

# STATE OF COLORADO

## Colorado General Assembly

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### 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 #66, concerning Cattle Tail Docking

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 Revised Statutes** appears to be to prohibit the routine docking of cattle tails except when therapeutic docking of a tail is medically necessary.

## 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 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 Colorado Revised Statutes is:

**SECTION 1.** In Colorado Revised Statutes, **add** 18-9-210 as follows:

2. It is standard drafting practice for the section headnote and any headnotes following subsection numbers to appear in lower case, bold-faced type. The headnotes, even though they are new language, should not be shown in small capitals. See the example in comment 4.
3. 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 the example in comment 4.
4. It is standard drafting practice for the format of a statutory section to appear as follows:

**18-9-210. Cattle tail docking. (1) Definitions.** As used in this section:

- (a) “Cattle” means any living bovine.
- (b) “Dock” means . . .

**(2) Prohibitions – exceptions – penalty.** (a) Notwithstanding any provision of . . .

(3) **Severability and applicability.** (a) If any provision . . .

5. The word “cattle” is a plural noun, but statutory language often requires the use of singular nouns. Perhaps the word “bovine” would be a better word choice because it is a singular noun.
6. It is standard drafting practice to use the same terms throughout a provision so as not to confuse the reader or unintentionally imply a different meaning. The proponents are using the word “cattle” and have defined the term to mean a bovine, so, for consistency, the word “animal’s” should not be used to refer cattle in paragraph (b) of subsection (1) of section 18-9-210 of the proposed initiative (“an animal’s” can include any animal, not just cattle).
7. When a citation references a subsection, paragraph, subparagraph, or sub-subparagraph, it is standard drafting practice to use the standard designations for the provisions. For example “subsection (1),” “paragraph (a),” “subparagraph (I),” or “sub-subparagraph (A).” The provision referenced in proposed paragraph (b) of subsection (2) should be “paragraph (a)” rather than “part (a).”
8. When citing a provision in the same section as the reference, it is standard drafting practice to start the citation with the most specific provision followed by the next most specific provision up to the provision it has in common with the citation’s location. For example, because both the citation and the reference are in subsection (2), the citation in proposed paragraph (b) of subsection (2) would read:

“NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION  
(2),”

9. It is standard drafting practice to show a paragraph letter in lowercase type without the small caps code, even when it is in new text. See the example in comment 8 above.
10. Although the text of the proposed initiative should be in small capital letters, a large capital letter should be used 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.

It is unnecessary to capitalize regular nouns such as “animal” in subparagraph (III) of paragraph (b) of subsection (2) and “article,” “constitution,” and “state” in subsection (4) of the proposed initiative.

11. It is standard drafting practice to end sentences with a period. Paragraph (c) of subsection (2) should end with a period.
12. It is preferred to use the singular form whenever possible. Therefore, in paragraph (d) of subsection (2), it is preferable to refer to “an alleged violation” rather than “alleged violations.”
13. Two unnumbered paragraphs appear in subsection (3) of the proposed initiative. If the proponents intend to have two paragraphs, it is standard drafting practice to use paragraph letters. For example, immediately following the headnote, insert “(a),” and before the second paragraph, insert a left tab and “(b).”
14. It is standard drafting practice to refer to a section as “this section,” regardless of the method of enactment. In subsections (3) and (4), rather than referring to “this initiated statute” or “the initiated statute,” use “this section.”

### **Substantive Comments and Questions**

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

1. How will a person be able to demonstrate that a bovine’s tail was docked either (a) before the effective date of the initiated measure or (b) for a therapeutic purpose by a licensed veterinarian?
2. Does each bovine with a docked tail constitute a discrete offense?
3. You might consider adding an exigent circumstances exception in subsection (2) wherein a bovine’s tail is docked for therapeutic purposes, but due to an emergency situation, there was not time to consult a licensed veterinarian.
4. Because criminal statutes must be prospective in nature so as to avoid violating the *ex post facto* clauses of section 9 of article I of the United States Constitution and section 11 of article II of the Colorado Constitution, you might consider adding an applicability clause that states:

This act applies to offenses committed on or after the effective date of this initiated measure.