

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM

**TO:** Committee on Legal Services

**FROM:** Office of Legislative Legal Services

**DATE:** November 8, 2017

**SUBJECT:** Update on and Recommendations from Title 12 Recodification Project

### 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 legislation for the 2018 legislative session to relocate certain articles and parts out of title 12 and title 24, including relocation of some articles and parts into a new title 44 consisting of laws governing activities regulated by the Department of Revenue; and
- The Committee should authorize the OLLS to draft a committee bill, for introduction in the 2018 legislative session, to extend the Title 12 Recodification Project for one additional year, and, as part of that legislation, extend the funding for additional OLLS staff through August 31, 2019.

## **Study Update and Recommendations**

### **1. Accomplishments in the 2017 Legislative Session**

The Committee sponsored a total of 15 bills in the 2017 legislative session, all of which were enacted by the General Assembly and signed by the Governor. HB17-1006, which became law on March 16, 2017, modified the rule-making procedure under the "Administrative Procedure Act" to allow state agencies to implement statutory citation updates in existing rules without conducting formal rule-making.

Additionally, the Committee sponsored 14 "relocation" bills that moved 21 articles from title 12 to other, more appropriate titles. All of these bills were enacted by the General Assembly, were signed by Governor, and became law on August 9, 2017. With the enactment of these relocation bills, the title 12 volume of the Colorado Revised Statutes was reduced by approximately 270 pages.

### **2. Steps Taken in the 2017 Interim**

#### **2.1. Incorporating 2017 Relocation Bills into Published C.R.S.**

Immediately following the 2017 legislative session, the OLLS began working to incorporate legislation passed in the session into the statute books, including the 14 relocation bills. As our staff worked on the "publications" process, we learned that the 14 relocation bills enacted in the 2017 session had a significant impact on the office's overall publications workload, increasing the workload burden and time needed to accomplish our publications responsibilities. Accordingly, OLLS staff began discussing plans for managing the workload for the remainder of the project, including the need for additional temporary staff, which will be discussed in more detail below in section 3 of this memorandum.

#### **2.2. Additional Relocation Proposals**

In addition to the publications work, the OLLS' Title 12 work group has been drafting proposals to relocate additional articles and parts from title 12 to other titles in the C.R.S., including a newly created title 44 that will consist of laws governing activities regulated by the Department of Revenue. The following table lists the articles in title 12 that we are proposing to relocate, and for which we are requesting the Committee sponsor bills to accomplish the relocations:

Article	Topic	Article	Topic
<b>6</b>	<b>Automobiles</b>	<b>47</b>	<b>Alcohol Beverages</b>
26	Firearms dealers	<b>47.1</b>	<b>Colorado Limited Gaming Act</b>
26.1	Background checks - gun shows	<b>47.2</b>	<b>Tribal-state Gaming Compact</b>
37.5	Parental notification act	<b>48</b>	<b>Liquors - Special Events Permits</b>
<b>43.3</b>	<b>Medical Marijuana</b>	Art. 55, pt. 3	Unsworn Declarations
<b>43.4</b>	<b>Retail Marijuana</b>	<b>60</b>	<b>Racing</b>
<b>46</b>	<b>Fermented Malt Beverages</b>		

As mentioned in previous updates, the articles in the above table that appear in **bold text** are administered by the Department of Revenue, and, given the feedback OLLS staff received in 2016, our proposal is to relocate these articles to a new title 44. The Department of Revenue also proposed, and stakeholders supported, relocating additional DOR statutes that are currently located in title 24 to the new title 44 (namely, the lottery division, a statute that creates the liquor enforcement division and state licensing authority cash fund, and statutes pertaining to the regulation of tobacco sales).

### 2.2.1. Feedback on the Relocation Proposals

With regard to the draft relocation proposals, OLLS staff has shared drafts with stakeholders and solicited feedback through email and at meetings held this interim. Please see the table attached as **Addendum A**, which shows the current status of the various draft bills for introduction in the 2018 regular session.

With the exception of the proposal to relocate article 26.1 of title 12 pertaining to background check at gun shows, the feedback on the proposals that would simply relocate articles and parts in title 12 has been generally positive. The biggest concern expressed has been around the issue of harmonizing the nonsubstantive relocation bills with other substantive bills that may be proposed in the 2018 session. OLLS staff has explained to stakeholders the process for ensuring bills can work together and for when we need to harmonize or, in some cases, amend bills to avoid direct conflicts. Additionally, the OLLS will post an explanation of this process on the Title 12 Recodification Project webpage.

OLLS staff also heard feedback on the effective date of the relocation bills and the timeline for state departments and agencies to update citations in their rules, forms, and guidelines to reflect the new statutory citations for relocated statutes. OLLS staff is considering whether the bills need to include a legislative declaration or some other clause to address this issue and, assuming the Committee authorizes the OLLS to draft the relocation bills, will provide our recommendations at your next meeting. However, in order to ensure that relocated statutes do not need to be published in two locations,

the OLLS **strongly recommends that all relocation bills contain an effective date no later than August 31, 2018.**<sup>1</sup>

With regard to the proposal to relocate article 26.1 of title 12, which is the gun show background checks law, OLLS staff heard from Adam Eichberg, a lobbyist representing some of the groups that support gun control, who indicated that the groups are opposed to putting the gun show background checks law into a bill, even though the relocation proposal will not contain any substantive changes to the law.

As to the proposed relocation and reorganization of the medical and retail marijuana codes, articles 43.3 and 43.4 of title 12, representatives from the Attorney General's Office expressed some concerns with the proposal, and representatives from the Department of Regulatory Agencies requested that the reorganization not occur while the department is conducting sunset review of the two codes. The summary of feedback from the stakeholder meeting on this proposal is attached as **Addendum B**.

Automobile and powersports vehicle dealers also expressed concern about the proposal to reorganize the parts in article 6 of title 12, noting a preference to retain the separation of automobile dealers from powersports vehicle dealers. The summary of feedback from the stakeholder meeting on this proposal is attached as **Addendum C**.

### **2.2.2. OLLS Recommendation**

Taking into consideration the feedback we have received to date, and with the goal of providing the Committee the ability to consider all possible options, the OLLS **recommends that the Committee authorize the OLLS to draft the following committee bills for your consideration at your December meeting:**

- Bills that relocate the following articles or parts to a newly created title 44:
  - Articles 46, 47, & 48 of title 12, concerning alcohol beverage laws
  - Part 4 of article 35 of title 24, concerning the liquor enforcement division and state licensing authority cash fund
  - Part 5 of article 35 of title 24, concerning the regulation of tobacco sales to minors
  - Articles 43.3 and 43.4 of title 12, concerning medical and retail marijuana
    - We are requesting permission for two versions of this proposal: One version to relocate those articles and a second version to relocate and reorganize those articles
  - Article 6 of title 12, concerning motor vehicle and powersports vehicle dealers

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<sup>1</sup> All of the relocation bills enacted in the 2017 session contained an "act subject to petition clause" and therefore took effect on August 9, 2017.

- We are requesting permission for two versions of this proposal: One version to relocate the article and a second version to relocate and reorganize the parts within the article
  - Article 47.1 of title 12, concerning limited gaming, and article 47.2 of title 12, concerning the tribal-state gaming compact
  - Article 60 of title 12, concerning racing
  - Part 6 of article 35 of title 24, concerning the gambling payment intercept act
  - Part 2 of article 35 of title 24, concerning the lottery
- Bills that relocate the following articles or parts from title 12 to the specified locations in the C.R.S.:
    - Article 26 of title 12, concerning firearms dealers, to part 4 of article 12 of title 18, and article 26.1 of title 12, concerning background checks at gun shows, to part 5 of article 12 of title 18
    - Article 37.5 of title 12, concerning parental notification, to part 7 of article 22 of title 13
    - Part 3 of article 55 of title 12, concerning unsworn declarations, to article 27 of title 13

For the bills listed under the second bullet, above, the Committee might want to consider combining those relocations into a single bill.

### **3. Remaining Portion of the Project - Reorganizing and Recodifying Title 12**

The Title 12 Recodification Project coordinators have been mapping out a plan for reorganizing and consolidating the remaining articles in title 12. The project coordinators met with representatives from DORA in June to coordinate efforts and obtain the department's input on the OLLS' plan. The coordinators have also obtained feedback within the OLLS on the additional workload generated by the Title 12 Recodification Project, and, frankly, were surprised to learn that the 14 relocation bills enacted in the 2017 session had a significant impact on the office's publications workload. And given the relocations being proposed for the 2018 session, the workload for the relocation bills, alone, will be substantial. Add to that an entire reorganization of title 12, and the workload may be more than the OLLS can bear with current staff levels.

When the General Assembly enacted the Title 12 Recodification Study and Statutory Revision Committee bills<sup>2</sup> in 2016, the OLLS received appropriations for a part-time attorney to assist with the Title 12 and Statutory Revision Committee workload, which

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<sup>2</sup> SB16-163 and HB16-1077, respectively.

enabled the OLLS to hire Kip Kolkmeier.<sup>3</sup> Additionally, for fiscal year 2017-2018, the OLLS received a 0.5 FTE for non-attorney staff that we have yet to use, but, given the impact of the title 12 project thus far, we are in the process of filling that position to assist with the additional editorial and publications workload in 2018, and possibly into 2019. Our intent is to fill the non-attorney staff position with a person who can work full-time at least through August 2018, and, if the Committee agrees to extend the project per our request below, through August 2019.

Even with the additional non-attorney staff person we plan to hire, the OLLS is concerned about the combined effect of the additional relocation bills and title 12 reorganization bills on our editorial and publications staff if we proceed with all remaining portions of the project in the 2018 legislative session.

And as it happens, after the meeting in June, DORA indicated that given some staffing changes within the department, and particularly, in the Division of Professions and Occupations (i.e., the division that will be most impacted by the reorganization of title 12 and whose assistance the OLLS will need in completing the reorganization), the department is requesting that the OLLS delay the actual reorganization of title 12 until next interim, with one or more bills to be considered in the 2019 legislative session.

SB16-163, which directed the OLLS to engage in this project, envisioned a two-year project, with legislation in the 2018 session. As the Committee knows, the OLLS modified that plan somewhat by proposing legislation in the 2017 session in an effort to manage the workload and address some simple relocation bills. As the OLLS has discovered, the simple relocation bills create a significant amount of additional workload that has presented challenges to the office. While the OLLS recognizes the challenges of prolonging the project (the OLLS would prefer to complete the job sooner rather than later), the OLLS is cognizant of the impacts the project has, not only on OLLS staff, but on state departments and the regulated community. The OLLS needs to ensure adequate time for outreach to affected departments and stakeholders and for vetting the reorganization proposal.

Accordingly, the OLLS is recommending that the Committee **authorize the OLLS to draft a bill to extend the Title 12 Recodification Project for one additional year** to allow the OLLS to continue its efforts to reorganize the laws that will remain in title 12 through 2019. During this time, OLLS staff will work with DORA to develop draft proposals, and, starting in 2018, possibly as early as March or April, begin conducting

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<sup>3</sup> Shortly after Mr. Kolkmeier joined the OLLS, long-time OLLS attorney Bart Miller retired and was not replaced. Since that time, the OLLS has lost two senior-level attorneys – Dan Cartin and Debbie Haskins – as well as a senior attorney on the Government Team, Kate Meyer. The OLLS has shifted Mr. Kolkmeier to a full-time position to help alleviate workload issues, and other attorneys in the OLLS have had to absorb additional workloads, as well, to accommodate for the reduced attorney staff in the OLLS. The OLLS is in the process of hiring an attorney to replace Ms. Haskins and Ms. Meyer.

stakeholder meetings and outreach to obtain feedback on the proposals. The OLLS would then present the proposals to the Committee in early Fall of 2018, and, with the Committee's approval, would draft legislation for introduction in the 2019 legislative session. Assuming the legislation is enacted, the OLLS editors and publications staff would then work through August 2019, to incorporate into and prepare for publication the recodified title 12 in the C.R.S.

With this extension, **the OLLS would also need the funding for additional, temporary staff, to be continued.** Please note that the fiscal notes for SB16-163 and HB16-1077 were based on the OLLS' salary ranges for OLLS staff positions as the ranges existed at that time. The salary ranges have been adjusted twice for inflation since that time, so the cost for an additional non-attorney staff person to assist with the editorial and publications workload will need to be adjusted accordingly. If the Committee approves the recommendation to draft a bill to extend the project, a new fiscal note would be prepared using current salary range information. Given that the publications work will extend through August 2019, the OLLS anticipates the need for funding for temporary non-attorney staff through August 2019.

# ADDENDUM A

Status of 2018 Session Bills - 9/26/17

Bill #	Bill topic (title 44 in shading)	Drafter	Bill		Meetings	
			Initial draft?	In default folder?	Scheduled?	Held?
1	Relocate article 6 of title 12 (autos & power sports) to Title 44	Jery Payne	Yes	Yes	Yes	Yes
2	Relocate (and relocating with reorg) articles 43.3 and 43.4 of title 12 (medical and retail marijuana) to Title 44	Michael Dohr	Yes	Yes	Yes	Yes
3	Relocate article 26 re firearms dealers & background checks - gun shows		Yes	No	Yes	
4	Relocate 37.5 re parental notification act	Michael Dohr	Yes	No		
5						
6	Relocate articles 46, 47, & 48 of title 12 (alcohol beverage laws) to Title 44	Jane Ritter	Yes	Yes		
7	Relocate sec. 24-35-401 (LED cash fund) to Title 44	Christy Chase	Yes			
8	Relocate pt. 5 of art. 35 of title 24 (tobacco regulation)	Jennifer Berman	Yes	Yes	Notice given	
9	Relocate article 60 (racing) to Title 44		Yes	Yes	Notice given	
10	Relocate articles 47.1 and 47.2 (limited gaming and tribal gaming compact) to Title 44	Esther van Mourik	Yes	Yes		
11	Relocate pt. 2 of article 35 of title 24 (lottery) to Title 44		Yes	Yes		
12	Relocate pt. 6 of art. 35 of title 24 (gambling payment intercept act)		Yes	Yes		
13	Relocate pt. 3 of article 55 of title 12 (unsworn declarations)	Thomas Morris	Revisor	Yes		



# ADDENDUM B

## Title 12 Recodification Project

### Marijuana statute relocation and reorganization

October 6, 2017

10 a.m.

### Senate Committee Room 354, State Capitol

Article & Topic	Staff
Articles 43.3 and 43.4 of title 12: Moving Medical Marijuana and Retail Marijuana to a new title 44.	Michael Dohr Thomas Morris

#### **Persons present:**

Representatives from the Marijuana Enforcement Division

Representatives from the Attorney Generals Office

Representatives from the Department of Regulatory Agencies

Jordan Wellington

Arnold Hanuman

Brock Herzberg

#### **Articles 43.3 and 43.4 —Title 12**

Michael Dohr, Office of Legislative Legal Services, explained the details and goals of the [Title 12 Recodification Project](#). In accordance with the project, staff proposes relocating the medical marijuana and retail marijuana to a newly created title 44, C.R.S., which will contain statutes relating to activities regulated by the Colorado Department of Revenue. Staff drafted two bills one that was a straight relocation and a second that was a relocation and reorganization.

#### **Straight Relocation Discussion**

There was no objection to the straight relocation bill. The AG's office had technical comments that they will provide by email.

Arnold Hanuman asked that regardless whether there is a relocation or reorganization that the bills have an effective January 1, 2019 to give law enforcement time to train everyone regarding the changes.

### **Reorganization Discussion**

The AG's office had 4 objections to the reorganization bill. First, they would prefer a reorganization that puts the two codes into one code rather than three codes. They feel three codes would make it more complicated and create the potential for inconsistencies. They don't like taking some rulemaking items out of the 202 statutes. Second, the bill creates new terms and definitions and makes some substantive changes. Third, they were concerned that the way it was drafted section 601 would not be able to be used by local licensing authorities. The last concern was that there will be a retraining and administrative burden with a reorganization and then there is the sunset of the two codes in 2019 which will cause another retraining and administrative burden the next year. So they would prefer to see everything done in 2019 in conjunction with the sunset.

The Marijuana enforcement division concurs with the concerns about the timing and would like to see everything done in 2019. They are behind the spirit of the process to reorganize the marijuana codes but are not sure about how we get there.

DORA said that the point of having both codes sunset at the same time in 2019 was to try to reconcile any outstanding differences between the codes. It would help if there were a bill this session to direct the sunset to also considering reorganizing the code. Harmonization in sunset bills in the past has created angst among legislators. It is hard to do a sunset if the law is going to change this year in a reorganization, it would be possible to move the sunset date out to a year.

Jordan Wellington - the issues still remain for a practitioner the code is too complicated especially section 202 (rulemaking). He is opposed to doing it with the sunset because there will both substantive issues and a reorganization which could get confusing. Jordan would like to see the reorganization done as soon as possible, but if it takes three years that is fine as long as it gets done.

Brock Herzberg – Although there is no interest from the industry currently the more substantive changes that happen the more that will be interested.

Overall there is concern about the timing of doing a relocation or reorganization.

# ADDENDUM C

## Title 12 Recodification Project

### Motor Vehicle & Powersports Dealer Statutes

Friday, July 7, 2017, 2 pm

Tuesday, July 11, 2017, 2 pm

### Senate Committee Room 354, State Capitol

Article & Topic	Staff
Article 6 of Title 12: Moving motor vehicle dealer & powersports dealer statutes to a new title 44.	Jery Payne Thomas Morris

#### Persons present:

Jep Seman  
Jeannie Vanderburg  
Alexandra Garza  
Brittany Wirth  
Bruce Zulauf  
Christine Staberg  
Edie Busam  
Gerald Abboud  
Jean Robinson  
Michael J. Dommermuth  
Michael F. Feeley,  
Blake Kuipers  
Tim Jackson  
Todd O'Connor  
Arnold Hanuman

#### Article 6 — Title 12

Jery Payne, Office of Legislative Legal Services, explained the details and goals of the [Title 12 Recodification Project](#). In accordance with the project, staff proposes

relocating the motor vehicle and powersports-vehicle dealer and manufacturer statutes to a newly created title 44, C.R.S., which will contain statutes relating to occupations regulated by the Colorado Department of Revenue. Jerry also proposed three options for the relocation:

- The first option is to move article 6 of title 12, C.R.S., to a new article 20 of title 44, C.R.S. This will entail making only minimal changes to the current language and structure of these statutes.
- The second option is to move article 6 of title 12, C.R.S., to new articles 20 to 22 of title 44, C.R.S., and to amalgamate part 1 (motor vehicles) with part 5 (powersports vehicles).
- The third option is to move article 6 of title 12, C.R.S., to new articles 20 to 22 of title 44, C.R.S., to amalgamate the duplicative portions of parts 1 and 5 and to separate the unique portions of both parts into new articles.

There was general agreement with the first option.

Michael Dommermuth expressed concern about amalgamating parts 1 and 5. He explained that the motor vehicle dealers would rather keep powersports and motor vehicle dealers separate, which he believes makes the statutes easier to understand. There was general discussion about this concern. Bruce Zulauf pointed out that most of the provisions of these parts are nearly and substantially identical, and that amalgamating parts 1 and 5 would be easier to administer, but he also expressed a desire to move forward on a consensus basis. Michael said he would talk to the Colorado Automobile Dealers Association about the third option to get their feedback.

Jerry Payne stated an intention to send a draft to the interested parties in late September or early October. When the draft is available it will also be posted to the [Title 12 Recodification Project](#) website.

Jep Seman asked about the decision-making process. Jerry explained that the decision as to what option to move forward would be made by the Committee on Legal Services. Their next meeting is on October 11, 2017. The proposed plan is to introduce two bills: both the simple move and a reorganization. This would ensure that these provisions are at least moved to the new title 44.

Bruce Zulauf explained that there is a technical problem with the powersports vehicle statutes. He proposed that each bill contain a fix for this problem. There was general agreement with this suggestion.

It was suggested that the bill not take effect until January 1, 2019. There was general agreement with this suggestion.