

# Continuous Revision of Wisconsin Statutes: a History

Even in the legal profession, which relies more than most on the infrastructure of state government, some government functions are over-looked or underappreciated. Such is continuous statutory revision, which is little noted, but serves such an important role in our legal system.

What are statutes? What are laws? In fact, the two terms have over-lapping meanings and can, in some contexts, be interchangeable. In Wisconsin, the statutes, used collectively, have come to mean the subject compilation of the law that, in its decimal-numbered organization, helps us to locate and efficiently cite applicable law. Laws have come to mean the individual acts of the legislature that are compiled and numbered sequentially as they are signed by the governor. Laws are enacted, then arranged by their diverse subjects, and placed in the statutes. The process seems so logical that one could be forgiven for not knowing or reflecting on the fact that it was not always so.

## Codifying Enactments – Early Attempts

The legal system in English-speaking countries is based on the Common Law, a body of legal precedents built up over centuries. This body of law existed side-by-side with acts passed by legislative bodies that existed only in their chronological compilation. Early in the American republic, courts and their devotion to Common Law were viewed as a reactionary force. This was to the exclusion of legislative enactments so prized by the revolutionary republic. As a way to compel courts to give due attention to legislative enactments, many states began – as part of the Jacksonian Era that ushered in universal male suffrage and ended debtor’s prison – to compile code or statute books, arranging enactments in a convenient, subject-based volume (sometimes incorporating aspects of the Common Law). Such code books had been compiled by several states by the time Wisconsin was settled.

## The Challenge of Practicing Law without Current Statutes

Just three years after the Wisconsin Territory was created, the Statutes of 1839 were published. When Wisconsin became a state in 1848, Article XIV, Section 2 of the new constitution retained in place all laws of the territory of Wisconsin “now in force” not repugnant to the constitution. The following year, the Statutes of 1849 were published, incorporating all general laws passed by the territory and state since 1839. The limitations of the statute book can be seen already – if you don’t issue updates regularly, the book becomes outdated and more difficult to use by the year. Wisconsin did a fairly good job of keeping up with this problem. The legislature regularly commissioned groups of private attorneys to revise the previous statute book and incorporate subsequent legislative enactments of a general nature. Revised Statutes were published in 1858, 1871, 1878, 1887 and 1898. Some states were not so scrupulous, leaving attorneys to struggle in evaluating the relevance and accuracy of a decades-old

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statute book. There was little regulation and a high percentage of legislative enactments were of a private or local character. Nevertheless, in many states attorneys felt compelled to purchase expensive, privately published supplements in order to responsibly practice law.

## Continuous Revision Becomes Law

It is perhaps not surprising that a solution to this problem was found in Wisconsin during a period noted for government innovation. Rapid reforms and growth in the regulatory state in the early 20th Century rendered the 1898 Statutes out of date very quickly. They were useless for the most contentious area of litigation – the testing of new laws in court. The answer was continuous revision. Chapter 546, Laws of 1909 created an office of the Revisor of Statutes under the trustees of the State Law Library – the justices of the Supreme Court and the Attorney General – to review actions of the legislature as they happened. Wisconsin was the first state to create such an office, which was also directed to prepare a new edition of the statutes as soon as possible after the adjournment of each legislative session. The first statutes volume by the new office was published following the 1911 session and a revision has been published every two years since. The new system offered a model to other states, many of whom were seeking a solution to the same problem. Continuous revision offered obvious benefits, chiefly that judges, attorneys and citizens could be certain of the law. One individual was responsible for the decisions made and was accountable as a state employee. Decisions on arrangement and organization bore the mark of one individual. The new statute book was available at cost, a bargain for practicing attorneys. There were other, less obvious advantages. The Revisor could alert the legislature to different pending pieces of legislation affecting a single area of the law in different ways, and allow them to deal with conflicts between them. The office could recommend uniform systems of spelling, usage, grammar, style, and arrangement. And it could track court interpretations of statutes and recommend amendments or repeals in response to court action.

## One Hundred Years Later

Today, the statutes have been published every two years for more than one hundred years and the process has become an expected service of state government. The revision function left the jurisdiction of the trustees of the State Law Library in 1963, and was placed in a Revisor of Statutes Bureau overseen by the Legislature's Joint Committee on Legislative Organization. Subsequent legislation in 2008 moved the revision function to the Legislative Reference Bureau (LRB), where it remains. Following is a review of the many tasks currently associated with statutory revision.

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The most obvious and visible contribution of the revising agency is to place enacted language into the statutes, modify amended language, and delete language that has been repealed. The LRB is also responsible for the uniform appearance of the statutes with respect to chapter, subchapter, and section headings, as well as the assignment and arrangement of the statute's rational decimal numbering scheme, which was instituted in the early years of continuous revision, and has become the organizational format with which generations of attorneys and judges are familiar.

Revision also involves the enforcement of stylistic uniformity in the statutes; for example, the elimination of gender-specific terms where a general application is intended, or the elimination of Latin legal terms which are today normally excluded from the statutes in the interest of clarity. Wisconsin law gives the Revisor unilateral authority to make changes in certain areas specified by law to enforce stylistic standards adopted by law.

The revising agency is also empowered to look for errors or inconsistencies in enacted legislation and recommend to the legislature new legislation. This is known as a "correction bill." Similarly, it may recommend "revision bills" that include repeal of obsolete provisions that have no effect or repeal of sections declared unconstitutional or otherwise made obsolete. Revision bills may provide for reorganization or renumbering of a portion of the statutes. These bills are to be without substantive change to the law. They are generally enacted with little controversy.

Another important function associated with continuous revision is the creation of notes that follow each statute section. In current statutes, history notes contain a list of each act that has amended the statute since 1971. A history note may also contain specific information regarding effective dates, if applicable. Annotations offer a brief summary of selected court decisions that have interpreted the statute and citations to relevant Attorney General Opinions and in-state law review articles that have discussed the statute.

The revision process initiated in 1909 continues today with many of the same basic objectives as one hundred years ago. The LRB is still responsible for compiling and providing for the publication of the statutes after the conclusion of each legislative session. However, this agency is also responsible for updating the legislature's online statutes as soon as possible after each new piece of legislation is enacted. In fulfilling this function, Wisconsin has, in effect, achieved a system of truly continuous revision.

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