

1 **VIRGINIA CODE COMMISSION**

2 **Wednesday, July 16, 2008 – 10 a.m.**  
3 General Assembly Building, 6th Floor  
4 Speakers Conference Room  
5 Richmond, Virginia 23219

6 **MEMBERS PRESENT:** R. Steven Landes, Chairman; John S. Edwards; James F.  
7 Almand; Jane M. Roush, Thomas M. Moncure, Jr.; Robert L. Calhoun; Frank S.  
8 Ferguson; E.M. Miller, Jr.

9 **MEMBERS ABSENT:** Ryan McDougle, Bill Janis.

10 **OTHERS PRESENT:** Leslie Ostrander, LexisNexis; Jeannine Rose, Department of  
11 Planning and Budget; Jeff Smith, President, Virginia Financial Services; Jay Spruill,  
12 Virginia Bankers Association.

13 **STAFF PRESENT:** Frank Munyan, Jane Chaffin

14 **CALL TO ORDER**

15 Delegate Landes called the meeting to order at 10:00 a.m. New member Judge Jane  
16 Marum Roush, Fairfax Circuit Court, was welcomed by the Commission members. The  
17 Chairman suggested that a trip to LexisNexis should be planned in the next year or so to  
18 give the new members an opportunity to tour the facilities.

19 **APPROVAL OF MINUTES**

20 Senator Calhoun made a motion to approve the minutes of the May 14, 2008, meeting as  
21 written. Judge Almand seconded the motion and the motion was approved.

22 **REVISION OF TITLE 6.1**

23 Frank Munyan presented several changes to the outline based on suggestions from the  
24 work group members and individuals on the mailing list. The Commission endorsed all  
25 suggested changes with the exception of moving the Equal Credit Opportunity Act from  
26 Title 59.1 to Title 6.2, which will be addressed after receiving feedback from the work  
27 group.

28 At the last meeting, Mr. Munyan pointed out that the Code of Virginia references  
29 attorney's fees several different ways (i.e., attorney fees, attorneys fees, attorney's fees  
30 and attorneys' fees). Lexis checked with its editorial staff to find out how other states  
31 reference these fees and determined that variations appear within each of the states' codes  
32 that were reviewed. Mr. Munyan discovered that the Code Commission approved a  
33 recommendation when undergoing the Code Reorganization Project to standardize the  
34 reference to "attorney fees," which comports with Black's Law Dictionary. As there was  
35 no objection, Mr. Munyan will standardize references to "attorney fees."

36 Chapter 15. Consumer Finance Companies

37 Mr. Munyan explained his drafting changes as found in Chapter 15 (§ 6.2-1500 et seq.),  
38 Consumer Finance Companies with Commission members.

1 The members discussed staff's recommendation to repeal § 6.1-248, which relates to  
2 preexisting contracts. Staff believes that the section is covered by Article I, Section 10 of  
3 the Virginia constitution and suggests deleting the section. Senator Calhoun disagrees  
4 stating that the General Assembly or the State Corporation Commission reserves the right  
5 to cancel the contract. However, if the law provides the State Corporation Commission or  
6 General Assembly the right to amend corporate charters, then the first part of the  
7 sentence could be deleted. Mr. Munyan stated that the second part of the sentence relating  
8 to impairment of contract provisions is redundant and the Commission agreed to repeal  
9 that language, but deferred its decision on repealing the second part until staff checks into  
10 the matter further.

11 Staff noted that a cross reference correction and a clarifying change are needed in § 6.2-  
12 1501 B. Specifically, on lines 73 and 74, change "Subject to subsection C and subdivision  
13 3 of § 6.2-1524" to read, "Subject to subsection C of this section and subsection C of  
14 § 6.2-1524."

15 Mr. Munyan stated that the process for applying for a license is set out in § 6.2-1505 and  
16 the changes are self-explanatory, but noted that a question was raised about replacing the  
17 requirement that the county or municipality be identified (existing subdivision 2) with the  
18 requirement that the application state the locality in which the business is to be conducted  
19 (subdivision 5). Staff explained that the State Corporation Commission has indicated that  
20 it sends notice to every licensee in that community when it receives an application for a  
21 new license (see § 6.1-255). One point of discussion by the work group was whether to  
22 retain the requirement to provide such notice required in § 6.2-1506. The Commission  
23 discussed whether to retain or eliminate the notice requirement and asked for input from  
24 members of the industry. Jeff Smith, President of Virginia Financial Services  
25 Association, provided a historical perspective for the notice requirement, but indicated  
26 that he does not find the notice necessary since it is not a consumer notice, but rather a  
27 convenience and advantage notice to businesses. The consensus of the Commission is to  
28 eliminate the notice requirement, but staff should flag the deletion as a substantive  
29 change and update the drafting note to reflect the discussion and decision.

30 In reference to the deleted language on page 13, § 6.2-1511 (§ 6.1-260), lines 325-327,  
31 regarding grounds for refusal to issue a license, staff was asked to clarify the drafting  
32 note to reflect that the change is editorial in nature to conform the section with changes  
33 noted in the previous paragraph.

34 Senator Calhoun made a motion to repeal § 6.1-279 relating to minimum assets because  
35 loans are not limited to the community, making this section obsolete. The motion was  
36 properly seconded and approved.

37 Mr. Munyan stated that wage purchases, wage assignments and chattel loans (§§ 6.2-  
38 1525-6.2-1528) are not thought of as consumer loans, but the sections specify that they  
39 are loans and how interest can be charged on the discounted deals. He has attempted to  
40 separate out and group provisions together.

41 The Commission discussed staff's recommendation to repeal § 6.1-304 (rule regarding  
42 transactional immunity for testimony in enforcement proceedings) and asked him to look

1 into the issue further and return to the Commission with a recommendation to retain or  
2 repeal.

3 Mr. Munyan stated that a member of the working group suggested that § 6.1-305 relating  
4 to the Commission's duty to furnish copies of orders or regulations is not necessary;  
5 however, staff's inclination is to retain the section. The Commission discussed the fact  
6 that regulations are accessible in the Virginia Administrative Code, which was  
7 unavailable at the time this section was originally enacted, and decided that references to  
8 "regulations" can be removed; however, the section should be retained as it also applies  
9 to orders and licenses.

10 The Commission discussed staff's recommendation to repeal § 6.1-306, but the consensus  
11 of the Commission is to retain the section.

12 Mr. Ferguson suggested that the Commission deter from its standard policy to set out  
13 penalties at the end of a chapter in the case of § 6.2-1539 on page 38 and made a motion  
14 to move it into § 6.2-1501 where the violation is set out since it is the only criminal  
15 penalty in the chapter. The motion was properly seconded; however, the motion failed to  
16 pass.

17 During the review of § 6.2-1542, fines for violations, staff was asked to contact the State  
18 Corporation Commission (SCC) and find out where the money from "a fine or penalty" is  
19 deposited. The Commission discussed that SCC would be able to keep fines, but penalties  
20 would go to the Literary Fund under the Virginia Constitution. Mr. Miller made a motion  
21 to remove "or penalty" on line 1021 (page 39). The motion was properly seconded and  
22 approved.

23 After the Commission completed its review of Chapter 20, the Chairman moved to  
24 agenda item 5 to discuss the Virginia Administrative Code contract expiration.

## 25 **VIRGINIA ADMINISTRATIVE CODE CONTRACT**

26 Mr. Miller stated that the current administrative code contract with West will expire on  
27 December 31, 2008, and the Commission is considering whether to exercise the option to  
28 renew the contract for four years or solicit bids. Mr. Miller said that he talked with  
29 representatives from LexisNexis informally and LexisNexis has no interest in publishing  
30 the administrative code. West has responded that it would like to continue publishing  
31 Virginia's administrative code. A price increase will likely be proposed. Mr. Miller  
32 suggests negotiating a contract with West: The Code Commission is not subject to the  
33 Procurement Act when contracting for publication of statutory or administrative codes.  
34 Senator Edwards made a motion to have staff prepare a four-year contract with a four-  
35 year extension option between West and the Commonwealth. Mr. Ferguson seconded the  
36 motion and the motion carried.

37 Mr. Miller stressed that the Virginia statutory code contract with LexisNexis expires next  
38 year. West has expressed an interest and Mr. Miller suggested proceeding by outlining  
39 items that we would like to include in a proposal, such as gratis copies and publication of  
40 the Code of 1819. Mr. Miller advised that he would prepare a list of items that the  
41 contract might contain for negotiation purposes.

1 **REVISION OF TITLE 6.1 (Continued)**

2 Chapter 22. Securitization Transactions.

3 Proposed Chapter 22, Securitization Transactions, which deals with any stream of cash  
4 securitized and bundled, was enacted as Chapter 19 of Title 16.1 in 2004. The existing  
5 chapter consists of two sections and Mr. Munyan is recommending repealing the first  
6 section, and splitting the remaining section into three sections.

7 Chapter 23. Refund Anticipation Loans.

8 Existing Chapter 20 of Title 6.1 was enacted in 2006. Mr. Munyan explained that this  
9 chapter deals with loans, such as those that a company that prepares tax returns will give  
10 by providing a discounted tax refund in advance. This chapter provides for disclosure of  
11 the costs involved. Changes primarily update terminology to reflect current practice

12 Chapter 27.1 of Title 55. Real Estate Settlements.

13 Chapter 27.1 of Title 55 is derived from Chapter 1.1 of Title 6.1, currently titled "Wet  
14 Settlement Act. The Wet Settlement Act deals with the conduct of real estate settlements,  
15 not so much real estate agents. Only minor changes to the chapter have been proposed.  
16 Delegate Landes directed staff to contact Martin Johnson and the State Bar to make sure  
17 there are no concerns with transferring the provisions from Title 6.1 to Title 55.

18 Mr. Munyan noted that in subsection D of § 55-252.5, he has classified the penalty in  
19 accordance with § 18.2-11. The Commission normally attempts to conform penalties with  
20 the classification system in § 18.2-11 as part of the title revision process. Mr. Ferguson  
21 believes that the stricken language on lines 125-127 is a substantive change  
22 (misdemeanor by indictment). Staff will check further into this issue and report back to  
23 the Commission.

24 **CODE COMMISSION WEBSITE**

25 Mindy Tanner reported that the Code Commission website was revised and released on  
26 June 12. Most of the changes were intended to make the site more user friendly.  
27 Additions include a historical listing of members. Other planned changes include adding  
28 a history of the Code of Virginia and a list of Frequently Asked Questions

29 **PUBLIC COMMENT**

30 No one came forward during the designated public comment period.

31 **OTHER BUSINESS AND ADJOURNMENT**

32 There being no further business to come before the Commission, the meeting adjourned  
33 at 1:45 p.m.