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MEMORANDUM

TO: Committee on Legal Services

FROM: Richard Sweetman, Office of Legislative Legal Services

DATE: November 7, 2018

SUBJECT: Rules of the Division of Motor Vehicles, Department of Revenue, concerning obtaining records for abandoned motor vehicles, 1 CCR 204-10 (LLS Docket No. 180371; SOS Tracking No. 2018-00220).¹

Summary of Problem Identified and Recommendation

The Division of Motor Vehicles (DMV) operates a website at which registered tow operators (operators²) and law enforcement agencies may access information about abandoned motor vehicles, and sections 42-4-1806 (2)(b) and 42-4-2105 (2)(b), C.R.S., allow the executive director of the department of revenue (department) to cancel the registration of any operator for any violation of the provisions of part 18 or part 21 of article 4 of title 42, C.R.S. However, rule 12.2.6 of the DMV states that the executive director may cancel or suspend the registration of any operator **or towing law enforcement agency** for any such violation. **Because Rule 12.2.6 of the DMV concerning obtaining records for abandoned motor vehicles conflicts with the statutes, we recommend that the rule not be extended.**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2019, unless the General Assembly acts by bill to postpone such expiration.

² An "operator" is defined in § 42-4-1802 (7), C.R.S., as "a person or a firm licensed by the public utilities commission as a towing carrier."

Analysis

1. The DMV allows registered operators and law enforcement agencies to use a departmental website to access information concerning abandoned vehicles.

Parts 18 and 21 of article 4 of title 42, C.R.S., describe specific procedures that operators and law enforcement agencies must follow when towing, impounding, and disposing of motor vehicles that have been abandoned on public and private property, respectively. To help operators and law enforcement agencies satisfy these statutory requirements, the DMV operates a website at which registered operators and law enforcement agencies may access information about abandoned motor vehicles.³

Sections 42-4-1806 (2)(b) and 42-4-2105 (2)(b), C.R.S., allow the executive director of the department to cancel the registration of an operator who has violated any provision of part 18 or 21, respectively, thereby terminating the operator's access to the website:

42-4-1806. Liens upon towed motor vehicles. (2) (b) The executive director of the department may cancel the registration of any operator if an administrative law judge finds, after affording the operator due notice and an opportunity to be heard, that the operator has violated any of the provisions set forth in this part 18.

42-4-2105. Liens upon towed motor vehicles. (2) (b) The executive director of the department may cancel the registration of any operator if an administrative law judge finds, after affording the operator due notice and an opportunity to be heard, that the operator has violated any of the provisions set forth in this part 21.

2. Rule 12.2.6 grants authority to the executive director that is not described in the law.

Rule 12.2.6 of the DMV concerning obtaining records for abandoned motor vehicles appears below.

2.6 The Department may cancel or suspend an Operator **or Towing Law Enforcement Agency's** registration and access to the Department Website pursuant to sections 42-4-1806 (2)(b), 42-4-2105 (2)(b), and for any violation of Part 18 of Article 4 of Title 42 or Part 21 of Article 4 of Title 42, C.R.S., or this Rule, including but not limited to the following:

³ See <https://dmvpartner.colorado.gov>.

- a. The Operator's permit to operate as a towing carrier has been suspended, cancelled, or revoked by the Department of Regulatory Agencies, Public Utilities Commission.
- b. Obtaining or using records for any purpose not authorized by this rule or Colorado Revised Statutes.
- c. Failing to complete an EULA annually on the Department Website.
[Emphasis added.]

The DMV has included "or Towing Law Enforcement Agency's" in the first sentence of the rule. This addition clearly moves the rule outside the scope of sections 42-4-1806 (2)(b) and 42-4-2105 (2)(b), C.R.S., which authorize the executive director of the department to cancel the registration and access of an operator, but not the registration and access of a law enforcement agency. The absence of any mention of law enforcement agencies in these statutory provisions is notable because parts 18 and 21 of article 4 of title 42, C.R.S., clearly contemplate that both operators and law enforcement agencies will use the DMV's system to access information about abandoned vehicles. If the general assembly wants to authorize the department to cancel or suspend the registration and access of a law enforcement agency, it knows how to do so, but it has not.⁴

Section 42-1-204, C.R.S., authorizes the executive director of the department to "make uniform rules and regulations not inconsistent with articles 1 to 4 of this title and to enforce the same." But Rule 12.2.6 is inconsistent with articles 1 through 4 because these provisions do not authorize the executive director to cancel or suspend the registration and access of a law enforcement agency.

⁴ The general assembly has examined and considered the DMV's electronic records systems as recently as 2017, when the general assembly enacted H.B. 17-1107. This act required the DMV to replace its existing vehicle titling and registration system with a new system known as Colorado driver's license, record, identification, and vehicle enterprise solution (Colorado DRIVES). Although H.B. 17-1107 made many changes to various provisions of title 42, C.R.S., to implement Colorado DRIVES, the bill made almost no changes to parts 18 and 21 of article 4 of title 42, C.R.S. Specifically, the bill made no changes to section 42-4-1806 (2)(b) or 42-4-2105 (2)(b), C.R.S., which sections are cited by Rule 12.2.6 as the basis for its authority.

Recommendation

We therefore recommend that Rule 12.2.6 of the DMV concerning obtaining records for abandoned motor vehicles should not be extended because the rule conflicts with the statutes.