

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Samantha Bruegger and Jeffrey Hersh
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 4, 2023
SUBJECT: Proposed initiative measure 2023-2024 #101, concerning Prohibiting Trophy Hunting

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 the Colorado 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 taking of a mountain lion, bobcat, or lynx during the period of January 1 through December 17;

2. To establish penalties for the taking of a mountain lion, bobcat, or lynx during the period of January 1 through December 17;
3. To prohibit trophy hunting of a mountain lion, bobcat, or lynx;
4. To establish penalties for trophy hunting of a mountain lion, bobcat, or lynx;
5. To require any person who kills a mountain lion, bobcat, or lynx to relinquish all of the animal's body parts that could be used for the mount, display, or preservation of the animal to the Colorado division of parks and wildlife within 36 hours of the killing of the animal; and
6. To establish penalties for persons who fail to relinquish the body parts of a mountain, bobcat, or lynx that could be used for the mount, display, or preservation of the animal to the Colorado division of parks and wildlife within 36 hours of the killing of the animal.

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. Should the portion of the headnote for section 33-4-101.4 of the proposed initiative be narrowed from "Wild cats" to "Mountain lions, bobcats, and lynx" to be more specific?
3. It appears that the proponents intend for the proposed initiative to establish a limited hunting season for mountain lions, bobcats, and lynx. What is the proponents' intent in using the phrase "but not to require any season at all" in section 33-4-101.4 (1) of the proposed initiative?
4. Section 33-4-101.4 (2) of the proposed initiative makes it "unlawful for any person to take a mountain lion, bobcat or lynx by any means, including but not limited to firearm, trap, bait, electronic device, bow and arrow, or by the use of one or more dogs" during the period of January 1 through December 17.
 - a. Do the proponents intend for it to be unlawful to accidentally take a mountain lion, bobcat, or lynx (other than by motor vehicle, vessel, or train) during the period of January 1 through December 17?
 - b. What constitutes an electronic device?

- c. Do the proponents intend for the attempted taking of a mountain lion, bobcat, or lynx to also be unlawful during the period of January 1 through December 17? The term of art for the attempted taking of wildlife is the word "hunt" or "hunting." See section 33-1-102 (25.5), C.R.S.
 - d. Section 33-4-101.4 (2) of the proposed initiative contains the phrase "including but not limited to firearm, trap, bait, electronic device, bow and arrow, or by the use of one or more dogs." This entire list appears to be redundant with the phrase "by any means." A rule of statutory interpretation is to give every word meaning. This means that a court will be obliged to give these words meaning. One way courts have given redundant lists such as the one mentioned is to hold that the phrase "by any means" is not meant to be taken literally; instead, it should be read to mean by the methods in the list or by similar methods. For example, poison is not mentioned; this list may cause a court to hold that poison is permissible in order to give the list meaning. If the intention is to limit the taking by any means, consider removing the list because it may inadvertently create a loophole. The inclusion of the phrase "but not limited to" has not stopped courts from holding that the catchall phrase is limited by the list.
 - e. Is the inclusion of the phrase "by any means" intended to be an element of the crime? Is the intention to require a prosecutor to prove that a mountain lion, bobcat, or lynx was taken by a means? If not, then the proponents should consider deleting the phrase "by any means."
5. Section 33-4-101.4 (3) of the proposed initiative makes it unlawful "to use traps, bait, one or more dogs, or electronic devices to follow or chase a mountain lion, bobcat, or lynx or to facilitate or assist in the hunting or killing of a mountain lion, bobcat or lynx."
- a. In regard to the "follow or chase a mountain lion, bobcat, or lynx" language:
 - i. Section 33-4-101.4 (2) of the proposed initiative appears to allow the taking of a mountain lion, bobcat, or lynx from December 18 through December 31, but section 33-4-101.4 (3) of the proposed initiative appears to prohibit the following or chasing of a mountain lion, bobcat, or lynx using the listed methods at any time. Is this the proponents' intent?

- ii. Do the proponents intend to make it unlawful to use one of the listed methods in section 33-4-101.4 (3) of the proposed initiative to follow or chase a mountain lion, bobcat, or lynx without intending to take the animal? If not, the proponents might consider changing the language to say "to follow or chase a mountain lion, bobcat, or lynx with the intent to take the mountain lion, bobcat, or lynx"
- b. Proponents use "taking" in section 33-4-101.4 (1) of the proposed initiative and "take" in section 33-4-101.4 (2) of the proposed initiative, but the word, "killing" in section 33-4-101.4 (3) of the proposed initiative. The term "taking" is broader than the term "killing" because taking includes things like capturing an animal and arguably wounding an animal. See section 33-1-102, C.R.S. Is the intention for this prohibition to not apply to a taking that is not a killing?
- c. The term "hunting" includes attempting to capturing an animal. The prohibition in the proposed section 33-4-101.4 (3) applies to "hunting and killing," which means the provision prohibits using the listed means to attempt to capture a mountain lion, bobcat, or lynx but not the successful capture of the animal. Is this the proponents' intent?
- d. Do the proponents intend to create a penalty for the prohibitions in sections 33-4-101.4 (3) and (4) of the proposed initiative? Currently, section 33-4-101.4 of the proposed initiative only sets forth a penalty for the actions specified in section 33-4-101.4 (2) of the proposed initiative.
- e. Section 33-4-101.4 (3) of the proposed initiative has a list of prohibited acts, which are using "traps, bait, one or more dogs, or electronic devices." The second element of the provision is using these "to follow or chase a mountain lion, bobcat, or lynx or to facilitate or assist in the hunting or killing of a mountain lion, bobcat, or lynx." It is not clear whether the second element applies to all the items of the list or only the last item on the list. For example, is it illegal to use traps or is it illegal to use traps to follow, chase, hunt, or kill mountain lions, bobcats, or lynx? Would the proponents consider breaking the elements out to remove this ambiguity? If the intention is to apply the second element to each of the items on the first list, for example, the provision could be drafted in the following manner:

(3) IT IS UNLAWFUL FOR A PERSON, AT ANY TIME, TO FOLLOW OR CHASE A MOUNTAIN LION, BOBCAT, OR LYNX OR TO FACILITATE OR ASSIST IN THE HUNTING OR KILLING OF A MOUNTAIN LION, BOBCAT, OR LYNX BY THE USE OF:

- (a) TRAPS;
- (b) BAIT;
- (c) ONE OR MORE DOGS; OR
- (d) ELECTRONIC DEVICES.

6. Proposed section 33-4-101.4 (4) provides "This section shall not apply when a mountain lion" Section 2-4-401 (13.7) defines the word "shall," for the Colorado Revised Statutes, to mean a person has a duty. Proposed section 33-4-101.4 (4) appears to give the section a duty, but a section is not a person, and therefore, cannot have a duty. Would the proponents consider replacing the word "shall" with the word "does"?
7. Section 33-4-101.4 (5) of the proposed initiative establishes penalties for the violation of section 33-4-101.4 (2) of the proposed initiative. Also, section 33-6-117 (1)(c)(IV) of the proposed initiative establishes penalties for the violation of section 33-6-117 (1)(c)(I) of the proposed initiative. Finally, section 33-6-117 (1)(c)(V) of the proposed initiative establishes penalties for the violation of section 33-6-117 (1)(c)(II) of the proposed initiative.
 - a. Proponents might consider adding language to clarify how the penalty structures work in the event that a person violates more than one section.
 - b. License suspension points are used as a way to quantify the severity of violations for the purpose of determining whether a person has violated the wildlife statutes to the degree necessary to suspend the person's ability to obtain a hunting license. Currently, section 33-6-106, C.R.S., provides that 20 license suspension points within five years results in a license suspension. Each of these penalty provisions provide for an automatic suspension. What is the purpose of adding license suspension points?
8. In sections 33-6-117 (1)(c)(I) and 33-6-117 (1)(c)(II) of the proposed initiative, proponents use the language "notwithstanding subsection (1) of this section." What is the proponents' intent in using this language? "Notwithstanding" is typically used in statute to refer to a provision that may conflict with a different provision.

- a. Do the proponents believe that sections 33-6-117 (1)(a) and (1)(b), C.R.S., of current conflict with the new proposed section? If so, how?
 - b. Because sections 33-6-117 (1)(c)(I) and 33-6-117 (1)(c)(II) of the proposed initiative are both part of subsection (1), depending on the proponents' intent the proponents should consider either removing the "notwithstanding subsection (1) of this section" language or changing the language to refer to a provision of law that does not include sections 33-6-117 (1)(c)(I) and 33-6-117 (1)(c)(II) of the proposed initiative.
9. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., to mean "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., means "that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty." The proponents might consider changing "must" to "shall" in section 33-6-117 (1)(c)(II) of the proposed initiative.
10. Section 33-4-101.4 (4) of the proposed initiative provides that the exceptions listed in section 33-6-117 (1)(c)(VI) of the proposed initiative apply to the actions described in section 33-4-101.4 of the proposed initiative. However, sections 33-6-117 (1)(c)(VI)(A), 33-6-117 (1)(c)(VI)(B), 33-6-117 (1)(c)(VI)(E), 33-6-117 (1)(c)(VI)(G), and 33-6-117 (1)(c)(VI)(H) of the proposed initiative each limit the exception to acts "specified in subsection (1)(c)(I) of this section." Is it the proponents' intent to limit each of these provisions to apply to acts covered by only section 33-6-117 (1)(c)(I) of the proposed initiative?
11. Section 33-6-117 (1)(c)(VI)(A) of the proposed initiative excludes from the definition of "trophy hunting" actions conducted in the defense of human life, livestock, property, or a motor vehicle so long as "appropriate nonlethal methods ... as defined by the commission" were used. Should the proponents add the phrase "by rule" after the word "commission" to more explicitly direct the parks and wildlife commission to define "appropriate nonlethal methods" through the rule-making process? If the proponents decide to add the phrase "by rule," it will be helpful to the commission and to readers of the provision to add "- rules" to the headnote of section 33-6-117 of the proposed initiative.
12. The definition of trophy hunting in section 33-6-117 (1)(c)(III)(B) of the proposed initiative appears to cover (1) the killing of a mountain lion, bobcat, or lynx for the purposes of keeping or transferring trophies from the animal; and (2) the solicitation of another person to kill a mountain lion, bobcat, or

lynx for the purposes of keeping or transferring trophies from the animal. In the language that covers the second scenario, the phrase "with the intent" is used. Should similar language be added to the language that covers the first scenario?

13. In section 2 of the proposed initiative, current language in section 33-6-117 (1)(a)(I), C.R.S., reads that it is unlawful for a person to hunt or take wildlife and to detach or remove, "with the intent to abandon the carcass or body, only the head, hide, claws, teeth, ..." The proponents have added the word "fur" to that list. Should the word "fur" also be added to the similar list in section 33-6-117 (2)(a) of the proposed initiative?
14. Section 33-6-117 (2)(b) of the proposed initiative states that "these provisions are intended to eliminate the increasingly prevalent and inhumane practices of using dogs and electronic devices to facilitate trophy hunting..." However, dogs and electronic devices are only mentioned in section 33-4-101.4 of the proposed initiative. If proponents intend to restrict the use of dogs and electronic devices in section 33-6-117 (1)(c)(I) of the proposed initiative, proponents might consider adding language to that effect.
15. What is the proponents' intent in adding the word "pertinent" to section 33-6-117 (2)(a) of the proposed initiative?

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. The phrase "mountain lion(s), bobcat(s), and lynx" is used various times throughout the proposed initiative; however, the list of animals is not always in the same order and does not always have the comma after the second listed animal, which is known as the Oxford comma. To conform to drafting conventions, please list the same animals, in the same order, each time and add the Oxford comma after the second animal.

Similarly, in section 33-6-117 (1)(c)(VI)(D) of the proposed initiative, an Oxford comma is missing after the word "division".

2. In section 33-4-101.4 (2) of the proposed initiative, a comma is missing after the word "year." In that same subsection, to ensure that the list of unlawful means

of taking a mountain lion, bobcat, or lynx is parallel, the list should read: "including but not limited to by firearm, trap, bait, electronic device, bow and arrow, or the use of one or more dogs."

3. In section 33-4-101.4 (4) of the proposed initiative, the proponents should change "subsection" to "section" to conform to the standard statutory citation format.
4. In section 33-4-101.4 (5) of the proposed initiative, the proponents should change "section 18-1.3-401, C.R.S." to "section 18-1.3-401" to conform to the standard statutory citation format.
5. Because headnotes are helpful to readers and those persons whose actions the section affects, consider adding the following words and phrases to the headnote of section 33-6-117 in section 2 of the proposed initiative: "Trophy hunting," "definitions," "penalties," and "exceptions."
6. When amending current law, each provision must be copied into the proposed initiative *exactly* as it appears in the Colorado Revised Statutes. This avoids amendment by implication and the resulting confusion as to what is the result of the statute. In section 2 of the proposed initiative, current language in section 33-6-117 (1)(b) introductory portion, C.R.S., is missing, and new language is added in section 33-6-117 (1)(a)(I) and (1)(b) introductory portion, C.R.S., but is not shown in small capital letters. To conform to drafting conventions, the provisions at issue should read as follows:

(1) (a) Except as is otherwise provided in articles 1 to 6 of this ~~title~~ TITLE 33 or by rule of the commission, it is unlawful for a person:

(I) To hunt or take, or to solicit another person to hunt or take, wildlife and detach or remove, with the intent to abandon the carcass or body, only the head, hide, **FUR**, claws, teeth, antlers, horns, internal organs, or feathers or any or all of such parts;

...

(b) A person who violates ~~this subsection (1)~~ **SUBSECTION (1)(a) OF THIS SECTION**, with respect to:

7. Because subsections (1)(a)(II), (1)(a)(III), and (1)(b)(I) of section 33-6-117, C.R.S., are not amended in section 2 of the proposed initiative, the proponents should consider removing those provisions from the proposed initiative. Should the proponents make this choice, the amending clause and the section would read, in part:

SECTION 2. In Colorado Revised Statutes, 33-6-117, **amend** (1)(a) introductory portion, (1)(a)(I), (1)(b) introductory portion, and (2); and **add** (1)(c) as follows:

33-6-117. Willful destruction of wildlife – legislative intent. (1) (a) Except as is otherwise provided in articles 1 to 6 of this ~~title~~ **TITLE 33** or by rule of the commission, it is unlawful for a person:

(I) To hunt or take ... wildlife and detach or remove ... only the head, hide, **FUR**, claws, ... or any or all of such parts;

(b) A person who violates ~~this subsection (1)~~ **SUBSECTION (1)(a) OF THIS SECTION**, with respect to:

(II) All other wildlife species, **EXCEPT AS PROVIDED IN SUBSECTION (1)(c) OF THIS SECTION**, commits a

...

Note that if the proponents choose to reorganize section 33-6-117 (1)(c) of the proposed initiative, as suggested in technical comment number 8, the amending clause would read, in part, "... and **add** (1)(c) and (1.5) as follows:".

8. Section 33-6-117 (1)(c)(III) of the proposed initiative defines the terms "trophy" and "trophy hunting." Section 33-6-117 (1)(c)(VI) of the proposed initiative lists actions that are not included in the definition of "trophy hunting." Proponents might consider rearranging some of the new language in section 33-6-117 to combine the excluded actions with the definition of "trophy hunting" as shown in an example, in part, below. Also at issue is the fact that, according to the rules of statutory construction for the Colorado Revised Statutes, statutory provisions are divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs. There are no further subdivisions allowed after sub-subparagraphs; however, in section 33-6-117 (1)(c)(III)(B) of the proposed initiative, the proponents have created a new subdivision beneath sub-subparagraph (B). (See technical comment number 10.)

Note that if the proponents choose to make this necessary change, the amending clause would need to be updated to reflect that (1.5) was added to the section and internal references in section 33-4-101.4 (4) of the proposed initiative would need to be updated.

33-6-117. Willful destruction of wildlife – legislative intent. (1) (c) (I) NOTWITHSTANDING ...

(II) NOTWITHSTANDING ...

(III) ANY PERSON WHO VIOLATES SUBSECTION (1)(c)(I) OF THIS SECTION ...

(IV) ANY PERSON WHO VIOLATES SUBSECTION (1)(c)(II) OF THIS SECTION ...

(1.5) AS USED IN SUBSECTION (1)(c) OF THIS SECTION:

(a) "TROPHY" MEANS ...

(b) (I) "TROPHY HUNTING" MEANS:

(A) THE KILLING ... ; OR

(B) SOLICITING

(II) "TROPHY HUNTING" DOES NOT INCLUDE:

(A) ANY ACT

(B) ...

Instead of adding the exempted actions as part of the definition of "trophy hunting" as a subparagraph (II) under a new subsection (1.5)(b), as suggested above, the proponents could consider adding the exemptions as a new section 33-6-117 (1)(d), which could read, in part:

(d) NOTWITHSTANDING SUBSECTION (1)(c) OF THIS SECTION, UNLAWFUL TROPHY HUNTING DOES NOT INCLUDE:

(I) ANY ACT SPECIFIED ...

Note that if the proponents make this latter change, the amending clause would read, in part, "... and **add** (1)(c) and (1)(d) as follows:".

9. It is now standard drafting practice to use the phrase "As used in this" as opposed to "For the purposes of" in an introductory portion to a list of definitions. Please consider rephrasing in section 33-6-117 (1)(c)(III) of the proposed initiative. Additionally, please consider changing "this subsection" to "this subsection (1)(c)."

10. The subdivision scale in the C.R.S. only goes down to sub-subparagraphs [(A), (B), (C), etc.]. Therefore, proponents should consider changing section 33-6-117 (1)(c)(III) of the proposed initiative as follows (but please see technical comment number 8):

(A) "TROPHY" MEANS ...

(B) "TROPHY HUNTING" MEANS: THE KILLING OF A MOUNTAIN LION, BOBCAT, OR LYNX, AND KEEPING OR TRANSFERRING TO ANOTHER, WHETHER BY GIFT, SALE, OR IN ANY OTHER MANNER EXCEPT AS PROVIDED IN SUBSECTION (1)(c)(II) OF THIS SECTION, ONE OR MORE TROPHIES FROM SUCH ANIMAL; OR SOLICITING ANOTHER PERSON TO KILL A MOUNTAIN LION, BOBCAT, OR LYNX, WITH THE INTENT TO ACQUIRE AND KEEP OR TRANSFER ONE OR MORE TROPHIES EXCEPT AS PROVIDED IN SUBSECTION (1)(c)(II) OF THIS SECTION.

11. Current drafting conventions discourage the use of certain antiquated language that can lead to ambiguity. Please consider changing:
 - a. The word "herein" in section 33-4-101.4 (1) of the proposed initiative to "in this section" or "in this subsection (1)"; and
 - b. The word "of" in the phrase "within thirty-six hours of the kill" to "after" in section 33-6-117 (1)(c)(II) of the proposed initiative; the phrase would then read "within thirty-six hours *after* the kill."
12. When referencing a different subsection within the *same* section, use the template "subsection (#) of this section." In section 33-6-117 (1)(b)(II) of the proposed initiative, the words "OF THIS SECTION" should be added, in small capital letters, after the phrase "SUBSECTION (1)(c)".
13. When referencing the *same* title as where a provision is located, use the template "this title #." Please update the references to "ARTICLES 1 TO 6 OF THIS TITLE" in section 33-6-117 (1)(c)(I) and (1)(c)(II) of the proposed initiative to read "ARTICLES 1 TO 6 OF THIS TITLE 33."
14. Section 33-1-102 (10), C.R.S., defines the division of parks and wildlife as the "division" for all of title 33, C.R.S. In section 33-6-117 (1)(c)(VI)(B) and (1)(c)(VI)(G), the phrase "division of parks and wildlife" can be shortened to the single word "division."
15. It is now standard drafting practice to use gender neutral terms, when appropriate, in the Colorado Revised Statutes. Proponents should consider changing the phrase "his or her" to "the employee's" in section 33-6-117 (1)(c)(VI)(B) of the proposed initiative.
16. Regarding section 33-6-117 of the proposed initiative:
 - a. In subsection (1)(c)(VI)(E), the phrase "commissioner of Agriculture" should read "commissioner of agriculture"; and
 - b. In subsection (1)(c)(VI)(F), the reference to the Colorado veterinary practice act should be in quotation marks and initial capped: "Colorado Veterinary Practice Act."
17. Under the final section of the proposed initiative, the section number is incorrect; "**SECTION 2. Effective date – applicability.**" should be changed to "**SECTION 3. Effective date – applicability.**"