



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 13, 2011

The Honorable Ben Ysursa
Idaho Secretary of State
VIA HAND DELIVERY

Re: Certificate of Review
Proposed Initiative to Make Torture of Animals a Felony

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on April 29, 2011. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. Given the strict statutory timeframe within which this office must review the petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only." The petitioners are free to "accept or reject them in whole or in part." Due to the available resources and limited time for performing the reviews, we did not communicate directly with the petitioner as part of the review process. The opinions expressed in this review are only those that may affect the legality of the initiative. This office offers no opinion with regard to the policy issues raised by the proposed initiative.

BALLOT TITLE

The petition contains the following short ballot title:

Initiative amending Chapter 35, Title 25, Idaho Code, Animal Care law, to add felony penalties for repeat violations and torture.

The petition contains the following long title:

Initiative amending section 25-3502, Idaho Code, to include definition of "torture"; to amend section 25-3504, Idaho Code, to change references for penalty classifications; and to amend section 25-3520A, Idaho Code, to increase fines for misdemeanor violations, and to add

felony penalties for third and subsequent violations, and for any violations that include the intentional torture of an animal.

These titles are appropriate under Idaho Code § 34-1809(2).

MATTERS OF SUBSTANTIVE IMPORT

A. Summary of the Initiative

The Initiative amends the Cruelty to Animals chapter of Title 25 of the Idaho Code to increase the fine applicable to misdemeanor violations of that law and to add felony provisions for repeat offenders or those who torture animals. Specifically, the Initiative amends the definitions section, Idaho Code § 25-3502, to delete “torture” from the definition of “cruelty” and adds a definition for the word “torture.” Second, it amends the section creating a crime, Idaho Code § 25-3504, by deleting language that violation of that section is a misdemeanor and adding torture as grounds for allowing law enforcement to seize an animal (in addition to cruelty). Third, it amends the penalty section, Idaho Code § 25-3520A, to state that first and second offenses are misdemeanors; changes the fine for a first-time offense from \$100 to \$400; changes the minimum fine for a second offense from \$200 to \$600, and makes a third offense or a violation that includes intentional torture a felony punishable by a prison sentence of between six months and three years and a fine of up to \$9,000. Finally, it includes a severability clause.

B. Legal Effect of the Initiative, if Enacted

The Initiative, if enacted, would succeed in its apparent purpose. It would increase the fine for a first or second offense and would elevate third offenses to felony status. It would also create a new felony for torture of an animal. Specifically, the statute is constructed such that torture is in the nature of a penalty enhancement rather than part of the crime itself. A jury would have to find the underlying crime of cruelty to an animal, with the aggravating element of intentional torture. Although the lower limit of the penalty for the felony (six months in prison) is more consistent with a misdemeanor, we are unaware of any limitation on the ability of an initiative to set a felony punishment at six months to three years.

C. Recommended Revisions or Alterations

No substantive revisions or alterations are suggested. As a matter of form, “Section 5” should be amended to read “Section 4,” because there is currently no Section 4.

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to Petitioner via a copy of this Certificate of Review, deposited in the U.S. Mail to Virginia Hemingway, 3906 S. Yorktown Way, Boise, Idaho 83706.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Wasden', written in a cursive style.

LAWRENCE G. WASDEN
Attorney General

Analysis by:

KENNETH K. JORGENSEN
Deputy Attorney General
