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MEMORANDUM

TO: Robert Schraeder and Joel Allen Cathey

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 31, 2022

SUBJECT: Proposed initiative measure: 2021-2022 #100, concerning Liquor Licenses

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 #96 to 99 and #101 and 102. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2021-2022 #96 to 99 and #101 and 102, except as necessary to fully understand the issues raised by the 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.

Purposes

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

1. To create parity in the number of additional licenses that businesses licensed under the "Colorado Liquor Code" or the "Colorado Beer Code" to sell alcohol beverages for consumption off the licensed premises may obtain by capping the total number of licenses each licensee may obtain at twelve;
2. To specify that the cap on the total number of licenses applies to the total number of retailer's licenses that a person, partnership, association, organization, or corporation may be granted under the "Colorado Beer Code", which includes licenses to sell fermented malt beverages, or "beer", at retail for consumption off the licensed premises, on the licensed premises, or both on and off the licensed premises;
3. With regard to licenses authorizing the retail sale of fermented malt beverages for on- and off-premises consumption:
 - a. To require a person licensed before June 4, 2018, that applies to renew the license on or after June 4, 2018, and whose licensed premises is located in a county with a population of 35,000 people or more and is not located in an underserved area to simultaneously apply to convert a maximum of twelve licenses to either licenses for on-premises consumption or for off-premises consumption; and
 - b. To allow the state licensing authority to issue or renew the license, up to a maximum of twelve licenses per retailer, if the licensed premises is located in a county with a population of fewer than 35,000 people or in an underserved area; and
4. To require the state licensing authority to adopt rules to determine how licensees are to surrender previously issued licenses that exceed the cap on the total number of licenses a person may hold.

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. It is standard drafting practice to show language being deleted from statute in stricken type. In section 2 of the measure, the current language in section 44-3-409 (4)(b)(III)(C) includes the word "or" at the end of the sub-subparagraph. The word "or" should be shown in stricken type after "~~licenses;~~" as: "... ~~licenses;~~ ~~or~~".
3. With regard to section 4 of the measure and the cap on the number of licenses, is it the proponents' intent that a person may have twelve licenses to sell beer for off-premises consumption and another twelve licenses to sell beer for on-premises consumption? In other words, may a person have up to twelve licenses of each type of retailer license permitted under the "Colorado Beer Code"? Or is the intent that the cap apply to the total number of all licenses issued to any one person under the "Colorado Beer Code"?
4. In section 4, with regard to the new subsection (1)(c)(VI) that requires the state licensing authority to adopt rules regarding the surrender of licenses exceeding the cap, if the measure takes effect on March 1, 2023, and the cap on the total number of licenses, as well as the requirement to adopt rules regarding the surrender of licenses, both take effect on the same day, it appears that a process for surrendering licenses may not be in place at the time the cap applies. Under the "State Administrative Procedure Act", article 4 of title 24, Colorado Revised Statutes, which governs state agency rule-making procedures, the state licensing authority may not be able to have rules in place immediately upon the effective date of the measure. Proponents may wish to consider an alternative effective date for the cap on licenses issued under the "Colorado Beer Code" to enable the state licensing authority sufficient time to adopt the required rules.
5. Have the proponents considered whether requiring the surrender of lawfully obtained licenses violates any constitutional provisions under the state or federal constitutions? If the state requires a license to be surrendered before its expiration, is there a property right in the license that triggers due process requirements in order to require that the license be surrendered? Would requiring surrender of a license amount to the impairment of a contract between the state licensing authority and a licensee or impair private contracts that the licensee entered into pursuant to the authority granted by the license?

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. It is standard drafting practice to show the introductory portion that precedes that language being amended, if one exists, for ease of reading. For example, in section 2, section 44-3-409 (4)(b) has an introductory portion.
2. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Revised Statutes, and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Revised Statutes.
3. In section 2 of the measure, subsection (4)(b)(III)(B) should end with an "or" instead of an "and". In current law, the provision that appears before subsection (4)(b)(IV) of that section ends with an "or". Since subsection (4)(b)(III)(B) is, under the measure, now the provision that appears before subsection (4)(b)(IV), it should end with an "or".
4. When amending a statutory section, the provisions of the section should be copied into the measure exactly as they appear in the Colorado Revised Statutes. In section 4 of the measure, in section 44-4-104 (1)(c)(II)(B) the word "for", which is in current law in the phrase "either to a license for the sale of", was omitted, and it instead appears in the measure in the phrase "simultaneously apply to for convert", which is not in current law.