

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

March 20, 2012

TO: Rico Colibri and Kathleen Chippi

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 20011-20012 #70, concerning Cannabis Laws

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 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 appear to be:

1. Decriminalize use, possession, and sale of cannabis by repealing all marijuana laws in title 18, C.R.S., and all other state, county, and municipal conflicting marijuana laws.
2. Create a constitutional right for personal cultivation and use of cannabis for Coloradans age 21 or older.
3. Regulate cannabis in the same manner as tobacco.

4. Create a reasonable licensing and regulation system for cannabis businesses.
5. Prohibit state, county, or municipal funds to be used to assist in the enforcement of federal marijuana laws against Coloradans in compliance with the proposed initiative.

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. A new amending clause format has been adopted in standard drafting practice. The new format looks like this: "In the constitution of the state of Colorado, article XVIII, **add** section 16 as follows:".
2. Throughout the proposed initiative, the defined terms are capitalized. Standard drafting practice does not capitalize the defined terms that appear in the text of a proposed initiative.
3. Throughout the proposed initiative, numbers are expressed as digits. Standard drafting practice uses words to express numbers. For example, paragraph (g) of subsection (2) of the proposed initiative states "contains 1%" and subsection (4) states "Coloradan 21 years of age or older". These numbers should be written out. For clarification, standard drafting practice *does* use digits when referring to criminal penalties and statutory or specific constitutional provisions.
4. The definitions should be in alphabetical order.
5. The definition of "hemp products" in the proposed initiative includes "etc . . .". Standard drafting practice does not use the term "etc."
6. The proposed initiative, in subsection (6), refers to paragraph (f) as "subparagraph (f)". Also, references to paragraph letters in the text of the proposed initiative should not appear in small capitals.
7. The paragraph reference to paragraph "(I)" in subsection (6) of the proposed initiative should be lower case.

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 change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. In the definition of cannabis, paragraph (a) of subsection (2) of the proposed initiative, it uses the term "sustainably produced" and states "How ever there is a legal distinction between cannabis products and hemp products."
 - a. What does "sustainably produced" mean?
 - b. What is the proponents' intent in claiming that there is distinction between "cannabis products" and "hemp products" in the definition of "cannabis"? The proponents may consider stating in the definition of "cannabis products" that the definition does not include "hemp products" and in the definition of "hemp products" that the definition does not include "cannabis products" in order to differentiate between the two terms.
4. In paragraph (e) of subsection (2) of the proposed initiative, it states ""Cannabis Businesses" Means the Cannabis equivalent to pre-existing Colorado State level tobacco business licenses and State level cigar and pipe tobacco law and regulations. i.e Cannabis Retailer, Cannabis Products Distributor, Cannabis Subcontractor. Cannabis Businesses will be exempt from the MSA."
 - a. What is intended by the statement that begins "i.e"? If those businesses are intended to be equivalent to similar tobacco businesses, would the proponents specifically state the equivalency? The use of "i.e" is not within standard drafting practices.
 - b. Paragraph (g) of subsection (2) of the proposed initiative states that cannabis products are exempt from the MSA, and paragraph (h) of subsection (2) of the proposed initiative states that hemp products are exempt from the MSA. What do the proponents mean by these exemptions from the MSA?
5. Does the definition of "Reasonable" in paragraph (i) of subsection (2) of the proposed initiative mean that an applicant for a cannabis business license may not be charged a licensing fee? What is meant by the term "average Coloradan" in the definition of "Reasonable"? Is it the proponents' intent that the Department of Revenue will determine what amount of "money, time, risk, or any other resource or assets or violation of privacy or restrictions" would deter or deny an average Coloradan from operating a cannabis business?
6. Subsection (3) of the proposed initiative proposes to repeal all marijuana laws in title 18, C.R.S., as well as all other existing conflicting state, county, or municipal marijuana laws.
 - a. Is it the proponents' intent that the General Assembly repeal each of the provisions during the legislative session after the proposed initiative becomes law, or is it the proponents' intent that the provisions would be automatically repealed? If the intent is to have provisions automatically repeal, the initiative should specifically direct the Revisor of Statutes to do so.

- b. In order to ensure that the proponents' intent is clear, the proposed initiative should specifically list each statute that is to be repealed.
 - c. Is it the proponents' intent that each local government repeal each of its provisions related to marijuana?
7. Subsection (4) of the proposed initiative states that there is a constitutional right for Coloradans 21 years of age or older to personal cultivation and possession of marijuana and that no person will be punished for cultivating or possessing the amounts specified in subsection (4). Does that mean that the General Assembly could create penalties for persons who exceed the limits?
 8. Subsection (4) of the proposed initiative imposes quantity limits on the number plants and amount of marijuana that an individual can cultivate and possess. The subsection states that any amounts exceeding the limits require remittance of tax to the Colorado Department of Revenue. How do the proponents envision that working? How would the person calculate the tax owed? How would the Department of Revenue know when tax is owed?
 9. How do the proponents anticipate that subsection (5) of the proposed initiative, concerning lawful business operation, and subsection (7) of the proposed initiative, concerning the enforcement of the law, will be implemented considering that cannabis is classified as a Schedule I controlled substance under federal law?
 10. Subsection (6) of the proposed initiative authorizes the creation of the Department of Revenue Alcohol, Cannabis, and Tobacco Enforcement Division "as the sole agency to enact reasonable licensing and regulations". Do the proponents intend that all licensing provisions and regulations would be done as department rules, as opposed to the General Assembly enacting statutory provisions?
 11. Subsection (6) of the proposed initiative states that "sales of cannabis products will be governed by the same rules as established in 18-13-121 CRS for tobacco sales." Section 24-35-501, et seq., C.R.S., also govern tobacco sales. Is it the proponents' intent that the provisions of those sections also apply to the sales of cannabis products? Is it the proponents' intent that the General Assembly will amend those sections of state law to clarify that cannabis sales are also regulated by those sections, or will otherwise enact implementing legislation to make this clear?
 12. Subsection (6) of the proposed initiative states that the regulations and licenses should be "in the same manner as and no more excessive or cost prohibitive than the equivalent State level cigar and pipe tobacco products laws." Paragraph (j) of subsection (6) of the proposed initiative contains similar language related to industrial hemp farming. How will someone know whether the regulations are more excessive or cost-prohibitive?

13. Subsection (6) of the proposed initiative states "With the following caveats:". The sentence does not specifically refer to the provisions that are subject to the caveats. Are the caveats meant to refer to the preceding language in subsection (6)? Can the proponents explain the caveats that follow?
14. Paragraph (c) of subsection (6) of the proposed initiative requires that cannabis licensees be residents of Colorado for one year before becoming licensed. Do the proponents believe this provision would violate the constitutional right to travel?
15. Paragraph (e) of subsection (6) of the proposed initiative appears to require local authorities to enact reasonable zoning laws and a per capita cap on cannabis businesses. Is it the proponents' intent to require that regulation or is it optional?
16. Paragraph (f) of subsection (6) of the proposed initiative uses the terms "public or private youth center" and "video arcade facility". Those terms may not have as common an understanding as the other terms in paragraph (f). Would the proponents consider defining those terms?
17. Paragraph (I) of subsection (6) of the proposed initiative states that ten percent of the sales tax on cannabis products will be appropriated to K-12 public schools, ten percent will be appropriated to state-funded health care programs, three percent will be appropriated to state-funded substance abuse and treatment programs, and two percent will be appropriated for state-funded prisoner rehabilitation programs.
 - a. Moneys need to be appropriated to a fund. Do the proponents intend for the General Assembly to create the fund? Is it the proponent's intent that the General Assembly make those appropriations annually or would the appropriation be continuous?
 - b. The provision requires money to be appropriated for health care programs. Would the proponents define "health care programs"?
 - c. The provision states "Such existing revenues and their distribution will not be repealed or reduced by the General Assembly." Would the proponents explain the intent of that statement? If the intent is to hold existing funding levels constant, how would such a change fit under a single subject ballot title?
18. Will *all* cannabis products sold to registered medical marijuana patients be tax exempt, or only sales of 2 ounces or less of a usable form of marijuana or of 6 marijuana plants or less, pursuant to the limitations in article XVIII, section 14, of the Colorado constitution?
19. Subsection (7) of the proposed initiative states that "No State, County, or Municipal funds, laws, rules or regulations will be used to assist or aid and abet in the enforcement of Federal marijuana laws...". How will someone determine if the government is aiding and abetting in the enforcement of federal marijuana laws?

20. The proposed initiative states that public officers or employees who act in official capacity in violation of subsection (7), concerning enforcement of the law, are guilty of a class 1 misdemeanor. The proposed initiative further states that "Any defense of sovereign immunity to such liability is hereby waived." Does this language refer to sovereign immunity established by the Eleventh Amendment to the United States constitution, or to governmental immunity as described in section 24-10-101, et seq., C.R.S.? If the latter, do the proponents anticipate that the General Assembly will need to enact conforming legislation to amend section 24-10-101, et seq., C.R.S.?
21. Paragraph (c) of subsection (7) of the proposed initiative states that "Driving while THC impaired will ... require a burden of proof beyond a reasonable doubt." Could the proponents provide more detail as to how this provision differs from the current prosecution of driving while impaired by drugs under state law?
22. Paragraph (e) of subsection (7) of the proposed initiative states, "If the General Assembly fails to enact licensing and regulations for Cannabis Businesses, the pre-existing State level cigar and pipe tobacco licensing and regulations and this section will be used for the implementation of commerce, no later than the end of the next legislative session after this section is adopted." How do the proponents expect this to work? Would there still be licensing? If so, who would do the licensing? Who would enforce the regulations?