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Colorado General Assembly

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MEMORANDUM

TO: Anthony Mitchell Ryerson III and Paul Baryames
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 5, 2022
SUBJECT: Proposed initiative measure 2021-2022 #111, concerning requiring criminal background checks for certain 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.

Purposes

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

1. To require every person who holds or applies for a retail liquor store license, including every member, partner, officer, director, and shareholder of a

- corporation, partnership, association, or company that holds or applies for a retail liquor store license, to submit to a criminal history background check; and
2. To make each person who holds a retail liquor store license, including every member, partner, officer, director, and shareholder of a corporation, partnership, association, or company that holds a retail liquor store license, liable for the unlawful sale of an alcohol beverage to a minor.

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. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the Colorado General Assembly. Is this the proponents' intention?
3. The proposed initiative uses the terms "[o]wners of grocery and convenience stores" and "beer and wine off-premises retailer" to describe the persons who will be subject to the new provisions. However, these terms do not currently appear in article 3 of title 44, Colorado Revised Statutes. Is the proponents' intention to:
 - a. Apply the new provisions to *all* persons who hold or apply for a retail liquor store license pursuant to section 44-3-409, Colorado Revised Statutes;
 - b. Apply the new provisions to *a subset of* such persons; or
 - c. Apply the new provisions to another group of persons?

In any case, the proponents should use consistent terminology throughout the proposed initiative.

4. The declaration portion of the proposed initiative includes the language "just as owners of Marijuana retail establishments." Is the intent to state that owners in both industries should be subject to the same requirements? If the proponents opt to retain this language, they may consider removing the capitalization of "Marijuana" and adding the word "do" after "establishments."

5. Section 2 of the proposed initiative adds certain language to section 44-3-307, Colorado Revised Statutes. The introductory portion of the proposed subsection (1)(c) refers to "a beer and wine off-premises retailer," but this term doesn't appear in current law and the proponents have not provided a definition for this term. Is this language intended to refer to a "retail liquor licensee"? If yes, would proponents consider using that term? If not, would the proponents consider defining the term?
6. The proponents should consider using active language, rather than passive language, in the introductory portion of the proposed subsection (1)(c). For example, "The state licensing authority shall not issue or renew a license...."
7. Section 2 of the proposed initiative adds certain language to section 44-3-307, Colorado Revised Statutes, that is redundant of language currently in section 44-3-307, Colorado Revised Statutes. Specifically, proposed section 44-3-307 (1)(c)(I)(a.) is redundant of language that currently exists in section 44-3-307 (1)(a)(I), Colorado Revised Statutes. Additionally, proposed section 44-3-307 (1)(c)(I)(b.) appears to be redundant of language that currently exists in section 44-3-307 (3)(c), Colorado Revised Statutes. How do the proponents intend for the new provisions to work with the existing provisions?
8. Section 2 of the proposed initiative adds certain language under a new section 44-3-307 (1)(c)(I)(c.) that prohibits the issuance of a license to a person "[until] a criminal history record check *reveals* that the [p]erson is of good moral character after considering the factors described in section 24-5-101." [Emphasis added.] This language is unclear because:
 - a. A criminal history background check merely investigates and determines whether an individual has a criminal record; it does not "reveal" or otherwise make an explicit determination regarding an individual's moral character. Would the proponents consider clarifying this language?
 - b. Section 24-5-101, Colorado Revised Statutes, concerns the effect of criminal convictions on a person's employment rights and describes requirements for state and local agencies in making determinations about a person's moral character. Only subsection (4) of that section refers to factors to be considered, and in subsection (4) it is the state or local agency, not the background check, that is required to consider the factors. Would the proponents consider specifically referencing the factors in section 24-5-101 (4), Colorado Revised Statutes, to clarify the intent?

9. Section 2 of the proposed initiative requires, in (1)(c)(II)(b.), that "each officer, director, and stockholder" submit fingerprints for a "criminal background check," but this language is inconsistent with language in (1)(c)(II)(c.), which requires that a "criminal history record check" must "reveal" that every "member, partner and shareholder's criminal history is of good moral character..." It is unclear based on this inconsistency who is subject to the criminal background check. The proponents should consider amending the proposed initiative to clarify who is subject to the criminal background check.
10. In Section 2 of the proposed initiative, the grammar of the language in (1)(c)(II)(c.) requires persons' "criminal history" to be "of good moral character." Would the proponents consider rewriting this provision so that the *person* is of good moral character?
11. Section 3 of the proposed initiative adds a statutory definition of the term "owner of a beer and wine off-premises retailer," and locates this new term as a new subsection (12) under existing section 44-3-901, Colorado Revised Statutes. However, section 44-3-901, Colorado Revised Statutes, is not a dedicated definitions section for part 9 of article 3 of title 44, Colorado Revised Statutes; the section currently includes only two definitions, each of which appears in the narrow context of a subsection of section 44-3-901, Colorado Revised Statutes. If the intent is that the definition apply only to proposed section 44-3-901 (13), the proponents should consider including it in that provision and specify that it only applies to that provision. If the intent is to have it apply to all of article 3 of title 44, Colorado Revised Statutes, it should be placed in section 44-3-103, Colorado Revised Statutes, in alphabetical order.
12. Section 4 of the proposed initiative adds the following language under a new section 44-3-901 (13):

"Each owner of a beer and wine off-premises retailer establishment shall be considered a "person" for the unlawful sale of an alcoholic beverage to a minor."

It is not clear what this language means. Do the proponents intend to make each person who holds a retail liquor store license, including every member, partner, officer, director, and shareholder of a corporation, partnership, association, or company that holds a retail liquor store license, liable in the event of an unlawful sale of an alcohol beverage to a minor?
13. Section 4 of the proposed initiative adds the following language under a new section 44-3-901 (13):

"The division may enforce the requirements of this section by *the same administrative proceedings that apply to alcohol beverage licensees or permit*, including without limitation any disciplinary or criminal action...."
[Emphasis added.]

It is not clear which "administrative proceedings" this language is describing. Do the proponents intend to cross-reference "this part 9," which concerns unlawful acts and enforcement of alcohol and tobacco regulation?

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. In the declaration portion of the proposed initiative, it is not necessary to capitalize "Owners."
2. In nonstatutory provisions, such as the declaration, "Colorado Revised Statutes" should be spelled out rather than abbreviated as "C.R.S."
3. Each section of the Colorado Revised Statutes has a headnote. Headnotes briefly describe the content of the section. The headnote that appears in existing law should be added to sections 1, 2, 3, and 4 of the proposed initiative and be in bold-face type. For example:

44-3-307. Persons prohibited as licensees - definition. (1) (c) NO LICENSE PROVIDED BY THIS ARTICLE 3....

4. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Revised Statutes.
5. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

- (I) Subparagraph
 - (A) Sub-subparagraph
 - (B) Sub-subparagraph
 - (II) Subparagraph
 - (b) Paragraph
 - (2) Subsection
 - (3) Subsection
6. The numbering in the proposed initiative should be changed to conform to the standard numbering format for the Colorado Revised Statutes. For example, according to the standard numbering format, section 3 of the proposed initiative should appear as follows:

SECTION 3. In Colorado Revised Statutes, 44-3-901, **add** (13) as follows:

44-3-901. Unlawful acts – exceptions – definitions. (13) (a) EACH OWNER OF A BEER AND WINE OFF-PREMISES RETAILER ESTABLISHMENT SHALL BE CONSIDERED A "PERSON" FOR THE UNLAWFUL SALE OF AN ALCOHOLIC BEVERAGE TO A MINOR.

(b) THE DIVISION MAY ENFORCE THE REQUIREMENTS OF THIS SECTION....

7. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization *only where appropriate*. The following should be large-capitalized:
- a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
8. The following is the standard drafting language used for creating a definition:
- As used in this [section][subsection][paragraph], unless the context otherwise requires, '[term]' means [the definition for the term]....
9. There should be a colon after "person" in proposed section 44-3-307 (1)(c)(I) and after "company" in proposed section 44-3-307 (1)(c)(II).