governments, and except as specifically provided in § 26-40, fiduciaries, whether individual or corporate, shall be conclusively presumed to have been prudent in investing the funds held by them in a fiduciary capacity, *not exceeding \$1 million in actual value*, in only the following securities:

1. Obligations of the Commonwealth, its agencies and political subdivisions. - The following obligations:

a. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth;

b. Revenue bonds, revenue notes or other evidences of revenue indebtedness issued by agencies or authorities of the Commonwealth upon which there is no default; and

c. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth upon which there is no default provided that such bonds, notes and other evidences of indebtedness are (i) direct legal obligations of the public body, for the payment of which the public body has pledged its full faith and credit and unlimited taxing power, or (ii) unconditionally guaranteed as to the payment of principal and interest by the public body.

In every case referred to in subsection B 1, such bonds, notes or other evidences of indebtedness shall be rated in one of the two highest rating categories of at least one national rating service and not rated in a category lower than the two highest rating categories of any national rating service. Determination of an obligation's rating in one of the two highest rating categories shall be made without regard to any refinement or gradation of such rating category by numerical or other modifier. In addition, the remaining maturity of such bonds, notes or other evidences of indebtedness shall not be greater than five years.

2. Obligations of the United States. - Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States with a remaining maturity not greater than five years, except in the case of savings bonds, which may have a longer maturity. The obligations enumerated in this subdivision may be held directly or in the form of repurchase agreements collateralized by such obligations or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such obligations or repurchase agreements collateralized by such obligations, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Savings accounts, time deposits or certificates of deposit. - Savings accounts, time deposits or certificates of deposit in any bank, savings bank, trust company, savings and loan association or credit union authorized to do business as such in this Commonwealth, but only to the extent that such accounts, deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency or by the National Credit Union Share Insurance Fund or any successor to it.

C. Notwithstanding the provisions of this section, investments listed in § 26-40 as in effect prior to

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59 July 1, 1992, which continue to be held on July 1, 1992, shall be subject to § 26-45.3, and any reference
60 to the Virginia "legal list" or to § 26-40 or any predecessor statute contained in a will, trust, or other
61 instrument that was irrevocable on June 30, 1992, shall be construed to refer to such section as in effect
62 on June 30, 1992, or at such earlier time as may be specified in the controlling document, absent an
63 expression of intent to the contrary contained in such document.

64 D. The permissible investments specified in subsection B are not exclusive and shall not be construed
65 to limit a fiduciary's investments as permitted pursuant to Article 2 (§ 26-45.3 et seq.).

66 **2. That the provisions of this act shall apply to the initial investment of funds held in a fiduciary**
67 **capacity on and after July 1, 2004. As applied to such funds already invested prior to July 1, 2004,**
68 **the provisions of this act shall govern only the decisions or actions made by the fiduciary after**
69 **that date.**