

STATE OF COLORADO

Colorado General Assembly

Natalie Mullis, 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
Email: lcs.ga@state.co.us



Sharon L. Eubanks, 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: 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 #99, 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 98 and #100 to 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 98 and #100 to 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 parity in the number of additional licenses that businesses licensed under the "Colorado Liquor Code" or the "Colorado Beer Code" to sell alcohol beverages for consumption off the licensed premises may obtain by capping the total number of licenses that each licensee may obtain at twelve;
2. To expand the existing fermented malt beverage retailer license, which authorizes primarily grocery stores and convenience stores to sell beer for off-premises consumption, to a "fermented malt beverage and wine" retailer license, which authorizes those stores to sell beer and wine for off-premises consumption;
3. To restrict the location of new fermented malt beverage and wine retailer licensed premises for which an application for the new license or to change the location of the premises is filed on or after March 1, 2023, to within five hundred feet of any elementary or secondary school or a college or university;
4. To change the name of the "Colorado Beer Code" to the "Colorado Beer and Wine Code";
5. To cap the total number of retailer's licenses that a person, partnership, association, organization, or corporation may be granted under the "Colorado Beer Code" at twelve licenses, which includes licenses to sell at retail:
 - a. Beer and wine for consumption off the licensed premises;
 - b. Beer for consumption on the licensed premises; or
 - c. Beer for consumption on and off the licensed premises;
6. To require the local licensing authority, when considering an application for a retailer license described in number 5, above, to consider the reasonable requirements of the neighborhood, the desires of its adult inhabitants, and other reasonable restrictions;
7. To prohibit a fermented malt beverage and wine retailer, but no other fermented malt beverage licensed retailers, from:
 - a. Selling beer or wine at a price that is below the retailer's cost to purchase the beer or wine, with certain exceptions;

- b. Allowing customers to use a self-checkout mechanism to complete the purchase of beer or wine without assistance from an employee to complete the transaction; and
- 8. To allow a fermented malt beverage and wine retailer, but no other fermented malt beverage licensed retailers, to:
 - a. Allow tastings of beer and wine on the licensed premises if authorized by the local licensing authority;
 - b. Operate under a single or consolidated corporate entity as long as purchases of alcohol beverage products for multiple locations are not commingled; and
 - c. Deliver beer and wine to customers if the delivery is made by an employee of the licensee who is at least twenty-one years of age and is made to a customer who is at least twenty-one years of age.

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. It is standard drafting practice to show language being deleted from statute in stricken type. In section 2 of the measure, the current language in section 44-3-409 (4)(b)(III)(C) includes the word "or" at the end of the sub-subparagraph. The word "or" should be shown in stricken type after "licenses;" as: "... ~~licenses;~~ ~~or~~". Additionally, the words "and before January 1, 2032," do not appear in current law so should not be shown in this provision as stricken.
3. Under standard drafting practices, a new defined term is not added to the law if the term is not used in the law to which the defined terms apply. In section 4 of the measure, the term "off-premises retailer" is being added to section 44-3-103, but that term is not otherwise used in the measure or in articles 3 or 4 of title 44, to which the defined terms in section 44-3-103 apply. Accordingly, would the proponents consider removing that new term from section 4 of the measure?

4. In section 5, the phrase "and wine" is added so that section 44-3-301 (9)(a)(I)(B) and (12)(a.5)(I) refer and apply to a "fermented malt beverage and wine retailer," in the context of distance restrictions imposed on the location of those businesses. However, the measure, in section 14, appears to retain the current fermented malt beverage retailer license. The apparent result is that the proposed changes to section 44-3-301 would apply the distance restrictions only to businesses that are licensed to sell both beer and wine, but not to businesses licensed only to sell beer. Is that the proponents' intent? This same issue arises in:
 - a. Section 6 of the measure, with regard to distance restrictions between a licensed premises and schools or universities, applying the restrictions to premises where beer and wine are sold, but not to premises where only beer is sold;
 - b. Section 7, in the proposed amendments to section 44-3-901 (6)(k)(II)(B) and (6)(k)(V), regarding sampling and damaged product, and 44-3-901 (6)(p)(III), with regard to the age of persons allowed to deliver alcohol beverages;
 - c. Section 14, in the proposed amendments to section 44-4-107 (4) and (5), regarding requirements of persons licensed under the "Colorado Beer Code" to sell beer and wine for off-premises consumption. As amended, those provisions will no longer apply to a retailer licensed to sell only beer for off-premises consumption.
5. In section 6, the applicability of the provision requiring licensed premises to be located five hundred feet from schools and universities, by applying the provision to applications for a new fermented malt beverage and wine retailer license or to change the location that are submitted on or after March 1, 2023, and only to premises where beer and wine will be sold, it appears that the required distance from a school will no longer apply to premises that are licensed only to sell beer for off-premises consumption. Is that the proponents' intent?
6. Section 11 of the measure amends section 44-4-104, which pertains to the types of licenses that the state licensing authority may issue under the "Colorado Beer Code". Under current law, the only types of licenses issued under the "Colorado Beer Code" pertain to the retail sale of beer, either for consumption off the licensed premise, for consumption on the licensed premises, or for consumption both on and off the licensed premises.

- a. The measure proposes to cap the number of retailer licenses that any one person or entity may have at twelve total. It appears that the cap on the total number of licenses applies to types of retailer licenses, so that if one corporation holds two types of licenses, some for on-premises consumption and some for off-premises consumption, the cap applies to the combined total number of all of those licenses, regardless of type. Is that the proponents' intent?
 - b. The amendments to section 44-4-104 (1)(c)(I)(A) appear to eliminate the fermented malt beverage retailer license that authorizes sales for off-premises consumption, replacing that license with the "fermented malt beverage and wine retailer license" authorizing sales for off-premises consumption. However, section 14 specifically includes the "fermented malt beverages for consumption off the premises of the licensee" in a new subsection (1)(b.5). These two provisions appear to conflict, and the proponents' intent as to whether the current fermented malt beverage off-premises retailer license is intended to be retained or repealed is unclear. Would proponents consider clarifying their intent in the measure?
 - c. It is unclear what happens to a person currently licensed under the "Colorado Beer Code" to sell beer for off-premises consumption. Does the license automatically convert to the "fermented malt beverage and wine retailer license"? Or, assuming the current fermented malt beverage off-premises retailer licenses remains an option, does the retailer retain its current license?
 - d. The amendment to section 44-4-104 (1)(c)(I)(A) adds, in the statute that pertains to the authority of the state licensing authority, references to an application to the "local licensing authority" and to the matters that the local licensing authority must consider in a license application. Section 44-4-107, on the other hand, pertains to the authority of local licensing authorities. Accordingly, would proponents consider moving this language to the statute that governs the powers of the local licensing authorities, section 44-4-107?
7. In section 14 of the measure, which amends section 44-4-107 regarding the authority of local licensing authorities to issue licenses under the "Colorado Beer Code":
 - a. In the introductory language in subsection (1), the words "fermented malt beverage" should be stricken since that term is being added in the

paragraphs below, and in subsection (1)(a), the words "and wine" are also added, and wine is not a class of fermented malt beverage license.

- b. Since the measure proposes to amend subsection (1)(a) to now refer to "sales of fermented malt beverages and wine for consumption off the premises of the licensee", references in section 44-4-107 and in other provisions of the liquor laws will now apply only to retailers licensed to sell both beer and wine, but not to those licensed to sell only beer. See, for example, subsection (6)(a), which permits delivery by a "person licensed under subsection (1)(a)". Accordingly, a person licensed under subsection (1)(b.5) to sell only beer for consumption off the licensed premises would no longer be allowed to deliver beer to its customers. Is that the proponents' intent? If the proponents do not intend to change the applicability of the current laws to persons licensed under the "Colorado Beer Code" only to sell beer for off-premises consumption, the proponents will need to make conforming changes to the laws to refer to these types of retailers that are licensed under section 44-4-107 (1)(b.5), as added by the measure.

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 to show the introductory portion that precedes the language being amended, if one exists, for ease of reading. For example, in section 2, section 44-3-409 (4)(b) has an introductory portion. (See example in number 2, below.) Introductory portions are also missing in multiple other sections, and it is important to include that introductory language to provide context to the public about what the current law says and how it is being changed. See number 3, below, for further explanation.
2. It is standard drafting practice to show the statutory text being amended immediately following the headnote. For example, section 2, 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:

(III) For a retail liquor store licensed on or before January 1, 2016, and whose
...

3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs. A provision that leads into another provision is called an introductory portion. For example:

X-X-XXXX. Headnote. (1) Subsection: [*introductory portion*]

(a) Paragraph: [*introductory portion*]

(I) Subparagraph: [*introductory portion*]

(A) Sub-subparagraph;

(B) Sub-subparagraph;

(II) Subparagraph;

(b) Paragraph.

(2) Subsection.

(3) Subsection.

4. Each statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed.
 - a. Each subsection, paragraph, subparagraph, and sub-subparagraph listed in an amending clause should be enclosed in parentheses. For example in the amending clause for section 5 of the measure, subsection (12) should be in parentheses.
 - b. When a provision is divided into subdivisions and the subdivisions follow an introductory portion, if the introductory portion is being amended, it should be listed in the amending clause. For example in section 11 of the measure, the amending clause should read:

SECTION 11. In Colorado Revised Statutes, 44-4-104,
amend (1) introductory portion and (1)(c)(I) as follows:

- c. An amending clause should not include provisions that are not being amended. For example, in section 7 of the measure, subsection (6)(p)(I)(B) is listed in the amending clause, but it is not being amended

in the statutory section so should not be included in the amending clause.

- d. When an entire subsection, paragraph, or subparagraph is being amended, it is not necessary to list each subdivision of the subsection, paragraph, or subparagraph. For example, in section 13 of the measure, since the entire subsection (1) is being amended, the amending clause should read: "In Colorado Revised Statutes, 44-4-106, **amend** (1) as follows:".
- e. In each amending clause, it is necessary to include the subsection number where the paragraph is being added. For example, in section 14 of the measure, the amending clause does not indicate where paragraph (b.5) is to be added. The amending clause should read:

SECTION 14. In Colorado Revised Statutes, 44-4-107, **amend** (1) introductory portion, (1)(a), (1)(b), (1)(c)(I), (4), (5), and (6); and **add** (1)(b.5) and (7) as follows:

- 5. 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.

Within each section, a subsection number, paragraph letter, subparagraph number, or sub-subparagraph letter appears only once in each subsection. For example, in section 6 of the measure, multiple subdivisions of section 44-3-313 (1) are being amended. The subsection number, "(1)", should not be inserted before each paragraph being amended in the statutory text but rather, only before the first paragraph in subsection (1) that is being amended.

- 6. 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. In section 4 of the measure, the introductory portion to the section is being shown in small capital letters but it is current law and should be shown in lowercase letters.
- 7. It is standard drafting practice to capitalize the first letter of each word in the short title of an act, except words such as "and". In section 8 of the measure, the short title in section 44-4-101 is being amended and the capitalized letters are being changed to lowercase letters. They should remain as capital letters.

8. 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 7 of the measure, in section 44-3-901 (1)(g), (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. It is permissible to change a word with a capitalized letter to a lowercase letter without showing the change, but all other changes of any word in current law must be shown so that the public can see how the law is being changed.
 - a. In subsection (1)(g), if the intent is to change "sections" to singular "section" before "44-4-104 (1)(c)", the measure should read: "~~sections~~ SECTION 44-4-104 (1)(c)".
 - b. In subsection (6)(k)(IV), current law includes the word "authorization", not "authorized", and "authorization appears to be grammatically correct.; and
 - c. In subsection (8)(b), "allow tasting" should be "allow tastings".
9. When amending the Colorado Revised Statutes, words cannot be 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 7, section 44-3-901 (1)(i)(III)(A) and (6)(k)(IV), "or" was moved from after "retail liquor store" to after "drugstore".
10. In sections 2 and 9 of the measure, language is shown in stricken type that is not actually in current law. In section 44-3-409 (4)(b)(III)(C), "and before JANUARY 1, 2032," is not part of current law. In section 44-4-102 (1), the language shown in stricken type is not part of current law.