

VIRGINIA CODE COMMISSION

*Monday, August 1, 2016 - 10:00 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219*

1 **MEMBERS PRESENT:** John S. Edwards (by telephone); James M. LeMunyon; Gregory D.
2 Habeeb; Carlos L. Hopkins; Leslie L. Lilley; Ryan T. McDougle; E.M. Miller, Jr. (by telephone);
3 Thomas M. Moncure, Jr.; Chris Nolen; G. Timothy Oksman; Charles S. Sharp; Mark Vucci

4 **MEMBERS ABSENT:** Robert L. Calhoun, Jr.

5 **STAFF PRESENT:** Kristen Walsh, Amigo Wade, Britt Olwine, David Cotter, Meg Burruss, Lilli
6 Hausenfluck, Jane Chaffin, Karen Perrine, Division of Legislative Services (DLS)

7 **OTHERS PRESENT:** Brian Kennedy, LexisNexis

8 **Call to order:** Delegate LeMunyon, Vice-Chair, called the meeting to order at 10:00 a.m.

9 **Remote member participants:** Senator Edwards and Mr. Miller participated in the meeting
10 remotely, by telephone, pursuant to § 2.2-3708.1 of the Code of Virginia and the Commission's
11 policy on remote participation. Senator Edwards stated that he was calling from Bald Head Island
12 while on family vacation. Mr. Miller stated that he was calling en route to Myrtle Beach, South
13 Carolina, where he would be attending an afternoon meeting.

14 **Approval of minutes:** On motion of Mr. Hopkins, seconded by Mr. Nolen, the minutes of the June
15 20, 2016, meeting of the Commission as printed and distributed to the members were approved.

16 **Recodification of Title 55, Property and Conveyances:** Amigo Wade presented a detailed list of
17 the proposed parts, chapters, articles, and sections for Subtitle III, Rental Conveyances. This list
18 was developed by the Rental Conveyances work group. Mr. Wade described an issue that the work
19 group has encountered pertaining to the organizational approach to rental conveyances. The
20 Virginia Residential Landlord and Tenant Act (VRLTA), which was first adopted in 1974, is based
21 on the Uniform Residential Landlord and Tenant Act developed by the National Conference of
22 Commissioners on Uniform State Laws. When it was initially enacted, the VRLTA did not apply to
23 all residential tenancies. Rental tenancies not covered by the VRLTA continued to fall under
24 existing Chapter 13 (§ 55-217 et seq.) of Title 55. The result is that two bodies of law pertaining to
25 residential tenancies have continued to exist. Mr. Wade went on to explain that, since 1994, the
26 General Assembly has passed legislation having the effect of expanding the applicability of the
27 VRLTA. A great deal of the work group's time has been spent reconciling the two bodies of law in a
28 proposed general provisions chapter that will cover all residential tenancies.

29 Mr. Miller suggested that staff review the revisions to the Uniform Residential Landlord and Tenant
30 Act that were recently approved by the Uniform Law Commission.

31 In response to a question from Delegate LeMunyon, Mr. Wade stated that staff will inquire as to
32 whether university buildings that are owned privately and leased by a public university are exempt
33 from the VRLTA.

34 **2017 Code of Virginia replacement volumes and pricing proposal:** Brian Kennedy stated that
35 LexisNexis proposes replacing the following volumes of the Code of Virginia in 2017: Volumes 1,
36 7, 8A, and 9A, which he suggests splitting into two volumes (9A and 9B). Volume 9A will consist
37 of Titles 63.2 and 64.2, and Volume 9B will consist of Titles 65.2 through 67. The proposal is based
38 largely on the size of the stand-alone supplement for each volume. Mr. Kennedy stated that

39 replacing five to six volumes each year is typical. In regards to the pricing information, Mr.
40 Kennedy advised that the requested increase is four percent.

41 Mr. Miller requested additional time to review the proposal. Mr. Kennedy stated that a delay was
42 acceptable to LexisNexis. Hearing no objection from the members of the Commission, Delegate
43 LeMunyon directed that this agenda item be moved to the next meeting of the Commission.

44 **Proposed work plan for study of (i) use of gender-specific references throughout the Code of**
45 **Virginia and (ii) referred bills from the 2016 Session of the General Assembly:** Mr. Cotter
46 provided a brief update on this study, which includes gender-specific-term bills referred to the
47 Commission, a request from House and Senate leadership for the Commission to set up a study to
48 evaluate the Code of Virginia in light of the 2015 U.S. Supreme Court ruling on same-sex marriage,
49 numerous bills amending Virginia law governing discrimination referred to the Commission during
50 the 2016 Session of the General Assembly, and a May 10, 2016, opinion of the Virginia Attorney
51 General addressing Virginia's antidiscrimination statutes.

52 Staff completed its review of the Code of Virginia to identify sections with gender specific terms,
53 and a list of those sections was presented. Mr. Cotter advised the members that work groups have
54 been established, and he presented a list of names or entities with work group assignments. One
55 additional work group will be formed to review those sections not amenable to consideration by an
56 existing work group because the subject matter is government oriented. Mr. Cotter will consult with
57 state agencies as appropriate for this "as necessary" work group.

58 Mr. Cotter indicated the work groups are expected to begin their work after this meeting. Findings
59 and recommendations will be presented to the Commission in discrete portions, but Mr. Cotter
60 indicated that he is not certain when the presentations will begin.

61 Senator Edwards addressed the bills referred to the Commission during the 2016 Session of the
62 General Assembly, noting that one bill was from House Courts and the others were from House
63 General Laws. He stated that the bills from House General Laws seem to be policy bills and not
64 within the purview of the Commission.

65 Mr. Oksman stated that he had discussed this matter with Senator Edwards before the meeting. He
66 moved that the bills be re-referred to General Laws. He stated that he was uncomfortable putting
67 staff in a position to recommend policy changes. Senator Edwards identified the bills as HB 77, HB
68 179, HB 300, HB 397, HB 427, HB 429, HB 913, HB 1005, SB 12, and SB 67. Mr. Hopkins
69 seconded the motion.

70 Delegate Habeeb spoke against the motion. He stated that the Commission understood that the bills
71 were policy bills when it agreed to include the bills in this study. Staff will not make policy
72 recommendations, but will evaluate each bill for the proper way to draft legislation and for
73 consistency with other recommendations from the work groups. He noted that a General Assembly
74 member may reintroduce any of these bills at any time and asserted that it is important for the
75 Commission to undertake this work to get the best result, particularly since the Commission has
76 publicly announced it is going to do so.

77 Mr. Nolen questioned, as a point of order, whether the Commission can send the bills back to
78 General Laws, as stated in the motion. A question arose as to the exact status of the bills. Delegate
79 LeMunyon stated that he would prefer that resolution of this matter be deferred until the next
80 meeting so that the members have an opportunity to review all of the bills, the status of the bills,

81 and the point of order. Mr. Oksman withdrew his motion and stated that he intended to reintroduce
82 the motion at the next meeting.

83 **Obsolete laws work plan, 2016:** Section 30-151 of the Code of Virginia requires the Commission
84 to review the Code of Virginia to identify obsolete provisions. Meg Burruss advised the members
85 that DLS staff planned to review Titles 5.1 (Aviation), 10.1 (Conservation), 27 (Fire Protection), 48
86 (Nuisances), and 62.1 (Waters of the State, Ports and Harbors) for obsolete provisions. She
87 anticipates that recommendations will be presented at the Commission's October meeting.

88 **2016 Virginia Administrative Code replacement volumes proposal:** Karen Perrine stated that the
89 contract for the print publication of the Virginia Administrative Code (VAC) provides for
90 Commission approval when West, the publisher, proposes replacement of more than four volumes
91 of VAC in any given year. West has requested approval to issue five replacement volumes in 2016.
92 The five volumes will be Volumes 14 through 18, consisting of Titles 14 through 24, which will
93 complete the replacement of the hardcover binder volumes with softcover volumes.

94 On motion of Mr. Hopkins, seconded by Judge Sharp, the Commission approved West's request to
95 issue five replacement volumes.

96 **Treatment of enactments and other uncodified acts passed by the General Assembly:** Mark
97 Vucci presented a list of Section 1 bills and enactment clauses from the 2016 Session of the General
98 Assembly that were assigned a section number in the Code of Virginia. Mr. Vucci explained that
99 this year, enactment clause 2 of Chapters 300 and 661 was placed in the Code as subsection I of §
100 58.1-439.12:11 following the general authority of the Commission regarding codification. In 2011,
101 Chapter 742 amended § 58.1-439.12:06 and contained a similar enactment clause; however, that
102 enactment clause was not placed in the Code. Mr. Vucci wanted the Commission to be aware of this
103 situation and provide guidance to staff on any action deemed necessary by the Commission.

104 Delegate LeMunyon stated that the Commission has three choices: take no action, codify both, or
105 leave both in the enactment clause. Mr. Moncure stated that an enactment clause should only be
106 transitional. The language of the enactment clause in question is substantive and therefore should be
107 in the Code. Mr. Hopkins agreed with Mr. Moncure, adding that the text of the enactment clause is
108 permanent in nature, which is basis for codification. Mr. Hopkins moved that enactment clause 2 of
109 Chapter 742 of the 2011 Acts of Assembly be placed in the Code. The motion was duly seconded.
110 Delegate Habeeb disagreed, indicating that a member of the General Assembly should have the
111 ability to introduce legislation as an enactment or Section 1 bill with confidence that it would
112 remain as enacted by the General Assembly.

113 After discussion of the Code Commission's statutory authority and responsibilities, Mr. Hopkins
114 renewed his motion on the basis of the information presented. The motion passed with Delegate
115 Habeeb voting against the motion.

116 Senator McDougle stated the Commission should provide clear direction on how to proceed in the
117 future. Delegate LeMunyon requested that Mr. Vucci draft the policy for discussion at the next
118 meeting.

119 **Public comment; adjournment:** Delegate LeMunyon opened the floor for public comment. As
120 there was no public comment and no further business to discuss, the meeting was adjourned at
121 11:25 a.m.