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## MEMORANDUM

**TO:** Carolyn Joy Fotino and Faye Diamond  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** April 5, 2016  
**SUBJECT:** Proposed initiative measure 2015-2016 # 157 concerning the minimum age for employees of specified liquor licensees

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:

1. To require a licensee under the "Colorado Liquor Code" to employ only persons who are at least twenty-one years of age to:

- a. Work on a licensed premises that sells malt, vinous, or spirituous liquors in sealed containers for consumption off the premises; or
  - b. Work on or off the licensed premises to deliver malt, vinous, or spirituous liquors in sealed containers that are purchased for off-premises consumption.
2. To specify that the minimum age of employees requirement does not apply to a person that has a manufacturer's license, limited winery license, brew pub license, vintner's license, distillery pub license, or wholesaler's license;
3. To specify that it is unlawful for a person licensed under the "Colorado Liquor Code" to sell at retail to have an employee who is younger than twenty-one years of age; and
4. 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. The measure proposes to create a new section in part 3 of article 47 of title 12, C.R.S. Part 3 pertains to "state and local licensing" and addresses the process and requirements to obtain, renew, modify, or transfer a license; duties of the state and local licensing authorities relative to issuing and denying licenses; persons restricted from obtaining a liquor license; hearing and notice requirements; and other matters related to licensing. This measure does not appear to address the licensing process; rather, it prohibits certain conduct by licensees, i.e., employing persons under twenty-one years of age either on the licensed premises where alcohol beverages are sold or to deliver alcohol beverages.
  - a. Would the section be better placed in part 9 of article 47 of title 12, C.R.S., which pertains to "unlawful acts and enforcement"?
  - b. Alternatively, rather than creating a new section in part 9, could the prohibited actions simply be added to section 12-47-901, C.R.S., which lists unlawful acts? Specifically, section 12-47-901 (5) (a) (I), C.R.S., which the measure proposes to amend, contains provisions regarding the

minimum age of employees of persons licensed to sell at retail, so could the measure simply amend that provision? See Substantive Comment #5.d., below, for suggested language.

3. With regard to the minimum employee age requirement in proposed section 12-47-314 (1):
  - a. To what specific types of licensed premises is the measure intended to apply? Since the term "licensee" is not defined in the measure, it is not clear if the measure is intended to apply to persons licensed only to sell alcohol beverages in sealed containers for off-premises consumption or if it applies more broadly to other licenses that allow a business to sell alcohol beverages for on- and off-premises consumption, as well as by the drink and in sealed containers.
  - b. Would the measure apply the minimum age requirement to a licensed hotel?
  - c. Assuming the requirement applies to a retail liquor store licensed under section 12-47-407, C.R.S., the measure appears to impose a stricter standard than what currently applies to retail liquor stores under section 12-47-901 (5) (a) (I), C.R.S. Under that section, a retail liquor store employee must be at least twenty-one years of age to sell alcohol beverages, but a retail liquor store is not precluded from employing persons under twenty-one years of age on the licensed premises to perform other tasks or to deliver alcohol beverages. Is it the proponents' intent to impose a new, stricter employee age requirement on retail liquor stores?
  - d. If the measure is intended to impose the minimum employee age requirement solely on those persons licensed to sell alcohol beverages only in sealed containers for consumption off the licensed premises, would the proponents consider adding that specifically to the measure to make the intent clear?
  - e. Does the minimum employee age requirement apply to a person licensed under the "Colorado Beer Code" pursuant to section 12-46-104 (1) (c) and 12-46-107 (1) (a) or (1) (c), C.R.S.?
  - f. Would this requirement prohibit a liquor-licensed drugstore, such as the Super Target in Glendale, from employing anyone who is under twenty-one years of age to "work on the licensed premises"?
  - g. With regard to initiative number 2015-2016 #104, which proposes to create a new food store license that would allow many grocery and convenience stores that obtain a food store license to sell malt and

vinous liquors in sealed containers for off-premises consumption, is the intent of this measure to apply the minimum employee age requirement to a grocery or convenience store that, if proposed initiative #104 is approved by the voters, obtains a food store license? In other words, if initiative #104 becomes law and this measure becomes law, would this measure preclude a grocery store that obtains a food store license from employing any person under twenty-one years of age to work on the licensed premises?

- h. Would the minimum employee age requirement apply to a financial institution that comes into possession of a licensed premises through foreclosure, as specified in section 12-47-308(4), C.R.S.?
4. With regard to the exceptions in proposed section 12-47-314 (2):
- a. By listing specific licenses that are exempt from the minimum employee age requirement, is the intent that all other licenses not mentioned are subject to the requirement?
  - b. If language is added to section 12-47-314 (1), pursuant to the suggestion in Substantive Comment 3.d., above, is the list of exceptions necessary? By narrowing the scope of the minimum employee age requirement to those licensed only to sell alcohol beverages in sealed containers for off-premises consumption, it appears that the requirement would not apply to any of the licenses listed in subsection (2) because none of those persons are licensed only to sell alcohol beverages in sealed containers for off-premises consumption.
5. With regard to section 2 of the measure, proposing to amend section 12-47-901 (5) (a) (I), C.R.S.:
- a. The measure adds a new sentence that appears to directly conflict with the sentence immediately preceding the new sentence, which prohibits an employee of a licensed tavern or retail liquor store from selling malt, vinous, or spirituous liquors unless the employee is at least twenty-one years of age. The new sentence, which appears to apply to retail liquor stores, prohibits a retail liquor store from employing an employee "subject to section 12-47-314" who is younger than twenty-one years of age. Rather than include the "Notwithstanding any other provision of law" language, would the proponents consider eliminating the conflict between the two sentences by striking, in the current law, the reference to a retail liquor store (i.e., "~~or a retail liquor store~~") so that it is clear that

the new sentence applies to retail liquor stores and imposes the new minimum employee age requirement on retail liquor stores?

- b. The new sentence also appears to conflict with two other provisions in section 12-47-901 (5) (a) (I), C.R.S. Specifically, the new language appears to conflict with the clause that starts "or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age . . ." and the sentence that reads "Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised . . ." Would the proponents consider modifying the measure to avoid the conflicts with existing law, which may cause confusion for licensees and employees?
- c. The new sentence, in combination with the proposed new section 12-47-314, suggests that the employee is the person who would be committing a prohibited act if he or she is under twenty-one years of age and is employed at an establishment that is licensed to sell alcohol beverages in sealed containers for off-premises consumption. However, the enforcement provisions in the "Colorado Liquor Code", part 6 of article 47 of title 12, C.R.S., authorize the state or local licensing authority to impose sanctions on licensees, such as imposing fines or suspending the license.
  - i. Is it the proponents intent that the employee also be penalized in some way, and if so, would the proponents consider amending the enforcement provisions to specify that an employee who is under twenty-one could be subject to penalties imposed by a licensing authority and specify how that employee could be penalized?
  - ii. If the proponents do not intend for employees to be penalized, but rather for licensees to be penalized, would proponents consider rewording the new language in section 12-47-901 (5) (a) (I), C.R.S., as well as in new section 12-47-314, to make it clear that the licensee is prohibited from employing persons in violation of the minimum age requirement and is subject to disciplinary action for violating the prohibition?
- d. Given that section 12-47-901 (5) (a) (I), C.R.S., contains a prohibition against selling alcohol beverages to minors, as well as multiple

restrictions on the age of employees of retail licensees that, with the proposed new sentence, may cause confusion and appear to contain conflicts, would the proponents consider moving the minimum employee age provisions to a new paragraph in section 12-47-901 (5), C.R.S., to make the restrictions clearer and avoid conflicts? This suggestion could also eliminate the need for a new section 12-47-314, as proposed by the measure. For example, the proposal could amend section 12-47-901 (5) (a) (I) and add a new (5) (p) as follows:

**SECTION \_\_\_\_.** In Colorado Revised Statutes, 12-47-901, **amend** (5) (a) (I); and **add** (5) (p) as follows:

**12-47-901. Unlawful acts - exceptions.** (5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(a) (I) To sell an alcohol beverage to any person under the age of twenty-one years, to a habitual drunkard, or to a visibly intoxicated person. ~~or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age, or to permit any such person to participate in the sale or dispensing thereof.~~ If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article or article 46 of this title. ~~Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age. No employee of a tavern licensed pursuant to section 12-47-412, that does not regularly serve meals as defined in section 12-47-103 (20), or a retail liquor store shall sell malt, vinous, or spirituous liquors unless such person is at least twenty-one years of age.~~

(p) (I) (A) TO PERMIT A PERSON UNDER EIGHTEEN YEARS OF AGE TO SELL, DISPENSE, OR PARTICIPATE IN THE SALE OR DISPENSING OF ANY ALCOHOL BEVERAGE;

(B) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (p), TO EMPLOY A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE BUT UNDER TWENTY-ONE YEARS OF AGE TO SELL OR DISPENSE MALT, VINOUS, OR SPIRITUOUS LIQUORS UNLESS THE

EMPLOYEE IS SUPERVISED BY ANOTHER PERSON WHO IS ON THE LICENSED PREMISES AND IS AT LEAST TWENTY-ONE YEARS OF AGE; OR

(C) IF LICENSED AS A TAVERN UNDER SECTION 12-47-412, TO PERMIT AN EMPLOYEE WHO IS UNDER TWENTY-ONE YEARS OF AGE TO SELL MALT, VINOUS, OR SPIRITUOUS LIQUORS;

(II) IF THE PERSON IS LICENSED UNDER THIS ARTICLE TO SELL MALT, VINOUS, OR SPIRITUOUS LIQUORS AT RETAIL ONLY IN SEALED CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES, TO EMPLOY A PERSON WHO IS LESS THAN TWENTY-ONE YEARS OF AGE TO:

(A) WORK ON THE LICENSED PREMISES WHERE ALCOHOL BEVERAGES ARE OFFERED FOR SALE IN SEALED CONTAINERS FOR OFF-PREMISES CONSUMPTION; OR

(B) WORK ON OR OFF THE LICENSED PREMISES TO DELIVER MALT, VINOUS, OR SPIRITUOUS LIQUORS IN SEALED CONTAINERS THAT ARE PURCHASED FOR CONSUMPTION OFF THE LICENSED PREMISES.

- e. Alternatively, the measure might be clearer if all of the minimum employee age requirements currently contained in section 12-47-901 (5) (a) (I), C.R.S., as well as the new age requirements proposed by the measure, were moved to a single section (either the new section 12-47-314 or a new section in part 9, as suggested in Substantive Comment 2.a., above). Would the proponents consider combining all of the employee age requirements into a single new section in the Colorado Liquor Code? If the proponents agree, the proponents might also want to add a new paragraph to section 12-47-901 (5), C.R.S., to make it unlawful for a person licensed to sell at retail to violate the requirements in the new 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. For purposes of this statutory initiative, the word “shall” is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means “that a person has a

duty.” The related word “must,” which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, “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.” The use of “shall” to indicate a mere condition, or where there is no duty to be carried out by a specific person, creates what is known as a false imperative. Therefore, constructions such as “this section shall not apply” and “no employee ... shall be younger than twenty-one years of age” should be avoided.

2. There is a standard format for an amending clause. The word “section” should not be included in an amending clause before the section number. Additionally, there is a standard order for the elements of the amending clause. When adding a new section, the section number appears after the word “**add**”. When amending a provision smaller than a section, the section number appears after “Colorado Revised Statutes,” followed by the first instruction word (e.g. **amend**, **repeal**, **add**), followed by the provisions being amended, repealed, or added, for example:

**SECTION 2.** In Colorado Revised Statutes, 12-47-901, **amend** (5) (a) (I) as follows:

3. Although the text of the proposed initiative should be in small capital letters:
  - a. The headnote following the statutory section number should appear in lowercase, bold-faced type; and
  - b. An uppercase letter should be used to indicate capitalization where appropriate. The first letter of the first word of each entry of an enumeration paragraphed after a colon should be large-capitalized, for example:

(2) THIS SECTION SHALL NOT APPLY TO ... THE FOLLOWING LICENSES:

(a) MANUFACTURER’S LICENSE UNDER SECTION 12-47-402;

(b) LIMITED WINERY LICENSE ...;

(c) BREW PUB LICENSE ...;

and so on.