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MEMORANDUM

TO: Steven Ward and Levi Mendyk
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 6, 2022
SUBJECT: Proposed initiative measure 2021-2022 #128, concerning the Sales and Delivery of Alcohol Products.

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 the 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.

Purposes

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

1. Authorizing the holder of any retail license that permits the sale of beer to also sell wine at the retail premises;

2. Authorizing third-party home delivery service providers to deliver alcohol products to homes;
3. Authorizing third-party home delivery service providers to use employees or independent contractors to make deliveries of alcohol products;
4. Requiring the persons making deliveries of alcohol products to be twenty-one years of age; and
5. Requiring the person receiving deliveries of alcohol products to be 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. As a change to the Colorado Constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. What will be the effective date of the proposed initiative?
4. Currently, the Colorado Constitution does not have an article XXII.
 - a. In order add a section 1 and section 2 to article XXII, the article needs to be added to the Colorado Constitution. Would the proponents consider adding article XXII to the Colorado Constitution?
 - b. The standard format for amending clauses that add articles to the Colorado Constitution is to write that the sections are being added to a specific article. Here is an example:

Section 1. In the constitution of the state of Colorado, **add** article XXII as follows:

Would the proponents consider rewriting the amending clause to match the standard format?
 - c. A new article should have an article heading that shows the article, the article number, and the article title. Here's an example:

ARTICLE XXII

THE SALE AND DELIVERY OF ALCOHOL PRODUCTS

Would the proponents consider adding an article heading to the proposed initiative?

5. The Colorado Constitution is divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

Section 1. Headnote. (1) Subsection.

- (a) Paragraph
- (I) Subparagraph
- (A) Sub-subparagraph

The standard format for a constitutional section is "section 1" and "section 2." The standard format for a subsection is "(1)" and "(2)." The proposed sections 1 and 2 of article XXII are written as if the section numbers are subsections.

- a. Do the proponents intend the notated (1) and (2) to be sections?
 - b. If the intention is to make the (1) and (2) sections, would the proponents consider using the standard format in both the amending clause and the constitutional section?
6. Section 1¹ of the proposed initiative does not specify who is permitted to sell wine in a retail establishment licensed to sell beer.
 - a. May a third party sell wine in a retail establishment licensed for the retail sale of beer?
 - b. If the intention is to permit the holder of a license to sell beer to also sell wine, the following would make that clear:

A person licensed to sell beer at retail may sell wine at retail from a premises that is licensed to sell beer at retail.

If the intention is to limit the authorization to sell wine to license holders, would the proponents consider rewriting the provision?

¹ For the purposes of the remainder of this memoranda, the assumption is that the (1) and (2) are intended to be sections.

7. The statutes use the phrase "alcohol beverage" when referring to beverages containing alcohol. Alcohol can be a powder or a vapor.
 - a. Do the proponents want section 2 of the proposed initiative to include powdered or vaporous alcohol?
 - b. If the intention is to permit the sale only of alcohol beverages, would the proponents consider using phrase "alcohol beverages"?
8. Is the intention to allow the wine to be sold at retail? If so, would the proponents consider adding the phrase "at retail" or something similar after the phrase "sell wine"? An example may be found in subsection (6)(b) of this memo.
9. Retail licenses can be broadly categorized as licenses for the sale of alcohol products for on premises consumption, such as a tavern, and for off-premises consumption, such as a liquor store.
 - a. Is the intention to allow the wine to be sold for on-premises consumption?
 - b. Is the intention to allow the wine to be sold for off-premises consumption?
10. Section 1 of the proposed initiative uses the term "retail establishment," but the statutes use the phrases "licensed premises" or "premises that is licensed..." Using the term familiar to the state licensing authority and to the regulated community may avoid confusion. Would the proponents consider using the statutory phrase? An example may be found in subsection (6)(b) of this memo.
11. A drafting convention is to use the authority verb "may" when authorizing or permitting someone to do something. Both sections 1 and 2 of the proposed initiative use the phrase "is permitted." Would the proponents consider using the word "may" instead of the phrase "is permitted" in both sections? An example may be found in subsection (6)(b) of this memo.
12. Section 2 of the proposed initiative does not specify who or what entity is permitted to deliver alcohol beverages.
 - a. Section 2 could be interpreted to allow non-licensed individuals to buy and deliver alcohol beverages. Is that the proponents' intention?
 - b. If the intention is to allow persons licensed to sell alcohol beverages at retail to use third-party home delivery service providers, would the

proponents consider specifying that a person licensed to sell alcohol beverages at retail may use third-party home delivery service providers? Here is an example:

A person licensed to sell alcohol beverages at retail may deliver alcohol beverages to a home using an employee or using a third-party home delivery service provider, which may use employees or independent contractors to make deliveries. The delivery person must be twenty-one years of age or older, and the delivery recipient must present a valid identification document showing proof of being twenty-one years of age or older.

13. The word "through" in the clause "Home delivery of alcohol is permitted through third-party ..." is unclear.
 - a. Is the intention to authorize delivery of alcohol beverages or to require that deliveries of alcohol beverages be made by third-party home delivery service providers?
 - b. Would the proponents consider clarifying whether the third-party home delivery service provider is a requirement or an authorization? An example is found in subsection (12)(b) of this memo.
14. Section 2 of the proposed initiative uses the pronoun "who" to describe third-party home delivery service providers. The pronoun "who" is typically understood to apply to individuals. Some of these providers may be companies or other legal entities. If the intention is to authorize legal entities to provide these services, would the proponents consider using the word "that" instead of the word "who"?
15. Section 2 of the proposed initiative uses the word "provided" as in "... make deliveries, provided the delivery person is age twenty-one..." It is considered a best practice to avoid using the word "provided" because it is ambiguous. Sometimes the word "provided," when used as a synonym of "if," sets a condition, and sometimes the word "provided," when used as a synonym of "except that," creates an exception. The intention appears to be to set a condition of delivery to be when both the delivery driver and delivery recipient are 21 years of age or older. Would the proponents consider replacing the word "provided" with the word "if"?
16. Section 2 uses the shorthand term "ID" as an initialism of "identification document." It is a better practice to use an initialism only when it is defined.

Would the proponents consider using the full phrase "identification document"?

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. The minimum age clause of the proposed section 2 does not specify what unit of time is intended. To ensure clarity and preciseness, express a minimum age in the format "years of age," with a lower age limit and with no upper age limit: "Twenty-one years of age or older."
2. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to both section 1 and section 2 of the proposed initiative and be in bold-face type. Here is an example:

Section 1. Sale of wine permitted for retail establishments license to sell beer. THE SALE OF WINE ...

3. The Colorado Liquor Code uses the term "malt liquors" to refer to beer and the term "vinous liquors" to refer to wine. The proponents may want to consider using those terms.