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MEMORANDUM

TO: Blake Harrison and John Grayson Robinson

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: February 29, 2016

SUBJECT: Proposed initiative measure 2015-2016 #104, concerning the sale of beer and wine by food stores

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 2015-2016 #103, 105, and 106. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memoranda for proposed initiatives 2015-2016 #103, 105, and 106, except as necessary to fully understand the issues raised by the revised 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. Only new comments and questions are included in this memorandum.

Earlier versions of this proposed initiative, proposed initiatives 2015-2016 #51 and 52 and proposed initiatives 2015-2016 #60 and 61, were the subject of memoranda dated November 16, 2015, and December 9, 2015, respectively, and were discussed at public meetings on November 18, 2015, and December 15, 2015, respectively. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and 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 create a food store license in the Colorado Liquor Code that would allow food stores to sell malt and vinous liquors in sealed containers for off-premises consumption;
2. To require food stores licensed to sell malt and vinous liquors to purchase the liquor products only from wholesalers licensed under the Colorado Liquor Code;
3. To specify that a person who owns an interest in a retail business licensed under the Colorado Liquor Code is not precluded from conducting, owning, or having an interest in one or more licensed food stores;
4. To permit a business that holds a valid fermented malt beverage retailer's license in effect on July 1, 2017, to apply to the local licensing authority for a food store license if the licensee otherwise complies with the requirements for a food store license;
5. To specify that, when reviewing and making a determination on a food store license application submitted by a currently-licensed fermented malt beverage retailer, the local licensing authority may:
 - a. Deem as proven the satisfactory nature of the applicant's character, record, or reputation if the applicant, at the time of application, has a valid, unexpired fermented malt beverage retailer license and is not subject to any pending administrative or criminal proceedings; and

- b. Consider the reasonable requirements of the neighborhood and the desires of its adult inhabitants in accordance with current law;
6. To require the state licensing authority to adopt rules and other findings as necessary to implement food store licenses;
7. To define a food store as an establishment, other than a restaurant, that offers food items for sale at retail premises that have at least 3,000 square feet of indoor sales area and that generates at least 20 percent of its annual gross sales income, including income from fuel products and lottery ticket sales, from the sale of food items;
8. To define food items as any raw, cooked, or processed edible substance, ice, and nonalcohol beverage intended for human consumption;
9. To authorize the state licensing authority and local licensing authorities to issue food store licenses;
10. To establish state and local license fees for food store licenses;
11. To prohibit a food store employee who is under 21 years of age from selling malt or vinous liquors; and
12. To specify that the measure takes effect July 1, 2017.

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. In comparing this measure with proposed initiatives 2015-2016 #103, 105, and 106, it appears that this measure and measure #105 specify, in proposed new section 12-47-425 (1), that a food store license may be issued to a food store selling malt and vinous liquors. On the other hand, proposals #103 and 106 specify that a food store may "only" sell malt and vinous liquors. What is the intent and effect of deleting the word "only" before "malt and vinous liquors"? Is the intent to allow food stores to sell other types of alcohol beverages?
3. In comparison to proposed measures #103 and 106, this measure and proposed measure #105 do not repeal fermented malt beverage retail licenses as of January 1, 2019. What is the combined effect of the changes to the definition of

"food store" and the retention of fermented malt beverage retail licenses as proposed in this measure?

Technical Comments

No new technical comments and questions were raised by this proposed initiative.