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MEMORANDUM

TO: Robert Schraeder and Joel Allen Cathey

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 31, 2022

SUBJECT: Proposed initiative measure: 2021-2022 #101, concerning Liquor 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 a series of initiatives including proposed initiatives 2021-2022 #96 to 100 and #102. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2021-2022 #96 to 100 and #102, except as necessary to fully understand the issues raised by the proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments 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 new "beer and wine off-premises retailer" license type under the "Colorado Liquor Code" that allows an establishment that derives at least twenty percent of its gross annual sales revenues from the sale of food items for consumption off the licensed premises to sell malt and vinous liquors, commonly referred to as "beer" and "wine", for off-premises consumption;
2. To cap the total number of beer and wine off-premises retailer licenses issued to any one person or entity at a total of twelve licenses;
3. To require a beer and wine off-premises retailer licensee to purchase beer and wine only from licensed wholesalers;
4. To prohibit a beer and wine off-premises retailer from:
 - a. Having a direct or indirect interest in a licensed manufacturer or wholesaler;
 - b. Selling beer or wine at a price below the retailer's cost to purchase the beer or wine, with certain exceptions; and
 - c. Allowing customers to purchase beer or wine through a self-checkout mechanism that allows the customer to complete the alcohol beverage purchase without assistance from an employee of the licensee;
5. To allow a person licensed as of March 1, 2023, under the "Colorado Beer Code" to sell fermented malt beverages, also known as "beer", for off-premises consumption to apply to the local licensing authority to convert up to twelve of its existing licenses to the new beer and wine off-premises retailer license upon meeting all other requirements and subject to local licensing authority considerations at a public hearing;
6. To permit a beer and wine off-premises retailer to allow tastings of beer and wine on the licensed premises if authorized by the local licensing authority;
7. To preclude the state licensing authority or local licensing authorities from issuing:

- a. A new beer and wine off-premises retailer license if the licensed premises is located within five hundred feet of an existing retailer liquor store; or
 - b. A new retail liquor store license if the licensed premises is located within five hundred feet of an existing beer and wine off-premises retailer;
8. To allow a retail liquor store or liquor-licensed drugstore to have an interest in a beer and wine off-premises retailer license; and
 9. To authorize state and local licensing authority application and annual fees pertaining to the new beer and wine off-premises retailer license.

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. This measure is nearly identical to sections 4 through 13 of proposed initiative 2021-22 #98, and the substantive questions raised in memorandum for that measure are pertinent and incorporated for purposes of this proposed initiative 2021-22 #101.

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. It is standard drafting practice that a headnote appears in lowercase type rather than small capital letters, even when appearing in a new section; except that the first letter of the first word should be capitalized.

2. It is standard drafting practice to show the introductory portion that precedes that language being amended, if one exists, for ease of reading. For example, in section 7, section 44-3-409 (4)(b) has an introductory portion. (See example in number 3, below)
3. It is standard drafting practice to show the statutory text being amended immediately following the headnote. For example, section 7, would appear as:

44-3-409. Retail liquor store license - rules. (4) (b) An owner, part owner, shareholder, or person interested directly or indirectly in a retail liquor store may have an interest in:

(V) A BEER AND WINE OFF-PREMISES RETAILER LICENSE GRANTED UNDER THIS ARTICLE 3. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Revised Statutes, and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Revised Statutes; however, an internal reference that contains a paragraph letter, such as (a), (b), or (c) should be shown in lowercase type so as not to confuse the reader. In section 44-3-410.5 (4) of section 2 of the measure, the internal reference "44-4-107 (1)(A)" should be shown in lowercase type as "44-4-107 (1)(a)."

4. When amending a statutory section, the provisions of the section should be copied into the measure exactly as they appear in the Colorado Revised Statutes.
 - a. Within each section, a subsection number, paragraph letter, subparagraph number, or sub-subparagraph letter appears only once in each subsection. For example, in section 4 of the measure, multiple subdivisions of section 44-3-301 (10) are being amended. The subsection number, "(10)", should not be inserted before each paragraph being amended in the statutory text but rather, only before the first paragraph in subsection (10) that is being amended. The same problem occurs in multiple provisions within the measure.
 - b. In section 9 of the measure, the amending clause indicates that section 44-3-501 (3)(a)(XVIII) and (3)(a)(XIX) are being *amended* and those subsections appear in the statutory text; however, they are both shown in small capital letters instead of lowercase letters. Since both subsections are current law, they should be shown in lowercase letters.
5. In sections 5, 6, 7, 8, 9, 10, and 11 of the measure, the introductory portions are missing, and in sections 5, 6, 7, and 8, the subsection number under which the

- new material is being added is missing. Although the subsection number appears in the amending clause, it is important that the subsection number be included in the statutory text so that it is clear where the new provision is to be placed.
6. Each statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new paragraph to section 44-3-401 (1), you would include the following amending clause: "In Colorado Revised Statutes, 44-3-401, **add** (1)(y) as follows:"
 7. In each amending clause, it is necessary to include the subsection number where the paragraph is being added and each subsection number, paragraph letter, subparagraph number, and sub-subparagraph letter must be enclosed in parentheses. For example, in section 4 of the measure, subsection (10) should be enclosed in parentheses each time it is used: "... **amend** (10)(b), (10)(c)(I)(A), (10)(c)(XII), (10)(d), and (10)(e); ..."
 8. Subsection numbers should also be enclosed in parentheses when they appear at the beginning of a subsection, paragraph, subparagraph, or sub-subparagraph and when they appear as an internal reference within the text of a statute.
 - a. In section 44-3-301 (10) and (12), at the beginning of subsections (10) and (12), the "10" and "12" should be enclosed in parentheses.
 - b. In subsections (12)(a.5)(III)(A) and (12)(a.5)(IV), the internal reference to "SUBSECTION 12(a)" should be changed to "SUBSECTION (12)(a)."
 9. It is standard drafting practice when changing a word to show the whole word in stricken type and the new word in small capital letters. In section 11 of the measure, in section 44-3-901 (6)(k)(I), (6)(k)(IV), and (8)(b) a word was changed by dropping a letter or changing the form of the word and it wasn't shown in stricken type and small capital letters. In subsection (6)(k)(I), the word "premise" should be "premises", in subsection (6)(k)(IV), "authorized" should be "authorization"; and in subsection (8)(b), "allow tasting" should be "allow tastings". It is permissible to change a word with a capitalized letter to a lowercase letter without showing the change, but a change in the actual word must be shown so that the public can see what is being changed.
 10. When amending the Colorado Revised Statutes, words cannot be dropped or relocated without being shown in stricken type in the original location and

small capital letters in the new location. In multiple places within the measure, the word "or" was relocated without being shown. For example, in section 11, section 44-3-901 (1)(i)(III), (6)(i)(II), (6)(k)(II)(A), (6)(k)(IV), (6)(k)(V), and (8)(b) "or" was moved from after "retail liquor store" to after "drugstore".

Additionally, in section 44-3-901 (1)(g)(II), the words "to sell at retail" were dropped from current law following the word "or" at the end of the subparagraph. They should be shown in stricken type.

11. It is standard drafting practice to end a subsection with either a period or a semi-colon. A subsection should end with a period if it is a complete sentence or has more than one sentence and is not an introductory portion. It should end with a semi-colon if it follows an introductory portion and is not a complete sentence. Subsections that end with a semi-colon may sometimes have an "and" or an "or" at the end of the penultimate subsection. A subsection should not end with a comma. In section 44-3-103 (4.5)(b)(II) of section 3 of the measure, the comma following "AND" at the end of the subsection should be deleted.
12. A hyphen should be used between two words that, together, modify the following word. In the phrase "off-premises retailer", it is correct to hyphenate "off-premises". In section 44-3-103 (32.5) of section 3 of the measure, a hyphen should be added at the beginning of the sentence in the phrase "'OFF PREMISES RETAILER'."
13. It is standard drafting practice that an internal reference should always be preceded by its name, for example "section 44-3-107" or "subsection (3)(b) of this section", unless there is a list of section or subsection numbers, in which case the words precedes the list. The word "section" should be added before the section numbers referenced in new language in sections 44-3-505 (4)(a)(VI) and 44-3-901 (6)(p)(I)(B) and (6)(p)(III).