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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 2021-2022 #138, concerning Minimum Wage for Employees of Certain Alcohol-related Businesses.

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 the 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 purpose of the proposed amendment to the Colorado Revised Statutes appear to be to:

1. Effective January 1, 2023, require a retailer that sells alcohol beverages for consumption off the premises of the retailer to pay to its employees a

minimum wage of no less than \$20 per hour, exclusive of any employee benefits, overtime compensation, reimbursement for expenses incurred, and tips or gratuities given by customers;

2. Annually increase the required minimum wage rate for cost-of-living increases as measured by the consumer price index for Colorado; and
3. Prohibit a retailer or person that provides or gives consumers access to alcohol delivery by the retailer's or person's employees from retaining any portion of gratuities or tips given by customers to the employees.

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 initiative adds the minimum wage requirements to the "Colorado Liquor Code," article 3 of title 44, Colorado Revised Statutes. The retail sale of alcohol beverages in Colorado is governed by the "Colorado Liquor Code," as well as the "Colorado Beer Code," article 4 of title 44, Colorado Revised Statutes.
 - a. If the proponents intend the initiative to apply to any person licensed to sell alcohol beverages at retail, either under the "Colorado Liquor Code" or the "Colorado Beer Code," the proponents might consider adding the proposed new statute to the "Colorado Beer Code," under article 4 of title 44, in addition to adding it to article 3 of title 44. Or, alternatively, specifying in the new section the particular retailers to whom the initiative applies.
 - b. Article 6 of title 8, Colorado Revised Statutes, contains the statutory provisions of law that govern minimum wage for workers in Colorado. Would the proponents consider moving this minimum wage provision to article 6 of title 8?
 - c. At the end of the last sentence in subsection (1), there is a reference to "the employee's provision of such services." What "services" are being referenced? The provision refers only to the retail sale of alcohol, so is the "service" the sale of alcohol beverages by employees?

3. Subsection (2) of the initiative states that the minimum wage rates for employees of retailers "shall be increased annually... by the consumer price index used for Colorado."
 - a. For clarity and consistency, would the proponents consider citing the more specific consumer price index for Denver-Aurora-Lakewood?
 - b. The initiative states that the minimum wage is to be "increased annually" but does not specify in what year and on what date the annual increase is to take effect. Would proponents consider clarifying the date and year the annual increase is to take effect, e.g., "starting [month, date, year,] and each [month and date] thereafter."
4. Subsection (3) prohibits a retailer or other person that provides or gives consumers access to "alcohol delivery" by their employees from retaining customer tips given to the employees. The reference to "alcohol delivery" in this provision suggests an intent that the initiative apply to employees providing "alcohol delivery" services, but subsection (1), which sets the minimum wage, does not mention alcohol delivery. Would proponents clarify whether the intent of the initiative is to require licensed retailers to pay all of their employees the minimum wage or just those employees providing alcohol delivery services?
5. Standard drafting practice is to use the following terminology as the introductory language preceding one or more definitions: "As used in this section, unless the context otherwise requires:" Would proponents consider using this standard terminology in subsection (4) of the initiative?
6. With regard to the defined term "alcohol" in subsection (4)(a) of the initiative:
 - a. The definition refers to "beer, wine, and spirituous liquors." However, in the "Colorado Liquor Code," the terms used throughout, and defined in section 44-3-103, Colorado Revised Statutes, for use in the code, are "malt liquors," "vinous liquors," and "spirituous liquors." Additionally, the term "alcoholic beverages" is not used in the code; rather, the defined term is "alcohol beverages," which term is defined in section 44-3-103 (2), Colorado Revised Statutes, to mean "fermented malt beverage or malt, vinous, or spirituous liquors." Adding new and different terms could create confusion in the law. Would proponents consider using the terms defined in and used throughout the "Colorado Liquor Code"?
 - b. Is there a reason to create a new term "alcohol," given the current-law definition of "alcohol beverages" that includes all types of regulated

alcohol beverages? “Alcohol beverage” and “person” are defined in section 44-3-103, Colorado Revised Statutes. Would the proponents consider using the defined term “alcohol beverage,” instead of adding a new definition for “alcohol,” and the defined term for “person,” rather than creating a new one?

- c. Standard drafting practice is to limit definitions to provisions that actually define what a term means, and to place substantive requirements relating to the defined term in the substantive portions of the statute that impose specific requirements or limitations. The definition of "alcohol" includes the method by which alcohol is sold, which is a substantive provision that does not explain or define what alcohol is. Would proponents consider moving this substantive component to the portion of the initiative that imposes substantive requirements? Consider, for example, adding a new subsection that provides "This section applies to the sale of alcohol beverages at retail in sealed containers by persons licensed under this article 3 or article 4 of this title 44 for consumption off the licensed premises."
7. With regard to the definition of "alcohol delivery" in subsection (4)(b) of the initiative:
- a. The location of the word "whether" before "delivery" creates confusion as to what the alternatives to the physical transfer of alcohol are. Is the intent that the alternatives are delivery to a person off the licensed premises or delivery to a physical location designated by a purchaser? Does that designated location need to be "off the licensed premises" as well? If the intent is that "delivery" or physical transfer of an alcohol beverage purchased by a customer is to a person who is located, or to a designated location that is, off the licensed premises, would proponents consider rewording the definition to make the intent clearer?
 - b. Can a "physical location designated by a purchaser" include another premises licensed under the "Colorado Liquor Code" or "Colorado Beer Code"? Under current law regarding delivery of alcohol beverages sold at retail, the delivery must be to a person "located at a place that is not licensed pursuant to" the applicable provision of law. See, e.g., sections 44-3-409 (3)(a)(I), 44-3-410 (3)(a)(I), and 44-3-911 (3)(a), Colorado Revised Statutes. Is it the proponents' intent that "alcohol delivery," as defined in the initiative, could include delivery to another licensed premises?

- c. Given the structure of the definition, the phrase "in any manner including through a technological, telephonic, or any other means for ordering such alcohol" appears to modify the manner of "physical transfer" of alcohol. Presumably, alcohol cannot be physically transferred by electronic means. If the proponents' intent is to specify that "alcohol delivery " includes delivery of alcohol that is *ordered or purchased* through technological, electronic, or other electronic means, would proponents consider rewording the definition to make this intent clear?
8. With regard to the defined term "retailer" in subsection (4)(c) of the initiative:
- a. If, by retailer, the proponents' intent is to reference a retailer that is licensed under the "Colorado Liquor Code" or "Colorado Beer Code" to sell alcohol beverages at retail, would the proponents consider defining retailer as "a person authorized under Colorado law to sell alcohol beverages at retail"? Cross-referencing the specific law that authorizes the person to sell alcohol beverages may avoid confusion, as well.
 - b. There is not subject-verb agreement between the nouns "person" and "group" with the verb "generate." In order to create subject-verb agreement, would the proponents consider changing the verb "generate" to "generates"?
9. With regard to the defined term "employee," which refers to an individual employed by a retailer "that sells alcohol," since the term "retailer" is defined as a person that sells alcohol, the phrase "that sells alcohol" is unnecessary.

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. While subsection (1) is an introductory portion, only paragraph (a) follows the introductory portion. Would the proponents consider using just a subsection (1) for the language in in (1) and (1)(a)? For example:

(1) NOTWITHSTANDING ... AND EFFECTIVE JANUARY 1, 2023, THE MINIMUM WAGE FOR EMPLOYEES ..."

2. Although the text of the initiative should be in small capital letters, please use an uppercase letter to indicate capitalization where appropriate. If the proponents choose not follow the suggestion in subsection (1), please capitalize the "t" in the word "The" after subsection (1)(a).
3. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "must" does not mean that a person has a duty." Please ensure that your use of "shall" throughout the proposed initiative fits within these guidelines.
4. Please put the definitions in alphabetical order.
5. The headnote for Section 1 of the initiative should not be in small capital letters. Please only capitalize the first letter of the first word and add "- definitions." after "retailers" to reflect the content of subsection (4).
6. Standard drafting language for an effective date clause is as follows: "This act takes effect Month Day, Year." Please consider revising Section 2 of the proposed initiative accordingly.
7. Please spell out all numbers in statute. This means spelling out "twenty dollars" in subsection (1)(a) and "eighty percent" in subsection (4)(c).