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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Michael Dohr, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Correction of errors in article 10 of title 44, C.R.S.

Summary

In 2019, the General Assembly passed Senate Bill 19-224, which reorganized the marijuana codes, compiling all of the marijuana provisions into one article, article 10 of title 44, C.R.S. During the Office of Legislative Legal Services' publications review during the 2019 interim, legal citation errors and grammatical errors were discovered that should be fixed.

Analysis

Senate Bill 19-224 included a number of federal law citations that included both the federal statute and the federal rule, but references refer only to provisions that are in the federal law. So, the citations to the federal statute should be removed, leaving the citations to the federal rule to correct the error. The publications review of title 44 also revealed various grammatical and wording issues that should also be considered for revision in a Statutory Revision Committee bill.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Statutory Charge²

Because article 10 of title 44, C.R.S., contains citation errors and because correcting grammatical and wording issues will streamline article 10 of title 44, C.R.S., the proposed bill fits within the charge of the Statutory Revision Committee.

Proposed Bill

The attached bill corrects the errors in article 10 of title 44, C.R.S.

² The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

DRAFT

LLS NO. 21-0806.01 Michael Dohr x4347

COMMITTEE BILL

Statutory Revision Committee

@House1 Committees

@House2 Committees

A BILL FOR AN ACT

101 **CONCERNING CORRECTING NONSUBSTANTIVE ERRORS IN THE**
102 **COLORADO MARIJUANA CODE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Statutory Revision Committee. The bill corrects citations in the marijuana code and grammatical and wording issues.

1 *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

1 **SECTION 1.** In Colorado Revised Statutes, 44-10-103, **amend** (8), (9),
2 (41), (50)(a) introductory portion, (50)(a)(I), (50)(a)(II)(A), (50)(b)(I),
3 (50)(d), (51), (52) introductory portion, (52)(a), (65), and (68) as follows:

4 **44-10-103. Definitions.** As used in this article 10, unless the
5 context otherwise requires:

6 (8) "Affiliate" of, or person "affiliated with", has the same
7 meaning as defined in the "~~Securities Act of 1933~~", as amended **17 CFR**
8 **230.405.**

9 (9) "Beneficial owner of", "beneficial ownership of", or
10 "beneficially owns an" owner's interest is determined in accordance with
11 ~~section 13(d) of the federal "Securities Exchange Act of 1934" as~~
12 ~~amended, and rule 13d-3 promulgated thereunder~~ **17 CFR 240.13d-3.**

13 (41) "Medical marijuana transporter" means an entity or person
14 ~~that is~~ licensed to transport medical marijuana and medical marijuana
15 products from one medical marijuana business to another medical
16 marijuana business and to temporarily store the transported medical
17 marijuana and medical marijuana products at its licensed premises, but is
18 not authorized to sell medical marijuana or medical marijuana products
19 under any circumstances.

20 (50) "Publicly traded corporation" means any person other than an
21 individual that is organized under the laws of and for which its principal
22 place of business is located in one of the states or territories of the United
23 States or District of Columbia or another country that authorizes the sale
24 of marijuana and that:

25 (a) Has a class of securities registered pursuant to ~~section 12 of~~
26 ~~the federal "Securities Exchange Act of 1934" as amended~~ 15 U.S.C. SEC.
27 77a ET SEQ., that:

1 (I) Constitutes "covered securities" pursuant to ~~section 18~~
2 ~~(b)(1)(A) of the federal "Securities Act of 1933", as amended~~ 15 U.S.C.
3 SEC. 77r (b)(1)(A); or

4 (II) Is qualified and quoted on the OTCQX or OTCQB tier of the
5 OTC markets if:

6 (A) The person is then required to file reports and is filing reports
7 on a current basis with the federal securities and exchange commission
8 pursuant to ~~the federal "Securities Exchange Act of 1934", as amended~~
9 15 U.S.C. SEC. 78a ET SEQ., as if the securities constituted "covered
10 securities" as described in ~~subsection (46)(a)(I)~~ SUBSECTION (50)(a)(I) of
11 this section; and

12 (b) Is an entity that has a class of securities listed on the Canadian
13 securities exchange, Toronto stock exchange, TSX venture exchange, or
14 other equity securities exchange recognized by the state licensing
15 authority, if:

16 (I) The entity constitutes a "foreign private issuer", as defined in
17 ~~rule 405 promulgated pursuant to the federal "Securities Act of 1933", as~~
18 ~~amended~~ **17 CFR 230.405**, whose securities are exempt from registration
19 pursuant to ~~section 12 of the federal "Securities Exchange Act of 1934",~~
20 ~~as amended~~ 15 U.S.C. SEC. 78a ET SEQ. pursuant to ~~rule 12g3-2 (b)~~
21 ~~promulgated pursuant to the federal "Securities Exchange Act of 1934",~~
22 ~~as amended~~ **17 CFR 240.12g3-2**; and

23 (d) A "publicly traded corporation" described in subsection
24 (50)(a), (50)(b), or (50)(c) of this section does not include:

25 (I) An "ineligible issuer", as defined in ~~rule 405 promulgated~~
26 ~~pursuant to the federal "Securities Act of 1933", as amended~~ **17 CFR**
27 **230.405**, unless such publicly traded corporation satisfies the definition

1 of ineligible issuer solely because it is one or more of the following, and
2 the person is filing reports on a current basis with the federal securities
3 and exchange commission pursuant to ~~the federal "Securities Exchange~~
4 ~~Act of 1934"~~, as amended 15 U.S.C. SEC. 78a ET SEQ., as if the securities
5 constituted "covered securities" as described in subsection (50)(a)(I) of
6 this section, and prior to becoming a publicly traded corporation, the
7 person for at least two years was licensed by the state licensing authority
8 as a medical marijuana business or retail marijuana business with a
9 demonstrated history of operations in the state of Colorado, and during
10 such time was not subject to suspension or revocation of the license:

11 (A) A "blank check company", as defined in ~~rule 419 (a)(2)~~
12 ~~promulgated pursuant to the federal "Securities Act of 1933"~~, as amended
13 **17 CFR 230.419 (a)(2);**

14 (B) An issuer in an offering of "penny stock", as defined in ~~rule~~
15 ~~3a51-1 promulgated pursuant to the federal "Securities Exchange Act of~~
16 ~~1934"~~ **17 CFR 240.3a51-1;** or

17 (C) A "shell company", as defined in ~~rule 405 promulgated~~
18 ~~pursuant to the federal "Securities Act of 1933"~~, as amended **17 CFR**
19 **240.12b-2;** and

20 (II) A person disqualified as a "bad actor" ~~under rule 506 (d)~~
21 ~~promulgated pursuant to the federal "Securities Act of 1933"~~, as amended
22 PURSUANT TO 17 CFR 230.506.

23 (51) "Qualified institutional investor" means:

24 (a) A bank, as defined in ~~section 3 (a)(6) of the federal "Securities~~
25 ~~Exchange Act of 1934"~~, as amended 15 U.S.C. SEC. 78c (a)(6), if the bank
26 is current in all applicable reporting and record-keeping requirements
27 under such act and rules promulgated thereunder;

1 (b) A bank holding company, as defined in ~~the federal "Bank~~
2 ~~Holding Company Act of 1956"~~, as amended 12 U.S.C. SEC. 1841 (a)(1),
3 if the bank holding company is registered and current in all applicable
4 reporting and record-keeping requirements under such act and rules
5 promulgated thereunder;

6 (c) An insurance company, as defined in ~~section 2 (a)(17) of the~~
7 ~~federal "Investment Company Act of 1940"~~, as amended 15 U.S.C. SEC.
8 80a-2 (a)(17), if the insurance company is current in all applicable
9 reporting and record-keeping requirements under such act and rules
10 promulgated thereunder;

11 (d) An investment company registered ~~under section 8 of the~~
12 ~~federal "Investment Company Act of 1940"~~, as amended and subject to
13 15 U.S.C. SEC. 80a-1 ET SEQ., if the investment company is current in all
14 applicable reporting and record-keeping requirements under such act and
15 rules promulgated thereunder;

16 (e) An employee benefit plan or pension fund subject to ~~the~~
17 ~~federal "Employee Retirement Income Security Act of 1974"~~ 29 U.S.C.
18 SEC. 1001 ET SEQ., excluding an employee benefit plan or pension fund
19 sponsored by a licensee or an intermediary holding company licensee that
20 directly or indirectly owns ten percent or more of a licensee;

21 (f) A state or federal government pension plan;

22 (g) A group comprised entirely of persons specified in subsections
23 (51)(a) to (51)(f) of this section; or

24 (h) Any other entity identified by rule by the state licensing
25 authority.

26 (52) "Qualified private fund" means an issuer that would be an
27 investment company, as defined in, ~~section 3 of the federal "Investment~~

1 ~~Company Act of 1940~~" but for the exclusions provided under, sections
2 ~~3(c)(1) or 3(c)(7) of that act~~ 15 U.S.C. SEC. 80a-3, and that:

3 (a) Is advised or managed by an investment adviser, as defined
4 and registered ~~under sections 80b-1-21, title 15 of the federal "Investment~~
5 ~~Advisers Act of 1940~~" PURSUANT TO 15 U.S.C. SEC. 80b-1 ET SEQ., and
6 for which the registered investment adviser is current in all applicable
7 reporting and record-keeping requirements under such act and rules
8 promulgated thereunder; and

9 (65) "Retail marijuana transporter" means an entity or person ~~that~~
10 ~~is~~ licensed to transport retail marijuana and retail marijuana products from
11 one retail marijuana business to another retail marijuana business and to
12 temporarily store the transported retail marijuana and retail marijuana
13 products at its licensed premises, but is not authorized to sell retail
14 marijuana or retail marijuana products under any circumstances.

15 (68) "Security" has the same meaning as DEFINED in ~~section (2)(f)~~
16 ~~of the federal "Securities Act of 1933", as amended~~ 15 U.S.C. SEC. ET
17 SEQ. 77b (a)(1).

18 **SECTION 2.** In Colorado Revised Statutes, 44-10-202, **amend**
19 (1)(b) as follows:

20 **44-10-202. Powers and duties of state licensing authority -**
21 **rules - legislative declaration - repeal. (1) Powers and duties.** The
22 state licensing authority shall:

23 (b) Grant or refuse state licenses for the cultivation, manufacture,
24 distribution, sale, hospitality, and testing of regulated marijuana and
25 regulated marijuana products as provided by law; suspend, fine, restrict,
26 or revoke such licenses, whether active, expired, or surrendered, upon a
27 violation of this article 10 or any rule promulgated pursuant to this article

1 10; and impose any penalty authorized by this article 10 or any rule
2 promulgated pursuant to this article 10. The state licensing authority may
3 take any action with respect to a registration OR PERMIT pursuant to this
4 article 10 as it may with respect to a license pursuant to this article 10, in
5 accordance with the procedures established pursuant to this article 10.

6 **SECTION 3.** In Colorado Revised Statutes, 44-10-203, **amend**
7 (2)(q) as follows:

8 **44-10-203. State licensing authority - rules. (2) Mandatory**
9 **rule-making.** Rules promulgated pursuant to section 44-10-202 (1)(c)
10 must include but need not be limited to the following subjects:

11 (q) Temporary appointee registrations issued pursuant to ~~section~~
12 ~~44-10-401 (2)~~ SECTION 44-10-401 (3), including occupational and
13 business registration requirements; application time frames; notification
14 requirements; issuance, expiration, renewal, suspension, and revocation
15 of a temporary appointee registration; and conditions of registration;

16 **SECTION 4.** In Colorado Revised Statutes, 44-10-307, **amend**
17 (1)(n), (1)(o), and (1)(p) as follows:

18 **44-10-307. Persons prohibited as licensees - definition. (1) A**
19 license provided by this article 10 shall not be issued to or held by:

20 (n) A person that is or has a controlling beneficial owner that is
21 disqualified as a "bad actor" ~~under rule 506 (d) promulgated pursuant to~~
22 ~~the federal "Securities Act of 1933", as amended, and subject~~ PURSUANT
23 to 17 CFR 230.506 (d)(1);

24 (o) A person that is not a publicly traded corporation that is or has
25 a passive beneficial owner or indirect financial interest holder that is
26 disqualified as a "bad actor" ~~under rule 506 (d) promulgated pursuant to~~
27 ~~the federal "Securities Act of 1933", as amended, and subject~~ PURSUANT

1 to 17 CFR 230.506 (d)(1);

2 (p) A person that is a publicly traded corporation that is or has a
3 nonobjecting passive beneficial owner or indirect financial interest holder
4 that is disqualified as a "bad actor" ~~under rule 506 (d) promulgated~~
5 ~~pursuant to the federal "Securities Act of 1933", as amended, and subject~~
6 PURSUANT to 17 CFR 230.506 (d)(1); or

7 **SECTION 5.** In Colorado Revised Statutes, 44-10-308, **amend**
8 (1)(a)(VII) as follows:

9 **44-10-308. Business and owner requirements - legislative**
10 **declaration - definition.** (1) (a) The general assembly hereby finds and
11 declares that:

12 (VII) Recognizing that participation by publicly traded
13 corporations in Colorado's medical marijuana industry and retail
14 marijuana industry creates an increased need to assess barriers of entry for
15 minority- and woman-owned businesses, with such efforts being made to
16 identify solutions to arrive at a greater balance and for further equity for
17 minority- and woman-owned businesses, and in a manner that is
18 consistent with the public safety and enforcement goals as stated ~~herein~~
19 IN THIS SUBSECTION (1), it is therefore of substantive importance to
20 address the lack of minority- and woman-owned businesses' inclusion in
21 Colorado's medical marijuana industry and retail marijuana industry,
22 social justice issues associated with marijuana prohibition, suitability
23 issues relating to past convictions for potential licensees, licensing fees,
24 and economic challenges that arise with the application processes.

25 **SECTION 6.** In Colorado Revised Statutes, 44-10-401, **amend**
26 (1) and (2)(c) as follows:

27 **44-10-401. Classes of licenses.** (1) For the purpose of regulating

1 the cultivation, manufacture, distribution, hospitality, and sale of
2 regulated marijuana and regulated marijuana products, the state licensing
3 authority in its discretion, upon application in the prescribed form made
4 to it, may issue and grant to the applicant a license from any of the
5 following classes LISTED IN SUBSECTION (2) OF THIS SECTION, subject to
6 the provisions and restrictions provided by this article 10.

7 (2) (c) THE FOLLOWING ARE REGULATED MARIJUANA LICENSES OR
8 REGISTRATIONS: Occupational licenses and registrations for owners,
9 managers, operators, employees, contractors, and other support staff
10 employed by, working in, or having access to restricted areas of the
11 licensed premises, as determined by the state licensing authority. The
12 state licensing authority may take any action with respect to a registration
13 or permit pursuant to this article 10 as it may with respect to a license
14 pursuant to this article 10, in accordance with the procedures established
15 pursuant to this article 10.

16 SECTION 7. In Colorado Revised Statutes, 44-10-603, **amend**
17 (2) as follows:

18 **44-10-603. Retail marijuana products manufacturer license -**
19 **rules - definition.** (2) Retail marijuana products must be prepared on a
20 licensed premises that is used exclusively for the manufacture and
21 preparation of retail marijuana or retail marijuana products and using
22 equipment that is used exclusively for the manufacture and preparation
23 of retail marijuana products; except that, if permitted by the local
24 jurisdiction and subject to rules of the state licensing authority, a retail
25 marijuana products manufacturer licensee may share the same premises
26 as:

27 (a) A medical marijuana products manufacturer licensee so long

1 as a virtual or physical separation of inventory is maintained;

2 (b) A commonly owned marijuana research and development
3 licensee so long as virtual or physical separation of inventory and
4 research activity is maintained; or

5 (c) AN accelerator manufacturer licensee if the retail marijuana
6 products manufacturer has its premises endorsed pursuant to rule before
7 each accelerator manufacturer licensee operates and each accelerator
8 manufacturer licensee is approved to operate on that premises.

9 **SECTION 8.** In Colorado Revised Statutes, 44-10-801, **repeal**
10 (1)(d) as follows:

11 **44-10-801. Marijuana cash fund.** (1) (d) ~~(f)~~ ~~On July 1, 2014, the~~
12 ~~state treasurer shall transfer to the marijuana tax cash fund created in~~
13 ~~section 39-28.8-501 any money in the fund that is attributable to the retail~~
14 ~~marijuana excise tax transferred pursuant to section 39-28.8-305 (1)(b);~~
15 ~~the retail marijuana sales tax transferred pursuant to section 39-28.8-203~~
16 ~~(1)(b), or the sales tax imposed pursuant to section 39-26-106, on the~~
17 ~~retail sale of marijuana products pursuant to this article 10.~~

18 ~~(H) On the date on which the state controller publishes the~~
19 ~~comprehensive annual financial report of the state for the 2013-14 state~~
20 ~~fiscal year, the state treasurer shall transfer to the marijuana tax cash fund~~
21 ~~created in section 39-28.8-501 any remaining money in the fund that is~~
22 ~~attributable to the retail marijuana excise tax transferred pursuant to~~
23 ~~section 39-28.8-305 (1)(b), the retail marijuana sales tax transferred~~
24 ~~pursuant to section 39-28.8-203 (1)(b), or the sales tax imposed pursuant~~
25 ~~to section 39-26-106, on the retail sale of marijuana products under this~~
26 ~~article 10.~~

27 ~~(HH) On July 1, 2019, the state treasurer shall transfer nine~~

1 ~~hundred fourteen thousand four hundred sixteen dollars from the~~
2 ~~marijuana cash fund to the marijuana tax cash fund created in section~~
3 ~~39-28.8-501. On July 1, 2020, the state treasurer shall transfer eight~~
4 ~~hundred ninety thousand nine hundred one dollars from the marijuana~~
5 ~~cash fund to the marijuana tax cash fund.~~

6 ~~(IV) Notwithstanding any other provision of law, on June 30,~~
7 ~~2020, the state treasurer shall transfer one million six hundred thousand~~
8 ~~dollars from the marijuana cash fund to the general fund.~~

9 <{*Petition or safety clause?*}>