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## MEMORANDUM

**TO:** Bruce Dierking and Jeanne McEvoy  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 6, 2016  
**SUBJECT:** Proposed initiative measure 2015-2016 #156, concerning the Prohibition on Sale of Marijuana and Liquor at 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.

### Purpose

The major purpose of the proposed amendment to the **Colorado Revised Statutes** appears to be:

1. Prohibiting the sale of alcohol, marijuana, and marijuana products at a food store.

## 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 measure?
2. With regard to proposed § 12-47-401.5 (1):
  - a. The measure prohibits the sale of alcohol, marijuana, and marijuana products at a food store by placing the prohibition in article 47 of title 12, C.R.S., which relates to alcohol sales. The regulated sale of marijuana and marijuana products is found in articles 43.3 and 43.4 of title 12, C.R.S. Why is the prohibition not added to articles 43.3 and 43.4 as well? Would the proponents consider adding the prohibition to each article in which the prohibition applies?
  - b. Would the proponents explain how a prohibition against licensing a food store to sell malt, vinous, or spirituous liquors is "CONSISTENT WITH SECTION 16 (1) (b) OF ARTICLE XVIII OF THE COLORADO CONSTITUTION"? That constitutional provision pertains to the personal use and regulation of marijuana, so how is restricting the sale of alcohol by certain businesses consistent with a constitutional provision governing marijuana?
  - c. The phrase "NO FOOD STORE MAY BE LICENSED TO, OR MAY, OFFER FOR SALE . . ." does not specifically prohibit a food store from being licensed to sell the specified products. Do the proponents intend to prohibit a food store from offering to sell or actually selling the specified products?
  - d. The measure states that "NO FOOD STORE MAY BE LICENSED TO. . . ". Food stores are not currently licensed. What is the intent in prohibiting licensure that does not currently exist?
  - e. The measure is statutory rather than constitutional. Therefore, a future statutory licensing scheme could amend or repeal this prohibition. Do the proponents intend for the general assembly to be able to change it or repeal it?
  - f. The measure prohibits a food store from selling "IN SEALED CONTAINERS FOR OFF-PREMISES CONSUMPTION" marijuana, marijuana products, and alcohol. Do the proponents intend for food stores to sell those items in

unsealed containers? Do the proponents intend for food stores to sell those items for on-site consumption?

- g. With regard to initiative number 2015-2016 #104, which proposes to create a new food store license that would allow grocery and convenience stores that obtain the food store license to sell malt, vinous, and spirituous liquors in sealed containers for off-premises consumption, is the intent of this measure to prohibit a grocery or convenience store that, if proposed initiative #104 is approved by the voters, obtains the food store license from actually selling malt, vinous, and spirituous liquors? If this measure and initiative 2015-2016 #104 both appear on the ballot and are both approved by the voters, what would be the effect? Could both measures take effect? Would that create a conflict in the law?
- h. If the proponents agree to include the prohibition in each article that governs the products affected by the measure, would the proponents consider stating the prohibition in active voice, specifying the entity that is prohibited from issuing the license? For example, under the "Colorado Liquor Code", article 47 of title 12, C.R.S., the state and local licensing authorities are the government bodies that issue alcohol beverage licenses to persons selling alcohol beverages in sealed containers for consumption off the licensed premises, so to state the prohibition in active voice, the measure could be rephrased as follows: "THE STATE OR LOCAL LICENSING AUTHORITY SHALL NOT ISSUE A LICENSE TO A FOOD STORE TO SELL OR OFFER FOR SALE, IN SEALED CONTAINERS ...".
- i. What is meant by the terms "marijuana" and "marijuana product"? Neither term is defined in article 43.3 or 43.4 of title 12, C.R.S. The terms are defined in section 16 of article XVIII of the Colorado constitution. Do the proponents intend that these terms have the meaning set forth in the constitution? If so, would the proponents include a cross reference to the constitutional citations where the terms are defined? If not, would the proponents consider using terms that are defined in articles 43.3 and 43.4 of title 12, C.R.S., to ensure the measure is clear as to what products it applies to?
- j. The term "food store" is defined under subsection (1). Would the proponents consider defining the term "food store" in § 12-47-103, C.R.S., the definitions section of the "Colorado Liquor Code"?

- k. What is meant by the term "intoxicants"? Would the proponents consider defining that term?
  - l. What is meant by the term "retail premises"? That term is not defined in the "Colorado Liquor Code", the "Colorado Medical Marijuana Code", article 43.3 of title 12, C.R.S., or the "Colorado Retail Marijuana Code", article 43.4 of title 12, C.R.S.
3. With regard to § 12-47-401.5 (2):
- a. If the prohibition does not apply to a restaurant, does that mean a restaurant would not be prohibited from obtaining a license to sell or offer to sell marijuana?
  - b. The term "medical marijuana center" is not defined in § 12-43.4-104 (8), C.R.S. Would the proponents consider including the correct citation indicating where that term is defined in state statute?
  - c. Since the prohibition does not apply to a medical marijuana center or retail marijuana store, could either of those businesses be licensed to sell malt, vinous, or spirituous liquors?
4. With regard to § 12-47-401.5 (3):
- a. The measure requires the division of liquor enforcement to have rules in effect by July 1, 2017. What if the division misses the deadline?
  - b. Under § 12-47-202 (1) (b), C.R.S., the state licensing authority is the entity required to adopt rules, not the "liquor enforcement division". Would the proponents consider referring to the state licensing authority?
  - c. Is the state licensing authority's duty to adopt rules limited to defining ""FOOD ITEMS" AND RELATED TERMS"? Could the state licensing authority adopt rules related to the measure that do not pertain to defining terms?
5. With regard to section 2 of the measure:
- a. Since the language prohibits a person from selling "SEALED CONTAINERS THAT CONTAIN" the specified products, could those products be sold in unsealed or open containers or for on-premises consumption at a food store?

- b. Does § 12-47-401.5 (2) actually "authorize" the sale of the specified products at a food store? Is the intent to clarify that the prohibition in paragraph (p) does not apply to licensees exempted under § 12-47-401.5 (2)?
- c. Section 2 of the measure makes it unlawful to sell alcohol, marijuana, or marijuana products "at retail pursuant to this article . . . AT A FOOD STORE...". Article 47 of title 12, C.R.S., only applies to alcohol beverages, not marijuana or marijuana products. What is the intent of section 2 as it applies to marijuana and marijuana products?

## **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. For purposes of this statutory initiative, the word "shall" is defined in § 2-4-401 (13.7), C.R.S., and it means "that a person has a duty". The related word "must", which is defined in § 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply". Furthermore, "'must' does not mean that a person has a duty". When defining terms in law, the standard format is to set off the term in quotation marks followed by the word "means", rather than "shall mean".
2. The definition for "food store" should be in its own subsection or other subdivision within § 12-47-401.5.
3. Since the term "restaurant" is a defined term for the entire article, the definition § 12-47-103 (30) applies wherever that term appears in article 47 of title 12, C.R.S. Accordingly, there is no need to refer to the statutory citation where the term is defined when using the term "restaurant" in article 47 of title 12, C.R.S. If the proponents want to keep the reference "SUBSECTION (30) OF SECTION 12-47-103" it should be "SECTION 12-47-103 (30)".
4. Unless a specific term is being defined, the term should not be set off in quotation marks. The measure defines "food store" and appropriately sets the term off in quotation marks. The measure is not defining the terms restaurant,

medical marijuana center, and retail marijuana store, so those terms should not appear in quotation marks.

5. In § 12-47-401.5 (2) of the measure, the reference "MEDICAL MARIJUANA CENTER" AS DEFINED IN SECTION 12-43.4-104 (8)" should be ""MEDICAL MARIJUANA CENTER" AS DEFINED IN SECTION 12-43.3-104, C.R.S.,".
6. It is standard drafting practice that when referencing a statutory section, Colorado Revised Statutes is abbreviated, for example, "AS DEFINED IN SECTION 12-43.4-104 (8), C.R.S.".