

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

March 5, 2008

TO: Joanne King and Larry Ellingson

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #75, concerning criminal conduct by businesses - civil liability

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 initiative was the subject of a memorandum dated January 18, 2008. Proposal 2007-2008 #57 was discussed at a hearing on January 22, 2008. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

This initiative was filed along with two other initiatives, Proposal 2007-2008 #73 and Proposal 2007-2008 #74, that address the similar subjects. It appears that this proposal incorporates portions of Proposal 2007-2008 #73. The incorporation uses similar language to Proposal 2007-2008 #73 but places it into a new section in statute which is not included in Proposal 2007-2008 #73.

Therefore, issues that are identified in this proposal that were addressed in Proposal 2007-2008 #73 shall be incorporated into this memo by appropriate reference.

Purposes

The major purposes of the proposed amendment appear to be:

1. To allow a citizen to bring a civil cause of action on behalf of the state against a business entity or executive official for conduct covered by section 18-1-606 (1.5), Colorado Revised Statutes.
2. To pay any damages awarded as a result of the civil cause of action to the governmental entity that imposed by law the duty to be performed by the business entity of Colorado, and to make those moneys exempt from all revenue and spending provisions provided by law.
3. To provide an affirmative defense to the civil action if the executive official, prior to being charged, reports to the attorney general all of the facts he or she is aware of concerning the conduct of the business entity that is covered by section 18-1-606 (1), Colorado Revised Statutes.
4. To permit a citizen who is successful in a civil cause of action to recover reasonable attorney fees and costs.

Comments and Questions

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

Technical questions:

1. The proper amending clause would appear like this:

SECTION 1. Part 6 of article 1 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

2. On page 1, line 8, there is a reference to section 18-1-606 (1.5), Colorado Revised Statutes.
 - a. There is no subsection (1.5) in section 18-1-606, Colorado Revised Statutes. Did the proponents intend section 18-1-606 (1), Colorado Revised Statutes, or were the proponents contemplating that (1.5) would be added by Proposal 2007-2008 #74. If the proponents are trying to tie this proposal to Proposal 2007-2008 #74, the proposed initiative needs a provision that states that both proposed initiatives must become law in order for either to become effective.
 - b. Also, the inclusion of Colorado Revised Statutes at the end of the citation is not

necessary since the reference is to a section located in the same title in which the reference is located.

3. On page 1, line 17, the inclusion of Colorado Revised Statutes at the end of the citation is not necessary since the reference is to a section located in the same title in which the reference is located.
4. Civil actions are generally place in title 13, not title 18. Would the proponents consider placing the civil action in title 13?

Substantive questions:

1. Section 18-1-606.1, Colorado Revised Statutes, creates a civil action against a business entity or its executive officials for conduct that meets the criteria set forth in section 18-1-606, Colorado Revised Statutes.
 - a. What are the elements that a successful plaintiff would need to prove in order to make his or her claim under section 18-1-606.1, Colorado Revised Statutes?
 - b. The civil action may be brought by any person residing in the state of Colorado? What is the purpose in limiting it to a person residing in the state of Colorado?
2. Section 18-1-606.1 (2), Colorado Revised Statutes, would award compensatory or punitive damages to any governmental entity that imposed, by law, the specific duty to be performed by the business entity.
 - a. What are the types of compensatory damages that the governmental entity could have?
 - b. Who would determine which governmental entity imposed by law the specific duty to be performed by the business entity? Would that governmental entity need to be made a party to the suit?
 - c. If the governmental entity is awarded damages, would the money be subject to appropriation by the body that has the power of appropriation for that governmental entity or would the governmental entity be able to appropriate that money on its own?
3. Section 18-1-606.1 (4), Colorado Revised Statutes, exempts the damages awarded to a governmental entity when appropriated from all revenue and spending limitations provided by law.
 - a. What is the intent of this provision?
 - b. Would the proponents consider specifying the revenue and spending limitations that are being contemplated?

4. The previous questions regarding the attorney fee and cost award in section 18-1-606.1 (5), Colorado Revised Statutes are incorporated herein, please see question 7 in the substantive questions section of the memorandum for proposal 2007-2008 #57.