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VIRGINIA CODE COMMISSION

Tuesday, October 16, 2007 – 1 p.m.
Stonewall Jackson Hotel & Conference Center
24 Market Street
Staunton, Virginia 24401

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards; Ryan McDougle; James F. Almand; Robert L. Calhoun; Thomas M. Moncure, Jr.; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: S. Bernard Goodwyn; Robert Hurt

OTHERS PRESENT: Donna Pugh Johnson, Virginia Agribusiness Council; Martha Moore, Virginia Farm Bureau; Robert Bailey, Wayne Surlis, Stephen Binns, Perida Giles, Donald Blankenship, and Rebecca Askew, Department of Agriculture and Consumer Services; David Whitt, Virginia Tech; Leigh Trippe and Leslie Ostrander, LexisNexis.

STAFF PRESENT: Frank Munyan, Marty Farber, Ellen Porter, Jane Chaffin

CALL TO ORDER AND WELCOME

Delegate Landes called the meeting to order at 2:10 p.m. The Chair welcomed members and guests to Staunton and gave a brief history of the Staunton area.

APPROVAL OF MINUTES

A motion was made by Senator Calhoun and seconded by Judge Almand to approve the minutes of the August 29, 2007, meeting. The motion was approved.

PUBLIC COMMENT

No one came forward during the designated public comment period.

PROPOSED WORKPLAN FOR THE REVISION OF TITLE 6.1

Frank Munyan, DLS Senior Attorney, presented a proposed workplan for the revision of Title 6.1, which is part of the Commission's 2008 workplan. Mr. Munyan outlined a number of issues that make this title a good candidate for revision. The Banking and Finance title has not been comprehensively recodified since 1966 and has become dated. Twenty-seven chapters have been added; 10 chapters, and all but two sections of another chapter, have been repealed.

Mr. Munyan stated that he has convened a five-member work group to assist with the project. The work group consists of representatives from the State Corporation Commission, Attorney General's office, Virginia Bankers Association, Thompson McMullan, and LeClair Ryan. The Commission members discussed the work group composition and whether others, such as credit unions and savings and loans, should be represented. Mr. Munyan was asked to notify those involved in the financial institutions and services area that may have an interest in the project and try to involve them during the process.

1 Mr. Munyan stated that the organizational scheme was initially approved by the Code
2 Commission in October 2005 when it was reviewed as part of the Code of Virginia
3 renumbering project and is significantly the same. Originally, staff recommended
4 dividing the title into three subtitles categorized as "Subtitle 1, General Provisions,
5 Money, Interest and Usury," Subtitle II, Financial Services," and "Subtitle III, Providers of
6 Financial Services."

7 Mr. Munyan outlined several issues to be addressed:

- 8 1. A work group member suggested separating Subtitle III into two subtitles--
9 "Depository Institutions" and "Nondepository Institutions." The Commission asked
10 Mr. Munyan for his recommendation and he indicated that he preferred the three
11 subtitle approach.
- 12 2. It is suggested that the Wet Settlement Act, CRESPA and Real Estate Settlement
13 Agent Registration Act, which currently reside in Title 6.1 but do not relate directly to
14 the practice of lending money, be moved to Title 55 (Property).
- 15 3. The Credit Counseling Act is currently in Title 6.1, but does not deal with financial
16 services. The Commission should decide whether to keep this act in Title 6.2 or move
17 it to Title 59.1, which deals with consumer protection.

18 Mr. Munyan stated that the title is approximately 300 pages in length, but he is confident
19 that the title can be completed in 2008. He plans to present Subtitle I at the Commission's
20 first meeting in 2008 and Subtitle II at the second meeting. Subtitle III, which deals with
21 depository institutions and other regulated institutions, is expected to take at least three
22 meetings to complete. The proposed final report will be presented to the Commission at
23 its final meeting in 2008 and legislation will be prepared for introduction to the 2009
24 General Assembly.

25 **PROPOSED 2008 CODE OF VIRGINIA PRICING AND**
26 **REPLACEMENT VOLUME PROPOSAL**

27 Leslie Ostrander with LexisNexis presented the 2008 Code of Virginia supplement and
28 replacement volume pricing proposal. Ms. Ostrander outlined two options—one pricing
29 option is based on replacing three volumes and the second option is based on replacing
30 four volumes. A 4.0% increase is requested, which Ms. Ostrander indicated is below the
31 increase in the Producer Price Index for Book Publishing.

32 Next, Ms. Ostrander presented proposed replacement volume options for 2008.
33 Recommendations for replacement include Volume 1A, if the Title 3.1 recodification
34 legislation is enacted by the General Assembly; Volume 3A (Title 15.2, Counties, Cities
35 and Towns); and Volume 4A (Titles 19.2—Criminal Procedure, 20—Domestic Relations,
36 and 21—Drainage, Soil Conservation, etc.). Ms. Ostrander stated that Volume 4A has
37 become large and unwieldy and suggested that it be split into two volumes by adding
38 Volume 4B. The Commission discussed the options for splitting Volume 4A. Finally, Ms.
39 Ostrander stated that if the Commission would like to replace a fifth volume, the
40 publisher recommends replacing Volume 5A. Today's handout does not reflect pricing
41 for replacing five volumes; however, Ms. Ostrander indicated that she would be happy to
42 provide that information. At Mr. Miller's request, the Chairman deferred the decision on

1 the LexisNexis proposal to provide staff an opportunity to review the proposal in detail
2 and make its recommendations to the Commission at the next meeting.

3 **TITLE 3.1 RECODIFICATION**

4 Ellen Porter advised the Commission that she has begun working on the Title 3.1
5 recodification final report for presentation at the next meeting. Ms. Porter mentioned that
6 domestic animals and animal care have become a significant part of the title and it this
7 topic receives a lot of attention. She suggested that the Commission might wish to
8 consider incorporating a reference to animals into the title description. The current title
9 description is "Agriculture, Horticulture and Food" and Ms. Porter suggests the Title 3.2
10 description be changed to "Agriculture, Food and Animal Care" or "Agriculture, Food
11 and Domestic Animals."

12 Chapter 39, Pesticide Act. Ms. Porter has attempted to better organize Chapter 39 and
13 clarify certain sections, in particular violations and privacy of documents. Model fund
14 language was used for consistency with previous actions made by the Code Commission.

15 In § 3.2-3900 (§ 3.1-249), definition of "insect," page 3, lines 15 and 17, Mr. Miller made
16 a motion, seconded by Senator Calhoun, to change "such as" to "including." The motion
17 was approved. In the same section, Senator Edwards made a motion, seconded by Senator
18 Calhoun, to add "for purposes of this chapter, includes" on line 16 of page 3, and to
19 change "wingless and usually" to "usually wingless and." The motion was approved. The
20 definition of "insect" now reads, "'Insect' means any small invertebrate animal generally
21 having a form and belonging to the class Insecta, including beetles, bugs, bees, and flies;
22 and for the purpose of this chapter includes classes of arthropods whose members are
23 usually wingless and have more than six legs, including spiders, mites, ticks, centipedes,
24 and wood lice."

25 The Commission discussed § 3.2-3913 (§ 3.1-249.75) relating to the exclusion of
26 medicinal and toilet preparations from the chapter (page 20, lines 20-23). Mr. Miller
27 made a motion to repeal this section. Senator Calhoun seconded the motion. Judge
28 Almand and Senators Edwards and McDougle voted against the motion. The motion
29 carried. Staff will do further research on the section and will bring back to the
30 Commission to revisit if necessary. Mr. Miller indicated that he would like the authority
31 to retain the section if staff finds the rationale to do so.

32 The Commission discussed § 3.2-3924 (§ 3.1-249.46) and asked staff to expand the
33 drafting note to explain that the rationale for removing classes of sellers of household
34 pesticides from the exemption provisions (page 25, lines 1 and 2) is because such classes
35 of sellers are set out in regulation. Senator McDougle made a motion, seconded by
36 Senator Edwards, to reinsert "businesses who sell pesticides primarily for limited
37 household use" on page 25, line 2. After further discussion, Senator Edwards made a
38 substitute motion, seconded by Senator McDougle, to reinsert the stricken language on
39 page 25, lines 1 and 2. The motion carried.

40 Under Article 4, Marine Antifoulant Paints, the Commission discussed staff's
41 recommendation to strike § 3.1-249.62 on page 34, lines 19-21. This section provides that
42 "Nothing in this article is intended to prevent or discourage the Board from further

1 restricting the distribution, possession, sale or use of tributyltin compounds." Staff asserts
2 that the language is unnecessary; however, if the Commission does not want to repeal the
3 provision, staff suggests moving the language to the provisions setting forth the powers
4 of the Board. After further discussion, Senator Edwards made a motion, seconded by
5 Senator McDougle, to move the provisions of § 3.1-249.62 to the section relating to the
6 powers of the Board. The motion was approved.

7 Staff was asked to return § 3.2-3939, line 24, to original language as it appears in § 3.1-
8 249.27 (definition of "misbranded") by adding "which may be necessary, and if complied
9 with," between "statement" and "adequate."

10 The Commission discussed the use of "provided, that" and, as a matter of policy, directed
11 staff to eliminate the comma between the words "provided" and "that."

12 Staff was asked to reinsert the stricken text in subdivision 3 of § 3.2-3941 on page 45,
13 line 25 that reads "when such research is conducted in accordance with regulations
14 established by the Board."

15 Chapter 40, Seeds. Ms. Porter reviewed Chapter 40 with the Commission members and
16 very little change was made by the members. On page 7, in the drafting note for the
17 definitions section, Ms. Porter was asked to expand the drafting note to point out the
18 substantive change to the definition of "code designation" on page 2, lines 18-21.

19 Chapter 42, Tobacco. Ms. Porter suggests retitling the chapter to "Tobacco Settlement
20 Agreement" to better reflect the contents of the chapter. Mr. Ferguson suggests retitling
21 the chapter to "Implementation of the Master Tobacco Settlement Agreement."

22 Chapter 43, Grades, Marks and Brands. Although on the agenda for tomorrow's meeting,
23 the Commission asked Mr. Farber to begin presenting Chapter 43.

24 In § 3.2-4316 (page 8, line 20) add specific authority providing that the Director may
25 determine design, preparation and use of labels "by regulation."

26 On page 9, lines 13-19, Mr. Ferguson suggests rewriting § 3.2-4317 (§ 3.1-356) to
27 establish a specific fund (Virginia Quality Label Fund) subject to appropriation.

28 Staff was asked to expand the drafting note beneath stricken § 3.1-155 to explain that the
29 section is eliminated as unnecessary as this type of service regarding dissemination of
30 information may be provided by an agency without specific statutory authority.

31 While reviewing § 3.2-5138 (§ 3.1-412), Mr. Farber explained that there were instances
32 where he had not changed certain references to courts to the term "appropriate court" as
33 directed at the Commission's last meeting. He did not make the change if a specific
34 procedure is in place, as found in § 3.2-5138, lines 11 through 14.

35 Staff was asked to change "court of record" to "circuit court" in § 3.2-4318 (§ 3.1-358),
36 line 23.

37 The Commission recessed at 5:15 p.m. to reconvene Wednesday, October 17 at 9:30 a.m.

38

Wednesday, October 17, 2007 – 9:30 a.m.

1 Chapter 47, Sale of Farm Produce. Mr. Farber stated that Chapter 47 deals with the
2 relationship between producers and dealers and addresses licensing and recordkeeping
3 requirements, verification of transactions, bonding, and revocation provisions. It was
4 noted that Chapter 47 is fairly unusual because the powers are given to the Director of the
5 Division of Marketing as opposed to the Commissioner of Agriculture. However, the
6 Division Director reports to the Commissioner.

7 The Commission discussed § 3.2-4700 titled "Division of Marketing; administration;
8 appointment of Director and assistants" and decided to change § 3.2-4700 to
9 "Definitions" and define "Division of Marketing" and "Director of the Division of
10 Marketing" in this section. The provisions relating to the establishment of the division
11 will be moved to § 3.7-4701, which will be retitled "Establishment of and responsibilities
12 of the Division."

13 Mr. Farber asked the Commission if § 3.2-4706 (§ 3.1-691) is needed. Section 3.2-4706
14 provides that payment of expenses necessary to carry out the division's responsibilities
15 and to carry out federal cooperation agreements shall be made to the State Treasurer. Mr.
16 Miller stated that the language appears to be archaic. During discussion between the
17 Commission and VDACS representatives, it was noted that the Division is funded
18 separately within the state budget with a specific line item. Based on that information, the
19 Commission decided to repeal § 3.1-691, with the contingency that the Department of
20 Agriculture and Consumer Services alert the Commission if it determines the repeal of
21 this section to be problematic.

22 With regard to § 3.2-4712 (§ 3.1-696), staff noted that the term "good and sufficient"
23 preceding "bond" had been stricken as archaic language. However, Senator Calhoun
24 stated that the new language, "approved by the Commissioner," implies that the
25 Commissioner must approve each bond, which is not the original intent. Staff will
26 remove the phrase "approved by the Commissioner" and try to come up with improved
27 language to replace "good and sufficient bond." If unable to improve the language, staff
28 will return the archaic language to its original state.

29 During the review of § 3.2-4717 (§ 3.1-699), Senator Calhoun made a motion to change
30 "Secretary of Agriculture" to "U.S. Department of Agriculture" throughout the chapter.
31 Mr. Ferguson seconded the motion and the motion carried.

32 The Commission discussed whether to append "as amended" to federal citations (e.g., see
33 § 3.2-4720, line 11). Mr. Ferguson made a motion, seconded by Mr. Miller, to remove
34 "as amended" from state and federal citations within the Code if Title 1 clearly provides
35 that such references prospectively incorporate amendments to such state or federal laws.
36 The motion was approved.

37 The Commission made the following additional changes to Chapter 47:

- 38 1. § 3.2-4726 (§ 3.1-707), page 19, line 24, change catchline to read "Contempt for
39 failure to comply with orders of the Commissioner" and change "disobeying" to "who
40 fail to comply with" on line 25.

1 2. § 3.2-4729 (§ 3.1-713), page 20, line 19, change reference from "correct record" to
2 "complete and true record." Also, change such references in §§ 3.1-4744 (§ 3.1-
3 722.8) and 3.1-4747 B (§ 3.1-722.10).

4 3. § 3.2-4737 (§ 3.1-718), page 24, lines 1 through 4, update the language to read, "Any
5 person who commits any of the following acts shall be guilty of a Class 1
6 misdemeanor."

7 During the review of § 3.2-4749 (§ 3.1-722.11 B), which relates to remedies with regard
8 to violations of Article 3, Dealers in Agricultural Produce, the Commission discussed the
9 Attorney General's role. The Attorney General may become involved when dealing with
10 violations occurring in multiple localities. Senator Edwards made a motion, seconded by
11 Mr. Ferguson, to rewrite the section as follows:

12 "The Commissioner may bring an action to enjoin the violation or threatened violation of
13 any provision of this article, or any regulation promulgated hereunder, in the circuit court
14 of the locality in which the violation occurs or is about to occur. If the violation affects
15 more than one locality, the bring action in the Circuit Court of the City of Richmond. The
16 Commissioner may request either the attorney for the Commonwealth or the Attorney
17 General to bring action under this section. The Attorney General is authorized to
18 prosecute any violation of this article that may affect more than one locality."

19 The motion was approved.

20

OTHER BUSINESS

21 Mr. Farber stated that the Chapter 47 was the last remaining chapter for the Commission
22 to review as part of the recodification. Mr. Farber indicated that the draft final report
23 would be ready for adoption by the Commission at its November 28th meeting.

24

ADJOURN

25 There being no further business to come before the Commission, the meeting was
26 adjourned at 12:10 p.m.