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COLORADO GENERAL ASSEMBLY



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MEMORANDUM

TO: Committee on Legal Services

FROM: Office of Legislative Legal Services

DATE: September 20, 2016

SUBJECT: Update on and Recommendations from Title 12 Recodification Study

Summary

The Office of Legislative Legal Services (OLLS) recommends that the Committee on Legal Services (Committee) consider the following actions with respect to the Title 12 Recodification Study authorized by SB16-163:

- The Committee should authorize the OLLS to draft a committee bill to amend the Administrative Procedure Act and should fast-track the legislation in the 2017 legislative session.
- The Committee should authorize the OLLS to draft legislation for the 2017 legislative session to relocate certain articles out of title 12 for which the feedback on the relocation proposal has been supportive.
- The Committee should provide the OLLS direction on proposals to reorganize and restructure articles that are planned for relocation out of title 12.
- The Committee should defer plans to relocate articles administered by the Secretary of State.

Study Update and Recommendations

1. Steps Taken to Date

Starting in early June 2016, the OLLS engaged in public outreach about the title 12 recodification study and conducted three rounds of meetings with interested parties.

1.1. Public outreach

In early June, the OLLS emailed executive branch agency and local government organization liaisons and representatives to inform them of the title 12 recodification study, invite them to initial organizational meetings in late June, solicit their participation in the meetings and the ongoing study, and request their assistance in reaching out to other interested stakeholders. Several departments provided contact information for additional department staff or other interested individuals to participate in and provide assistance with the study. Additionally, the OLLS received requests from several interested persons to participate in the study and also compiled a list of lobbyists that may be interested in participating. The OLLS added those individuals to an email subscriber group to whom the OLLS sends notices of title 12 recodification study meetings.

The OLLS also created a title 12 recodification study webpage,¹ accessible from the OLLS website, that includes a description of the purpose of the study, information about upcoming meetings, links to live audio-streaming of meetings, summaries of and links to audio archives of prior meetings, and a link to subscribe to our email list. Currently, we have 126 subscribers to our title 12 email list.

The title 12 recodification study and June meetings were also highlighted in the June 21 issue of the OLLS' LegiSource blog and mentioned in tweets on June 15 and 21.

At every meeting and in every email notice, the OLLS continues to solicit assistance in reaching out to other interested individuals in our effort to get the word out about the study and obtain feedback from those interested in or affected by the study and potential legislation. Additionally, the OLLS tweets about all upcoming meetings.

¹ A screenshot of the Title 12 Recodification Study webpage is attached to this memorandum.

1.2. Meetings

The OLLS held organizational meetings on June 29 and June 30 to explain the impetus behind the study: to reorganize and consolidate the professions and occupations articles administered by the Department of Regulatory Agencies (DORA) and to relocate articles or programs that are not administered by DORA to other titles in the Colorado Revised Statutes. Nearly sixty individuals attended these meetings and signed up to participate in various aspects of the study.

On July 21, the OLLS held stakeholder meetings to discuss all articles in title 12 that are not administered by DORA. Meetings were held concurrently in two House committee rooms, and OLLS staff presented specific proposals for relocating specified articles in title 12 to different locations and obtained feedback from those present.

On August 17, the OLLS held a meeting to discuss three articles in title 12 that are not administered by the Division of Professions and Occupations (DPO) in DORA but are administered by other divisions in DORA. With respect to two of the articles, OLLS staff presented proposals to relocate those articles to title 11. As for the third article, administered by the Division of Real Estate, the OLLS obtained feedback on retaining that article within title 12 but considering some minor restructuring of the article.

On August 18, the OLLS held a meeting to discuss the articles in title 12 that are administered by DPO and that regulate a business or health care profession or occupation. The discussion focused on how to divide the professional groups into smaller working groups for future meetings and consideration of restructuring proposals.

2. Summary of Feedback & Recommendations

Generally, the feedback from department and local government representatives on the title 12 recodification proposal has been positive. Industry and professional group representatives have also been receptive to the proposal. As a result of the feedback received to date, the OLLS recommends the following:

2.1. The Committee should pursue a bill for the 2017 legislative session to allow state agencies to more easily update rules if statutory citations change.

At the meetings held on July 21, agency representatives initially expressed concern about the fiscal impact and tremendous workload involved in engaging in the rulemaking process under the Administrative Procedure Act (APA) merely to change statutory citations in rules if a given article is relocated and thus is assigned different statutory citation numbers. Representatives from the Attorney General's office indicated that the impact would not be as great if the agencies were permitted to use the "scrivener's error" process in the APA to correct those changing citations without

proceeding through the normal rulemaking process. In other words, allow the agencies to send a notice to the Secretary of State, indicating the new statutory citation, and allow the Secretary of State to incorporate the correct statutory citation in the applicable rule.

The OLLS agrees that this modification to the APA would minimize the fiscal and workload impacts of any legislation resulting from the recodification proposal that renumbers existing statutes and therefore *recommends*:

- a) *That the Committee authorize the OLLS to draft a committee bill to amend the APA;* and
- b) *That the Committee fast-track this legislation* in order to avoid a significant fiscal impact in legislation proposing to relocate any articles currently in title 12, per the recommendation in section 2.2, below.

2.2. The Committee should authorize the OLLS to draft bills for the 2017 legislative session to relocate certain articles out of title 12.

During the meetings held on July 21 and August 17, much of the feedback received on specific articles supported the proposals to relocate those articles to different, more appropriate titles in the Colorado Revised Statutes. Although the initial recodification proposal was to defer any recodification legislation until the 2018 legislative session, *the OLLS recommends, based on the feedback received on certain articles, that the Committee authorize the OLLS to draft legislation for the 2017 legislative session to relocate articles for which the feedback on the relocation proposal has been supportive and relocation does not appear controversial.* Specifically, the OLLS is seeking permission to draft legislation for the 2017 legislative session to relocate the following articles currently contained in title 12:

Article	Topic	Relocation Proposal
14	Fair debt collection practices act	Title 5 (Consumer Credit Code)
14.1	Child support collection consumer protection act	
14.3	Consumer credit reporting act	
14.5	Debt-management services	
44	Hotel establishments	Title 6 (Consumer & Commercial Affairs), Title 13 (Courts), or Title 38 (Property)
44.5	Indian arts and crafts sales	Title 6 (Consumer & Commercial Transactions) or Title 18 (Criminal Code)
13	Life care institutions	Title 11 (Financial Institutions)
52	Money transmitters	

Article	Topic	Relocation Proposal
5	Attorneys-at-law	Title 13 (Courts)
66	Wholesale sales representatives	
12	Cemeteries	Title 15 (Probate & Trusts)
34, part 1	Uniform anatomical gift act	
34, part 2	Unclaimed human bodies	
59	Private occupational schools	Title 23 (Postsecondary Education)
28	Fireworks	New part in article 33.5 of Title 24 (State Government) or to Title 29 (Local Government)
29.3	Emergency volunteer health practitioners	Title 25 (Public Health & Environment)
30	Cancer cure control	
25.5	Escort services	Title 29 (Local Government)
56	Pawnbrokers	
18	Dance halls	Title 30 (County Government)
16	Farm products and commodities handlers	Title 35 (Agriculture)
15	Commercial driving schools	Title 42 (Vehicles & Traffic)

2.3. The Committee should provide the OLLS direction on proposals to reorganize and restructure articles that are planned for relocation.

During the July 21 meeting, OLLS staff discussed proposals to relocate articles administered by the Department of Revenue, namely:

- Article 6 Automobiles
- Article 43.3 Medical Marijuana
- Article 43.4 Retail Marijuana
- Article 46 Fermented Malt Beverages
- Article 47 Alcohol Beverages
- Article 47.1 Colorado Limited Gaming Act
- Article 47.2 Tribal-state Gaming Compact
- Article 48 Liquors - Special Events Permits
- Article 60 Racing

OLLS staff initially suggested relocating these articles to title 39 or title 24. Based on concerns about relocating these articles to either title 39, pertaining to "Revenue," or title 24, pertaining to "State Government," OLLS staff suggested creating a new title in the Colorado Revised Statutes to which the above-listed articles could be relocated. The feedback to this proposal has been positive.

During the meeting and through follow-up feedback, several stakeholders requested, as part of the title 12 recodification, that a few of the Department of Revenue articles recommended for relocation to a new title also be reorganized and restructured. Specifically, representatives of the marijuana industry proposed a restructuring and reorganization of the medical and retail marijuana codes to eliminate duplication, clarify the differences in the two regulatory schemes, and streamline the statutes. The intent, as explained by the proponents of the proposal, is to effectuate a nonsubstantive reorganization of the marijuana laws to make them more understandable. Representatives of the Attorney General's office also expressed a desire to reorganize these two codes to foster better administration by the Department of Revenue. This specific proposal affects articles 43.3 and 43.4 of title 12.

Additionally, during follow-up discussions with representatives of the automobile dealers, the OLLS received a similar request with regard to article 6 of title 12, regarding automobiles, i.e., to restructure article 6 as part of any legislation to relocate article 6 to a new title 44.

Also at the July meeting, OLLS staff suggested relocating provisions in any of the above-listed articles that impose or enforce a tax (e.g., excise tax on alcohol beverages in sections 12-47-503 and 12-47-504, C.R.S.) to title 39, which is the title pertaining to revenue and taxes. No one at the meeting expressed opposition to this suggestion, although those present indicated a desire to revisit the idea after soliciting feedback from others in the Department of Revenue, as well as the regulated community.

Before proceeding with reorganization efforts or moving tax provisions, *the OLLS requests direction from the Committee on whether the committee wants the OLLS to:*

- a) *Work with interested parties to reorganize the marijuana codes, articles 43.3 and 43.4, and the automobiles law, article 6; and*
- b) *Relocate any tax provisions contained in the Department of Revenue articles to Title 39.*

2.4. The Committee should defer plans to relocate articles administered by the Secretary of State.

After the initial meetings in June, a representative from the Secretary of State's office indicated that the Secretary is planning to propose substantive legislation in the 2017 legislative session to amend portions of article 9, regulating bingos and raffles, and article 55, regulating notaries public. The Secretary's representative indicated a willingness to relocate those articles as part of the substantive legislation. Therefore, at this time, *the OLLS recommends that it defer further efforts on relocating articles 9 and 55, pending further direction from the Committee and potential legislation proposed by the Secretary of State to relocate those articles.*

3. Future plans

The OLLS will continue to meet with department and local government representatives and interested stakeholders to develop specific proposals to recodify and reorganize articles that will remain in title 12 and will continue to seek feedback on articles that are slated for relocation but for which no input has been received. Additionally, the OLLS will be holding another round of meetings in mid-October to discuss:

- a. Reorganizing article 61, pertaining to real estate, which article is administered by the Division of Real Estate in DORA and will remain in title 12; and
- b. Relocating certain articles administered by the Department of Revenue to a new title in the Colorado Revised Statutes.²

The OLLS will continue to update the title 12 recodification study website and will email and tweet notices of meetings.

The OLLS will report progress to the Committee in December and, if the recommendations for legislation are approved, will present, at a minimum, the APA proposed bill at the Committee's December meeting.

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² See the attached list of articles in title 12 that will either remain in title 12 and be restructured or that will be relocated but require further meetings and stakeholder discussions.

REMAINING ARTICLES IN TITLE 12 FOR REORGANIZATION OR RELOCATION

Remain in Title 12 and Reorganize

Article	Topic	Article	Topic
1.5	General provisions	38.1	Nurse aides
2	Accountants	39	Nursing home administrators
5.5	Hearing aid providers	40	Optometrists
8	Barbers and cosmetologists	40.5	Occupational therapy
10	Boxing	41	Physical therapists
15.5	Fantasy contests	41.5	Respiratory therapy
23	Electricians	42	Psychiatric technicians
25	Engineers, surveyors, and architects	42.5	Pharmacy
29.1	Professional review proceedings	43	Mental health
29.5	Acupuncturists	43.2	Surgical assistants and technologists
29.7	Athletic trainers	43.7	Speech-language pathologists
29.9	Audiologists	45	Landscape architects
32	Podiatrists	54	Mortuaries
33	Chiropractors	55.5	Outfitters and guides
35	Dentists and dental hygienists	58	Plumbers
35.5	Massage therapists	58.5	Private investigators
36	Medical practice	61	Real estate
36.5	Health care provider professional review committees	64	Veterinarians
37	Direct-entry midwives	70	Inactive license status
37.3	Naturopathic doctors	71	Regulation of military individuals and spouses
38	Nurses		

Relocate to a New Title 44 and Possibly Reorganize

Article	Topic	Article	Topic
6	Automobiles	47.1	Colorado Limited Gaming Act
43.3	Medical Marijuana	47.2	Tribal-state Gaming Compact
43.4	Retail Marijuana	48	Liquors - Special Events Permits
46	Fermented Malt Beverages	60	Racing
47	Alcohol Beverages		

**Secretary of State-Administered Articles That May Be Relocated
in 2017 Substantive Legislation**

Article	Topic	Article	Topic
9	Bingos & raffles	55	Notaries public

Relocate to a Different Title

Article	Topic	Article	Topic
26	Firearms dealers	37.5	Parental notification act
26.1	Background checks - gun shows		