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MEMORANDUM

TO: Steven Ward and Levi Mendyk
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 28, 2022
SUBJECT: Proposed initiative measure 2021-2022 #66, concerning Sales and Delivery of Alcohol Beverages

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 another initiative addressing the same topic, proposed initiative 2021-2022 #67. The comments and questions raised in this memorandum will not include comments and questions that are addressed in the memorandum for proposed initiative 2021-2022 #67, except as necessary to fully understand the issues raised by proposed initiative 2021-2022 #66. Comments and questions addressed in the other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

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

1. To allow grocery stores and convenience stores in the state, starting March 1, 2023, to obtain a beer and wine off-premises retailer license that permits the stores to sell wine, in addition to beer, for consumption off the licensed premises;
2. To require a beer and wine off-premises retailer licensee to obtain at least 20% of its gross annual sales revenues from the sale of food items for off-premises consumption;
3. To allow stores that hold a valid "fermented malt beverage" retailer's license in effect on March 1, 2023, which license authorizes the store to sell beer for off-premises consumption, to apply to convert the license to a beer and wine off-premises retailer license and thereby expand the licensee's alcohol beverage sales to also include wine;
4. To allow a beer and wine off-premises retailer licensee to conduct tastings of beer and wine on the licensed premises if the local government in which the licensed premises is located has adopted an ordinance or resolution allowing tastings in licensed premises within the jurisdiction and the local licensing authority grants the licensee's application to conduct tastings on its licensed premises;
5. To prohibit a beer and wine off-premises retailer licensee from:
 - a. Selling beer or wine to customers at a price that is below the licensee's cost to purchase the beer or wine;
 - b. Permitting customers to use self-checkout to purchase beer or wine; or
 - c. Commingling its alcohol beverage purchases among multiple locations, if the licensee operates as a single or consolidated corporate entity that holds multiple beer and wine off-premises retailer licenses for multiple licensed premises;
6. To preclude issuance of a beer and wine off-premises retailer license for a licensed premises that is located within 500 feet of a licensed retail liquor store, unless the premises were licensed, as of March 1, 2023, as a fermented malt beverage retailer and the licensee applies to convert that license to a beer and wine off-premises retailer license;

7. To establish state and local licensing fees for a beer and wine off-premises retailer license;
8. To allow a licensed beer and wine off-premises retailer to deliver beer and wine to its customers, either pursuant to a delivery service permit granted to the licensee or through a third-party delivery service that holds a delivery service permit;
9. To specify the requirements for obtaining a delivery service permit and the requirements for providing delivery services;
10. To repeal the requirement that, to deliver alcohol beverages to customers, licensed retail liquor stores, liquor-licensed drugstores, or certain businesses licensed to sell alcohol beverages for consumption on the licensed premises must derive no more than 50% of annual gross sales revenues from sales of alcohol beverages for delivery; and
11. To repeal the requirement that certain businesses licensed to sell alcohol beverages for consumption on the licensed premises accomplish delivery of alcohol beverages using an employee of the licensed business.

Substantive Comments and Questions

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. 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?
3. Section 1 of the measure, entitled "Declaration," states that the purpose of the measure is to allow grocery and convenience stores that are licensed to sell beer to also sell wine, and to allow home delivery of alcohol beverages by licensed retailers through third-party delivery service providers.
 - a. It appears that the measure also would allow grocery and convenience stores, if otherwise permitted by the local jurisdiction, to conduct tastings on their premises. Should this new permitted activity be included in the declaration?

- b. Should the declaration also mention that the intent of the measure is to repeal, in the context of alcohol beverage delivery, the limit on the amount of gross revenues that may be derived from sales of alcohol beverages for delivery?
- 4. With regard to section 2 of the proposed measure, which creates a new beer and wine off-premises retailer license:
 - a. It appears that the intent is to include the new statute adjacent to similar types of establishments licensed to sell alcohol beverages at retail in sealed containers for off-premises consumption, namely, retail liquor stores licensed pursuant to section 44-3-409, C.R.S., and liquor-licensed drugstores licensed pursuant to section 44-3-410, C.R.S. If that is the intent, the proponents might consider changing the location of this new statute to "44-3-410.5" so that it follows the statute regarding liquor-licensed drugstores.
 - b. In subsection (3), what is meant by the terms "non-retailer manufacturer" and "non-retailer wholesaler"? Those terms are not defined in the "Colorado Liquor Code", and their meaning is unclear.
 - c. Subsection (3) appears to prohibit a licensed beer and wine off-premises retailer from having a financial interest in a licensed alcohol beverage manufacturer or wholesaler. However, the provision does not appear to prohibit a licensed beer and wine off-premises retailer from having a financial interest in any alcohol beverage retail establishment, including a retail liquor store, a liquor-licensed drugstore, a hotel or restaurant, a tavern, or any other entity licensed to sell at retail, either for on-premises or off-premises consumption. Is that the intent?
 - d. Subsection (4) appears to allow a business that is currently licensed under the "Colorado Beer Code" as a fermented malt beverage retailer authorized to sell beer for off-premises consumption to apply to convert that license to the new beer and wine off-premises retailer license by applying to the local licensing authority to convert the license. Under the "Colorado Liquor Code", licenses that authorize the retail sale of alcohol beverages are typically issued by both the state and local licensing authorities. This is typical even in cases where the law permits a licensee to convert an existing license. See, e.g., sec. 44-3-410 (1)(b), C.R.S. Is it the intent that the conversion from a fermented malt beverage retailer's license to a beer and wine off-premises retailer license

only requires application to and approval by the local licensing authority?

- e. Subsection (4) appears to establish standards for an application to convert a fermented malt beverage retailer's licenses to a beer and wine off-premises retailer license that differ from standards in current law for other liquor license applications.
 - i. Is the intent to establish a different standard for these applications? If so, the proponents might want to include language indicating that these standards apply "notwithstanding any other provision of this article 3" in order to avoid any possible conflict with requirements specified in C.R.S. sections 44-3-301, 44-3-303, 44-3-305, 44-3-311, 44-3-312, 44-3-313, and other provisions of part 3 of article 3 of title 44.
 - ii. What is meant by "satisfactory nature of the character," and is that different than the standard in sec. 44-3-307 (1)(a), C.R.S., i.e., "good moral character"?
 - iii. What is meant by "satisfactory nature of the record" of the applicant?
 - iv. What is meant by "satisfactory nature of the reputation" of the applicant?
 - v. The provision allows the local licensing authority to "administratively approve" a conversion application. Does the term "administratively approve" mean the local licensing authority may approve the application without conducting a public hearing or otherwise obtaining public input on the license application? If so, consider adding language making an exception to the requirements of section 44-3-312, C.R.S.
 - vi. The provision states that the local licensing authority "may consider the reasonable requirements of the neighborhood and the desires of its adult inhabitants pursuant to section 44-3-301." Section 44-3-301 (2)(a), C.R.S., states that the licensing authorities "shall" consider the reasonable requirements of the neighborhood and the desires of its inhabitants, as well as other reasonable restrictions. That requirement applies "except where this article 3 and article 4 of this title 44 specifically provide otherwise". Is it the intent of the proponents that subsection (4)

"specifically provides otherwise" to allow, rather than require, consideration of the needs of the neighborhood and the desires of its adult inhabitants? And is it also the intent to not allow or require the local licensing authority to consider "other reasonable restrictions"?

- vii. The last sentence in subsection (4) states that "The provisions in section 44-3-301 (12) shall not apply to applications under this subsection (4)." It appears that the intent of this sentence is to make an exception, in cases where an existing fermented malt beverage retailer licensee is applying to convert the license to a beer and wine off-premises retailer license, to the requirements specified in section 44-3-301 (12), C.R.S., for maintaining a specified distance between businesses licensed to sell alcohol beverages in sealed containers for off-premises consumption. However, both section 44-3-301 (12)(a) and (12)(a.5), which impose the distance restrictions, start with the phrase "Notwithstanding any other provision of this article 3 . . ." Without specifically amending that statute to add an exception for license conversions under 44-3-411.5 (4), C.R.S., it is unclear whether an exception would apply. This ambiguity could result in litigation. Would proponents consider amending section 44-3-301 (12), C.R.S., to make the intent clear?
 - f. Subsection (9) appears to authorize the state licensing authority to adopt rules to implement the section. Additionally, the provision authorizes the state licensing authority to make "regulations and special rulings and findings." This language appears to copy language in section 44-3-202 (1)(b), C.R.S., which already grants this authority to the state licensing authority. Subsection (9) appears to be redundant as these powers are already granted in section 44-3-202 (2)(b), C.R.S. If proponents retain subsection (9), consider eliminating "and regulations" as it is redundant with the term "rules," as noted in the definition of "rule" in section 24-4-102 (15), in the "State Administrative Procedure Act," article 4 of title 24, C.R.S.
5. Section 3 of the measure appears to add a new term "beer and wine off-premises retailer" to the defined terms in section 44-3-103, C.R.S. The term is defined, then is followed by further clarifications of how to calculate gross revenues and what the term "food items" means. For ease of reading and clarity

and to separate these distinct concepts, proponents might consider breaking the subsection into paragraphs as follows:

(4.5) (a) "BEER AND WINE OFF-PREMISES RETAILER" MEANS AN ESTABLISHMENT THAT SELLS MALT AND VINOUS LIQUORS FOR OFF-PREMISES CONSUMPTION AND THAT MUST DERIVE AT LEAST 20% OF ITS GROSS ANNUAL REVENUES FROM TOTAL SALES FROM THE SALE OF FOOD ITEMS FOR CONSUMPTION OFF THE PREMISES.

(b) FOR PURPOSES OF CALCULATING GROSS ANNUAL REVENUES FROM TOTAL SALES, REVENUES DERIVED FROM THE SALE OF THE FOLLOWING PRODUCTS ARE EXCLUDED:

- (I)** FUEL PRODUCTS, AS DEFINED IN SECTION 8-20-201 (2);
- (II)** CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS, AS DEFINED IN SECTION 18-13-121 (5); AND
- (III)** LOTTERY PRODUCTS.

(c) AS USED IN THIS SUBSECTION **(4.5)**, "FOOD ITEMS" MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE, OR BEVERAGE, OTHER THAN A BEVERAGE CONTAINING ALCOHOL, THAT IS INTENDED FOR USE OR FOR SALE, IN WHOLE OR IN PART, FOR HUMAN CONSUMPTION.

6. Section 4 of the measure amends section 44-3-301 (10)(b), C.R.S., to add a reference to a beer and wine off-premises retailer licensee with the apparent intent to allow these licensees to conduct tastings on the licensed premises if otherwise permitted in the local jurisdiction. The reference to "beer and wine off-premises retailer" is added to the list of other off-premises retail licensees that are permitted to conduct tastings, i.e., retail liquor stores and liquor-licensed drugstores. Subsection (10) of section 44-3-301, C.R.S., which governs tastings, imposes other requirements on retail liquor stores and liquor-licensed drugstores. For example, subsection (10)(c)(I)(A) requires that these licensees ensure that the person conducting the training has received appropriate server training and is the licensee or an employee of the licensee, or is a representative or employee of the manufacturer promoting the alcohol beverage product offered for tasting. Subsection (10)(c)(XII) states that these licensees bear "the financial and all other responsibility for a tasting conducted on its licensed premises." Subsection (10) includes additional requirements on licensees in order to conduct tastings. By not adding references to a beer and wine off-premises retailer licensees throughout subsection (10), is it the intent that a beer and wine off-premises retailer licensee would not be subject to those requirements?
7. Section 5 of the measure amends section 44-3-301 (12)(a.5), C.R.S., to add a prohibition against a beer and wine off-premises retailer license being issued for

a premises located within 500 feet of a licensed retail liquor store. The section also appears to exempt applications to convert an existing fermented malt beverage off-premises retailer's license to a beer and wine off-premises retailer license from this distance restriction.

- a. The exception to the distance restriction, which is added in a new subsection (12)(a.5)(IV), states "**This** subsection (12)(a.5)(III) does not apply" (**Emphasis added**). Using the term "this" means that the language is within the subsection referenced. However, since the language is NOT within subsection (12)(a.5)(III), but instead is within subsection (12)(a.5)(IV), the use of "this", as well as the reference to subsection (12)(a.5)(III), is confusing and creates an ambiguity as to the true meaning and whether the exception actually applies. A solution to this problem could be to change the terminology to read "Subsection (12)(a.5)(III) of this section does not apply . . ." Alternatively, subsection (12)(a.5)(III) could be relabeled as (12)(a.5)(III)(A), and (12)(a.5)(IV) could be relabeled as (B), a sub-subparagraph within subsection (12)(a.5)(III). This latter approach requires eliminating reference in the amending clause to the addition of a new (12)(a.5)(IV).
- b. Section 44-3-301 (12)(a), C.R.S., prohibits the state or local licensing authority from issuing "a new license under this article 3 authorizing the sale at retail of malt, vinous, or spirituous liquors in sealed containers for consumption off the licensed premises if the premises for which the retail license is sought is located . . ." within specified distances from a another licensed premises licensed to sell malt, vinous, or spirituous liquors at retail for off-premises consumption. Those distances are, at minimum, 1,500 feet, and, in small cities or towns, 3,000 feet. The language in proposed new section 44-3-301 (12)(a.5)(III) appears to directly conflict with section 44-3-301 (12)(a), C.R.S. While the proposed measure includes "notwithstanding any other provision," if the intent is to create an alternative standard, applicable to beer and wine off-premises retailer licenses only, which standard imposes a shorter distance and is limited to proximity to one type of licensed retailer, the intent would be clearer if the "notwithstanding" clause referred specifically to "subsection (12)(a) of this section."
- c. Given that a beer and wine off-premises retailer license authorizes the sale of malt and vinous liquors at retail in sealed containers for off-premises consumption, the provisions of section 44-3-301 (12)(a), C.R.S., as clarified in subsection (12)(b), would preclude issuance of a

new retail liquor store license within the specified distance of a beer and wine off-premises retailer licensed premises. Is that the proponents' intent?

8. Section 8 of the measure proposes to add a new subparagraph (V) to subsection (4)(b) in C.R.S. section 44-3-409 governing retail liquor store licenses. Subsection (4)(a) prohibits a retail liquor store licensee from owning an interest in another business licensed under the "Colorado Liquor Code." Subsection (4)(b) lists limited exceptions to that prohibition. By adding a new subparagraph (V) to subsection (4)(b), it appears that the measure would create an exception, thereby allowing a retail liquor store licensee to own in full or in part a beer and wine off-premises retailer license. Is that the proponents' intent? And could the retail liquor store licensee own multiple beer and wine off-premises retailer licenses, or just one? Would the proponents consider clarifying whether this exception allows ownership of multiple beer and wine off-premises retailer licenses? Section 9 of the measure raises the same questions with regard to liquor-licensed drugstores and interest in other licenses.
9. Section 10 of the measure proposes to create an annual fee in section 44-3-501 (1)(f.5), C.R.S., imposed by the state licensing authority, for a beer and wine off-premises retailer license. Section 44-3-501 (3)(a), C.R.S., also allows the state licensing authority to impose application fees for various types of applications filed with the state licensing authority, including applications for new licenses, to transfer ownership or change the licensee name, or to transfer of ownership, change the location, and merge and convert licenses pursuant to section 44-3-410 (1)(b), C.R.S. Section 44-3-501 (3)(a), C.R.S., does not appear to address applications to convert a license from one type to another. Do the proponents intend that the state licensing authority would be allowed to charge an application fee for an application submitted pursuant to section 44-3-411.5 (4), C.R.S., to convert a fermented malt beverage retailer's license to a beer and wine off-premises retailer license? If so, proponents should consider amending section 44-3-501 (3)(a), C.R.S., to specifically authorize fees for these applications. Section 11 of the measure raises the same issue with regard to application fees imposed by local licensing authorities pursuant to section 44-3-505 (4)(a), C.R.S.
10. Section 12 of the measure amends several provisions in section 44-3-901, C.R.S., which is the section in the "Colorado Liquor Code" that lists unlawful acts, and raises the following questions:
 - a. Did proponents search the entire section for existing references to other persons licensed to sell alcohol beverages in sealed containers for off-

premises consumption? It appears that additional amendments may be needed in section 44-3-901, C.R.S. For example, subsection (6)(p) addresses the age of employees who may sell or deliver specified types of alcohol beverages on certain licensed premises and specified supervision requirements. Did the proponents consider whether this provision needs to be amended to add a reference to a beer and wine off-premises retailer licensee? Should that type of licensee be referenced in subsection (6)(p)(III), which prohibits alcohol beverage delivery from a retail liquor store, liquor-licensed drugstore, or fermented malt beverage retailer by a person who is under 21 years of age?

- b. In the proposed amendment to subsection (1)(g), the current law prohibits retail liquor stores and liquor-licensed drugstores from selling "malt, vinous, or spirituous liquors" in sealed containers unless the business holds the appropriate license, and the measure proposes to add "beer and wine off-premises retailer" to the list. However, since a beer and wine off-premises retailer would not be permitted to sell "spirituous" liquors, adding this license type in this list could cause confusion about whether a beer and wine off-premises retailer licensee could sell spirituous liquors if the retailer holds the license. The proponents might consider the following structure for clarity:

- (1) Except as provided in section 18-13-122, it is unlawful for any person:

- (g) To sell at retail:

- (I) Any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, except as permitted by section 44-3-107 (2) or 44-3-301 (6)(b) or any other provision of this article 3;

- (II) ANY MALT OR VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A BEER AND WINE OFF-PREMISES RETAILER LICENSE; ~~or to sell at retail~~

- (III) Any fermented malt beverages in sealed containers without holding a fermented malt beverage retailer's license under sections 44-4-104 (1)(c) and 44-4-107 (1)(a);

- c. The addition of "beer and wine off-premises retailer" in subsection (1)(i)(III) and (6)(k)II(A), with reference to consumption and tastings of "malt, vinous, or spirituous liquors" and the types of alcohol beverages that a licensee may have on the licensed premises in an open container, respectively, create the same potential confusion as noted above in subsection (1)(g).

11. Section 13 appears to authorize alcohol beverage delivery by an "off-premises retailer" or a third-party "delivery service permittee". This proposed provision raises the following questions:
- a. The term "delivery service permittee" is used throughout the section but is not defined. What does this term mean, and would proponents consider defining it in the measure?
 - b. The term "off-premises retailer" is used in subsection (1) and is described as a retailer that is "licensed pursuant to Title 44, Article 3 or Title 44, Article 4." Neither current law nor the proposed measure defines what an "off-premises retailer" is and what specific licensees are included in that term. Since, for example, a licensed manufacturer of vinous liquors may operate a sales room and sell vinous liquors in sealed containers for off-premises consumption, could a licensed winery be an "off-premises retailer" under this section? If the proponents intend that term to be narrower, would proponent consider defining "off-premises retailer" for purposes of this section and listing the specific license types included in that term?
 - c. Subsection (1) appears to allow delivery of alcohol beverages from "a licensee licensed for on premises consumption pursuant to Title 44, Article 3" and then excludes licensees licensed under C.R.S. sections 44-3-412 (bed and breakfast), 44-3-415 (optional premises), 44-3-418 (club), 44-3-419 (arts), 44-3-420 (racetrack), 44-3-421 (public transportation), or 44-3-428 (lodging and entertainment). Under current law, section 44-3-911 (6)(a)(II), C.R.S., allows these licensees to deliver alcohol beverages in accordance with that section. Is the intent of this measure to prohibit those licensees from delivering alcohol beverages? If so, to avoid confusion, would proponents consider amending section 44-3-911 (6)(a)(II) to strike references to those sections that are specifically excluded from delivery in proposed section 44-3-911.5 (1)?
 - d. Subsection (1) uses the following ambiguous phrase: "The holder of a license listed herein." Since the section does not actually "list" licenses, other than listing licenses that are *excluded* from applicability of the section, it is unclear which licenses this language refers to. If, as suggested above, the specific licenses to which the provisions apply are listed in the section, instead of using the term "herein", the preferred and clearer drafting practice is to refer to the specific subsection in which the licenses are listed, e.g., "listed in this subsection (1)" or in whatever specific subsection that license types are listed.

- e. In subsection (2), reference is made to "residency." However, with regard to business entities, the more appropriate term is "domiciled." Would proponents consider adding "or domicile" after "residency"? Also, since "individual" is referred to, it might be clearer to change this clause to read "regardless of the residency or domicile of the individual, entity, or the owners of the entity".
- f. In subsection (3), the phrase "do all of the following:" could be eliminated so that the introductory phrase reads "In order to receive a delivery service permit, an applicant shall:". To make it clear that all three criteria must be satisfied, the conjunction "and" could be added at the end of paragraph (b), as follows "IDENTIFICATION; AND". (**Emphasis added**) Additionally, the word "Shall" at the start of paragraph (c) is redundant and should be eliminated since "shall" is included in the introductory portion of subsection (3).
- g. Subsection (3)(a) includes a reference to a "retailer". Is this an "off-premises retailer" as referenced in subsection (1)? Or a "licensee licensed for on premises consumption" referenced in subsection (1)? Or both? Would the proponents consider defining the term or otherwise clarifying what it means?
- h. Subsections (3)(a), (3)(b), (4)(i), (5), (8), and (9) refer to the "Division," and subsection (4)(c) refers to the "liquor enforcement division in the department." Subsection (10) refers to the "state licensing authority." The term "division" is not otherwise used in the "Colorado Liquor Code." Rather, the term used and defined in the liquor code, in reference to the state entity responsible for administering liquor laws, is the "state licensing authority." That is the term that should be used when referring to the state entity that administers liquor laws.
- i. Subsection (4)(a) appears to allow off-premises licensees to which section 44-3-911.5, C.R.S., applies to deliver alcohol beverages either through its employees or through an independent contractor. If this section is intended to apply to retail liquor stores, liquor-licensed drugstores, and fermented malt beverage off-premises retailers, allowing them to use third parties for delivery, then the statutes governing delivery by those licensees should be amended to eliminate the requirement, in C.R.S. sections 44-3-409 (3)(a)(II), 44-3-410 (3)(a)(II), and 44-4-107 (6)(a)(II), respectively, that delivery be conducted only by employees and only using a vehicle owned or leased by the licensee.

- j. Subsection (4)(b) appears to allow on-premises licensees to which section 44-3-911.5, C.R.S., applies to deliver alcohol beverages either through its employees or through an independent contractor. If this section is intended to apply to licensees to which section 44-3-911, C.R.S., applies, allowing them to use third parties for delivery, then section 44-4-911 (3)(b), C.R.S., which requires delivery by an employee, should be amended to eliminate that requirement.
 - k. In subsection (4)(b), there is a reference to a certification program required by "subdivision (4) of subsection (B)." This cross reference appears to be incorrect. It appears that the correct reference is to "subsection (3)(b) of this section." Would the proponents correct this reference?
 - l. Subsection (5) refers to renewal fees. As noted above, section 44-3-501, C.R.S., in current law authorizes the state licensing authority to impose specified annual fees as well as application fees. Consider amending that section to allow the state licensing authority to assess fees for delivery service permits under subsections (1) and (3).
 - m. In subsections (6) and (10), the reference to this "Act" should be changed to "this section" in accordance with standard drafting procedure and to make clear what is intended to be referenced.
 - n. Subsection (8) permits enforcement of the section but appears to be limited to unlawful sales to minors. Does this mean this provision would not permit enforcement of the prohibition against delivering alcohol beverages to a person who is intoxicated, who uses altered identification, or who refuses to show identification?
 - o. In subsection (9), what is meant by "a violation of alcohol law"? Consider specifying "this article 3 or article 4 or 5 of this title 44."
 - p. Subsection (9) refers to the "retailer's permit and delivery permit". The section refers to a "delivery service permit," so what is meant by the terms used in subsection (9)?
12. Sections 14, 15, and 18 appear to make conforming amendments to C.R.S. sections 44-3-409 (3)(a)(IV), 44-3-410 (3)(a)(IV), and 44-4-107 (6)(a)(IV) to repeal the limit on the percent of gross revenues from alcohol beverage delivery sales, consistent with the provision in proposed section 44-3-911.5 (7) that states that there shall be no limit on percentage of gross revenues from delivery sales. However, given that proposed new 44-3-911.5 appears to govern delivery of

- alcohol beverages, it creates confusion, particularly with the conflict noted above regarding the requirement in C.R.S. sections 44-3-409 (3)(a)(II), 44-3-410 (3)(a)(II), and 44-4-107 (6)(a)(II) regarding delivery only by employees, to retain the separate delivery provisions in C.R.S. sections 44-3-409 (3), 44-3-410 (3), and 44-4-107 (6). Would proponents consider repealing those separate provisions so that it is clear that the new section 44-3-911.5 governs alcohol beverage delivery?
13. Section 16 also appears to make some conforming amendments to section 44-3-911, C.R.S., to make that section consistent with proposed section 44-3-911.5. However, repealing section 44-3-911 (2)(d), C.R.S., which requires compliance with subsection (3), while not repealing subsection (3), creates confusion. If there are parts of subsection (3) that should be retained and should apply, then consider repealing pertinent portions of subsection (3) and NOT repealing subsection (2)(d).
 14. Since both sections 13 and 14 repeal provisions in the same statutory section, those two sections should be combined.

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 has a headnote that briefly describes the content of the section. When amending a provision in current law, the headnote for the section should be included in the proposed initiative and be in bold-face type. Accordingly, the headnote for the sections of the Colorado Revised Statutes that are proposed to be amended or repealed in sections 3 through 12 and 14 through 18 of the proposed measure should be included in the measure. Additionally, the introductory language in the statute should be included, even if not being amended, to show the context of the provision being amended. For example, in section 3 of the proposed measure, after the amending clause and before the new definition proposed to be added to section 44-3-103, C.R.S., the headnote and introductory language of that statute should be included as follows:

44-3-103. Definitions. As used in this article 3 and article 4 of this title 44, unless the context otherwise requires:

The same comment applies to sections 4 through 12 and 14 through 18 of the measure.

2. In definitions sections in the Colorado Revised Statutes, the defined terms are listed in alphabetical order to aid the reader in more easily locating the defined term. Accordingly, the new defined term "Beer and wine off-premises retailer" should be added in the definitions section, 44-3-103, between the defined terms "Bed and breakfast" and "Brew pub," possibly as a new "(4.5)." Also, the new subsection number should precede the words, e.g., "(4.5) "Beer and wine off-premises retailer" means ..."
3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

XX-X-XXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

Note, also, that the headnote of a section appears in **boldface type**, but not in SMALL CAPITAL LETTERS, and is preceded by the statutory section number, also in **boldface type**.

4. With regard to references to statutory sections, articles, titles, and subsections within sections, standard drafting practices dictate the format for these references as follows:
 - a. When referencing a statutory article or title, the article or title number should be included. For example, in the new proposed section 44-3-411.5 (1), "this article" should be changed to read "this article 3." If the

article being referenced is the article in which the statute is included, the correct reference is to "this article 3" without referencing the title. If the article referenced is not the same article as the one in which the statute is included, the proper format is to refer to the article and the title, e.g., "article 4 of this title 44." Please correct the references to articles throughout the measure consistent with this format.

- b. When referring to a subsection within the same section, the reference to the section number should be eliminated, and instead, the reference should be to "subsection (__) of this section." See, for example, new section 44-3-911.5 (4), in which the reference to "44-3-911.5 (1)" should be changed to "subsection (1) of this section." See also, 44-3-911.5 (3)(a), in which the reference to "subsection (1)" should be changed to "subsection (1) of this section." (**Emphasis added**)
 - c. When referencing "this subsection," the subsection number should be included. See, for example, new proposed section 44-3-911.5 (3)(a), in which the reference to "this subsection" should be changed to "this subsection (3)(a)."
 - d. References to "C.R.S." are not needed.
 - e. The amending clauses in the measure, which are identified as "SECTION [number]", are not included in the codified law so should not be referred to. For example, in proposed new C.R.S. section 44-3-911.5 (1), the reference to "Section 2 of this Act" should be changed to "section 44-3-411.5", if that is the intent of that reference.
5. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "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."
 6. 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 proper names.

7. While initial capitalization is needed as indicated in the above comment, words that are not proper nouns should not be capitalized, e.g., in the term "Beer and Wine Off-Premises Retailer", none of the words should be initial capitalized unless the term appears at the start of the sentence, in which case only the word "Beer" should be initial capitalized. Additionally, the words "state" and "division" are not proper nouns and should not be initial capitalized.
8. In the amending clause for section 5 of the measure, the reference to the C.R.S. section number should appear before the word "**add**," the section number should only appear once, and the reference to subsection "(12)" should be included before each new subparagraph that is being added, e.g., "In Colorado Revised Statutes, 44-3-301, **add** (12)(a.5)(III) and (12)(a.5)(IV) as follows:". Note that if this structure is changed, based on substantive comment no. 7, above, this amending clause may need further changes.
9. Section 6 of the measure purports to add a new subsection (1)(o) to section 44-3-309, C.R.S., but the new provision is labeled as "(n)." Current law includes a subsection (1)(n), so the new provision should be relettered as "(o)."
10. A provision of current law that ends in a period does not need to be amended to change the punctuation to a semicolon. Through the publications process, this punctuation will be corrected.
11. Standard drafting practice is to spell out numbers, other than statutory references, in the Colorado Revised Statutes, and to use words instead of symbols. For example, in section 3 of the measure, "20%" should be changed to "twenty percent".
12. When the same section of statute is being amended, subsections within that same C.R.S. section can be amended in a single section of the measure. For example, since sections 4 and 5 of the measure amend provisions within C.R.S. section 44-3-301, those sections could be combined, with an amending clause that reads "In Colorado Revised Statutes, 44-3-301, **amend** (10)(b); and **add** (12)(a.5)(III) and (12)(a.5)(IV) as follows:"
13. Standard drafting practice is to use the Oxford comma in a series of items to avoid ambiguity, e.g., apples, berries, and cherries". The measure adds reference to a "beer and wine off-premises retailer" or "beer and wine off-premises retailer license" to a series of two or three items but does not always include the Oxford comma before the conjunction. The measure should include the Oxford comma whenever the new terms are added to a series that results in listing three or more items.

14. If language in current law is being repealed, the language must appear in stricken type so that it is clear what language is intended to be removed from the law. For example, in section 4 of the measure, which amends sec. 44-3-301 (10)(b), C.R.S., the word "or" that appears in current law between "retail liquor store" and "liquor-licensed drugstore" has been removed and replaced with a comma. The word "or" should appear in the measure as "or" so that the intent to strike the word is clear. When repealing a provision, as in proposed sections 14, 15, and 16 of the measure, please do not strike the number, letter, or Roman numeral preceding the text.
15. When adding a reference to a C.R.S. section in a list of sections in current law, standard drafting practice is to show that new section being added to the list in ***bold italics***. See, for example, section 12 of the measure, which adds "44-3-411.5" to the list of sections in 44-3-901 (11)(c).