Proposition ? proposes amending the Colorado statutes to:

- reduce the total cost for a payday loan to a 36 percent annual percentage rate; and
- expand what constitutes unfair or deceptive trade practices for payday lending.

Summary and Analysis

Background. Payday loans are small, easy-to-access short-term loans that do not require a credit check. In 2016, about 207,000 individuals in Colorado secured over 414,000 payday loans. These loans totaled over $166 million, and consumers paid an estimated $50 million in loan costs (any combination of fees and interest), with a default rate of 23 percent. The Department of Law licenses and establishes rules for payday lenders and conducts compliance examinations of their loans. The department also investigates and litigates cases involving payday lenders.

Annual percentage rate (APR). The APR is the total loan cost expressed as a yearly rate and includes the interest on the loan amount, origination fees, and monthly maintenance fees. The APR varies on a daily basis and, because of the way maintenance fees are structured in Colorado, tends to increase over the life of the loan. In 2016, the average APR on payday loans in Colorado was 129 percent.

Current payday loan regulations. Colorado law limits payday loans to $500 with a minimum repayment term of six months, no maximum repayment term, and no penalty for early repayment. The law allows lenders to charge an origination fee of up to 20 percent of the first $300 loaned, plus 7.5 percent of any amount in excess of $300. In addition, lenders may charge an interest rate of 45 percent per year per loan and a monthly maintenance fee of $7.50 per $100 loaned, up to a total of $30 per month. If the borrower repays the loan early, the lender must refund a prorated portion of the fees. Current law defines unfair and deceptive trade practices as making loans disguised as personal property sale and leaseback agreements or as a cash rebate.

Changes under the measure. The measure reduces the loan costs on a payday loan to a maximum APR of 36 percent and eliminates the current fee structure. In addition, regardless of whether payday lenders have a physical location in the state, they may not offer higher cost loans via electronic or U.S. mail, the internet, or telemarketing.

Table 1 below provides an example of the total cost, including interest and any fees, of a $500 loan that is repaid in six months under current law and under Proposition ?.
Table 1. Comparison of Estimated Cost of a Six-Month Payday Loan*

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*The actual costs may vary by lender.

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http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Argument For:

1) Coloradans are paying too much to borrow small amounts of money from payday lenders. The APR for these loans can exceed 180 percent. Some consumers borrow money to pay off other payday loans, which leads to a cycle of debt. Because the measure reduces the high cost of payday loans, consumers may be better able to repay their loans and avoid further financial stress.

Argument Against:

1) This measure may eliminate the payday lending business in Colorado. Payday loans provide options for consumers who may not qualify for other types of credit. With limited or no access to these loans, consumers may pay higher costs to other creditors for late payment, bounced check, overdraft, or utility disconnect fees, or turn to unregulated lenders for higher-cost loans. This measure is unnecessary because the state legislature passed reforms in 2010 that led to reduced loan costs and fewer defaults, while ensuring that consumers have access to a well-regulated source of short-term credit.

Estimate of Fiscal Impact

State revenue and spending. If Proposition ? results in payday lenders choosing not to renew their licenses, there will be a reduction in fee revenue to the Department of Law.
Proposition ? proposes amending the Colorado statutes to:

- reduce the total cost for a payday loan to a 36 percent annual percentage rate;
  - and
- expand what constitutes unfair or deceptive trade practices for payday lending.

Summary and Analysis

Background. Payday loans are small, easy-to-access short-term loans that do not require a credit check. In 2016, about 207,000 individuals in Colorado secured over 414,000 payday loans. These loans totaled over $166 million, and consumers paid an estimated $50 million in loan costs (any combination of fees and interest), with a default rate of 23 percent. The Department of Law licenses and establishes rules for payday lenders and conducts compliance examinations of their loans. The department also investigates and litigates cases involving payday lenders.

Annual percentage rate (APR). The APR is the total loan cost expressed as a yearly rate and includes the interest on the loan amount, origination fees, and monthly maintenance fees. The APR varies on a daily basis and, because of the way maintenance fees are structured in Colorado, tends to increase over the life of the loan. In 2016, the average APR on payday loans in Colorado was 129 percent.

Current payday loan regulations. Colorado law limits payday loans to $500 with a minimum repayment term of six months and no maximum repayment term. The law allows lenders to charge an origination fee of up to 20 percent of the first $300 loaned, plus 7.5 percent of any amount in excess of $300. In addition, lenders may charge an interest rate of 45 percent per year per loan and a monthly maintenance fee of $7.50 per $100 loaned, up to a total of $30 per month. If the borrower repays the loan early, the lender must refund a prorated portion of the fees. Current law defines unfair and deceptive trade practices as making loans disguised as personal property sale and leaseback agreements or as a cash rebate.

Changes under the measure. The measure reduces the loan costs on a payday loan to a maximum APR of 36 percent. In addition, regardless of whether payday lenders have a physical location in the state, they may not offer higher cost loans via electronic or U.S. mail, the internet, or telemarketing.

Table 1 below provides an example of the total cost, including interest and any fees, of a $500 loan that is repaid in six months under current law and under Proposition ?.
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Argument For:

1) Coloradans are paying too much to borrow small amounts of money from payday lenders. The APR for these loans can exceed 200 percent. Some consumers borrow money to pay off other payday loans, which leads to a cycle of debt. Because the measure reduces the high cost of payday loans, consumers may be better able to repay their loans and avoid further financial stress.

Argument Against:

1) This measure is unnecessary because the state legislature passed reforms in 2010 that led to reduced loan costs and fewer defaults, while ensuring that consumers have access to a well-regulated source of emergency loans. Payday loans provide options for consumers who may not qualify for other types of loans. With limited or no access to payday loans for emergencies, consumers may pay higher costs to other creditors from late payment fees, bounced check and overdraft fees, or utility disconnect fees.

Estimate of Fiscal Impact

State revenue and spending. If Proposition results in payday lenders choosing not to renew their licenses, there will be a reduction in fee revenue to the Department of Law.
Corrine Fowler, Fowler Strategies & Consulting, representing proponents:

Please find attached comments and suggested Changes to draft 3 for the Blue Book, Initiative 126.

Ms. Fowler submitted written comments (Attachment A).

Sarah Mercer, Brownstein Hyatt Farber Schreck, representing opponents:

Please find the comments attached and let me know if you have any questions.

Ms. Mercer submitted written comments (Attachment B).
Initiative #126 Limitations on Payday Loans

1 Proposition ? proposes amending the Colorado statutes to:

2 • reduce the total cost for a payday loan to a 36 percent annual percentage rate;

3 and

4 • expand what constitutes unfair or deceptive trade practices for payday lending.

5 Summary and Analysis

6 Background. Payday loans are small, easy-to-access short-term loans that do not require a credit check and require the borrower to give the payday lender a check or access to their bank account as security for the loan. In 2016, about 207,000 individuals in Colorado secured over 414,000 payday loans. These loans totaled over $166 million, and consumers paid an estimated $50 million in loan costs (any combination of fees and interest), with nearly one in four loans going into default. The Department of Law licenses and establishes rules for payday lenders and conducts compliance examinations of their loans. The department also investigates and litigates cases involving payday lenders.

7 Annual percentage rate (APR). The APR is the total loan cost expressed as a yearly rate and includes the interest on the loan amount, origination fees, and monthly maintenance fees. The APR varies on a daily basis and, because of the way maintenance fees are structured in Colorado, tends to increase over the life of the loan. In 2016, the average APR on payday loans in Colorado was 129 percent.

8 Current payday loan regulations. Colorado law limits payday loans to $500 with a minimum repayment term of six months and no maximum repayment term. The law allows lenders to charge an origination fee of up to 20 percent of the first $300 loaned, plus 7.5 percent of any amount in excess of $300. In addition, lenders may charge an interest rate of 45 percent per year per loan and a monthly maintenance fee of $7.50 per $100 loaned, up to a total of $30 per month. If the borrower repays the loan early, the lender must refund a prorated portion of the fees. Current law defines unfair and deceptive trade practices as making loans disguised as personal property sale and leaseback agreements or as a cash rebate.

27 Changes under the measure. The measure reduces the loan costs on a payday loan from an average APR of 129 percent to a maximum APR of 36 percent. In addition, regardless of whether payday lenders have a physical location in the state, they may not offer higher cost loans via

Commented [1]: See §5-3.1-102(3), (4):

(3)"Deferred deposit loan" or "payday loan" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:
(a) Accepts a dated instrument from the consumer as sole security for the loan and no other collateral;
(b) Agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and
(c) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted bysection 5-3.1-105.
(4) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this article.

Commented [2]: 1 in 4 loans in default may be easier for a voter to understand. There are so many references to percentages throughout the document. The voter may be confused that this percentage refers to cost of loan.
30 electronic or U.S. mail, the internet, or telemarketing.

31 Table 1 below provides an example of the total cost, including interest and any fees, of a $500 loan that is repaid in six months under current law and under Proposition 21 Table 1. Comparison of Estimated Cost of a Six-Month Payday Loan*

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*The actual costs may vary by lender.

2 Argument For:

1) Coloradans are paying too much to borrow small amounts of money from payday lenders. The APR for these loans can exceed 200 percent. Some consumers take out a new payday loan to fill the budget gap caused by the previous payday loan, leading to a cycle of debt. Some consumers borrow money to pay off other payday loans, which leads to a cycle of debt. Because the measure reduces the high cost of payday loans, consumers may be better able to repay their loans and avoid further financial stress. Payday loans in Colorado today are associated with financial distress. Consumers face aggressive debt collections, overdraft fees, and insufficient fund fees. According to the Attorney General, in 2016, payday lenders charged consumers over $700,000 in insufficient fund fees. By reducing the cost of payday loans, this measure provides the same 36 percent APR to all consumers that is currently provided to active duty military personnel.

8 Argument Against:

1) This measure is unnecessary because the state legislature passed reforms in 2010 that led to reduced loan costs and fewer defaults, while ensuring that 11 consumers have access to a well-regulated source of emergency loans. Payday loans provide options for consumers who may not qualify for other types of loans. With limited or no access to payday loans for emergencies, consumers may pay higher costs to other creditors from late payment fees, bounced check, and overdraft fees, or utility disconnect fees.
16 Estimate of Fiscal Impact

17 State revenue and spending. If Proposition ? results in payday lenders choosing not to renew their licenses, there will be a reduction in fee revenue to the Department of Law.
Limitations on Payday Loans

Proposition ? proposes amending the Colorado statutes to:

1. reduce the total cost for a payday loan to a 36 percent annual percentage rate; and
2. expand what constitutes unfair or deceptive trade practices for payday lending.

Background. Payday loans are small-dollar, easy-to-access short-term loans that do not require a credit check. In 2016, about 207,000 individuals in Colorado secured over 414,000 payday loans. These loans totaled over $166 million, and consumers paid an estimated $50 million in loan costs (any combination of fees and interest), with a default rate of 23 percent, meaning 77% of these loans were successfully repaid. The Department of Law licenses and establishes rules for payday lenders and investigations cases involving payday lenders. The department’s data shows that, historically, women significantly outnumber men as borrowers of these loans.

Annual percentage rate (APR). The APR is the total loan cost expressed as a yearly rate and includes the interest on the loan amount, origination fees, and monthly maintenance fees. The APR varies on a daily basis and, because of the way maintenance fees are structured in Colorado, tends to increase over the life of the loan. In 2016, the average APR on payday loans in Colorado was 129 percent, the lowest of any state.

Current payday loan regulations. Colorado law underwent significant reform in 2010, and now limits payday loans to $500 with a minimum repayment term of six months and no maximum repayment term. The law allows lenders to charge an origination fee of up to 20 percent of the first $300 loaned, plus 7.5 percent of any amount in excess of $300. In addition, lenders may charge an interest rate of 45 percent per year per loan and a monthly maintenance fee of $7.50 per $100 loaned, up to a total of $30 per month. If the borrower repays the loan early, the lender must refund a prorated portion of the fees. Current law defines unfair and deceptive trade practices as making loans disguised as personal property sale and leaseback agreements or as a cash rebate.

Changes under the measure. The measure reduces the loan costs on a payday loan to a maximum APR of 36 percent, and prohibits all currently allowable fees. In addition, regardless of whether payday lenders have a physical location in the state, they may not offer higher cost loans via electronic or U.S. mail, the internet, or telemarketing.

Table 1 below provides an example of the total maximum cost, including interest and any fees, of a $500 loan that is repaid in six months under current law and under Proposition ?.
Table 1. Comparison of Maximum Estimated Cost of a Six-Month Payday Loan*

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*The actual costs may vary by lender and depend on when the loan is repaid.

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2 Argument For:

1) Coloradans are paying too much to borrow small amounts of money from payday lenders. The APR for these loans can exceed 200 percent. Some consumers borrow money to pay off other payday loans, which leads to a cycle of debt. Because the measure reduces the high cost of payday loans, consumers may be better able to repay their loans and avoid further financial stress.

8 Argument Against:

1) This measure is unnecessary because the state legislature passed blue-ribbon reforms in 2010 that led to reduced loan costs and fewer defaults, while ensuring that consumers continue to have access to a well-regulated source of emergency short-term credit. Even so, such reforms have pushed Colorado consumers into the unregulated market, resulting in a 1,900% increase in unregulated online loans from 2009 to 2016, as shown by this graph:

Comment [BHFS7]: It is misleading to state these are estimated costs when they are maximum costs.

Comment [BHFS8]: This number has changed from 115% in the first draft to 116% in the second draft to now 180% - thus, it seems important to show voters the work here of how these numbers are being calculated as the Attorney General Report, page 13, shows, available at https://coag.gov/sites/default/files/content/uploads/cpt/ConsumerCredit.html/UCCC/AnnualReportComposites/DemoStatIndexsummary2000-2015.pdf

Comment [BHFS9]: These loans aren’t used solely by borrowers for emergencies.
2) Payday loans provide options for consumers who may not qualify for other types of loans. The 2010 reforms reduced the industry by nearly 50%, disproportionately in small towns and rural areas, and this measure will overregulate the industry out of existence entirely. Consumer need, however, will not go away. With limited or no access to payday loans for emergency short-term credit needs, even more consumers will pay higher costs to other creditors from late payment fees, bounced check and overdraft fees, or utility disconnect fees, or fall prey to illegal, offshore, online lenders and be left with no recourse.

16 Estimate of Fiscal Impact

17 **State revenue and spending.** If Proposition 2 results in payday lenders choosing not to renew their licenses, there will be a reduction in fee revenue to the Department of Law.

Comment [BHFS10]: According to information from the Department of Law, 263 (52%) of storefronts have closed since 2009, available at https://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/InternetReports/ucccreport.pdf

Comment [BHFS11]: Voters have the right to know about these consequences. A push to the unregulated market has already occurred in Colorado as shown in the graph above. It has also occurred in other states that have passed initiatives similar to this measure, such as in South Dakota. See local news report, available at https://kelo.com/news/articles/2018/mar/19/study-borrowers-seeks-other-sources-after-payday-lenders/
Initiative #126
Limitations on Payday Loans
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Ballot Title: Shall there be an amendment to the Colorado Revised Statutes concerning limitations on payday lenders, and, in connection therewith, reducing allowable charges on payday loans to an annual percentage rate of no more than thirty-six percent?

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 5-3.1-101.5 as follows:

5-3.1-101.5. Legislative declaration. The people of this state find and declare that payday lenders are charging up to two hundred percent annually for payday loans and that excess charges on such loans can lead Colorado families into a debt trap of repeat borrowing. It is the intent of the people to lower the maximum authorized finance charge for payday loans to an annual percentage rate of thirty-six percent.

SECTION 2. In Colorado Revised Statutes, amend 5-3.1-105 as follows:

5-3.1-105. Authorized charges. A lender may charge a finance charge for each deferred deposit loan or payday loan that may not exceed twenty and seven and one-half percent of any amount loaned in excess of three hundred dollars. Such charge shall be deemed fully earned as of the date of the transaction. The lender may also charge an interest rate of forty-five percent per annum for each deferred deposit loan or payday loan. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term. The lender may charge a monthly maintenance fee for each outstanding deferred deposit loan, not to exceed seven dollars and fifty cents per one hundred dollars loaned, up to thirty dollars per month. The monthly maintenance fee may be charged for each month the loan is outstanding thirty days after the date of the original loan transaction. The A lender shall may charge only those charges expressly authorized in this article in connection with a deferred deposit loan or payday loan.

SECTION 3. In Colorado Revised Statutes, 5-3.1-108 amend (2) as follows:

5-3.1-108. Renewal – new loan – consecutive loans – payment plan – definitions. (2) Upon renewal of a deferred deposit loan or payday loan, the lender may assess additional finance charge not to exceed an annual percentage rate of forty-five percent. If the deferred deposit loan or payday loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

SECTION 4. In Colorado Revised Statutes, 5-3.1-121 amend (2) as follows:

5-3.1-121. Unfair or deceptive practices. (2) A person violates the requirements of this article by engaging in any act that limits or restricts the application of the requirements of this article, including making loans disguised as personal property, personal sale, and leaseback transaction; or by disguising loan proceeds as a cash rebate for the pretextual installment sale of goods and services; or making, offering, guaranteeing, assisting, or arranging a consumer to
SECTION 5. **Effective date.** This initiative takes effect on February 1, 2019.