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Colorado General Assembly

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MEMORANDUM

TO: Steven Ward and Levi Mendyk

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 6, 2022

SUBJECT: Proposed initiative measure 2021-2022 #127, concerning Sales and Delivery of Alcohol Beverages

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 #112 through 129. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memoranda for proposed initiatives 2021-2022 #112 to 118 and 120 to 125, proposed initiative 2021-2022 #119, and proposed initiative 2021-2022 #126, except as necessary to fully understand the issues raised by the revised 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.

Earlier versions of this proposed initiative, proposed initiatives 2021-2022 #66 and 2021-2022 #67, were the subject of memoranda dated February 28, 2022, which were discussed at a public meeting on March 3, 2022. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and 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 allow businesses licensed under the "Colorado Beer Code" to sell fermented malt beverages, or "beer", to also sell wine starting March 1, 2023;
2. To add references to "and wine" and "beer" in several sections in the "Colorado Liquor Code" and the "Colorado Beer Code", purportedly to effectuate the ability of persons licensed under the "Colorado Beer Code" to sell beer to also sell wine;
3. To allow retailers licensed under the "Colorado Liquor Code" or the "Colorado Beer Code" for the sale of alcohol beverages for off-premises consumption and retailers licensed under the "Colorado Liquor Code" for the sale of alcohol beverages for on-premises consumption to deliver alcohol beverages to their customers, either through their own employees, through an independent contractor, or through a third-party delivery service that holds a delivery service permit;
4. To specify that if a licensed retailer is using an independent contractor to deliver alcohol beverages to its customers, the retailer must obtain a delivery service permit, but if the retailer is using its own employees who are at least twenty-one years of age and using the retailer's owned or leased vehicle to make deliveries, the retailer need not obtain a delivery service permit;
5. To specify the requirements for obtaining a delivery service permit and the requirements for providing delivery services;

6. To authorize the state licensing authority to enforce the delivery service requirements against licensees and delivery service permittees, and employees and independent contractors of licensees and permittees;
7. To specify that a licensee must also be the delivery service permittee for the licensee's license to be subject to disciplinary action for a violation of alcohol law during delivery; and
8. To repeal the requirements that, to deliver alcohol beverages to customers, licensed retail liquor stores, liquor-licensed drugstores, fermented malt beverage retailers licensed to sell beer for off-premises consumption, and certain businesses licensed to sell alcohol beverages for consumption on the licensed premises must:
 - a. Derive no more than fifty percent of annual gross sales revenues from sales of alcohol beverages for delivery; and
 - b. Use an employee of the licensee who is at least twenty-one years of age and who uses a vehicle owned or leased by the licensee to make the alcohol beverage delivery.

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. In section 7 of the measure, in subsection (9) of section 44-3-911.5, the last sentence states that a licensee is not subject to disciplinary action for violating alcohol law during delivery if the licensee is not also the delivery permittee. If a licensee uses an employee to make deliveries and does not, pursuant to subsection (1) of the new section 44-3-911.5, obtain a delivery service permit, and then commits a violation of alcohol law during the delivery, it appears that this language would shield the licensee from discipline for the violation. Is that the proponents' intent?

There are no additional substantive comments and questions for the proposed initiative included in this memorandum.

Technical Comments

There are no new technical comments for the proposed initiative included in this memorandum.