

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 26-40.01, 26-45.13, 31-48, and 55-34.7 of the Code of Virginia,*  
 3 *relating to the presumption of prudence granted to a fiduciary.*

4 [H 2767]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 26-40.01, 26-45.13, 31-48, and 55-34.7 of the Code of Virginia are amended and**  
 8 **reenacted as follows:**

9 § 26-40.01. In what securities fiduciaries may invest; definitions.

10 A. As used in this section:

11 "Fiduciary" shall be defined as in § 8.01-2 and shall also include ~~any~~ *an* attorney in fact or agent  
 12 acting for a principal under a written power of attorney, *a custodian under § 31-48, and a custodial*  
 13 *trustee under § 55-34.7.*

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

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

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

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

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

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

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

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

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

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

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

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

64 E. ~~Nothing in this section shall relieve a fiduciary of his obligation, pursuant to § 26-45.3, to comply~~  
65 ~~with the provisions of the prudent investor rule~~ *The presumption under subsection B shall apply to (i) a*  
66 *fiduciary only for a calendar year in which the value of the intangible personal property under the*  
67 *fiduciary's control or management does not exceed \$100,000 at the beginning of such year, or (ii) a*  
68 *fiduciary who, on motion for good cause shown, has obtained express authorization from the court*  
69 *having jurisdiction over such fiduciary for the presumption under subsection B to apply.*

70 § 26-45.13. Definition of terms.

71 As used in this article, the term "trustee" includes any fiduciary as defined in § 8.01-2 ~~and any, an~~  
72 ~~attorney in fact or agent acting for a principal under a written power of attorney, a custodian under~~  
73 ~~§ 31-48, and a custodial trustee under § 55-34.7.~~ The term "trust" includes the assets under the control  
74 or management of the trustee as defined herein. "Controlling document" means the will, agreement,  
75 power of attorney, court order or other instrument creating the fiduciary powers.

76 § 31-48. Care of custodial property; duties of custodian.

77 A. A custodian shall take control of custodial property, register or record title to custodial property,  
78 if appropriate, and collect, hold, manage, invest, and reinvest custodial property.

79 B. In dealing with custodial property, a custodian shall observe the standard of care ~~that would be~~  
80 ~~observed by a prudent person dealing with such person's own property and is not limited by any other~~  
81 ~~statute restricting investments by fiduciaries.~~ *If a custodian has a special skill or expertise or is named*  
82 *custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill*  
83 *or expertise set forth in the Uniform Prudent Investor Act (§ 26-45.3 et seq.), except for the extent*  
84 *provided by § 26-40.01.* However, a custodian, in the custodian's discretion and without liability to the  
85 minor or the minor's estate, may retain any custodial property received from a transferor.

86 C. A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the  
87 life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another  
88 person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate,  
89 or the custodian in the capacity of custodian, is the beneficiary during the period of custodianship.

90 D. A custodian at all times shall keep custodial property separate and distinct from all other property  
91 in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property  
92 consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common  
93 and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial  
94 property subject to registration is so identified if it is either registered, or held in an account designated,  
95 in the name of the custodian, followed in substance by the words: "as a custodian for . . . . .  
96 . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

97 E. A custodian shall keep records of all transactions with respect to custodial property, including the  
98 information necessary for the preparation of the minor's tax returns, and shall make them available for  
99 inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the  
100 minor has attained the age of fourteen years.

101 § 55-34.7. General duties of custodial trustee.

102 If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust  
103 property. If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the  
104 beneficiary in the management, control, investment, or retention of the custodial trust property. In the  
105 absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee  
106 shall observe the standard of care ~~that would be observed by a prudent person dealing with such~~  
107 ~~person's own property and is not limited by any other law restricting investments by fiduciaries set forth~~  
108 ~~in the Uniform Prudent Investor Act (§ 26-45.3 et seq.), except for the extent provided by § 26-40.01.~~  
109 However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property  
110 received from the transferor. ~~If a custodial trustee has a special skill or expertise or is named custodial~~  
111 ~~trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that~~  
112 ~~skill or expertise.~~ Subject to this paragraph, a custodial trustee shall take control of and collect, hold,  
113 manage, invest, and reinvest custodial trust property.

114 A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has  
115 control, separate from all other property in a manner sufficient to identify it clearly as custodial trust  
116 property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so  
117 identified if an appropriate instrument so identifying the property is recorded, and custodial trust

118 property subject to registration is so identified if it is registered, or held in an account in the name of  
119 the custodial trustee, designated in substance: "as custodial trustee for . . . . . (name of  
120 beneficiary) under the Virginia Uniform Custodial Trust Act."

121 A custodial trustee shall keep records of all transactions with respect to custodial trust property,  
122 including information necessary for the preparation of tax returns, and shall make the records and  
123 information available at reasonable times to the beneficiary or legal representative of the beneficiary.

124 The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to  
125 terminate or direct the administration or distribution of a custodial trust.

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