

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

January 11, 2012

TO: Jose Ortiz and Ignacio Ramirez

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #52, concerning authorizing the division of motor vehicles to issue driver's licenses, temporary driver's licenses, or identification cards to Colorado residents with either an individual taxpayer identification number or social security number

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.

Earlier versions of this initiative were the subject of a memorandum dated December 8, 2011. Proposal 2011-2012 #48 was discussed at a hearing on December 16, 2011. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To allow noncitizen residents of Colorado to establish proof of residency for the purpose of obtaining a Colorado driver's license;
2. To create a new list of documents that are acceptable forms of identification and residency for purposes of applying for a driver's license, temporary driver's license, or minor driver's license; and
3. To remove any prohibition on a person who is not lawfully present in the United States from obtaining a Colorado driver's license.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions

1. The italicized paragraph following the enacting clause appears to be a title. The title board will set the title for the initiative, so this language should be removed.
2. Amending clauses should not have a comma after the instruction [e.g. after "**amend**"] and should always end with "as follows:".
3. Within a statutory section, the text may be divided into subsections with numbers [(1), (2), (3)...], paragraphs with lower-case letters [(a), (b), (c)...], subparagraphs with Roman numerals [(I), (II), (III)...], and sub-subparagraphs with upper-case letters [(A), (B), (C)...]. The amending clauses in sections 1 and 2 do not follow this format, which makes it unclear what is being amended or repealed. Additionally, amending clauses that are amending the same statutory section can be combined, so sections 1, 2, and 3 can be combined into one section with an amending clause that says:

SECTION 1. In Colorado Revised Statutes, 42-2-107, **amend** (1)(b) and (3)(a); and **repeal** (1)(c) as follows:

4. The headnotes used in sections 1, 2, and 3 are different, even though they are for the same statutory section. If the sections are not combined, the same headnote should be used in all three sections. New information can be inserted into the headnote along with the old information. For example:

42-2-107. Application for license or instruction permit - *licenses for*

drivers required - anatomical gifts - donations to Emily Maureen Ellen Keyes organ and tissue donation awareness fund - legislative declaration - repeal.

Headnotes are changed without showing the change in either stricken type or small capital letters. Italics were added to the example for the proponent's benefit to show where the new information was added. They should not be used in an actual headnote.

5. In order to identify the provision being amended, all numbers relative to the provision must be included. The first number following the headnote should be the subsection number [e.g. (1)]. The next number should be the paragraph letter [(b)], third is the subparagraph number [(I)], and last is the sub-subparagraph letter [(A)]. If there are introductory portions following any of the numbers, they should be included for context:
 - In section 1 of the initiative, the number following the headnote should be "(1) (b) (I)";
 - In section 2 of the initiative, the number following the headnote should be "(1) (c)";
 - In section 4 of the initiative, the number following the headnote should be "(3)", followed by the introductory portion, then the next paragraph begins with "(e)";
 - In section 5 of the initiative, the number following the headnote should be "(1) (b) (I)".
6. To combine the three sections, eliminate the section number and headnote from the second and third sections. Use a tab to indent each paragraph, and add the numbers that would otherwise follow the headnotes.
7. In standard drafting practice, the word "section" should always be used before the statutory section number. "C.R.S." should follow the section number if the citation is in a different title than the one in which it is cited. The standard format is "section xx-xx-xxx, C.R.S.," In section 1 of the initiative, the statutory cite should read: "section 23-7-103 (2) (f), C.R.S.,"
8. It is not necessary to initial cap names of documents or agencies. In subsection (1) (b) (I) of section 1, subsection (3) (a) of section 3, and subsection (1) (b) (I) of section 5, "individual tax identification number" and "internal revenue service" should not be initial capped.
9. Usually, complete sentences are used in the Colorado Revised Statutes. In section 1 of the initiative, paragraphs (a), (b), and (d) would be better grammatically if they began with the word "A". It is also helpful to include whose document is required. For instance, in paragraph (a), say "A PASSPORT FROM THE APPLICANT'S COUNTRY OF ORIGIN;". The words "the applicant" could be added before "country of origin" in paragraphs (a), (b), (c), and (d).
10. Every paragraph should end with punctuation. In a series of incomplete sentences that are dependent upon the introductory portion, each paragraph except the last should end with a semicolon. The last paragraph should end with a period. So paragraphs (a), (b), and (c) in section 1 of the initiative should end with semicolons and paragraph (d) should end with a period.
11. When referring to a provision within the same statutory section, standard drafting practice

is to refer to the subdivisions within the section, rather than stating the section number. For example, the cite in subparagraph (II) in section 1 of the initiative should say: "AS REQUIRED IN THIS SUBPARAGRAPH (I) OF THIS PARAGRAPH (b)."

12. Effective dates can either be added to the statutory section or they can be in an effective date section at the end of the initiative. To add the effective date to the statutory section, it must have a number like the other provisions in the section. In section 1 of the initiative, it could be added as "(III)". When the effective date is added to an existing provision and applies only to new language, it should include the words "as amended" to clarify that it only applies to the newest changes.

When an effective date applies to an entire initiative, the best method is to use an effective date provision at the end. It should be added as a new initiative section, rather than as a statutory section. For example:

SECTION 7. This initiative takes effect January 1, 2013.

13. When repealing one subdivision within a larger provision, as in section 2 of the initiative, the letter or number designating the provision should not be shown in stricken type. The number or letter will remain in the statutes and be shown as repealed. In section 2 of the initiative, show "(c)" without stricken type. In section 4 of the initiative, show "(e)" without stricken type.
14. In section 3 of the initiative, the article and title numbers should not be underlined.
15. When amending statutory provisions, the statutory sections should be listed numerically in the initiative. Since section 4 of the initiative amends section 42-2-104, it should be the first section in the initiative.
16. In sections 4 and 6 of the initiative, in the amending clauses, the word "repeal" should be in bold type.
17. In section 5 of the initiative, in the amending clause, the numbers "(1) (b) (I)" should not be in bold type.
18. In section 6 of the initiative, the section number [42-2-122] and the paragraph [(f)] should be preceded by a left tab.

Substantive questions

1. In section 1 of the initiative, subsection (1) (b) (I) requires the submission of Colorado tax returns for the last "fiscal" year. Usually tax returns are submitted for a calendar year, which starts in January, not the fiscal year that starts in July. Is "fiscal" the word you want to use?
2. Section 1 of the initiative refers to section 23-7-103, C.R.S., for purposes of establishing

residency in Colorado. Is it your intention to make the law to establish residency for a driver's license similar to the one for in-state college tuition?

3. If a noncitizen of the United States is new to the state of Colorado and does not have a tax return for the previous year, could that person not get a driver's license until that person paid taxes in Colorado?
4. In section 42-2-107, current law requires someone from another state or another country to submit proof of lawful presence in the United States. The new language from the initiative says "OR SHALL SUBMIT PROOF OF COLORADO RESIDENCY ACCORDING TO C.R.S. 23-7-103 (2) (f) AND SHALL SUBMIT COLORADO TAX RETURNS..." Do the requirements after the "AND" apply *only* to those applicants submitting tax returns or to *anyone* using out-of-state identification? In other words, do the new identification requirements apply to anyone applying for a license under section 42-2-107 (1) or just to a new class of applicants who use tax returns to show residency? If it is meant to apply only to the new class of applicants, the language should more clearly state that.