

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

To: Natalie Menten and Brandon Wark

From: Legislative Council Staff and Office of Legislative Legal Services

Date: March 18, 2026

Subject: Proposed Initiative Measure 2025-2026 #275 Concerning eliminating sales tax on food for immediate consumption

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 #275** was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives **2025-2026 #274** and **#275**. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memorandum for proposed initiative **2025-2026 #274**, except as necessary to fully understand proposed initiative **2025-2026 #275**. Comments and questions addressed in

that memorandum 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 to:

1. Make findings and declarations of the people of the state of Colorado;
2. Eliminate state sales taxes on food for immediate consumption;
3. Define "food for immediate consumption" as food or drink intended for human consumption that is sold in a ready-to-eat or ready-to-drink form and is ordinarily consumed at or shortly after the point of sale;
4. Exclude alcohol beverages from the definition of food for immediate consumption;
5. Specify that cover charges shall be included as part of the amount paid for alcohol beverages;
6. Preempt municipalities, counties, city and counties, home rule municipalities, and special districts from imposing or collecting any sales tax, use tax, fee, or other governmental assessment measured by the sale or purchase of food for immediate consumption;
7. Allow reasonable regulatory licensing or inspection fees on food establishments if imposed solely to recover the costs of administering a regulatory program;
8. Protect existing bonded indebtedness lawfully authorized prior to January 1, 2028, by allowing local governments to continue collecting sales and use taxes on food for immediate consumption solely to satisfy scheduled principal and interest payments; and
9. Prohibit any bonded indebtedness issued on or after January 1, 2028, from pledging revenue derived from the sale of food for immediate consumption.

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 following comments and questions relate to section 2 of the proposed initiative, which modifies the definition "food" for the purposes of state sales tax as it is currently defined in section 39-26-102 (4.5), C.R.S., to define "food for immediate consumption":
 - a. The proposed initiative defines "food for immediate consumption" as food or drink that is "ordinarily consumed at or shortly after the point of sale. What timeframe constitutes "shortly after" the point of sale? If a person purchases a "ready-to-eat" sandwich at a grocery store at 7 a.m., intending to eat the sandwich for lunch at noon, is the sandwich consumed "shortly after" the point of sale?
 - b. The proposed definition of "food for immediate consumption" explicitly excludes alcoholic beverages. However, it does not explicitly exclude other consumable items that are regulated or taxed differently, such as edible marijuana products, dietary supplements, or liquid medications. Because these items can be sold in a "ready-to-eat or ready-to-drink form," is it the proponents' intent that they become exempt from sales taxation under this initiative?
 - c. The proposed initiative states that in determining whether food is for immediate consumption, no inference shall be drawn from the type of vendor, the location of the product within a store, or the manner in which the product is marketed. If no inference can be drawn from the type of vendor, the location of the product in the store, or the manner in which the product is marketed, how will retailers and the Department of Revenue determine which ready-to-eat items meet the criteria of being "ordinarily consumed at or shortly after the point of sale"?

3. The following comments and questions relate to section 4 of the proposed initiative which amends section 39-26-707 (1)(a), C.R.S., to state that sales of food for immediate consumption are exempt from taxation "under the provisions of part 1 of this article":
 - a. Part 1 of article 26 of title 39 concerns the state sales tax, whereas part 2 concerns the state use tax. Is it the proponents' intent that food for immediate consumption remain subject to the state use tax?
 - b. While Section 5 (1) of the proposed initiative prohibits local governments from collecting use tax on these items, why is the state use tax exemption omitted in Section 4?
4. Section 6 of the proposed initiative protects existing bonded obligations that rely on sales or use tax revenues derived from food for immediate consumption. Initiative 2025-2026 #274, which was submitted with this proposed initiative, includes a similar protection. However, the language between the two initiatives varies slightly. Were these differences intentional? If so, how are the protections provided in section 6 of this proposed initiative different from the protections provided in proposed initiative #274?
5. What fiscal or other impacts may result from the enactment of the proposed initiative on the state and local governments in Colorado? Because many municipalities rely heavily on sales tax generated by restaurants, cafes, and other establishments that sell food for immediate consumption, how do the proponents anticipate local governments will manage the loss of revenue used to fund municipal services?

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. Each statutory section being amended, repealed, or added is preceded by a separate clause, referred to as the “amending clause,” that explains how the law is being changed. Amending clauses are written in lowercase type and follow a specific format. For example, when adding a specific subsection, such as in section 2 of the proposed initiative, the section heading and amending clause should be formatted as follows: “**SECTION 2.** In Colorado Revised Statutes, 39-26-102, **add** (4.5)(c) as follows:”
2. Other than initiative section headings and Colorado Revised Statutes section headnotes, the initiative does not need to be written in bolded text.
3. It is standard drafting practice to show language being removed from the Colorado constitution or the Colorado Revised Statutes in stricken type, e.g., ~~stricken type~~.
4. It is standard drafting practice to use small capital letters to show the language being added to the C.R.S. The headnote should remain in lowercase letters. 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.
5. A provision should end with a semicolon if it follows an introductory portion and is not a complete sentence.
6. The Colorado Revised Statutes are divided into sections, labeled with three numbers to indicate the title, article, and part in the Colorado Revised Statutes (e.g., “39-26-102”), and each section may contain subsections, which are labeled with an arabic number; paragraphs within a subsection, which are labeled with lowercase letters; subparagraphs within a paragraph, which are labeled with capital Roman numerals; and sub-subparagraphs within a subparagraph, which are labeled with uppercase letters. This structure should be followed to ensure consistency in the structure of the statutes. All text within a C.R.S. section must be a part of a subsection, paragraph, subparagraph, or sub-subparagraph and may not stand on its own without its own letter or number heading. For example, in section 2 of the proposed initiative, the subsections should be organized as follows:

“(4.5)(c)(I) “Food for immediate consumption” means food or drink intended for human consumption that is sold in a ready-to-eat or ready-to-drink form and is ordinarily consumed at or shortly after the point

of sale, including prepared meals, hot or cold food sold for immediate consumption, and beverages served or sold in a ready-to-drink form.

(II) Food for immediate consumption does not include alcoholic beverages as defined in section 44-3-103(2).

(III) In determining whether food is for immediate consumption, no inference shall be drawn from:

- (A) The type of vendor selling the product;
- (B) The location of the product within a store; or
- (C) The manner in which the product is marketed.”