

# 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

February 4, 2014

**TO:** Mike Callicrate and Angela Smith

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #65 concerning Protection of and Prevention of Cruelty to Livestock Animals

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 #64 to 67. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2013-2014 #59 to 62, which were substantially similar, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

## Purpose

The major purpose of the proposed amendment to the **Colorado constitution** appears to be to constitutionally prohibit people accused of violating laws relating to the protection of animals from asserting an affirmative defense that the animal was treated in accordance with accepted animal husbandry practices.

## 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, before the amending clause, each section, part, etc. being amended or added with a section number (i.e., **SECTION 1.**, **SECTION 2.**), like chapters in a book. See comment 2 for an example.
2. The standard format for amending clauses changed in 2011. The proponents have used the old format. The correct current format for an amending clause that adds a new section to the constitution of the state of Colorado is:

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

3. It is standard drafting practice for a section headnote and any sub-headnotes to appear in lower-case, bold-faced type. A headnote should not be shown in small capitals. See comment 5 for an example.
4. It is standard drafting practice to capitalize the first letter of the first word of the headnote. The headnote should end with a period. See comment 5 for an example.
5. It is standard drafting practice for a section's first subsection to immediately follow the headnote on the same line (instead of the first subsection appearing on a separate line from the headnote) Likewise, when a subsection number is followed only by a headnote, the first paragraph should immediately follow the headnote. For example:

**Section 17. Protection of and prevention of cruelty to animals. (1) Use of accepted animal husbandry practice is not an**

**affirmative defense.** NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY . . .

(2) **Severability and applicability.** (a) IF ANY PROVISION OF THIS SECTION IS FOUND BY A COURT . . .

(b) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO . . .

6. It is standard drafting practice to use present tense rather than future tense. For example, subsection (3) would read:

(3) **Effective date.** All provision of this section are effective upon official declaration . . .

7. It is unnecessary to capitalize words such as “article,” “constitution,” and “state” in subsection (3) of the proposed initiative.

## **Substantive Comments and Questions**

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

1. You might consider defining the terms "accepted animal husbandry practices," "companion animal," and "livestock animal." "Accepted animal husbandry practices" is not currently defined in statute, but you can find examples of somewhat similar terms. A statutory definition of "companion animal" exists in section 35-42-103 (5), Colorado Revised Statutes, and means "domestic dogs, domestic cats, small pet birds, and other nonlivestock species." A definition of "livestock" exists in section 35-43-201 (3), Colorado Revised Statutes, and means "all cattle, calves, horses, mules, and donkeys." Broad definitions of "livestock" exist in titles 18 and 35, Colorado Revised Statutes.
2. Looking at the animal cruelty statutes in part 2 of article 9 of title 18, Colorado Revised Statutes, treating an animal in accordance with "accepted animal husbandry practices" is not an affirmative defense to the offenses listed therein, e.g., cruelty to animals, animal fighting, or tampering or drugging livestock. Rather, it operates as a negation to the elements of the offenses wherein section 18-9-201.5 provides that "[n]othing in this part 2 shall affect accepted animal husbandry practices ...."<sup>1</sup> As such, prohibiting

---

<sup>1</sup> An affirmative defense is an admission to having committed each element of an offense, but falling within a codified exception, e.g., acting in self-defense. A negation to the elements of an offense requires a

the use of accepted animal husbandry practices from being used as an affirmative defense would not affect the way that the term is currently being used to negate criminal culpability.

3. Determining what constitutes an "accepted" animal husbandry practice versus an "unaccepted" one will be difficult based on changing practices, new technology, and the dynamic views society has on certain animal husbandry practices. For example, cattle tail docking is increasingly disfavored, and even the National Milk Producers Federation and the American Association of Bovine Practitioners, which are major associations of the dairy and cattle industries, now disapprove of tail docking. How would this constitutional provision guide legislators and the courts in making the determination?
4. Paragraph (b) of subsection (2), which essentially states that the constitutional provision does not preempt other state and local laws protecting animal welfare, is unnecessary because, as a constitutional provision, it will automatically preempt any inconsistent law except a federal statute, regulation, or constitutional provision. Therefore, it could safely be deleted.
5. If you decide to keep the language in paragraph (b) of subsection (2), you may want to consider making it a separate subsection and placing it before the severability and effective date subsections because it contains more substantive, operative language.
6. You might want to consider using the standard language we use for a severability clause, which is:

**Severability.** If any provision of [this act] or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of [the act] that can be given effect without the invalid provision or application, and to this end the provisions of [this act] are declared to be severable.

7. In paragraph (b) of subsection (2), you use "may not" in the second sentence. You might want to consider changing the language to "shall not" because "may not" implies something that is impossible instead of something that is prohibited.

---

determination that at least one element of the offense cannot be met, e.g., intoxication negates the mental state element required to commit specific intent crimes like first-degree assault.

