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MEMORANDUM

TO: Alexander Sage and Brent Johannes
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 8, 2021
SUBJECT: Proposed initiative measure 2021-2022 #13, concerning laws related to cruelty to 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 initiative.

The purpose of this statutory requirement of the directors of 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 amendments to the Colorado Revised Statutes appear to be:

1. Update language in the criminal cruelty to animal statutes (sections 18-9-201, 18-9-201.5, and 18-9-202, Colorado Revised Statutes) to create greater

protections for animals from suffering and exploitation by raising the standard of care; and

2. Extending certain portions of the criminal cruelty to animal statutes to include, in certain instances, livestock, and criminalizing actions that are currently considered legal animal husbandry practices.

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. What will be the effective date of the proposed initiative if it passes?
3. What is the purpose of removing "certified police working dog" and "police working horse" from the definition of "animal" in section 18-9-201 (2) of the proposed initiative?
4. The proposed initiative adds "fish" to the definition of "livestock" in section 18-9-201 (2.9). Fish are not considered livestock according to federal or state law. What is the proponents' purpose for adding "fish" to the definition of "livestock"?
5. Section 18-9-201 (5) of the proposed initiative amends the definition of "sexual act with an animal." The new definition language includes the phrase "or an inanimate object of the human." What do the proponents mean by that phrase? Would the proponents consider using wording that is parallel to section 18-3-401 (5), Colorado Revised Statutes, which defines "sexual intrusion" for purposes of the human unlawful sexual behavior statutes?
6. Section 18-9-201 (6) of the proposed initiative defines "natural lifespan" for cows, chickens, turkeys, ducks, pigs, sheep, and rabbits. This raises the following questions:
 - a. Why are only these species included?
 - b. How is "under humane conditions" measured or defined?
 - c. When the term is used in section 18-9-202 (1.9) of the proposed initiative there appears to be a conflict with whether the animal has lived one quarter of its natural lifespan, measured based on being raised in humane conditions, and whether the assumption is that the animal was

not raised in humane conditions; therefore, its natural lifespan is irrelevant.

- d. Why in the definition of lifespan are the words "at least" only added for ducks?
 - e. The definition, combined with the new language for 18-9-202 (1.9), makes veal and lamb illegal agricultural products. Is that the proponents' intent?
- 7. In two places of the proposed initiative the proponents strike language related to "accepted animal husbandry practices" (sections 18-9-201 (5) and 18-9-201.5 (1)), yet add that language in as new language in section 18-9-202 (1.9). Do the proponents have a reason for striking it in some places and adding in another?
 - 8. Have the proponents considered conflicts with the proposed initiative and laws related to the protection and care of livestock as set forth in Title 35 of the Colorado Revised Statutes?
 - 9. Section 18-9-202 (2)(a.5)(VII) of the proposed initiative would criminalize numerous practices that most ranchers and farmers engage in, as well as affect industry rules and accepted practices. Is this the proponents' intent?
 - 10. Current law creates an affirmative defense to an animal cruelty charge if the injury or death to a dog was the result of "running, worrying, or injuring" livestock. The proposed initiative amends that so that the affirmative defense only applies if the dog injured the sheep, cattle, or other livestock. How would "injury" be measured in this case? For example, if a dog was found "running or worrying" livestock to the point of exhaustion, perhaps leading to death at a later date, would that be considered an injury, or must the injury be immediately evident for the affirmative defense be valid?

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. Amending clauses and content of draft. Each statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. Standard drafting practice uses an amending clause

that only includes those parts of a section being amended, repealed, or added. Parts of the section that remain unchanged from current law are not included in the amending clause nor in the language of the draft. The headnote for the section is not included in the amending clause.

For example, because the proposed initiative only amends parts of sections 18-9-201, 18-9-201.5, and 18-9-202, the proper amending clauses would read:

SECTION 1. In Colorado Revised Statutes, 18-9-201, **amend** (2), (2.9), and (5); and **add** (3.5) as follows:

SECTION 2. In Colorado Revised Statutes, 18-9-201.5, **amend** (1) as follows:

SECTION 3. In Colorado Revised Statutes, 18-9-202, **amend** (1)(b), (2)(a.5)(VII), (2.5), and (4); and **add** (1.9) and (2)(a.5)(VIII) as follows:

In light of these specific amending clauses, standard drafting practice would direct you to only include in your proposed initiative those parts of the statutory section referenced in the amending clause.

2. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to SECTIONS 1, 2, and 3 of the proposed initiative and be in bold-face type. For example:

18-9-202. Cruelty to animals - aggravated cruelty to animals - service animals - short title. (1)(a) A person commits cruelty to animals...

3. It is standard drafting practice to use SMALL CAPITAL LETTERS (rather than ALL CAPS) to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
4. It is standard drafting practice to place definitions in alphabetical order, with a corresponding numeric order. In section 18-9-201 the proposed initiative has a new definition for "natural lifespan" inserted as a new subsection (6) following "sexual act with an animal." If placed alphabetically, "natural lifespan" would fall between subsections (3) and (4), as (3.5).
5. It is standard drafting practice to use the singular form of nouns. The proposed initiative's section 18-9-201 (2) uses the plural nouns "dogs," "cats," and "horses" instead of "dog," "cat," and "horse".