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MEMORANDUM

March 19, 2014

TO: Mike Callicrate and Angela Smith

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measures 2013-2014 #99 and #100, concerning the Care of 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 initiatives.

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.

These initiatives were submitted with a series of initiatives including proposed initiatives 2013-2014 #97, 98, 101, and 102. 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 #64 to 67, and 2013-2014 #97, 98, 101, and 102 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.

Purposes

The major purpose of the proposed amendments to the Colorado Revised Statutes and the Colorado constitution appears to be to repeal the exemption of accepted animal husbandry practices used in the care of companion and livestock animals from the animal cruelty statutes.

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. After the headnote for section 18-9-210, Colorado Revised Statutes, “(1)” should not be in bold-faced type.
2. Headnotes should have spaces on both sides of the dash. The headnote for proposed section 18-9-210 (2) should be in the format below:

“(2) **Prohibitions - exceptions - penalty.** (a)
NOTWITHSTANDING ANY...”

3. The word "shall" should be used to indicate that a person has a duty; it should not be used as a future tense verb. See section 2-4-401 (6.5) and (13.7), Colorado Revised Statutes, which define "must" and "shall." With this definition of "shall", one should avoid using the phrase "no person shall" in a sentence written in active voice. For example, "No person shall act..." means, literally, "no person has a duty to act..." This would allow everyone to do the act specified because "no person" has a duty, implying that the action is discretionary or not prohibited. For example, the proponents may want to consider amending proposed section 18-9-210 (2) to read: “NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, **A PERSON SHALL NOT DOCK** THE TAIL....”
4. The comma after “bovine” in proposed section 18-9-210 (2) (a) is not necessary and should be removed.

Substantive Comments and Questions

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

Questions pertaining to both proposed initiatives 99 and 100:

1. You need not define "person" in section 18-9-210, Colorado Revised Statutes, because "person" is defined for all statutes in section 2-4-401 (8), Colorado Revised Statutes, as "any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity."

2. For paragraph (e) of subsection (2) of proposed initiative 99 and paragraph (c) of subsection (3) of proposed initiative 100, you state that "[i]t is not a negation to the elements of the offenses listed in part 2 of article 9 of title 18, C.R.S., that the animal was treated in accordance with an accepted animal husbandry practice." By referring to the offenses listed in part 2 of article 9 of title 18, Colorado Revised Statutes, do you intend:
 - (a) That the offense of tail docking will be placed among the offenses listed in part 2 of article 9 of title 18, Colorado Revised Statutes?

 - (b) That the offense of tail docking could constitute either or both of the existing offenses of cruelty to animals, as set forth in section 18-9-202, Colorado Revised Statutes, or tampering with livestock, as set forth in section 18-9-207, Colorado Revised Statutes? If so, you might consider expressly stating that the offense of tail docking could constitute one or both of these existing offenses.