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Colorado General Assembly

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MEMORANDUM

TO: Kailee Nicole and Melanie Rose
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 7, 2022
SUBJECT: Proposed initiative measure 2021-2022 #61, concerning Legal Possession and Use of Entheogenic Plants and Fungi

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 permit the lawful possession, use, cultivation, production, sharing, giving away, and delivery of entheogenic plants and fungi by a natural person twenty-one years of age or older.

2. To permit the provision of supervision, guidance, therapeutic, harm reduction, spiritual, or supportive services by a natural person twenty-one years of age or older to natural persons who are engaging in the use of entheogenic plants and fungi.
3. To permit the lawful possession of drug paraphernalia designed for use in the cultivation, production, storage, or use of entheogenic plants by a natural person twenty-one years of age or older.

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. What will be the effective date of the proposed initiative and do the provisions apply on or after that date or some other date?
3. The proposed initiative uses the term "natural person" throughout. What do the proponents mean by natural person? Is the intent to distinguish between legal entities like a corporation that are defined as a person in section 2-4-401 (8), C.R.S. and an individual? If so, is the intent to exclude business entities from the protections created in the proposed initiative?
4. How will someone obtain entheogenic plants and fungi if they are not available for sale? At what kind of facility or location would someone be able to obtain the plants or fungi?
5. The proposed initiative permits a natural person 21 years of age or older to provide services to natural persons who are engaging in the use of entheogenic plants and fungi. The proposed initiative does not impose an age restriction on the person receiving the services. Is the intent to allow a person under 21 years of age to receive the services?
6. In subsection 18-18-418 (8) of the proposed initiative, it states that the provisions of subsection 18-18-418 (7) should not be construed to permit a person to distribute or sell any amount of such natural plants and fungi for remuneration as part of a business promotion or other commercial activity.

- a. The language does not use the defined term "entheogenic plants and fungi". Is the intent to cover the same plants as the defined term? If so, would the proponents consider using the defined term?
- b. Does the language "as part of a business promotion or other commercial activity" limit the language to a business that does more than sell these plants, or is the language intended to preclude any business activity that would distribute or sell these plants for remuneration?

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. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. The headnote for section 18-18-418 should be added to section 1 of the proposed initiative and be in bold-face type.
2. It is standard drafting practice to separate the Colorado Revised Statutes section being amended from the action in the amending clause with a comma. For example, "In Colorado Revised Statutes, XX-XX-XXX, **add** subsection (a) as follows:". Would the proponents consider adding a comma after "18-18-418" in the amending clause?
3. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
4. The citation in subsection 18-18-418 (7)(a) of the proposed initiative is incorrect, it should be section 18-18-203 (2)(c).
5. It is standard drafting practice not to include a parenthetical showing the digits when the statute uses a number. Would the proponents consider removing the digits that are used in the references to twenty-one throughout the measure?

6. Would the proponents consider following the standard drafting style of definitions for the definition of "entheogenic plants and fungi", so that the definition reads "entheogenic plants and fungi" means"
7. In subsection 18-18-418 (8), would the proponents consider adding the phrase "of this section" after the reference to subsection 18-18-418 (7) to conform to standard drafting practices?
8. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter 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 the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of the proper names of places or people.

Throughout the measure, several terms are capitalized that are not capitalized pursuant to standard drafting practices, including entheogenic plants and fungi and natural plants and fungi. Would the proponents consider using lower case type for these words?