

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 7, 2014

TO: George Brown and Juliet Piccone

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #68, concerning Restrictions on Pet Animal Euthanasia

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.

An earlier version of this proposed initiative, proposed initiative 2013-2014 #56, was the subject of a memorandum dated January 10, 2014. Proposed initiative 2013-2014 #56 was discussed at a public meeting on January 14, 2014. The comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and 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 prohibit the euthanasia of pet animals except in cases in which a pet animal is experiencing extreme pain and suffering, has a contagious terminal disease, or is deemed irredeemably hostile or aggressive; and
2. To make Colorado the first “no kill” state in the union.

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. The title board will set the ballot title for the proposed initiative. The language included under the heading Ballot Title appears to be in the nature of a declaration or intent statement. If the proponents wish to retain this language, it could be included in the proposed declaration in section 35-80-106.3. Otherwise, it should be deleted from the proposed initiative.
2. Although the new text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The first letter of the first word of each sentence should be large capitalized.
3. It is standard drafting practice to capitalize only proper nouns such as Colorado. Other words should not be capitalized. For example, when referring to the state of Colorado, it is not necessary to capitalize the “s” in “state.”
4. References to “this statute” should be “this section” or a more specific reference to a section subdivision.
5. When striking a word that immediately precedes punctuation, the punctuation should be stricken unless new language is being inserted before the punctuation. For example:

~~(1)~~ (2) Any pet animal held by or in the custody of a
licensed animal shelter, whether public or private, OR HELD

BY A PET ANIMAL RESCUE and not reclaimed by the owner shall be held by the animal shelter OR PET ANIMAL RESCUE for a minimum of five days after acquisition by the animal shelter before it may become available for adoption or otherwise disposed of ~~at the discretion of the animal shelter~~ IN ACCORDANCE WITH THIS STATUTE, except that..."

6. Numbers should be spelled out. For example, in the proposed subsection (3) of section 35-80-106.3: "THE AMOUNT OF FIFTEEN PERCENT OF..."
7. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph. For example:

(4) AFTER THE EXPIRATION OF THE HOLDING PERIODS SET FORTH IN SUBSECTION (2) OF THIS SECTION, OR ... ANIMAL THAT:

(a) OCCURRED PRIOR TO THE TIME THE ORGANIZATION ASSUMED POSSESSION OF THE ANIMAL; OR

(b) IS DUE TO THE ACTS OR OMISSIONS OF A PERSON ... THE ORGANIZATION.

8. It is standard drafting practice to use the word "that" instead of "which" when indicating a restrictive clause, meaning the word, clause, or phrase following the word "that" is necessary to the meaning of the sentence and is not simply additional or descriptive information. For example, in proposed section 35-80-106.3 (4), on the third and sixth lines, the word "which" should be changed to "that".
9. It is standard drafting practice to avoid using provisos such as "provided that" because the meaning is unclear. In proposed section 25-80-106.3 (4), on the fifteenth line, the meaning of the words "provided that" would be clearer if either "if" or "except that" were used.
10. Paragraph letters should not be in small capital letters. For example:

(5) The animal shelter shall ... METHOD OF DISPOSITION WHEN:

(a) In the WRITTEN opinion ... PART OF AN INFECTION CONTROL PROTOCOL; OR

(b) IF A PET ANIMAL, AFTER BEING EVALUATED ... OR PHYSICAL CHARACTERISTICS.

11. When citing a date, there should be a comma after the year. For example, in proposed subsection (8) of section 35-80-106.3:

(8) THE SAVING SHELTER PETS FEE SHALL ... ON JANUARY 1, 2015,
AND MONEYS SHALL ...

12. It is standard drafting practice to be consistent in the spelling of a word when there is more than one acceptable spelling. In proposed subsection (8) of section 35-80-106.3, the spelling "MONIES" is used. In current law in section 35-80-116 (1) the word is spelled "moneys" and in proposed paragraphs (a) and (b) of subsection (6) in section 35-80-116.5, the spelling "MONEYS" is used. The accepted spelling in the Colorado Revised Statutes is "moneys."

13. In an amending clause, it is not necessary to repeat the words "repeal," "amend," or "add," even if multiple subsections are being repealed, amended, or added. For example:

SECTION 2. In Colorado Revised Statutes, 35-80-113, **amend** (1) and (3); and **add** (4) as follows:

14. It is standard drafting practice to set off parenthetical phrases with commas. As such, there should be a comma after "(5)" in the first sentence of subsection (1) of section 35-80-113.

15. Headnotes should be in regular, bold-faced type and only the first letter of the first word should be capitalized. It is also standard drafting practice to end each headnote with a period. For example:

(4) **Private right of action.** (a) IN ADDITION TO
ENFORCEMENT ...

16. When a provision is an introductory portion, it is standard drafting practice to end subsequent provisions with a semicolon. For example:

(4) **Private right of action.** (a) IN ADDITION TO
ENFORCEMENT ... JURISDICTION REQUESTING:
(I) **A RESTRAINING ORDER;**
(II) **A PRELIMINARY INJUNCTION;**

17. It is standard drafting practice to use the singular rather than the plural. See the example in comment 16.

18. It is standard drafting practice to insert two spaces after the number or letter of a provision, rather than a tab. For example:

(1) All fees and civil fines collected pursuant to this article WITH THE EXCEPTION ...

19. When citing a statutory section within the Colorado Revised Statutes, the word "section" should precede the number.
20. It is not necessary to use the word "section" in an amending clause, and all provisions should be accurately cited. For example:

SECTION 4. In Colorado Revised Statutes, 35-80-116.5, **amend** (2) (a) (VII), (6), and (7); and **add** (8) and (9) as follows:

21. It is not necessary to use an ellipsis after "and" in section 35-80-116.5 (2) (a) (VII).
22. In proposed subsection (6) of section 35-80-116.5, there should be a comma after the word "gifts."
23. It is standard drafting practice to spell out the word "and" rather than using an ampersand.
24. In the proposed subsection (6) (c) (X) of section 35-80-116.5, the word "reunited" should not be hyphenated.
25. One font size should be used consistently throughout the initiative.

Substantive Comments and Questions

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

1. "Animal shelter" and "pet animal rescue" are defined terms in section 35-80-102, Colorado Revised Statutes. Therefore, those terms should be used throughout, instead of using just "shelter" or "animal rescue".

Section 35-80-106.3

2. There are two sentences in subsection (2) of section 35-80-106.3, Colorado Revised Statutes, that include the phrase "may be PLACED FOR ADOPTION IMMEDIATELY or disposed of IN ACCORDANCE WITH THIS STATUTE." In both sentences, you might consider moving the word "immediately" before

"placed" so "immediately" will modify both "placed for adoption" and "disposed of in accordance with this statute". As written, "immediately" appears to apply only to "placed for adoption."

3. In subsections (3) and (4), it states that "after the expiration of the holding periods set forth in [sub]section (2)." You might consider changing the language to "after the expiration of the relevant holding period set forth in subsection (2)," because subsection (2) has both a five-day holding period and a three-day holding period.
4. In subsection (3), you state that an animal shelter or pet animal rescue may keep the fees collected for pet animal adoptions or transfers; however, you go on to state that fifteen percent of the sale price of a pet animal will be paid into the newly-created saving shelter pets account of the pet overpopulation fund. As stated, these two sentences seem to conflict with one another. You might consider adding language to the effect that the animal shelter or pet animal rescue may keep the fees collected "except that fifteen percent of the sale price for an adoption shall be transmitted to the state treasurer and deposited into the saving shelter pets account of the pet overpopulation fund."
5. In subsection (3), do you also want fifteen percent of transfer fees collected by the animal shelter or pet animal rescue to go to the saving shelter pets account?
6. In subsection (3), you might consider stating that the saving shelter pets account and the pet overpopulation fund are both created in section 35-80-116.5, Colorado Revised Statutes.
7. In subsection (3), you should add the phrase "commencing on January 1, 2015," before the phrase "the state shall collect a saving shelter pets fee ..." to indicate the specific effective date of this provision.
8. If all parts of subsection (3) other than the provision establishing the saving shelter pets fees are to take effect on July 1, 2015, then the provision establishing the saving shelter pets fees should be placed in a separate subsection or paragraph because it has a different effective date, as provided in subsection (8).
9. For the organizations requesting notification of animals scheduled to be transferred in subsection (4), does each animal shelter and pet animal rescue maintain its own notification list? Should there be a single

- notification list for each region of the state and, if so, who should maintain the notification list?
10. In subsection (4), you state that an animal shelter or pet animal rescue without resources to care for a pet animal may notify any other animal rescue or adoption organization that has asked to be notified. Then you state "Upon request to take possession of the pet animal," It is unclear who is making the request to take possession, the facility that notified the other facilities or one of the facilities notified. Could you clarify who is making the request?
 11. In subsection (4), since "PACFA" is not a defined term, instead of referencing a "PACFA" license, you might consider referencing a "pet animal facility license, as required under section 35-80-104, Colorado Revised Statutes."
 12. In subsection (4), when a pet animal is being transferred from one animal shelter or pet animal rescue to another animal shelter or pet animal rescue, which facility is responsible for the transportation of the pet animal? Which facility pays for the transportation?
 13. In subsection (4), you state that the original animal shelter or pet animal rescue "shall not refuse to transfer any such pet animal to a shelter or pet animal rescue that requests to take possession of the animal." Aren't there circumstances in which it would be acceptable for the original animal shelter or pet animal rescue to refuse to transfer the pet animal, e.g., the requesting animal shelter is located too far away or another animal shelter already requested transfer of the pet animal?
 14. In subsection (4), do you intend that adoption organizations and organizations formed for the prevention of cruelty to animals may request to take possession of a pet animal? If so, you should add them to the sentence stating that "any shelter or pet animal rescue ... that requests to take possession of the animal."
 15. In subsection (4), you state that the requesting organization is not responsible for harm caused by or to the animal that occurred before the requesting organization took possession of the animal. What about when the animal is in transit? Who is responsible for acts by or to the animal at that time?

16. In subsection (4), you state that the requesting organization is not responsible for harm caused by or to the animal that is due to acts or omissions of a person not associated with the organization. You might want to clarify what "associated with" means. Would it cover a volunteer? A contractor? A veterinarian whose services the organization uses?
17. In paragraph (a) of subsection (5), with respect to the contagious terminal disease exception to the prohibition against euthanasia, you might consider adding other scenarios that could warrant euthanasia, for example, (a) the spread of nonterminal contagious diseases that would cause extreme pain or suffering; or (b) contagious terminal diseases that *may* be spread to healthy animals if not contained, but not necessarily "will be spread" to them.
18. Paragraph (b) of subsection (5) requires that a pet animal be evaluated by an independent certified animal behaviorist to determine if the pet animal is irredeemably hostile or aggressive. Is it overly burdensome for rural areas of Colorado to have an independent certified animal behaviorist on hand to make the determination? Could a veterinarian make the determination?
19. In paragraph (c) of subsection (5), you state that "in circumstances where the stray pet animal is deemed irredeemably hostile or aggressive, the pet animal may be disposed of through euthanasia within 3 days." Does this mean that a facility has to wait 3 days to euthanize a pet animal that is irredeemably hostile or aggressive? Couldn't the delay create a dangerous situation for staff and other pet animals?
20. In subsection (6), it states that an "animal shelter and any employee thereof ... that disposes of a pet animal in accordance with the provisions of subsection (2) of this section ... shall be immune from liability in a civil action" You might consider striking "the provisions of subsection (2)" in that sentence because the provisions concerning disposing of pet animals are now in subsections (2) through (5).
21. In conjunction with substantive comment number 8 in this memo, for subsection (8), you might consider stating "EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, THIS MEASURE TAKES EFFECT ON JULY 1, 2015" instead of the language therein.
22. In subsection (8), you might consider stating that "the moneys shall be deposited into the saving shelter pets account ..." instead of "the moneys shall accrue in"

Section 35-80-113

23. In subsection (1) of section 35-80-113, Colorado Revised Statutes, you do not need to say "not less than one thousand dollars per violation, nor in excess of one thousand dollars per violation." You can just say "one thousand dollars."
24. In subsection (1), do you want each pet animal euthanized in violation of section 35-80-106.3 (5) to constitute a single violation? If so, you might want to clarify that.
25. In subsection (3), do you intend that the commissioner could both bring a lawsuit and refuse to renew a license? If so, you should use the conjunctive "and" instead of the disjunctive "or" in that sentence.
26. In subsection (4), you can state "any person" instead of "any individual or entity" because "person" is defined for all Colorado statutes as "any individual, corporation ... or other legal entity" in section 2-4-401, Colorado Revised Statutes.
27. In subparagraph (VI) of paragraph (a) of subsection (4), you mention "other appropriate remedies at law." You might consider adding "or in equity" because remedies such as injunctions and declaratory relief are remedies in equity, not remedies at law.
28. In paragraph (b) of subsection (4), do you want the prevailing plaintiff to be entitled to any damages assessed? If not, it might not be economically feasible for a person to file a civil suit because they would only be entitled to recoup the costs and attorney fees they've already paid in bringing the suit.
29. In paragraph (b) of subsection (4), you might consider clarifying that the civil penalty is only assessed against a defendant that does not prevail in the civil action.

Section 35-80-116

30. In subsection (1) of section 35-80-116, Colorado Revised Statutes, you might consider stating "COMMENCING ON JULY 1, 2015," after "WITH THE EXCEPTION".
31. In subsections (2) and (6), you might want to specify all "SAVING SHELTER PET FEES PROVIDED FOR IN SECTION 35-80-106.3 (3)" because section 35-

80-106.3 references both those fees and adoption or transfer fees in general, which remain with the animal shelter or pet animal rescue.

32. In conjunction with substantive comment number 31 of this memo, you might consider instead stating " EXCEPT AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, THIS MEASURE TAKES EFFECT ON JANUARY 1, 2015," in subsection (3).
33. In paragraph (a) of subsection (6), you state "saving shelter pets account of the saving shelter pets account." You should delete one of the references to the account.
34. With respect to the grant program established in paragraph (c) of subsection (6), do you want to establish eligibility criteria, application procedures, minimum and maximum grant amounts, and other guidance on how the grant program will be implemented?
35. For paragraph (d) of subsection (6), how will the authority determine if an area has an insufficient number of veterinary resources? Do you want to require that the grant applicant demonstrate that fact to the authority in the application?
36. You should consider adding a nonstatutory effective date provision that states:

Effective date. This measure takes effect on July 1, 2015; except that sections 35-80-106.3 (3), 35-80-116 (2), and 35-80-116.5, Colorado Revised Statutes, as amended, take effect on January 1, 2015."