

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Blake Harrison, John Grayson Robinson, and Trey Rogers
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 9, 2015
SUBJECT: Proposed initiative measure 2015-2016 #60, concerning food store 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 proposed initiative 2015-2016 #61. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2015-2016 #61, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

An earlier version of this proposed initiative, proposed initiative 2015-2016 #51, was the subject of a memorandum dated November 16, 2015. Proposed initiative 2015-2016 #51 was discussed at a public meeting on November 18, 2015. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, 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 only malt and vinous liquors in sealed containers for off-premises consumption;
2. To require food stores selling malt and vinous liquors to purchase the liquor products only from licensed wholesalers;
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 inhabitant 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 and that generates at least 25% of its annual gross sales income, excluding 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 section 1 of the measure, in proposed C.R.S. section 12-47-425 (2), the provision refers to "every food store selling malt and vinous liquors ..." Since the term "food store" is not defined as an establishment that is licensed to sell malt and vinous liquors, it is not clear, in subsection (2), that a food store must be licensed to sell or purchase at wholesale malt or vinous liquors. Would proponents consider rephrasing to read "Every *licensed* food store ..." or "Every food store *licensed under this section to sell* malt and vinous liquors ..."?
3. A previous version of the measure, in what is now proposed section 12-47-425 (4), stated that a licensed fermented malt beverage retailer that applied for and received a food store license could continue operating regardless of the food store's proximity to a school. It appears that language has been deleted from the current proposal.
 - a. What is the intent of deleting that language?

- b. If a licensed fermented malt beverage retailer obtains a food store license, will it be able to continue operating regardless of how close the business is located to a school?

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. In Section 1 of the measure, section 12-47-425 (4), in the first sentence a comma should be inserted after "2017".
2. When defining the term "food store" in section 2 of the measure, the phrase "AS DEFINED AT SECTION 12-47-103 (3)" is unnecessary. The term "restaurant" is defined in that section, and the definition applies any place in article 47 of title 12 that it appears. Accordingly, proponents should strike that phrase. Alternatively, if proponents prefer to retain an internal cross reference to the definition of "restaurant", because Section 2 is amending the section in which the definition of restaurant is contained, the cross reference should be changed to read "AS DEFINED IN SUBSECTION (30) OF THIS SECTION".