

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Corrine Fowler and Rev. Dr. Annie M. Rice-Jones  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** February 2, 2018  
**SUBJECT:** Proposed initiative measure 2017-2018 #126, concerning Payday Loans

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 lower the maximum authorized finance charges for payday loans so that the effective annual percentage rate (APR) does not exceed thirty-six percent;
2. To repeal existing provisions authorizing flat, up-front charges and monthly maintenance fees in addition to interest charges; and

3. To broaden the coverage of the existing prohibition against circumvention of the APR limit.

## **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. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
  - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
  - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
  - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).
3. The existing statute differentiates between (a) the interest rate payable on the principal balance of the loan and (b) other fees or charges associated with issuing the loan.
  - a. Is it the proponents' intent to eliminate this distinction and say that all interest, fees, and charges associated with a particular loan may not exceed the equivalent of a thirty-six percent APR over the duration of the loan until repaid?
  - b. In the case of a loan that is repaid within a short time, an APR of thirty-six percent may only yield a small return, perhaps not enough to cover the lender's costs. Do the proponents wish to address this possibility?

4. In several places, the proposed initiative inserts "or payday loan" after the term "deferred deposit loan" in the existing statute. The applicable definition (in section 5-3.1-102 (3)) indicates that these terms are interchangeable. Are the added references intended to have any substantive effect, or are they merely inserted for clarity?
5. The proposed initiative states that it is effective January 1, 2019. If it passes, the results of the election may not be fully determined and proclaimed by the governor in accordance with article V, section 1 (4)(a) of the Colorado constitution until sometime after January 1. In order to avoid a retroactivity problem, would the proponents consider changing the effective date to a later date, such as February 1, or say instead that the measure takes effect upon passage or applies to acts committed after passage?

## **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. Changes to headnotes—the bold-faced type that precedes a section in the Colorado Revised Statutes—are not shown in strike type and small capital letters, as is the case with changes to statutory text. So, for example, the headnote in section 2 of the proposed initiative can simply be "**Authorized charges.**"
2. The amending clauses in sections 3 and 4 of the proposed initiative should follow the following format: "In Colorado Revised Statutes, 5-3.1-108, **amend** (2) as follows:"
3. Instead of striking letters of a word of existing statutory text, strike the entire word and replace it with the word you want to replace it with. For example, in section 4 of the proposed initiative, the word "sales" should be stricken entirely ("~~sales~~"), and the word "SALE" should appear immediately after.
4. In section 5-3.1-121 (2), the first letter of the word "no" should be capitalized.