

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

December 29, 2014

TO: Edgar Antillon and Isaac Chase

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2015-2016 #10, concerning the issuance of permits to carry concealed handguns to permit applicants who lawfully use marijuana.

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.

Purposes

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

To amend section 18-12-203 of the Colorado Revised Statutes, which section concerns the criteria for obtaining a permit to carry a concealed handgun, to state that a county sheriff may not use a permit applicant's lawful use of marijuana as a basis for denying the applicant a permit.

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 your proposed language, you have omitted a bit of existing language from paragraph (1) (c) of section 18-12-203, Colorado Revised Statutes. This provision actually reads as follows:

(c) Is not ineligible to possess a firearm pursuant to section 18-12-108 or federal law;

You have omitted the words "or federal law" from your version of the provision. It is not clear whether this omission was intentional or accidental.

If you intend to delete the words "or federal law" from the provision, then you should redraft the language to render the deleted text in strike-type, per standard drafting practice, as follows:

(c) Is not ineligible to possess a firearm pursuant to section 18-12-108; ~~or federal law~~;

If you do not intend to delete the words "or federal law" from the provision, then you should redraft your language to include the omitted text, as follows:

(c) Is not ineligible to possess a firearm pursuant to section 18-12-108 or federal law;

3. Similarly, in your proposed language, you have altered a bit of existing language in paragraph (1) (f) of section 18-12-203, Colorado Revised Statutes. This provision actually reads as follows:

(f) Is not an unlawful user of or addicted to a controlled substance as defined in section 18-18-102 (5). Whether an applicant is an unlawful user of or addicted to a controlled substance shall be determined as provided in federal law and regulations.

In your version of this provision, you have substituted the word "state" for "federal". If you intend to make this change in the law, you should follow standard drafting practice, which is to render stricken text in strike-type, to be followed by new text in small caps, as follows:

(f) Is not an unlawful user of or addicted to a controlled substance as defined in section 18-18-102 (5). Whether an applicant is an unlawful user of or addicted to a controlled substance shall be determined as provided in ~~federal~~ STATE law and regulations.

4. In amending paragraph (1) (f) of section 18-12-203, Colorado Revised Statutes, you have broken the provision into subparagraphs (I), (II), and (III), with subparagraphs (II) and (III) indicated as "exceptions" to the language in subparagraph (I). This creates a technical problem in terms of granularity; if (II) and (III) are truly "exceptions" to (I), then they should be placed at the level of granularity below (I). That is, they should be indicated as sub-subparagraphs (I) (A) and (I) (B).

However, it is not clear that the new subparagraph (II) and the existing language that you have labeled as subparagraph (III) *are* in fact "exceptions" to (I). To eliminate potential confusion, we suggest redrafting the amended provision as follows:

(f) Is not an unlawful user of or addicted to a controlled substance as defined in section 18-18-102 (5), EXCEPT THAT A SHERIFF SHALL NOT USE A PERMIT APPLICANT'S LAWFUL USE OF MARIJUANA PURSUANT TO SECTION 14 OR 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION AS A BASIS FOR DENYING THE APPLICANT A PERMIT. Whether an applicant is an unlawful user of or addicted to a controlled substance shall be determined as provided in ~~federal~~ STATE law and regulations.

5. What will be the effective date of the proposed initiative?

Technical Comment

The following comment addresses a technical issue raised by the form of the proposed initiative. This comment will be read aloud at the public meeting only if you so request. You will have the opportunity to ask questions about this comment at the review and comment meeting. Please consider revising the proposed initiative as suggested below:

Per standard drafting practice, please redraft the amending clause and the first line of the section 18-12-203, Colorado Revised Statutes, to read as follows:

SECTION 1. In Colorado Revised Statutes, 18-12-203, **amend** (1) (c) and (1) (f) as follows:

18-12-203. Criteria for obtaining a permit. (1) Beginning May 17, 2003, except as . . .