

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, 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



Charles W. Pike, 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: olls.ga@state.co.us

MEMORANDUM

April 21, 2006

TO: Representative Kevin Lundberg and Wilfred G. Perkins

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2005-2006 #109, Concerning a Prohibition on Legal Status Similar to Marriage

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 appear to be:

1. To specify that the state can not create or recognize a legal status similar to marriage.
2. To specify that a political subdivision of the state can not create or recognize a legal status similar to marriage.
3. To refer to the definition of marriage as defined in the Colorado Revised Statutes in the "Uniform Marriage Law".
4. To specify that the measure shall take effect upon proclamation of the vote by the governor.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Standard drafting practice generally identifies the sections of a constitutional measure or a bill with capital letters in bold type in order to distinguish the section numbers of the proposed measure or bill from the actual sections of the state constitution or the actual sections of statute being amended. In addition, the section number of the proposed measure or bill is typically followed by a period rather than a colon. To conform to this standard drafting style, would the proponents consider changing the reference to "Section 1:" of the proposed measure to "**SECTION 1.**" and of "Section 2:" of the proposed measure to "**SECTION 2.**"?
2. To conform to the style of presentation of the headnotes used in the state constitution, would the proponents consider placing the reference to the new proposed section number of article II, "**Section 32.**", in bold type?
3. Standard drafting style in concurrent resolutions amending the constitution is to show the text of any new law in SMALL CAPITAL letters. Would the proponents consider showing the text of the proposed measure in SMALL CAPITAL font to indicate that the text shown for section 32 is new language to be added to the state constitution?
4. Section (4) of Article V of the state constitution states "All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become ...a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed". Since the constitution already provides for when the measure takes effect, it may not be necessary to state this in Section 2 of the measure. What is the reason for including the effective date in the measure?
5. The materials included in the packet submitted to Legislative Council as part of the proposed initiative included a "Ballot Title". A "Ballot Title" is typically not included in a submission of an initiative and the actual ballot title will be set by the Title Board after it is submitted to the Secretary of State. Would the proponents consider removing the Ballot Title before submitting the proposed measure to the Secretary of State?
6. In referring to a definition of marriage, the measure provides a particular citation to the Colorado Revised Statutes and states "... as defined in Colorado Revised Statute §14-2-101 through 104 (2005) (the Uniform Marriage Act)". As a matter of drafting style, the word section is used rather than a section symbol (§), the word "Statute" should be "Statutes", and the reference to the sections should be written out, and the title should be in quotes as "Uniform Marriage Act". Would the proponents consider writing the citation as "sections 14-2-101 through 14-2-104, Colorado Revised Statutes, from the "Uniform Marriage Act"?"

7. Nothing in sections 14-2-101 through 14-2-104, C.R.S., "defines" the term marriage. Those sections include the short title of the article, give the purposes of the article, state how the article is to be construed, and state the formalities for marriage, but do not actually provide a definition of marriage. Would the proponents consider selecting another word or term that more accurately describes these sections?

8. In the citation to the statutes, the year 2005 was also used. As a drafting style, the year is not generally referred to in a citation to the Colorado Revised Statutes. Why is there a reference to the year 2005?

Substantive questions:

1. The proponents have proposed adding the measure as a new Section 32 to Article II of the state constitution, which article is referred to as the Bill of Rights. Did the proponents purposefully select placing this proposed measure in the Bill of Rights rather than in another portion of the constitution? Could the proponents articulate what type of rights are implicated by this section?

2. The title of Section 1 reads, "Legal Status of Marriage". The language in the text seems to address the legal status of unions similar to marriage. Should the title of Section 1 be changed to reflect that?

3. The measure refers to the term "state". Does the use of the word "state" include the general assembly? Does the use of the word "state" include a state agency, such as the department of public health and environment? Does the use of the word "state" include the judicial branch and any of the courts of the judicial branch?

4. The measure refers to the term "political subdivisions". What types of government would be covered under this term? Counties? City and Counties? Municipalities? Cities? Private sector grantees? Private sector contractors? Does it include a county clerk or recorder who issues marriage licenses?

5. How would the prohibition on creating or recognizing a legal status similar to that of marriage affect legislation that might be enacted by the general assembly in the future? For example, how would it affect the ability of the general assembly to enact legislation creating domestic partnerships or civil unions for same-sex couples? How would the measure affect legislation that extended certain rights or benefits to persons of the same sex that are related to each other but are not in an intimate relationship such as the reciprocal beneficiary bill introduced this legislative session (Senate Bill 06-166)?

6. What is a "legal status similar to that of a marriage"?

a. To what "legal status" is the proposed measure intended to cover? What do the proponents mean by the term "legal status"?

b. To whom does it apply? Same-sex couples? Heterosexual couples? Both? Persons in a non-sexual relationship (e.g., a brother and sister who live together? sibling relationships in which one is a disabled dependent of the other?)

c. How is "similar" defined? Are there degrees of similarities that are acceptable (e.g., persons who reside together, own a home together?)

d. Is the measure intended to affect or undo contractual arrangements between unmarried persons who live together? What if a person wrote a will to say "John Doe shall inherit my estate in the same manner as if John Doe were my spouse"?

7. What does it mean "to *recognize* a legal status similar to that of marriage"? Some states (Massachusetts and Vermont) and more than one foreign country (Belgium, Canada, Netherlands, Spain, Great Britain) now authorize the formal establishment and legal recognition of unions between persons of the same sex, such as domestic partnerships and civil unions, by way of example. Is this proposal meant to prohibit the recognition of same-sex unions entered into outside of Colorado? Is this proposal meant to prohibit the recognition of heterosexual marriages from another state or country? What do the proponents intend by the use of the term "recognize" in this measure?

8. House Bill 06-1344 currently pending before the Colorado General Assembly this legislative session, if enacted by the General Assembly, would refer to the voters in the 2006 election a proposal to authorize domestic partnerships for persons of the same sex and to extend to same-sex couples in a domestic partnership the benefits, protections, and responsibilities that are granted by Colorado law to spouses. How do the proponents think their measure would affect House Bill 06-1344? What if the voters approve both measures?

9. Section 14-2-104, C.R.S., sets forth the formalities and requirements for a valid marriage. That section provides that a valid marriage has to be licensed, solemnized, and registered as provided in the law and has to be "only between one man and one woman". How would the initiative impact that statute?

10. How would the initiative impact current local government laws and policies regarding partnerships? Some municipalities and other local governments provide health insurance and other employee benefits for same-sex partners. How would the initiative impact local government or private sector policies that grant employee benefits for same-sex partners of employees?

11. The Colorado courts have recognized the status of common law marriage. How does the initiative impact common law marriage? Would the Colorado courts no longer be able to recognize the legal status of common law marriage?

12. Are there enforcement mechanisms or penalties associated with the initiative? What do the proponents envision being the enforcement mechanism under this provision if a county clerk and recorder in Colorado were to issue a marriage license or a certificate of domestic partnership to a same-sex couple despite this provision?

13. How will this measure change current law with respect to the creation of domestic partnerships or civil unions in Colorado? How will this measure change current law with respect to the recognition of domestic partnerships or civil unions in Colorado?

14. What are the purpose and goals of this measure? What do the proponents believe passage of this measure would accomplish?