

1 **VIRGINIA CODE COMMISSION**

2 **Thursday, July 30, 2009 – 10 a.m.**

3 General Assembly Building, 6th Floor
4 Speaker's Conference Room
5 Richmond, Virginia 23219

6 **MEMBERS PRESENT:** R. Steven Landes; John S. Edwards; Ryan McDougale; William R. Janis;
7 Jane M. Roush; James F. Almand; Robert L. Calhoun; Thomas M. Moncure, Jr.; E.M. Miller, Jr.

8 **MEMBERS ABSENT:** Frank S. Ferguson

9 **OTHERS PRESENT:** Jay Spruill, Virginia Bankers Association; Todd Rose, State Corporation
10 Commission; Jeannine Rose, Department of Planning and Budget

11 **STAFF PRESENT:** Frank Munyan, David Cotter, Jane Chaffin

12 **CALL TO ORDER**

13 Delegate Landes called the meeting to order at 10:10 a.m., and he thanked Senator Edwards for
14 chairing last month's meeting.

15 **AWARDS FOR REGULATION INFORMATION SYSTEM**

16 Mr. Miller announced that Virginia's electronic regulation drafting and filing system (Regulation
17 Information System) was awarded the 2009 Robert J. Colborn Jr. Innovation Award by the
18 Administrative Codes and Registers Section of the National Association of Secretaries of State
19 (NASS). Jane Chaffin accepted the award from her colleagues in Minneapolis at the July NASS
20 conference.

21 Mr. Miller stated that the Colborn Award follows receipt of the Governor's Technology Award,
22 which was awarded at the COVITS Conference in September 2008 to the Virginia Code
23 Commission, Division of Legislative Automated Systems, and the Department of Planning and
24 Budget in the Cross-Boundary Collaboration category.

25 **APPROVAL OF MINUTES**

26 Senator Calhoun made a motion to approve the minutes of the June meeting. Judge Almand
27 seconded the motion, and the motion was approved.

28 **REVISION OF TITLE 64.1, WILLS AND DECEDENTS' ESTATES**

29 David Cotter presented the Title 64.2 proposed outline recommended by the work group. The
30 proposed name of the title (Wills, Trusts, and Fiduciaries) now reflects the incorporation of
31 Trusts and Fiduciaries into the title. The title is divided into four subtitles: I: Wills and
32 Decedents' Estates; II: Trusts, which are mostly uniform acts; III: Fiduciaries and Guardians; and
33 IV: General Provisions concerning Probate and Nonprobate Transfers. The work group proposes
34 incorporating fiduciary provisions from Title 37.2 (Guardianship of Incapacitated Persons),
35 recognizing that Title 37.2, Behavioral Health and Developmental Services, was recently
36 recodified in 2005, and the subject matter has been a hot-button issue lately. In addition, the
37 work group recommends moving the Health Care Decisions Act, which currently resides in Title
38 54.1 (Professions and Occupations), to Title 64.2.

39 The Commission discussed adding the Uniform Power of Attorney Act to Subtitle III, Part B
40 (Powers of Attorney), even though the legislation has not yet been enacted in Virginia. Mr.
41 Miller suggested that including the act gives the Commission the opportunity to familiarize itself
42 with the components of the proposed bill.

1 **REQUEST TO CORRECT § 25.1-210**

2 The Code Commission considered a request from Allan Reynolds of the Norfolk law firm
3 Crenshaw, Ware & Martin, who identified an error in § 25.1-210. Section 25.1-210 describes the
4 process for obtaining a court order to effect service of a notice of a condemnation action by
5 publication in situations where the property owners are out of state or unknown. As currently
6 written, the section provides that unknown owners "may be served by order of publication." Mr.
7 Reynolds suggested the language be clarified to read that unknown owners "may be served by
8 notice, pursuant to an order of publication," so that it is clear that the notice must be published,
9 not the order.

10 Senator Edwards stated that the requester is technically correct, but referred to it as a
11 "de minimis error." In its discussion, the Commission agreed that the suggested change improved
12 and clarified the language, but noted that this type of clarification change is usually handled
13 during the recodification process. It was further noted that Title 25 was recodified in 2002.

14 No motion was made to introduce legislation to correct the error. A suggestion was made to
15 bring the matter to the attention of the Department of Transportation and the Attorney General's
16 office in case they would like to address the issue. Mr. Munyan offered that John Beall of the
17 Attorney General's office was a member of the Title 25.1 recodification work group and might
18 be able to provide some insight into the matter.

19 Mr. Miller suggested that the Commission review its statutory authority to make corrections to
20 the Code for the purpose of considering whether that authority should be expanded to deal with
21 issues such as this one. The Chairman asked staff to put the powers issue on a future agenda for
22 thorough discussion.

23 **REVISIONS OF TITLE 6.1**

24 Chapter 3, Interest and Usury

25 Frank Munyan explained that the proposed draft reflects repealing §§ 6.1-330.47 and 6.1-330.48
26 and carrying the substantive provisions of the sections in an enactment clause. The drafting note
27 in the recodification report details the rationale for this recommendation.

28 In the definitions section for Chapter 3 (§ 6.2-300), staff pointed out that the definition of "open-
29 end credit" is added. Currently, this term is not defined and is used interchangeably with the term
30 "revolving credit."

31 The Commission discussed the proposed changes in proposed § 6.2-303 (§ 6.1-330.55). Staff
32 explained that the narrative descriptions of the types of loans authorized by the referenced
33 sections in subsection A are eliminated because it is not practical to completely and accurately
34 describe each such loan. Several Commission members commented that they find the descriptors
35 helpful, and the consensus was to update and retain the descriptors.

36 Judge Almand noted his preference to retain the existing catchline of § 6.1-330.55 (Contracts for
37 more than legal rate of interest) rather than adopting the proposed catchline (Contract rate of
38 interest).

39 The Commission discussed staff's recommendation to rewrite and move subsection A of § 6.1-
40 330.59 to an enactment clause because of its limited applicability. A detailed explanation of this
41 recommendation is available in the drafting note of the recodification report.

1 Stemming from the discussion of moving a codified provision to an enactment clause, a member
2 expressed concern that users of the online Code of Virginia cannot find uncoded enactments
3 that often provide pertinent information with regard to the codified law. Mr. Miller explained
4 that the print version of the Code of Virginia prepared under contract between LexisNexis and
5 the Virginia Code Commission contains such enactments as part of the publisher's annotations.
6 When LexisNexis provides the Code of Virginia database for upload on the General Assembly
7 website, all annotations are removed.

8 Ms. Chaffin offered to contact the Division of Legislative Automated Systems to discuss all
9 related possibilities from a technical standpoint. A couple of suggestions were discussed. One
10 suggestion is to add hyperlinks to the referenced Acts of Assembly in the history line of each
11 Code section. Another suggestion involved adding the letter "e" at the end of the historical line if
12 the act contains a second or subsequent enactment clause. Judge Almand suggested adding the
13 issue to a future agenda for further discussion.

14 Regarding Article 4 (Loans Exempt from Limit on Contract Rate of Interest), Senator Calhoun
15 commented that he would prefer incorporating all exemptions within Article 4 into a single
16 section instead of separate sections. Mr. Munyan advised that he has attempted to avoid
17 inadvertent substantive changes. When he had suggested standardizing the exception language,
18 the work group stated that interpretations of provisions over time have substantive differences.
19 Staff opinion is that listing all exceptions in a single section could also have a substantive effect.

20 The repeal of § 6.1-330.66:1 is recommended because the statute establishing the State
21 Education Assistance Authority was repealed in 1998. Mr. Munyan queried whether the
22 Commission feels it is necessary to add an enactment clause providing that loans made under
23 provisions repealed in the recodification process would not be affected. The Chairman asked Mr.
24 Munyan to contact the Department of the Treasury to determine if it knows who holds any
25 outstanding loans, get feedback regarding the inclusion of a savings clause, and bring the issue
26 back to the Commission with a recommendation.

27 The Commission agreed with staff that the first sentence of proposed subsection B of § 6.2-319
28 (§ 6.1-330.67) needs clarification. The Commission approved staff's recommendation to reword
29 the sentence to conform to the structure in similar sections.

30 The Commission discussed whether the reference in subsection A of § 6.2-328 (§ 6.1-330.72) to
31 premiums on policies required or provided pursuant to § 6.2-411 is redundant. Staff indicated
32 that the language was added to ensure that the lender may require the borrower to pay the
33 premiums, but queried whether it is redundant given that proposed subsection D states that such
34 premiums shall not be considered a charge payable by the borrower in connection with the loan.
35 Mr. Miller questioned whether subsection D is new language proposed by the work group. Mr.
36 Munyan stated that subsection D is derived from existing language. Senator Edwards made a
37 motion to retain subsection D of § 6.2-328 and delete the phrase "premiums on policies of
38 insurance that are required or provided pursuant to § 6.2-411," from subsection A. Senator
39 Calhoun seconded the motion, and the motion was approved.

40 Chapter 4, Certain Lending Practices.

41 Staff noted a proposed substantive change in § 6.2-414 (§ 6.1-2.8). The references to banks or
42 lenders are replaced with the broader "person" because a bank may be a lender, and an institution
43 other than a bank may maintain an escrow account. The change makes the section applicable to
44 mortgage servicers that are not banks; however, the change is consistent with the intended scope

1 of the section. Senator Calhoun asked if the work group agreed with the change, and Mr.
2 Munyan confirmed that the work group concurs.

3 On behalf of one member of the work group, Mr. Munyan relayed a question of whether § 6.1-
4 432, credit card account disclosures, can be repealed as obsolete because it provides that a
5 disclosure that complies with federal law is deemed to comply with the requirements of this
6 section. Senator McDougle asked staff if there are potential concerns with repealing the section.
7 Mr. Munyan responded that, although Regulation Z as is in effect today applies to all credit
8 accounts, if the section is retained, it would be in place if Regulation Z is superseded or amended
9 in the future so that it no longer applies. Staff was asked to bring the issue back before the
10 Commission at the December meeting for further consideration.

11 Chapter 7, Acquisitions of Interests in Financial Institutions

12 With regard to existing Chapter 14 of Title 6.1 (Financial Service Center Banks) and whether its
13 provisions should be continued, Mr. Munyan brought an issue back before the Commission that
14 arose at the June meeting regarding the acquisition of a Virginia bank by out-of-state bank
15 holding companies and general business corporations. The work group revisited the issue, and
16 recommended repealing Chapter 14 (§ 6.1-390 et seq.). Work group consensus is that the chance
17 that the provisions will be utilized is minimal. The drafting note fully explains the rationale for
18 the recommendation to repeal these provisions.

19 Chapter 10, Entities Conducting Trust Business

20 Staff asked the Commission if subsection B of § 6.1-32.31 should be restated as a directive
21 regarding the construction of Article 4, Multistate Trust Institutions. The consensus is to repeal
22 the entire section, including subsection B.

23 Outstanding Issues

24 Staff presented an issue involving prohibited practices under the Payday Loan Act. Subdivision 9
25 of § 6.2-1816 provides that a licensed payday lender shall not threaten criminal penalties against
26 a borrower if the check securing the loan bounces. The proposed amendment adds the
27 introductory phrase "Notwithstanding any provision of § 8.01-226.10 to the contrary," which
28 takes away immunity. The Commission discussed whether this change is clarifying or
29 substantive in nature, and ultimately decided to add the language. However, the Commission
30 may revisit the issue when the final draft is presented for approval.

31 Mr. Munyan stated that the State Corporation Commission brought up an issue involving clause
32 (iv) of § 6.1-1.1 (confidentiality of information), indicating that it is not clear what "appropriate
33 process" means. The amendment clarifies that the State Corporation Commission must obtain a
34 protective order, and that the State Corporation Commission may not release records unless the
35 person consents to the release of information.

36 The final issue is that the term "finance charge" is used throughout Title 6.1; however, the term is
37 not defined. Mr. Munyan recommends adding a titlewide definition of "finance charge" by
38 incorporating by reference the federal definition found in Regulation Z (12 CFR 226.4).

39 Incorporating Federal Laws and Regulations by Reference into the Code of Virginia

40 At the last meeting, a question was raised regarding incorporating a federal act or regulation by
41 reference into the Code of Virginia, and whether the language "as amended" or similar language
42 is necessary. One thought is that the federal act in effect at the time the Code section is read is
43 the effective language, with or without the language "as amended" appended to the reference.

1 Another consideration is that the federal act in effect at the time the Code section was enacted is
2 the effective language. Mr. Miller stated that he is continuing to research the issue and will bring
3 it back to the next meeting for discussion.

4 **AUTHENTICATION OF STATE ONLINE LEGAL MATERIALS**

5 Ms. Chaffin advised members that the Uniform Law Commissioners established a new drafting
6 committee to develop a uniform law relating to the authentication and preservation of state
7 electronic legal materials.

8 **OTHER BUSINESS AND PUBLIC COMMENT**

9 There was no further business to come before the Commission. No one from the public came
10 forward during the public comment period.

11 **ADJOURN**

12 Senator Calhoun made a motion, seconded by Senator Edwards, to adjourn the meeting. The
13 motion was approved and the meeting was adjourned at 2 p.m.