

# STATE OF COLORADO

## Colorado General Assembly

Natalie Castle, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 E. Colfax Ave., Room 011  
Denver, Colorado 80203-1716  
303-866-3521  
lcs.ga@coleg.gov



Ed DeCecco, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
1375 Sherman St., Suite 300  
Denver, Colorado 80203  
303-866-2045  
olls.ga@coleg.gov

## MEMORANDUM

**To:** Raymond Surface and Lindsey Lamb

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** November 14, 2025

**Subject:** Proposed initiative measure 2025-2026 #185, concerning protection from fiat debt for natural persons

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

## Purposes

The major purposes of the proposed amendments to the Colorado Constitution and to the Colorado Revised Statutes appear to be:

1. To amend the Colorado Constitution to prohibit the enforcement of fiat debt; ensure a natural person has access to their credit when it is being used as security for a loan; declare that the enforcement of debt upon a person when the lender provides no security, consideration, or value is equivalent to treason; and declare void any statute that purports to enforce fiat debt;
2. To amend the Colorado Revised Statutes to require a holder of evidence of debt to provide evidence of their equitable interest or security in a loan before electing to foreclose; and
3. To repeal from the Colorado Revised Statutes certain language concerning foreclosure by a qualified holder without original evidence of debt, original or certified copy of deed or trust, or proper endorsement.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor.

Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, you should include your desired effective date, making sure that is not earlier than the default effective date to comply with this constitutional requirement. If you include a desired effective date that is distinct from the default effective date, standard drafting language for an effective date clause is as follows: "This act takes effect [Month Day, Year]."

3. The proposed initiative amends both the Colorado Constitution and the Colorado Revised Statutes. The proponents should be aware that article V, section 1 (2.5) of the Colorado Constitution imposes an additional requirement for initiatives that

amend the Colorado Constitution. Specifically, a petition for an initiated constitutional amendment must be signed by registered electors who reside in each state senate district in Colorado in an amount equal to at least two percent of the total registered electors in the senate district.

4. The first portion of the proposed initiative is indicated as “**SECTION 2**,” and there is no “**SECTION 1**.” Proponents should begin the proposed amendment with a “**SECTION 1**.”
5. The proponents may consider using subsections to break up the text in “**SECTION 2**” [sic] of the proposed initiative in order to improve readability. For example:

**Section \_\_\_. Protection from fiat debt.** (1) NO DEBT SHALL BE ENFORCED IN ANY COURT WITHOUT EVIDENCE OF EQUITABLE INTEREST, EQUITABLE SECURITY, EXTENSION OF CREDIT TO BORROWER, EXTENSION OF ASSET TO BORROWER, OR CONTRACTED SERVICES PROVIDED BY LENDER.

(2) NO NATURAL PERSON SHALL BE DENIED ACCESS TO THEIR CREDIT WHEN IT IS BEING USED AS SECURITY FOR A LOAN.

(3) ENFORCEMENT OF ANY DEBT UPON A NATURAL PERSON WHEN THE LENDER PROVIDES NO SECURITY, CONSIDERATION, OR VALUE IS EQUIVALENT TO TREASON.

(4) ANY STATUTE ENFORCING FIAT DEBTS WITHOUT EVIDENCE OF EQUITABLE INTEREST, EQUITABLE SECURITY, EXTENSION OF CREDIT TO BORROWER, EXTENSION OF ASSET TO BORROWER, OR CONTRACTED SERVICES PROVIDED BY LENDER [IS] VOID.

6. The proponents’ proposed new constitutional language includes the sentence “Enforcement of any debt upon a natural person when the lender provides no security, consideration, or value is equivalent to treason.” In Colorado, treason is a class 1 felony and is described in section 18-11-101 (1), Colorado Revised Statutes, as follows:

**18-11-101. Treason.** (1) A person commits treason if he levies war against the state of Colorado or adheres to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or upon confession in open court.

Because the statutory description of treason in section 18-11-101 (1), Colorado Revised Statutes, does not mention the enforcement of fiat debt, the proponents may consider amending this statutory section as part of the proposed initiative.

7. The text of the amended language in “**SECTION 3**” [sic] of the proposed initiative is punctuated incorrectly. To add the proponents’ new language properly, the commas should be placed as follows:

**38-38-101. Holder of evidence of debt and security may elect to foreclose.**

(1) **Documents required.** Whenever a holder of an evidence of debt PROVIDES EVIDENCE OF THEIR EQUITABLE INTEREST OR SECURITY IN THE LOAN, declares a portion of a covenant of a deed of trust, and elects to publish all or a portion of the property therein described for sale, the holder ...

8. The proposed repeal of section 38-38-101 (2), Colorado Revised Statutes, should appear in strike-type:

(2) ~~**Foreclosure by qualified holder without original evidence of debt, original or certified copy of deed of trust, or proper indorsement.**~~ (a) A qualified holder, whether acting for itself or as agent, nominee, or trustee under section 38-38-100.3 (20), that elects to foreclose without the original evidence of debt pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section, or without the original recorded deed of trust or a certified copy thereof pursuant to subparagraph (II) of paragraph (c) of subsection (1) of this section, or without the proper indorsement or assignment of an evidence of debt under paragraph (b) of subsection (1) of this section shall, by operation of law, be deemed to have agreed to indemnify and defend any person liable for repayment of any portion of the original evidence of debt in the event that the original evidence of debt is presented for payment to the extent of any amount, other than the amount of a deficiency remaining under the evidence of debt after deducting the amount bid at sale, and any person who sustains a loss due to any title defect that results from reliance upon a sale at which the original evidence of debt was not presented. The indemnity granted by this subsection (2) shall be limited to actual economic loss suffered together with any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate cause of the failure to produce the original evidence of debt, but such indemnity shall not include, and no claimant shall be entitled to, any special, incidental, consequential, reliance, expectation, or punitive damages of any kind. A qualified holder acting as agent, nominee, or trustee shall be liable for the indemnity pursuant to this subsection (2).

~~(b) In the event that a qualified holder or the attorney for the holder commences a foreclosure without production of the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof, the qualified holder or the attorney for the holder may submit the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof to the officer prior to the sale. In such event, the sale shall be conducted and administered as if the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof had been submitted at the time of commencement of such proceeding, and any indemnities deemed to have been given by the qualified holder under paragraph (a) of this subsection (2) shall be null and void as to the instrument produced under this paragraph (b).~~

~~(c) In the event that a foreclosure is conducted where the original evidence of debt, proper indorsement or assignment, or original recorded deed of trust or certified copy thereof has not been produced, the only claims shall be against the indemnitor as provided in paragraph (a) of this subsection (2) and not against the foreclosed property or the attorney for the holder of the evidence of debt. Nothing in this section shall preclude a person liable for repayment of the evidence of debt from pursuing remedies allowed by law.~~

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as follows:

1. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate clause, referred to as the **amending clause**, that explains how the law is being changed. Amending clauses are written in lowercase type and follow a specific format.
  - a. The amending clause for “**SECTION 2**” [sic] of the proposed initiative indicates the addition of a new “Section 34” to the Colorado Constitution. It is not clear what this means. The Colorado Constitution is organized into twenty-nine articles, which are denoted with roman numerals (i.e., “XXIX”). Each article contains multiple sections. The proponents should use

standard drafting practice to redraft the amending clause to indicate the placement of the new language in the Colorado Constitution as follows:

**SECTION 1.** In the constitution of the state of Colorado, **add** section \_\_ to article \_\_ as follows:

- b. The proponents should use standard drafting practice to combine and redraft the proposed amending clauses in “**SECTION 3**” and “**SECTION 4**” [sic] of the proposed initiative. Because both of the statutory provisions that the proponents wish to address (i.e., section 38-38-101 (1) introductory portion and (2), Colorado Revised Statutes) appear within the same section 38-38-101, they can be combined into a single section under a single amending clause.

The amending clause should indicate with bold text that the language **amends** the introductory portion of subsection (1) of section 38-38-101 and **repeals** subsection (2) of section 38-38-101, as follows:

**SECTION 2.** In Colorado Revised Statutes, 38-38-101, **amend** (1) introductory portion; and **repeal** (2) as follows:

2. Each section in the Colorado Constitution and Colorado Revised Statutes has a **headnote**. Headnotes briefly describe the content of the section.
  - a. The proponents should update the proposed constitutional language in “**SECTION 2**” [sic] of the proposed initiative as follows:
    - i. The “**Section X.**” portion of the headnote should be indented and appear in bold, mixed-case type; and
    - ii. Only the new language that follows the “**Section X.**” portion of the headnote should appear in small caps. For example:

**Section \_\_. Protection from fiat debt.** (1) ...

- b. The proponents should update the headnote in “**SECTION 3**” [sic] of the proposed initiative as follows:
  - i. The headnote should be indented and appear in bold, mixed-case type. New language (“and security”) added to an existing headnote does not need to be shown in small caps. For example:

**38-38-101. Holder of evidence of debt and security may elect to foreclose. (1) Documents required.** Whenever a ...

3. The material in “**SECTION 3**” and “**SECTION 4**” [sic] of the proposed initiative should be combined to appear under a single amending clause and under a single iteration of the headnote for section 38-38-101, Colorado Revised Statutes. After the headnote, the (amended) subsection (1) introductory portion should appear. (An **introductory portion** is a sentence fragment that ends in a colon and leads into a list to form a complete sentence.) After the subsection (1) introductory portion, the proposed repeal of subsection (2) should follow:

**SECTION 2.** In Colorado Revised Statutes, 38-38-101, **amend** (1) introductory portion; and **repeal** (2) as follows:

**38-38-101. Holder of evidence of debt and security may elect to foreclose.**

(1) **Documents required.** Whenever a holder of an evidence of debt PROVIDES EVIDENCE OF THEIR EQUITABLE INTEREST OR SECURITY IN THE LOAN, declares a violation of a covenant of a deed of trust, and elects to publish all or a portion of the property therein described for sale, the holder or the attorney for the holder shall file the following with the public trustee of the county where the property is located:

(2) ~~Foreclosure by qualified holder without original evidence of debt, original or certified copy of deed of trust, or proper indorsement.~~ (a) A qualified ...