

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: February 5, 2025

Subject: Proposed initiative measure 2025-2026 #14, concerning penalties for fentanyl crimes

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. Make it a level 1 drug felony if a person knowingly manufactures, dispenses, sells, or distributes; possesses with intent to manufacture, dispense, sell, or distribute; or induces, attempts to induce, or conspires with one or more persons, to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute, any material, compound, mixture, or preparation that weighs any amount and that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof; and

2. Repeal the immunity from arrest and prosecution for a person who distributes, manufactures, dispenses, or sells a material, compound, mixture, or preparation that weighs not more than four grams and contains any amount of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, if the person reports an overdose to an emergency responder and satisfies additional requirements related to the reporting.

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. What will be the effective date of the proposed initiative?

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. 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 article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:". The following amending clause changes must be made:
 - a. On page 1 of the proposed initiative, after "**amend**" you must insert "(2) introductory portion," to reflect the striking of "any" and the substitution of "A" in the introductory portion of 18-18-405 (2). See the amending clause of Section 1.
 - b. On page 2 of the proposed initiative, "repeal" in the amending clause must be in bold. See the amending clause of Section 2.

2. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

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

(a) Paragraph

(l) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(ll) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

a. On page 1 of the proposed initiative in Section 1, the headnote and section number for section 18-18-405 should be in bold-faced type.

b. On page 3 of the proposed initiative, in Section 4, the "(h)" should not be in bold.

3. When parts of a provision are repealed, the number or letter of the provision is not stricken along with the provision language. On page 1 of the proposed initiative in Section 1 for the repealed provisions (2)(b)(l)(D) and (2)(c)(V), the "(D)" and "(V)" should not be stricken. On page 2 of the proposed initiative in Section 2 the "(i)" for repealed provision (3)(i) should not be stricken.

4. If the proponents intend for the proposed initiative, if it is approved by the people at the next general election and becomes law, to take effect on the date of the official declaration of the vote by the Governor, the effective date clause must be drafted as follows:

SECTION 5. Effective date. The initiative takes effect if it is approved by the people at the next general election and becomes law, and, in such case, this takes effect on the date of the official declaration of the vote thereon by the governor.