

Title 12 Recodification Study
Working Group Meeting – New Title 44
October 20, 2016
1:30 p.m.
HCR 0112

Dept./Office/ Entity	Article & Topic	Staff
	6 – Automobiles	Esther van Mourik
	43.3 – Medical Marijuana	Esther.vanmourik@state.co.us
	43.4 – Retail Marijuana	Michael Dohr
	46 – Fermented Malt Beverages	michael.dohr@state.co.us
	47 – Alcohol Beverages	Christy Chase
	47.1 – CO Limited Gaming Act	christy.chase@state.co.us
	47.2 – Tribal-state Gaming Compact	Thomas Morris
	48 – Liquors – Special Events	thomas.morris@state.co.us
	Permits	Jery Payne
	60 – Racing	Jery.payne@state.co.us

Persons present:

Lynda Atkins, Department of Law; Jane Biglin, Lottery; Laura Solano, Lottery; Claudia Brett Goldin, Department of Law; Flavio Quintana, Gaming; Ceri Williams, Department of Law; Dan Hartman, Racing; Debbie Wagner, Lombard & Clayton; Matt Mortier, DORA, Division of Insurance; and a number of other folks who didn't sign in.

Article 44 – New Title

General update:

On September 29 Christy Chase and Tom Morris presented the update on the recodification project to the Committee on Legal Services (COLS), and the COLS approved the drafting of a bill to update the APA Process to minimize any potential fiscal challenges created by the recodification. The bill will be fast-tracked for the 2017 session.

The COLS also approved the request to draft multiple bills for the 2017 session – to relocate those articles that would be easily moved, in an effort to make the recodification during the 2018 session smoother.

In addition, COLS gave its approval to the Title 12 Recodification Study group for the creation of a new Title 44 to house all the department of revenue administered programs and to pursue a **nonsubstantive** recodification of marijuana codes and automobile statutes. These changes will not be seen on bill drafts until the 2017 interim for introduction in the 2018 session.

Article 6 of title 12 – Automobiles

Jery Payne suggested folding Part 5 (licensing of motor vehicles) into Part 1 (licensing of powersports vehicles) as they're almost identical and there's duplication between the two parts.

Randall Cherry, attorney from the Colorado Attorney General's office, said that they hadn't discussed these changes with the division yet. Jery shared that combining Parts 1 and 5 was suggested by Bruce Zulauf, director of the Auto Industry Division.

Jery said once he begins drafting and gets things on paper, he'll share the drafts and get feedback and comments.

Article 43.3 – Medical Marijuana

Article 43.4 – Retail Marijuana

Three different articles for marijuana 1) Common provisions 2) Medical marijuana 3) Retail marijuana

Jordan's law students at DU are working on the recodification. He's teaching a class on cannabis policy and drafting. Students have put forth a proposed alternative table of contents and structure. Mike Dohr worked with the students on the language. Once the semester is over, students interested in continuing, and other interested parties, will construct a white paper that explains all the changes—and why any language changed. Would then submit to OLLS.

Eric: Department is skeptical that language adjustments, changes to ease/read/follow –reorganizing policy-based statutes that one person might think make sense “is a substantive change in the department's eyes” –we're starting to talk about what the sunset review process is really for. Isn't sure that anything other than moving into Title 44 is within the project.

Claudia: 2019 is when both the codes are up for sunset review.

Esther: COLS members had similar concerns. Did not want to get into policy discussions. They cautioned restraint. That message has been shared with other stakeholders. Mike will work with all parties involved. Senator Steadman, COLS committee member, mentioned the same sunset review period—that it's more policy that reorganizational—saw it as two different things.

Claudia: After working with Brian on the prior sunset, three programs are sunseting: medical, recreational, and CDPHE's regulatory authority over caregivers. Possibly unnecessary to do this work in 2018 when sunset is 2019.

Eric: Is concerned about transparency and the unanticipated cascading effects.

Christy: Her understanding, they purposefully aligned sunset tracks—but reorganizing isn't part of the sunset process.

Mike: Explanation as to why moving things to different places is policy change?

Eric: We see recodification as moving the entire statute. Whereas what he's hearing, changes to the language, combining statutes, eliminating portions.

Claudia: For example, 202 in each statute is quite different. In the retail statute is much more details than the medicinal. There's been a different philosophical approach to each, that merging wouldn't be a simple recodification.

Mike: They wouldn't be merged in one place—they would be separated out.

Christy: Same definitions, same licensing authority, local authority, common provisions portion—the parts that are unique would remain unique to those particular codes. Three separate articles under the current proposed scheme.

Not sure who: Is it simpler, breaking it up from 2 codes into 3 codes? Would you go into 202 common articles to see where you have licensing authority for rulemaking and then go into another article to see specifics?

Tom: Tom suggested a pure relocation bill and if there's consensus on a reorganization approach, that can go forward as well, but on a separate track, with contingent effective dates, etc.

Eric: Refining, simplifying (breaking 2 into 3) that “represents a policy decision”. It is a policy decision to make the statutes more readable.

Christy: Drafters create the organizational structure –not connected to policy.

Jordan: Bill drafting question vs. policy issue

Ed: What is the effect of the language before and after? There is no substantive change.

Jordan: Individual provisions are clear. It's how they're restructured—internally each provision is consistent and clear.

Eric: Disagreement where, how, and in what context language is used.

No one expressed concerns about the wholesale moving of articles to Title 44.

Article 46 – Fermented Malt Beverages

Article 47 – Alcohol Beverages

Article 48 – Liquors - Special Events Permits

From the Department: Strong preference that there aren't any changes made – all we're interested in is a wholesale moving of the articles. There's going to be a lot of changes being made in the near future. For now, just a moving and renumbering.

Article 47.1 – Colorado Limited Gaming Act

Article 47.2 – Tribal-state Gaming Compact

Esther spoke to Ernest House in the Governor's Office about whether or not there would be an opinion about moving 47.2 to Title 24, Article 60 or whether it should go with the limited gaming language. He

could not make it to this meeting. It looks like the Department of Revenue agrees that it should be moved to Title 44.

Quintana: Keeping it together makes it a lot easier for the readers.

Tom: There are a lot of water compacts in another title, not article 60, title 24, in order keep those compacts together by subject.

Article 60 – Racing

Esther recapped her recollection of the gaming discussion at the July 21 meeting where the interested parties were worried about moving out of Title 12 but were happy with the thought of going to a new title devoted to Department of Revenue administered programs. It appeared that the people in the room agreed with that recap.

Article 35 of Title 24: Part 2, Part 4, Part 5, and Part 6

Part 1 will stay in Title 24.

Part 2 – Lottery will likely move to Title 44

Eric: Lottery is distinct from other programs; it's its own division. Is just being with the other revenue programs a reason to move it, or does it make more sense to keep it with its organic, department of revenue Title 24.

Esther: It makes sense to move it from a drafting perspective. Has always thought that lottery seems lost in Title 24. Moving distinct divisions in Department of Revenue together, makes sense in terms of readability. Senator Steadman asked if there were any other DOR divisions that should go to Title 44 that weren't already planned on being moved. We suggested Lottery and Sen. Steadman appeared to agree with that thought.

Eric: Laura Solano will bring drafts to the Lottery Commission for feedback.

Part 4 – Liquor Enforcement Division and State Licensing Authority

Department of Revenue has agreed that moving part 4, art 35, title 24 to the new Title 44 makes sense.

Eric: The document provided doesn't express preferred order—just putting everything together.

Part 5 – Regulation of tobacco sales to minors

DOR: Part of liquor and tobacco enforcement division—makes sense to keep together so move with part 4 into Title 44.

Part 6 – Gambling payment intercept act

This part should go to the new Title 44.

Moving Tax Provisions to Title 39

Eric: No direction from AG's office yet. Within the statutory provisions, makes sense to not move because there's necessary referral and context. What would happen, flipping between titles instead of within one title? Is already a difficult to maneuver title, could create more work.

Esther: Look at marijuana articles: the taxation provisions for marijuana are in Title 39. From an organizational standpoint of the code, makes sense that the tax provisions are together, programmatic pieces together. Also makes sense for division of labor throughout the OLLS, separated by subject matter. One team handles tax matters, another team handles marijuana statutes. They did get authority from COLS to pursue the idea of moving it.

Eric: Is your analysis the same depending on the type of tax. Marijuana has sales and excise taxes. Does that make a difference?

Esther: No difference.

Ed: Both marijuana taxes are in title 39.

One of the AG's office representatives: Enforcement (regulation, licensing) doesn't deal with taxes.

Gaming division collects gaming taxes and racing commission sets their tax.

Moving gaming tax out would really separate it from the embedded step-by-step that lays out what a licensee pays.

Division of Gaming and Gaming Act—makes more sense for the tax provisions to stay with the rest of the limited gaming act—the gaming Commission is a unique body—they set the tax and the criteria they need to consider to set it.

Eric: Don't think contemplated moving tax provisions to Title 44.

Ed: That's where the idea came from: Our most recent new tax was put separately into Title 39 and marijuana was put in Title 12. What have we done lately, but if there's good reasons not to? Not supposed to be a wrench in the process.

Back to the marijuana code discussion

Claudia: Going back to the marijuana codes: as Jordan mentioned, there are extensive rules organized in a particular way, hundreds of pages each. Changing the rules could be an extensive undertaking for the division.

Esther: We're trying to mitigate that by at least giving the department the authority to renumber by skipping the rule-review process.

AG's office representative: It's not just the rules that are tied to the statutory changes—systematic components, licensing numbers correspond to the section number (not 12-43 ... just the last three numbers like 202)

Where to go from here

Article 47.1 and 47.2 could easily be moved to Title 44 this year, but wouldn't want to start that now because would want to do the entire Title 44 together, in one process, to keep the process and numbering organized.

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Tom: Plan is to go before COLS and ask for authority to draft an unlimited number of bills that relate to the relocation the articles—multiple bills so marijuana folks don't need to look at one huge bill.