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Colorado General Assembly

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MEMORANDUM

TO: Robert Schraeder and Joel Allen Cathey

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 31, 2022

SUBJECT: Proposed initiative measure: 2021-2022 #102, concerning Liquor Licenses

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council 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 to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2021-2022 #96 to 101. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2021-2022 #96 to 101, except as necessary to fully understand the issues raised by the proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To expand the existing fermented malt beverage retailer license, which authorizes primarily grocery stores and convenience stores to sell beer for off-premises consumption, to a "fermented malt beverage and wine" retailer license, which authorizes those stores to sell beer and wine for off-premises consumption;
2. To restrict the location of new fermented malt beverage and wine retailer licensed premises for which an application for the new license or to change the location of the premises is filed on or after March 1, 2023, to within five hundred feet of any elementary or secondary school or a college or university;
3. To change the name of the "Colorado Beer Code" to the "Colorado Beer and Wine Code"
4. To cap the total number of retailer's licenses that a person, partnership, association, organization, or corporation may be granted under the "Colorado Beer Code" at twelve licenses, which includes licenses to sell at retail:
 - a. Beer and wine for consumption off the licensed premises;
 - b. Beer for consumption on the licensed premises; or
 - c. Beer for consumption on and off the licensed premises.
5. To require the local licensing authority, when considering an application for a retailer's license described in number 4, above, to consider the reasonable requirements of the neighborhood, the desires of its adult inhabitants, and other reasonable restrictions;
6. To prohibit a fermented malt beverage and wine retailer, but no other fermented malt beverage licensed retailers, from:
 - a. Selling beer or wine at a price that is below the retailer's cost to purchase the beer or wine, with certain exceptions;
 - b. Allowing customers to use a self-checkout mechanism to complete the purchase of beer or wine without assistance from an employee to complete the transaction; and

7. To allow a fermented malt beverage and wine retailer, but no other fermented malt beverage licensed retailers, to:
 - a. Allow tastings of beer and wine on the licensed premises if authorized by the local licensing authority;
 - b. Operate under a single or consolidated corporate entity as long as purchases of alcohol beverage products for multiple locations are not commingled; and
 - c. Deliver beer and wine to customers if the delivery is made by an employee of the licensee who is at least twenty-one years of age and is made to a customer who is at least twenty-one years of age.

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. This measure appears to be the same as sections 4 through 14 of proposed initiative 2021-22 #99, and the substantive comments and question on the memorandum regarding that measure are pertinent to and incorporated in the substantive comments to this proposed initiative 2021-22 #102.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents 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 suggested below.

1. It is standard drafting practice to show a headnote in bold-faced type, so in section 1, "Declaration of Purpose." would appear in bold-faced type.

2. It is standard drafting practice to show the introductory portion that precedes that language being amended, if one exists, for ease of reading. For example, in section 4, section 44-3-313 (1)(e) has an introductory portion that reads:

44-3-313. Restrictions for applications for new license. (1) An application for the issuance of any license specified in section 44-3-309(1) or 44-4-107 (1) shall not be received or acted upon:

3. It is standard drafting practice to show the statutory text immediately following the headnote. See the example in number 2, above.
4. When amending a statutory section, the provisions of the section should be copied into the measure exactly as they appear in the Colorado Revised Statutes.
 - a. Within each section, a subsection number, paragraph letter, subparagraph number, or sub-subparagraph letter appears only once in each subsection, as shown in the Colorado Revised Statutes. For example, in section 4 of the measure, multiple subdivisions of section 44-3-313 (1)(e) are being amended. The numbers, "(1)(e)", should not be inserted before each subdivision of subsection (1)(e) being amended in the statutory text but rather, only before the first subdivision in subsection (1)(e) that is being amended.
 - b. In section 2 of the measure, the introductory portion is shown in small capital letters, but the language is current law. Therefore, it should appear in lowercase letters.
 - c. In section 44-4-102 (1) of section 7 of the measure, language is shown in stricken type but that language is not part of current law. Therefore it should be removed from the measure.

5. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. A provision that leads into another provision is called an introductory portion. For example:

X-X-XXXX. Headnote. (1) Subsection: [*introductory portion*]

(a) Paragraph: [*introductory portion*]

(I) Subparagraph: [*introductory portion*]

(A) Sub-subparagraph;

- (B) Sub-subparagraph;
 - (II) Subparagraph;
 - (b) Paragraph.
 - (2) Subsection.
 - (3) Subsection.
6. Each statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed.
- a. Each subsection, paragraph, subparagraph, and sub-subparagraph listed in an amending clause should be enclosed in parentheses. For example, in the amending clause for section 3 of the measure, subsection (12) should be enclosed in parentheses as follows:

SECTION 3. In Colorado Revised Statutes, 44-3-301,
amend (9)(a)(I)(B) and (12)(a.5)(I) as follows:

- b. An amending clause should not include provisions that are not being amended. For example, in section 5 of the measure, subsection (6)(p)(I)(B) is listed in the amending clause, but it is not being amended in the statutory section.
- c. When a provision is divided into subdivisions and the subdivisions follow an introductory portion, if the introductory portion is being amended, it should be listed in the amending clause. For example in section 9 of the measure, the amending clause should read:

SECTION 9. In Colorado Revised Statutes, 44-4-104,
amend (1) introductory portion and (1)(c)(I) as follows:

- d. When an entire subsection, paragraph, or subparagraph is being amended, it is not necessary to list each subdivision of the subsection, paragraph, or subparagraph. For example, in section 11 of the measure, the amending clause should read:

SECTION 11. In Colorado Revised Statutes, 44-4-106
amend (1) as follows: (*see also the example following c.*)

- e. In each amending clause, it is necessary to include the subsection number where the paragraph is being added. For example, in section 12

of the measure, the amending clause does not indicate where paragraph (b.5) is to be added. "(1)" should be inserted before (b.5) in the amending clause.

7. It is standard drafting practice when changing a word to show the whole word in stricken type and the new word in small capital letters. In section 44-3-901 (1)(g), (6)(k)(V), and (8)(b) a word was changed by dropping a letter or changing the form of the word and it wasn't shown in stricken type and small capital letters. In subsection (1)(g), the word "section", which precedes "44-4-104 (1)(c)" should be "sections"; in subsection (6)(k)(IV), "authorized" should be "authorization"; and in subsection (8)(b), "allow tasting" should be "allow tastings".

It is permissible to change a word with a capitalized letter to a lowercase letter, or vice versa, without showing the change.

8. When amending the Colorado Revised Statutes, words cannot be dropped or relocated without being shown in stricken type in the original location and small capital letters in the new location. In multiple places within the measure, the word "or" was relocated without being shown. For example, in section 5, section 44-3-901 (1)(g) "and" was dropped from current law following "44-4-104 (1)(c)" and in section 44-3-901 (1)(i)(III)(A), (6)(i)(II), (6)(k)(I), (6)(k)(IV), and (8)(b) "or" was moved from after "retail liquor store" to after "drugstore".

Additionally, in section 44-4-106 (1)(b), the words "under section 44-4-107 (6)" were dropped from current law following at the end of the paragraph following the word "customers". They should be shown in stricken type.

9. A hyphen should be used between two words that, together, modify the following word. In the phrase "off-premises retailer", it is correct to hyphenate "off-premises". In section 44-3-103 (32.5) of section 2 of the measure a hyphen should be added at the beginning of the sentence in the phrase "'OFF PREMISES RETAILER'."