

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Jessi Cudd and Ben Gelhaus

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** March 17, 2026

**Subject:** Proposed Initiative Measure 2025-2026 #266, Concerning Digital Property Rights and Restitution for Digital Harms

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

This proposed initiative 2025-2026 #266 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #267 and #2025-2026 #268. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memoranda for proposed initiatives 2025-2026 #267 and #2025-2026 #268, except as necessary to fully understand proposed initiative 2025-2026 #266. Comments and

questions addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

## **Purposes**

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. Establish "The Digital Soul" (including biometric, behavioral, derived biological data, and civic telemetry) as the inalienable intangible personal property of Colorado residents;
2. Create a "Master Deed" registry for residents to record their digital property rights and grant or revoke consent for data usage;
3. Establish "Audit Marker Signatures" (synthetic data artifacts) to detect unauthorized data ingestion and automatically trigger statutory damages;
4. Authorize the Attorney General to execute "Master Data Settlement and Restitution Agreements" to resolve historical violations of unauthorized data extraction;
5. Create a "Data Tap" financial routing system to distribute a "Base Dividend" or "Premium Royalty" to a resident's "Sovereignty Account" based on how their data is used;
6. Require the state to establish physical "Analog Bridges" (kiosks) so residents can exercise their digital rights without needing digital or internet access;
7. Grant a "Spousal Veto Power" allowing a married resident or domestic partner to cosign or veto data consent grants for their household; and
8. Direct the General Assembly to draft and refer a constitutional amendment to the voters enshrining The Digital Soul as inalienable property.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. **Single Subject Requirement:** 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. **Retroactivity:** The proposed initiative authorizes the Attorney General to pursue settlements for "historical violations" occurring "prior to or after the effective date of this article." How does this language comport with the Colorado Constitution's prohibition on retrospective laws (article II, section 11)?
3. **Effective Date:** Proposed section 15-15-900 states that certain provisions "take effect immediately upon enactment of this act." However, article V, section 1 (4)(a) of the Colorado Constitution dictates that an approved initiative takes effect from and after the date of the official declaration of the vote by proclamation of the governor. Are the proponents aware of this constitutional default?
4. Proposed section 15-15-900 also states that the provisions are self-executing statutory rights and "are not dependent upon technical system deployment."
  - a. What is meant by "technical system deployment"?
  - b. What does it mean that the provisions that require the creation of systems, such as the creation of the master deed registry, audit marker signatures, master data settlement and restitution agreements, and analog bridges, are not dependent upon the deployment of those systems?
5. **Undefined Entities and Missing Statutes:** The proposed initiative repeatedly references the "Colorado Trust of Unique and Identifying Information" and the "Colorado Consumer Protection and Automation Mitigation Enterprise (CCPAME)." Are these entities currently established in Colorado law, or are they being created by a separate companion measure? If a companion measure fails to pass, how will this initiative operate?
6. **"Honey-Pot Signatures":** As one of the unnecessary subheadings described below in technical comment #8, section 15-15-104 of the proposed initiative includes in such a subheading the term "HONEY-POT SIGNATURES." However, this term does not appear elsewhere in section 15-15-104 or elsewhere in the proposed initiative. Such inclusion of the term without it being used in the statutory language itself could then create ambiguity as to the intended purpose of the statutory language. What is the purpose of including this untethered term in the proposed initiative?

7. **"Rope-a-Dope":** The headnote to section 15-15-130 includes the term "ROPE-A-DOPE." However, this term does not appear elsewhere in section 15-15-130 or elsewhere in the proposed initiative. What is the purpose of including this term in the headnote?
8. **"ODO":** The proposed initiative refers many times to an entity that it calls the "ODO." What is the "ODO"?
9. **Spousal Veto Power:** Proposed section 15-15-141 creates a "Spousal Veto Power" over digital soul transactions.
  - a. How does this provision interact with existing Colorado marital property laws? If "The Digital Soul" is the inalienable personal property of the resident from whom it derives, can a spouse legally exercise control over it?
  - b. Additionally, if a spouse exercises the authority to "veto consent grants for Digital Soul data," but the resident later exercises their authority to "revoke the Spousal Veto designation unilaterally," what does that mean with respect to the spouse's previous exercises of the veto power? Are such exercises of the spouse's veto power retroactively invalidated by the resident?
10. **Extraterritoriality:** The initiative imposes strict liability and statutory damages on "covered entities" that ingest an "Audit Marker Signature." Do the proponents intend for the state to enforce these provisions against out-of-state or international data scrapers? If so, how does this comport with the dormant Commerce Clause of Article I of the United States Constitution that limits a state's ability to excessively burden interstate commerce?
11. **TABOR Implications:** The initiative mandates the collection of "Premium Royalties" and "Base Dividends" from covered operators.
  - a. Do these mandatory payments constitute state revenue subject to the limitations and voter-approval requirements of article X, section 20 of the Colorado Constitution (TABOR)?
  - b. How are the premium royalties and base dividends calculated? There is reference to a premium royalty schedule in section 24-20-116, but there is neither a section 24-20-116 in the Colorado Revised Statutes nor in the proposed initiative.

- c. Statutes are presumed prospective in their operation pursuant to section 2-4-202, C.R.S. How does the collection of retroactive royalty payments against past conduct authorized under section 15-15-130 (2) of the proposed initiative comply with that prospective presumption?

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. **Bill Format Removal:** The proposed initiative includes language used for bills drafted by the General Assembly, such as "BILL 1," "A Bill for an Act Concerning...," and "AMPLIFY Act Bill 1 of 3." Because this is a citizen initiative, this language should be removed.

For an example of an initiative that added new language to the Colorado Revised Statutes and that used correct formatting, see [2015-2016 #145](#).

2. **Enacting Clause:** Article V, section 1 (8) of the Colorado Constitution requires the following enacting clause: "Be it Enacted by the People of the State of Colorado." After removing the extraneous language mentioned in technical comment #1, this phrase should be placed at the very beginning of the measure, and the headers "ENACTING CLAUSE & SINGLE SUBJECT" should be removed.
3. **SMALL CAPITAL LETTERS:** It is standard drafting practice to use SMALL CAPITAL LETTERS to show language being added to the Colorado Revised Statutes. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under Effects.
4. **Capitalization:** It is standard drafting practice not to capitalize common nouns or defined terms in the statutes unless they are proper nouns. Terms such as "Digital Soul," "Master Deed," "Audit Marker Signature," "Sovereignty Account," and "Analog Bridge" should be converted to lowercase.

In addition, words like "The" are capitalized in the middle of sentences, as in section 15-15-101 (1) of the proposed initiative, which reads:

No covered entity may assert ownership, perpetual license, or lien against The personal data and derived inferences.

Only proper nouns, like “Colorado,” the first letter of each word of a sentence, and the first letters of the names of private entities, should be capitalized.

5. **Headnote Formatting:** Each section in the Colorado Revised Statutes has a headnote that briefly describes the content of the section. It is standard practice to use sentence case capitalization for headnotes and to bold them.

For example, "15-15-102. The Digital Soul - Inalienable Intangible Personal Property - No Waiver - No Conversion." should be changed to:

**15-15-102. The digital soul - inalienable intangible personal property - no waiver - no conversion.**

6. **Statutory Numbering and Organization:**

- a. The numbering of statutory sections skips erratically. For example, the text jumps from 15-15-104 to 15-15-130, then backward to 15-15-110, forward to 15-15-140, and backward again to 15-15-105. Section numbers must be sequential.
- b. The initiative contains several unnumbered paragraphs and floating sections, such as "MSSA DISQUALIFICATION," "ROYALTY FLOOR," "INFLATION ADJUSTMENT," and "CONSTRUCTION; SCOPE OF COMMERCIAL PROCESSING." These must be integrated into standard statutory sections (e.g., 15-15-110, 15-15-111, etc.) with proper subsection numbering.
- c. The inclusion of an "ANNEX" and an "APPROPRIATION NOTE" does not conform to Colorado statutory structure. If these provisions establish legal rules, they should be codified within the standard Title-Article-Part-Section framework.

7. **Statutory Placement:** The proponents have placed the language of the initiative as article 15 of title 15, C.R.S. However, such an article 15 already exists; therefore, the proponents should locate the language of the initiative elsewhere in statute.
8. **Unnecessary Headings:** The initiative includes apparently random subheadings over some of the statutory sections (e.g., "DATA TAP FINANCIAL ROUTING – TIER

1 AND TIER 2," "ANALOG BRIDGES AND myCOLORADO ID – SPOUSAL VETO POWER"). These subheadings should be removed, leaving only a numbered headnote to precede each statutory section.

9. **Definitions:** The definitions in section 15-15-101 should appear in alphabetical order so that readers can find them more easily. Also, since section 2-4-102, C.R.S., states the statutory rule of construction that the singular includes the plural, it is standard drafting practice to use the singular form of nouns.
10. In section 15-15-101 (1), there is a subject-verb agreement issue (“inferences is”) in the sentence:

The personal data and derived inferences is the alienable intangible personal property of the resident from whom it derives.

As suggested in technical comment #9, changing the defined term to the singular form, “personal data and derived inference,” will fix that issue.

The personal data and derived inference is the ...

11. In section 15-15-104 (3) of the proposed initiative, “ a Audit Marker” should be changed to use the correct article, “an audit marker ....”  
  
In subsection (5) of that same section, “an Legacy Use ...” should be changed to “a legacy use settlement ....”
12. The words “Sovereign Account” and “Sovereignty Account” appear to be used interchangeably. The proponents should choose one term to use consistently throughout.
13. The proposed initiative repeatedly refers to “this act.” The proposed initiative is not a bill that will be enacted as an act. It should, instead, be referred to as a measure.