

2007 Code of Virginia: Time for Change

by Cheryl L. Jackson and E. M. Miller Jr.

Question: What's 55 years old, and for two months every year goes in to be nipped, tucked, augmented and enhanced?

Answer: The Code of Virginia.

SJR 388

The 2005 General Assembly unanimously agreed to Senate Joint Resolution 388, which advises the citizens of Virginia of the intention of the Code Commission to publish a 2007 Code of Virginia. The Code has not been completely renumbered and reformatted since 1950, when it was adopted by the General Assembly as the official Code of Virginia. Practitioners know all too well that the numbering system for the Code has become increasingly convoluted and disorganized as chapters and titles are inserted, renumbered or deleted entirely from the Code. It is not uncommon, for example, to see Code numbers as complex as: § 32.1-122.10:001. With more than one thousand bills passed each year, even newly-recodified titles quickly outgrow their numbering schemes.

Codification history

In 2007, the Code of Virginia will be fifty-seven years old, which is older than any previous Virginia Code. Hening's Statutes at Large carried the laws of Virginia from 1619 through the beginning of the 19th century. Building on that, statutory law was first codified in 1804, with new codifications following in 1819, 1849, 1887, 1904, 1919 and 1950. The average time between these codifications is twenty-six years, with thirty-eight years being the longest span of time before a new code was implemented. The 1950 Code of Virginia has far surpassed that mark, and is ripe for a makeover.

It is a subtle distinction that eludes many practitioners, but the Acts of Assembly, not the Code of Virginia, actually contains the law of the commonwealth. The Acts of Assembly hold all acts passed by the General Assembly, signed by the Governor and enacted into law. They are published annually in volumes arranged

by chapter number, which is assigned when the Governor signs the bill. The Code of Virginia codifies all acts of a general and permanent nature (i.e., laws that apply commonly to all citizens), arranging them topically by title, chapter and article.

Code Commission

Pursuant to Virginia Code § 30-146, the Code Commission is charged with publishing and maintaining the Code. The Code Commission was established in 1946, when the General Assembly created the Commission on Code Recodification, to oversee the revision and recodification of laws that became the 1950 Code. Two years later its name was changed to the Virginia Code Commission.

The Code Commission is a permanent legislative branch commission staffed by the Division of Legislative Services. It consists of ten members: two current and one former Senator, two current and one former member of the House of Delegates, two circuit court judges, the Attorney General or her designee, and the director of the Division of Legislative Services.¹

The Code Commission has full discretion to arrange for the publication of the Code of Virginia, as well as the Virginia Administrative Code and the Virginia Register of Regulations. The commission may decide all questions of form, makeup and arrangement pertaining to the Code, including title pages, prefaces, annotations, indices, tables of contents, appendices, paper, type, binding and lettering.² The Code Commission has broad authority to make minor changes to the Code of Virginia, and may renumber, rename, and rearrange any Code titles, chapters, articles, and sections. It may also correct printer's errors, misspellings and other unmistakable errors in the statutes, and make consequential changes necessary in terminology, references or language that is no longer appropriate.³

Individual titles of the Code are revised on an ongoing basis. Forty-six of the Code's sixty-six titles have been revised at least

once since 1950, many of them twice. Title revisions are drafted by legislative services attorneys over a one- to two-year period. The Code Commission typically appoints a work group, composed of interested parties in the public and private sectors, to act as a sounding board and assist in developing policy during the revision process. The Code Commission reviews the revision draft, approves it, issues a recodification report, and a bill is introduced in the General Assembly to effectuate the changes. Title revisions contain both non-substantive or technical changes, as well as substantive additions and deletions. It is those substantive changes that trigger legislation.

2007 Code Project

The 2007 Code project is a nonsubstantive reorganization of statutory law. It will contain many cosmetic and technical changes, but there will not be substantive changes in the statutory law. Therefore, there will be no bill introduced in the General Assembly to enact the 2007 Code. The Code Commission is acting on its authority to make these changes. The project will also be done at little or no additional cost to the state, as the Division of Legislative Services staff will absorb the work with existing staff. Moreover, LexisNexis, the contract publisher, has agreed to provide the 2007 Code to current subscribers at no extra cost than they currently pay for Code maintenance, by amortizing the costs over several years.

Specifically, the 2007 Code will be revised in the following ways:

- Renumbering Code sections using a new numbering convention.
- Creating new titles and title numbers.
- Dividing lengthy sections and grouping like sections, articles and chapters more logically within their titles.
- Making global changes to archaic or inconsistent language.

Numbering scheme

In March, the Division of Legislative

Services' staff undertook a fifty-state analysis of numbering conventions used by other codes. That analysis led to three recommended options being presented to the Code Commission at its April 20 meeting. Commission members overwhelmingly endorsed what has become known as the "two-dash system." It is a convention used in one form or another by eighteen states, including Tennessee, Arkansas, Colorado, Montana, Utah, and Wyoming. The section number is broken down as follows:

Two-dash system: Title-Chapter-Section (with Article embedded).

Ex.: Wyoming Stat. §§ 11-19-101 through 11-19-117
 Title 11, Chapter 19, Article 1, Sections 1-17

Tenn. Code § 26-2-309
 Title 26, Chapter 2, Article 3, Section 9

Advantages of this system are numerous:

- It provides a clear visual distinction between 1950 Code sections and 2007 Code sections.⁴
- The number itself gives immediate reference to its placement within the title, chapter, and article. This eliminates the problem of not knowing where the article and chapter end when reading language such as: "as used in this article . . ." or "as used in this chapter . . ."
- It allows room to grow, in that there can be 100 sections per article, rather than 100 sections per chapter as allowed by our current system.

New titles

At this writing, no final decision has been reached on title numbering and arrangement. Several options are being considered. For example, it has been suggested that some titles could be consolidated (e.g., creating a Transportation title by combining Title 46.2, Motor Vehicles; Title 33.1, Highways, Bridges and Ferries; Title 5.1, Aviation; and Title 62.1, Waters of the State, Ports and Harbors), and that new titles could be created (e.g., establishing an Interstate Compacts and Agreements title). The Code Commission will also decide if titles should be kept in alphabetical order, or grouped in another way.

Dividing and grouping sections

The whole-Code reorganization effort provides an ideal opportunity for simplifying areas that have grown out of control. Extremely lengthy sections will be broken into more manageable sections. Likewise, as the Code has grown, sections, articles, and chapters have been added in places where they don't "fit" well, so this will give the commission a chance to clean up each title.

Global changes

Before legislative services attorneys start the project, the editing staff will make certain language consistent throughout the Code. Examples of these changes include: changing spelled out numbers to numerals (ten and over), using monetary symbols rather than the words "dollars" and "cents," standardizing inconsistent wording throughout the Code, and so on.

Work group

Just as is standard for title recodifications, a work group has been established for the 2007 Code project within the Division of Legislative Services, and will report to the Code Commission monthly. The work group strives to be inclusive, and invites comment and participation from all interested parties. While still growing, the work group currently consists of representatives from the Supreme Court, Commonwealth's Attorneys' Services Council, Virginia State Bar, Virginia Bar Association, Virginia

Association of Law Librarians, LexisNexis, Local Government Attorneys Association, Thomson West, Department of Motor Vehicles, and the Virginia State Police. A Web site has been established through which agendas, minutes and work group materials can be accessed.⁵ Any person wishing to make comment to the work group is invited to do so. ☞

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E. M. Miller Jr. has been the director of the Division of Legislative Services since 1988. Prior to that, he was a senior attorney at the division and staff director of the Senate Finance Committee. He has the distinction of serving as the principal drafter for the first title revised by the Code Commission by in-house counsel. Miller is a member of the Code Commission, and also serves as a Virginia commissioner of the National Conference on Uniform State Laws.

Endnotes:

- 1 *Code of Virginia*, 1950 § 30-145. Current members of the Code Commission are: Sen. William C. Mims, Chair; Del. R. Steven Landes, Vice-Chair; Del. Robert Hurt; Sen. John S. Edwards; Robert L. Calhoun; Thomas M. Moncure Jr.; Judge Diane M. Strickland; Judge S. Bernard Goodwyn; Frank S. Ferguson; and E.M. Miller Jr.
- 2 *Code of Virginia*, 1950 § 30-146.
- 3 *Code of Virginia*, 1950 § 30-149.
- 4 The chart below offers a comparison of 1950 Code numbering and 2007 Code numbering, based on Title 22.1, Chapter 5, Articles 1 - 8 (§§ 22.1-28 through 22.1-57.5). For purposes of this example, title numbering has remained the same, less the decimal point.

	1950 Code	2007 Code
Article 1	22.1-28 through 22.1-33	22-5-101 through 22-5-107
Article 2	22.1-34 through 22.1-40	22-5-201 through 22-5-209
Article 3	22.1-41 through 22.1-46	22-5-301 through 22-5-306
Article 4	22.1-47	22-5-401
Article 5	22.1-47.1 through 22.1-47.3	22-5-501 through 22-5-503
Article 6	22.1-48 through 22.1-51	22-5-601 through 22-5-604
Article 7	22.1-52 through 22.1-57	22-5-701 through 22-5-706
Article 8	22.1-57.1 through 22.1-57.5	22-5-801 through 22-5-810

5 <http://legis.state.va.us/codecomm/2007code/2007code.htm>