

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

January 10, 2014

**TO:** George Brown and Juliet Piccone

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

**SUBJECT:** Proposed initiative measure 2013-2014 #56, 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.

### 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; and

2. To reduce the homeless animal population through humane efforts rather than killing.

## 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. Enacting clause. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted through the initiative process: "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. The sentence that begins "Proposed amendments to the..." is not necessary and should be removed.
3. Organization of proposed initiative. It is standard drafting practice to number, before the amending clause, each section, part, etc. that is being amended or added with a section number (i.e., **SECTION 1.**, **SECTION 2.**) See comment 24 for an example.
4. Amending clause. Each statutory section being amended, repealed, or added should be preceded by an amending clause explaining how the law is being changed. Please see comment 24 for an example.
5. Section number and headnote. Each statutory section is designated with a number, followed by a descriptive headnote in bold-face type. The amending clause and headnote should not be combined in a single sentence. See comment 24 for an example of how the section number and headnote should appear.

### Section format.

6. It is standard drafting practice for the first subsection to immediately follow the headnote instead of the first subsection appearing separately from the headnote. See comment 24 for an example.
7. All provisions in a section should have a designation. Statutory provisions are usually divided into component parts using the following

structure: Subsection, or, for example, "(1)", followed by paragraphs, or, for example, "(a)" followed by subparagraphs, or, for example, "(I)", ending with sub-subparagraphs, or, for example, "(A)".

8. The unnumbered paragraph at the beginning of section 35-80-106.3, Colorado Revised Statutes, should be numbered as (1). You may wish to include a secondary headnote for the new subsection (1) such as “**Declaration.**” or something similar to indicate that the paragraph contains an expression of the reasons for the change to the statute; however, such a headnote is not required.
9. Because a new subsection (1) is being added to section 35-80-106.3, Colorado Revised Statutes, the existing subsections will need to be renumbered. The existing subsection number should be shown in stricken type, followed by the new subsection number. For example, “~~(1)~~ (2) Any pet animal...”

#### Definitions.

10. The words being added in the definitions subsection are already defined in section 35-80-102, Colorado Revised Statutes, and apply to the entire article 80. As such, it is not necessary to define them again in section 35-80-106.3, Colorado Revised Statutes.
11. To change the current definitions, an amendment to section 35-80-102, Colorado Revised Statutes, should be added in a separate section of the proposed initiative.

#### Showing changes to current law.

12. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to the Colorado Revised Statutes.
13. Only text that is already in the statutes should be stricken. For example, in section 35-80-106.3 (2), Colorado Revised Statutes, the phrase “at the discretion of by the animal shelter” is stricken, though the word “by” does not appear in the original language of the section.
14. All text that you wish to remove must be shown in stricken type and all new text must be shown in small caps. For example, “EUTHANASIA OF A pet animal IS ONLY...” should read: “EUTHANASIA OF A pet ~~animals which~~ ANIMAL IS ONLY...”

15. Stricken text should precede new text when such changes appear together. Additionally, the space that follows or precedes a stricken word or phrase should not be stricken. For example, “(2) ...otherwise disposed of ~~at the discretion of the animal shelter~~ IN ACCORDANCE WITH THIS SECTION; except that...”
16. Internal references. The references to “subsection (1) of this section” in section 35-80-106.3 (3) and (4), Colorado Revised Statutes, will need to be changed to reflect the renumbering of the subsections in section 35-80-106.3, Colorado Revised Statutes. For example, “(3) ...set forth in subsection ~~(1)~~ (2) of this section...”
17. It is not necessary to show subsections that are not being amended. Section 35-80-113 (2) and (3), Colorado Revised Statutes, should not be included unless the proponents wish to amend or repeal these subsections.

Format of citations.

18. The citations in section 35-80-113 (1) and (4) need not include “C.R.S.” or “CRS” because the cited sections are contained within the same title as the section containing the citation. When C.R.S. is necessary, it should follow the section number rather than precede it.
19. It is standard drafting practice to spell out the word “section” rather than use “§”. For example, “(1) ...IN SECTION 35-80-106.3 (2) IN WHICH...”
20. The citation for the “euthanasia exception” in section 35-80-113 (1), Colorado Revised Statutes, is incorrect and should read: “(1) ...THE EUTHANASIA EXCEPTION CONTAINED IN SECTION 35-80-106.3 (2) IN WHICH...”

Grammar and punctuation.

21. It is not necessary to use quotation marks around the word “disposition” on line 21 of section 35-80-106.3 (2), Colorado Revised Statutes.
22. On lines 8 and 9 of the proposed section 35-80-113 (4), the words “... INCLUDING AN ACTION FOR DAMAGES AND/OR AND OTHER” appear. Per standard drafting practice, the phrase “and/or” should not be used and should be deleted. The second “AND” can remain or be changed to “OR”.
23. The proponents may want to consider breaking up the text of the proposed section 35-80-113 (4) as follows for ease of reading:

(4) (a) IN ADDITION TO THE...AND INJUNCTIVE RELIEF INCLUDING, BUT NOT LIMITED TO:  
(I) RESTRAINING ORDERS;  
(II) PRELIMINARY INJUNCTIONS;  
(III) INJUNCTIONS;  
(IV) WRITS OF MANDAMUS AND PROHIBITION, INCLUDING AN ACTION FOR DAMAGES; OR  
(V) OTHER APPROPRIATE REMEDIES AT LAW WHICH WILL COMPEL COMPLIANCE WITH THE EUTHANASIA EXCEPTION OR IMPOSE A CIVIL PENALTY FOR VIOLATION OF THE EUTHANASIA EXCEPTION.  
(b) THE PREVAILING PARTY...THE ACTION.

#### 24. Formatting samples.

**SECTION 1.** In Colorado Revised Statutes, **amend** 35-80-106.3 as follows:

**35-80-106.3. Animal holding periods - disposition of unclaimed animals - immunity from actions over disposition of a pet animal.**  
(1) IT IS HEREBY RECOGNIZED...

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

### **Substantive Comments and Questions**

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

1. 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?
2. If euthanasia is no longer available as a way to address overcrowding in animal shelters, how will animal shelters deal with overcrowding?
3. If euthanasia is no longer available as a way to address dangerous pet animals in animal shelters, how will animal shelters deal with dangerous pet animals?
4. If euthanasia is no longer available to address the issue of long-term care for unadopted animals, how will animal shelters fund the lifetime care of

- those animals? Will the General Assembly be required to appropriate money to private shelters to address that need?
5. Do you intend for section 35-80-106.3 (2), Colorado Revised Statutes, to apply to pet animals being held by pet animal rescues? If so, you should add a reference to "or pet animal rescue" after all references to "shelter."
  6. In section 35-80-106.3 (2), Colorado Revised Statutes, you specify that pet animals held for a minimum of five days may only be disposed of "IN ACCORDANCE WITH THIS SECTION"; however, you do not so specify for those pet animals without identification that may be disposed of in three days. Therefore, it is not clear whether the limitations on disposing of pet animals set forth in the section apply to pet animals without identification.
  7. If you intend for the disposal limitations set forth in section 35-80-106.3 (2), Colorado Revised Statutes, to apply to pet animal rescues, then the definition of "days" in that subsection (2) should be amended. The definition provided – "days during which the shelter is open to the public" – would not apply to pet animal rescues because they may not be open to the public. At the very least, the definition should be amended to reference "the shelter OR THE PET ANIMAL RESCUE."
  8. In section 35-80-106.3 (2), Colorado Revised Statutes, why did you strike the language about the pet animal becoming the property of the animal shelter if the animal shelter acquires the pet animal from the owner or an authorized representative of the owner or if the pet animal is abandoned? Whose property is the pet animal at that time if not the animal shelter?
  9. The proponents may want to consider breaking up the text of section 35-80-113 (1), Colorado Revised Statutes, to read: "Any person who violates any provision of this article or any rule adopted pursuant to this article is subject to a civil penalty. ~~as determined by~~ The commissioner ~~The maximum penalty shall not exceed~~ MAY DETERMINE THE AMOUNT OF THE CIVIL PENALTY UP TO one thousand dollars per violation; EXCEPT THAT THE COMMISSIONER SHALL ASSESS A CIVIL PENALTY OF ONE THOUSAND DOLLARS PER VIOLATION FOR A VIOLATION OF THE EUTHANASIA EXCEPTION CONTAINED IN SECTION 35-80-106.3 (2)."
  10. In the proposed section 35-80-113 (4), in providing for a possible civil penalty, you should establish the maximum amount of the penalty.
  11. In the proposed section 35-80-113 (4), you set out a list of actions under the rubric "declaratory and injunctive relief" including "an action for damages"

but an "action for damages" does not fall under either an action seeking declaratory relief or an action seeking injunctive relief.

12. In the proposed section 35-80-113 (4), the phrase "but not limited to" is unnecessary when following the word "including" because the word "including" denotes a non-exhaustive list.
13. The proposed section 35-80-113 (4) grants a private right of action to "any individual or entity" in Colorado.
  - a. Do you intend for any of the normal rules regarding legal standing ("injury in fact" to the plaintiff specifically) to apply in these cases, or would a person need to show, for example, that the person's own pet animal was wrongly euthanized before he or she could locate and retrieve it, and on that basis had suffered "injury in fact"?
  - b. If the answer to (a) above is that any person has standing to sue, to whom would the \$1,000 "civil penalty" be paid: To the commissioner, or to a private plaintiff? Could this measure encourage opportunists to sue in hopes of obtaining a financial windfall?
14. The proposed section 35-80-113 (4) grants the prevailing party costs and attorney fees "in bringing the action." If a shelter or rescue successfully defends against a charge of violation, may it recover its costs and attorney fees incurred in defending the action?