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## MEMORANDUM

TO: Committee on Legal Services

FROM: Office of Legislative Legal Services

DATE: January 18, 2017

SUBJECT: Background of and Update on Title 12 Recodification Study

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### Background of Title 12 Recodification Study

In the 2016 legislative session, the General Assembly enacted S.B. 16-163, which directs the Office of Legislative Legal Services (OLLS) to conduct a study of an organizational recodification of Title 12 of the Colorado Revised Statutes governing the regulation of professions and occupations. The reasons for studying a recodification of title 12 include the following:

- The title pertains, generally, to professions and occupations regulated by the Department of Regulatory Agencies but contains laws that do not regulate a profession or occupation and may be better placed in another title of the Colorado Revised Statutes;
- The title is disorganized and contains redundant provisions that are ripe for consolidation and restructuring.

The legislation directed the OLLS to conduct the recodification study in the 2016 and 2017 interims and bring recommendations, including any legislative proposals to recodify the title, to the Committee on Legal Services by December 2017.

# **Title 12 Recodification Study Update**

## **1. Steps Taken to Date**

Starting in early June 2016, the OLLS engaged in public outreach about the title 12 recodification study and conducted four 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 assist with the study. Additionally, the OLLS received requests from several interested persons to participate in the study and also compiled a list of lobbyists who 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,<sup>1</sup> which 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 132 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.

### **1.2. 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)

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<sup>1</sup> The Title 12 Recodification Study webpage is available at <http://leg.colorado.gov/agencies/office-legislative-legal-services/title-12-recodification-study>

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.

Another meeting was held on October 19 to discuss in more detail the proposed revisions to article 61 of title 12, which is administered by the Division of Real Estate. Finally, the OLLS held a meeting on October 20 with interested stakeholders to discuss the proposed relocation of articles in title 12 that are administered by the Department of Revenue to a new title 44 in the Colorado Revised Statutes, as well as proposals for nonsubstantive reorganization of the Marijuana Codes (articles 43.3 and 43.4) and Automobile Dealers Article (article 6).

## **2. Summary of Feedback, Recommendations, and Committee Action to Date**

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 made the following recommendations to the Committee on Legal Services at the committee's meeting held on September 29, 2016:

### **2.1 The OLLS recommended that the Committee 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 rule-making process under the "State 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 rule-making 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.

Based on this feedback, the OLLS recommended that the Committee:

- a) *Authorize the OLLS to draft a committee bill to amend the APA to allow agencies to update statutory citations when necessitated by a legislative enactment that alters the original citation;* and
- b) *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 OLLS's second recommendation, below.

The Committee approved the recommendation to draft the bill to amend the APA as described above. At its November 17, 2016, meeting, the Committee reviewed a draft bill to amend the APA, amended the proposed draft, and approved a motion to introduce a committee-sponsored bill. The OLLS presented the amended final bill draft to the Committee at its December 19, 2016, meeting, at which time the committee approved the final bill and assigned Rep. Foote and Sen. Kagan as the bill sponsors. The bill has been introduced as H.B. 17-1006 and is scheduled for its first hearing in the House Judiciary Committee on Tuesday, January 24, 2017, at 1:30 p.m. in House Committee Room 0112.

## **2.2 The OLLS recommended that the Committee 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 recommended, 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 sought 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	
5	Attorneys-at-law	Title 13 (Courts)
66	Wholesale sales representatives	
12	Cemeteries	
34, part 1	Uniform anatomical gift act	Title 15 (Probate & Trusts)
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)

The Committee granted OLLS permission to draft the relocation bills, and the OLLS presented the bill drafts at the Committee's November 17, 2016, meeting. After discussing the proposed drafts, the Committee determined that the most prudent course of action would be to *defer voting on introduction of the relocation*

*bills until new Committee members are appointed for the Seventy-first General Assembly, can get up to speed on the recodification project, and determine whether to proceed with the relocation bills in the 2017 session.*

The OLLS plans to present the relocation bills to the Committee at its meeting in February.

### **2.3 The OLLS requested direction on proposals to reorganize and restructure articles 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 ultimately 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<sup>2</sup> 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 initially expressed a desire to reorganize these two codes to foster better administration by the Department of Revenue. Based on this information, **the Committee authorized the OLLS to pursue the proposed**

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<sup>2</sup> The proposal pertains to the "Colorado Medical Marijuana Code" and the "Colorado Retail Marijuana Code", articles 43.3 and 43.4 of title 12, C.R.S., respectively.

**structural reorganization but cautioned that this proposal needs to remain nonsubstantive to the extent possible.**

At the OLLS's next stakeholder meeting on October 20, 2016, the Attorney General's office representatives expressed concern with the proposed reorganization of the marijuana laws. *The OLLS will continue working with stakeholders in the 2017 interim to determine whether to recommend that the marijuana laws only be relocated, or whether to recommend a reorganization of the laws, as well.*

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

Thereafter, the OLLS received positive feedback to this proposal at the October 20, 2016, meeting. Following the meeting, however, the OLLS discovered that, as part of the Department of Regulatory Agencies' sunset review and recommendations on the automobile dealers act, the department recommended that article 6 of title 12 be restructured in the same manner as was proposed as part of the recodification study. *Accordingly, the restructuring will be part of the sunset legislation and, if enacted by the General Assembly, will not need to be addressed as part of the recodification study.*

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. At the October 20, 2016, meeting, the OLLS received feedback indicating that relocating tax provisions may cause more confusion and problems than originally anticipated, so *this proposal will not be pursued.*

#### **2.4 The OLLS recommended that the Committee 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 informed the OLLS 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, *the OLLS recommended 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.*

The Colorado Commission on Uniform State Laws has approved a bill to relocate two of the three parts of article 55 to the Secretary of State's article in title 24. The Commission has also approved a bill to amend, but not relocate, the third part of article 55, so some further relocation may be necessary.

Article 9 is subject to sunset review during the 2017 session, and no bill to relocate that article has been introduced.

### **3. Future plans**

The OLLS will update the committee on the status of H.B. 17-1006, mentioned in Section 2.1, above.

The OLLS will present relocation bill drafts described in Section 2.2, above, to the Committee at a meeting in February for the Committee's consideration.

The OLLS will start stakeholder meetings as early as possible in the 2017 interim to continue the recodification project and will update the Committee periodically.

**REMAINING ARTICLES IN TITLE 12 FOR REORGANIZATION OR RELOCATION**

**Remain in Title 12 and Reorganize**

<b>Article</b>	<b>Topic</b>	<b>Article</b>	<b>Topic</b>
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**

<b>Article</b>	<b>Topic</b>	<b>Article</b>	<b>Topic</b>
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**

<b>Article</b>	<b>Topic</b>	<b>Article</b>	<b>Topic</b>
9	Bingos & raffles	55	Notaries public

**Relocate to a Different Title**

<b>Article</b>	<b>Topic</b>	<b>Article</b>	<b>Topic</b>
26	Firearms dealers	37.5	Parental notification act
26.1	Background checks - gun shows		