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## MEMORANDUM

**TO:** Ali Pruitt and Ron Castagna

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** April 5, 2016

**SUBJECT:** Proposed initiative measure 2015-2016 #139, concerning the Regulation of the Sale of Marijuana and Marijuana 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 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. To require marijuana to be sold in child-resistant packaging.
2. To require edible marijuana products to be sold as individually packaged single-serving products.

3. To require that marijuana and marijuana product packaging include warnings regarding identified health risks and the potency of the product.
4. To limit all marijuana and marijuana products to a potency limit of 16% THC.

## **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. The measure states that marijuana and marijuana products "must be controlled . . . in child resistant packaging . . . or as a single-serving edible retail marijuana product that is individually packaged." What does "controlled" mean in this context?
3. The measure defines potency and restricts marijuana and marijuana products to a potency of less than 16% THC. How is the percentage of THC measured?
4. In paragraph (b) of the new subsection (5.5), the measure states that marijuana and marijuana products must be controlled like alcohol.
  - a. How does imposing a potency limit of 16% control marijuana and marijuana products like alcohol?
  - b. What does "controlled" mean?
5. The measure states, "The Colorado general assembly is authorized to adopt by bill measures that advance the public interest in the public health and safety related to the controlled sale of marijuana and marijuana products so long as its actions do not contravene this subsection (5.5)." This provision seems to state the general assembly's plenary authority is limited by the Colorado constitution. What is the intent of this section?

## **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. You only need to show the provisions of article 16 of title 18 that you are amending, and the amending clause would reflect those provisions. For example, "In the constitution of the state of Colorado, **amend** subsection (2) of section 16 of article 18; and **add** subsection (5.5) of section 16 of article 18 as follows:".
2. The Colorado constitution is divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

**X-X-XXXX. Headnote.** (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

In the new subsection (5.5), you use (a), (1), (A), and (I) as the subdivisions. The subdivisions should be (a), (I), and (A).

3. It is standard drafting practice to only capitalize proper nouns, such as "Colorado," "South Platte river," "Pike's Peak community college". In the measure, words such as "Single-Serving Edible Retail Marijuana Product" do not need to be initial-capitalized.