

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: ols.ga@state.co.us

MEMORANDUM

April 2, 2014

TO: Richard Evans, Stephen Roark, and Mark Grueskin

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #138, concerning Naming of Gambling Locations

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2013-2014 #139 to 142.

Purposes

The major purposes of the proposed amendment to the **Colorado constitution** appear to be:

1. To prohibit state licensing authorities from granting an exclusive license to conduct casino-style gambling at specific geographic sites identified in an initiative approved by the people at any general election;
2. To define casino-style gambling to include slot machines, poker, blackjack, craps, roulette, and video lottery terminals; and
3. To apply the prohibition on exclusive licenses to any other initiative adopted at the general election conducted on November 4, 2014, or any later election.

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 number each section, part, etc. that is being amended or added with a section number in capital letters and bold-faced type (e.g., **SECTION 1.**, **SECTION 2.**) before the amending clause. For example:

SECTION 1. In the constitution of the state of Colorado, **add** section 17 to article XVIII as follows:

2. Sections being added to the Colorado constitution are typically numbered in sequence. Currently, the last section under article XVIII of the Colorado constitution is section 16. Therefore, the proponents should number the new section of the proposed initiative as section 17 rather than section 18.
3. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings. See technical comment 1 for an example.
4. When definitions are included in a section, it is standard drafting practice to give notice of definitions in the section headnote. For example:

Section 17. Naming of certain gambling locations in the constitution – prohibited – definition. (1) NO STATE LICENSING AUTHORITY ...

5. It is standard drafting practice for the first line of text to immediately follow the headnote on the same line instead of appearing on a separate line from the headnote. See the example in technical comment 4.
6. The word "shall" should be used to indicate that a person has a duty; it should not be used as a future-tense verb. See section 2-4-401 (6.5) and (13.7), Colorado Revised Statutes, which define "must" and "shall." Simple present tense verbs should be used when possible.
 - a. With this definition of "shall", one should avoid using the phrase "no [entity] shall" in a sentence written in active voice. For example, "No state licensing authority shall grant..." means, literally, "no state licensing authority has a duty to grant...." This would allow any state licensing authority to grant the ability specified because "no state licensing authority" has a duty, implying that the action is discretionary or not prohibited. For example, the proponents may want to consider amending proposed subsection (1) to read: "A STATE LICENSING AUTHORITY SHALL NOT GRANT AN EXCLUSIVE...."
 - b. The proponents may want to consider amending proposed subsection (3) to read: "THIS PROHIBITION IS EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND APPLIES TO...."
- 7.
- 8.
9. Subsection (2) of the proposed initiative defines "Casino-style gambling" as "the use of slot machines, poker, blackjack, craps, roulette, or video lottery terminals ... as those terms are defined in article XVIII" However, section 9 of article XVIII, which contains the limited gaming provisions, does not define "slot machines," "poker," "blackjack," "craps," "roulette," or "video lottery terminals." Section 9 (4) (b) of the Colorado constitution defines "limited gaming" as "the use of slot machines and the card games of blackjack and poker," and section 9 (7) of the Colorado constitution permits the cities of Central, Black Hawk, and Cripple Creek to approve the additional games of roulette or craps, or both, at a local election. Video lottery terminals are not included in section 9. To ensure clarity and encompass games not currently approved in article XVIII of the Colorado constitution, you may wish to change the definition of "casino-style gambling" to "*limited gaming as defined in section 9 of article XVIII of the*

Colorado constitution and in implementing legislation and rules, including any games approved by voters on or after November 4, 2014."

10. When citing a provision in the Colorado constitution, it is standard drafting practice to include the phrase "Colorado constitution" in the citation. For example, in subsection (2), "... ARE DEFINED IN ARTICLE XVIII OF THE COLORADO CONSTITUTION."
11. Although the text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The following should be large capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of proper names; and
 - c. The first letter of the first word of each entry of an enumeration paragraphed after a colon. For example, in paragraphs (a) and (b) of subsection (3), the word "THE" and the word "ANY" should have a large capital letter.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Subsection (1) of the initiative has at least four possible interpretations, listed below. Which do you intend?
 - a. The current geographic limitation of "casino-style gambling" (as defined in this initiative) to Central City, Black Hawk, and Cripple Creek is exclusive. No "casino-style gambling" may be conducted by anyone at any other location as a result of an initiative that is not already part of the Colorado constitution.
 - b. Casino-style gambling may be conducted at other locations as a result of pending or future initiatives, but the licenses granted may not be exclusive, *i.e.*, no licensee may have a monopoly on casino-style gambling within those newly authorized areas.

- c. Casino-style gambling may be conducted at other locations as a result of future initiatives, but the licenses granted may not be exclusive either in those new locations *or* in Central City, Black Hawk, and Cripple Creek. **Note:** This interpretation is based on the absence of the word “only” or “exclusively” from subsection (3), which states that “[t]his prohibition [*i.e.*, the prohibition in subsection (1)?] ... shall apply to any initiative adopted [on or after Nov. 4, 2014]” but does not specifically state that the prohibition does *not* apply to initiatives adopted *before* Nov. 4, 2014. Since Central City, Black Hawk, and Cripple Creek were “identified” in an initiative adopted before Nov. 4, 2014—which would be included in the term “any general election”, as stated in subsection (1)—arguably they are included in the prohibition in subsection (1) and therefore licenses granted in those areas may not be exclusive.
 - d. Casino-style gambling may be conducted anywhere in Colorado. **Note:** This interpretation is also based on the absence of the term “only” or “exclusively” in subsection (3).
3. It appears that this initiative is written to allow it to be submitted alongside initiative 2013-2014 #141 or 142, which would prohibit single-licensee monopolies on one or more types of gambling in a single county. Under interpretation “b.” above, would this initiative be redundant if it were to be passed alongside initiative 141 or 142?
4. Under interpretation “b.”, how small a “geographic site” (the term used in subsection (1)) is intended by the proponents? For example, would it be unconstitutional for a single licensee to have an exclusive ability to conduct casino-style gambling within a specific building?
5. Tax revenues from limited gaming and from “extended limited gaming” (under the 2008 “Amendment 50”) are distributed to specific municipalities (the cities of Central, Black Hawk, and Cripple Creek) and counties (the counties of Gilpin and Teller). If this initiative results in gaming tax revenues from other municipalities or counties, how should those revenues be distributed?
6. It appears that this initiative is written to allow it to be submitted alongside one of initiatives 143 through 145, which would prohibit casino-style gambling within one mile of a school. If one or more of those initiatives passed in addition to this one, would they conflict, and if so, which should prevail?

7. The proposed initiative applies only to initiatives, so the general assembly would still be able to refer a measure to the ballot that authorized an exclusive ability to conduct casino-style gambling. Is that the proponents' intent?