

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Blake Harrison, John Grayson Robinson, and Trey Rogers

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: November 16, 2015

SUBJECT: Proposed initiative measure 2015-2016 #52, concerning food store 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 proposed initiative 2015-2016 #51. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memorandum for proposed initiative 2015-2016 #51, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in the other memorandum are also relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

Purposes

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

1. To create a food store license in the Colorado Liquor Code that would allow food stores to sell only malt and vinous liquors in sealed containers for off-premises consumption;
2. To define a food store as an establishment that offers food items for sale at retail and that generates at least 25% of its annual gross sales income, excluding income from petroleum products and lottery ticket sales, from the sale of food items;
3. To define food items as any raw, cooked, or processed edible substance, ice, and nonalcohol beverage intended for human consumption;
4. To require food store licensees to purchase malt and vinous liquor products only from licensed wholesalers;
5. To prohibit a food store employee who is under 21 years of age from selling malt or vinous liquors;
6. To specify that a person who owns an interest in a retail business licensed under the Colorado Liquor Code is not precluded from conducting, owning, or having an interest in one or more licensed food stores;
7. To repeal, as of eighteen months after the proposed measure takes effect, or on January 1, 2019, provisions of the Colorado Beer Code that authorize a local licensing authority to issue fermented malt beverage licenses authorizing the sale of fermented malt beverages for off-premises consumption;
8. To permit a business that holds a valid fermented malt beverage retailer's license to apply to the local licensing authority for a food store license if the licensee otherwise complies with the requirements for a food store license, and if the food store license is issued, to permit the business to continue its operations and sell malt and vinous liquors regardless of restrictions in current law pertaining to the location of a retail business selling alcohol beverages in proximity to a school;
9. To specify the criteria the local licensing authority may consider when reviewing a food store license application submitted by a licensed fermented malt beverage retailer;

10. To require the state licensing authority, within 180 days after the measure takes effect, to adopt rules and other findings as necessary to implement and administer food store licenses;
11. To specify that a food store licensee cannot sell spirituous liquors;
12. To establish state and local license fees for food store licenses;
13. To authorize a local licensing authority and the state licensing authority to issue a food store license; and
14. To specify that the measure takes effect July 1, 2017.

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. In sec. 12-47-425 (6) of section 1 of the proposed measure, the first sentence proposes to repeal section 12-46-107 (1) (a) and (1) (c) "as of eighteen months after the effective date of this section." Since the measure contains a specific effective date of July 1, 2017, it would be clearer to specify that the repeal date is January 1, 2019.
3. Under standard drafting procedures, if a section of law is to be repealed, the repeal language is added to the specific section being repealed. Accordingly, it is the preferred practice to repeal section 12-46-107 (1) (a) and (1) (c) within that section 12-46-107, rather than in section 12-47-425 to give notice of the repeal to the reader. This can be done by adding a SECTION 2 to the proposed initiative that amends section 12-46-107 as follows:

SECTION 2. In Colorado Revised Statutes, 12-46-107 **amend** (1) (a) and (1) (c) as follows:

12-46-107. Local licensing authority - application - fees. (1) The local licensing authority shall issue only the following classes of fermented malt beverage licenses:

- (a) (I) Sales for consumption off the premises of the licensee;

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2019.

(c) (I) Sales for consumption both on and off the premises of the licensee. A person licensed pursuant to this paragraph (c) may deliver at retail fermented malt beverages in factory-sealed containers in conjunction with the delivery of food products if such person has obtained a permit for the delivery of fermented malt beverages from the state licensing authority. The state licensing authority shall promulgate rules as are necessary for the proper delivery of fermented malt beverages pursuant to this paragraph (c) and shall have the authority to issue a permit to any person who is licensed pursuant to and delivers fermented malt beverages under this paragraph (c).

(II) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE JANUARY 1, 2019.

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 subsection (6), the correct citation format is "section 12-46-107 (1) (a) and (1) (c)."