

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #314 (“Concerning Farm Animal Confinement”)</p> <p>Petitioners: Brett Rutledge and Joyce R. Kelly</p> <p>v.</p> <p>Respondents: John Seber and John Surenkamp</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell, and Julie Pelegrin</p>	
<p>Attorney for Petitioners:</p> <p>Mark G. Grueskin, #14621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #314 (“CONCERNING FARM ANIMAL CONFINEMENT”)</p>	

Brett Rutledge and Joyce R. Kelly (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Proposed Initiative 2019-2020 #314 (“Concerning Farm Animal Confinement”), and state:

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #314.

John Seber and John Surenkamp (the “Proponents”) proposed Initiative 2019-2020 #314 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, Proponents submitted final versions of the Proposed Initiative to the Secretary of State for submission to the Title Board, of which the Secretary or her designee is a member.

A Title Board hearing was held on April 15, 2020, at which time titles were set for 2019-2020 #314. On April 22, 2020, Petitioners Brett Rutledge and Joyce R. Kelly filed a Motion for Rehearing, alleging that the Title Board erred because the titles set for #314 are unfair, inaccurate, incomplete and misleading to voters, and additionally that the abstract is misleading. Rehearing was held on April 23,

2020, at which time the Motion for Rehearing was granted to the extent that the Board made changes to the titles but otherwise denied.

B. Jurisdiction

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioners believe that the Title Board erred in denying certain aspects of the Motion for Rehearing. The matter is properly before this Court.

GROUND FOR APPEAL

The Title Board erred when it set titles for #314 which are unfair, inaccurate, incomplete and misleading to voters, and additionally erred by setting titles for

#314 when the abstract for #314 is misleading. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. Whether the Board erred by failing to inform voters that the "fine for violating this measure" is in criminal in nature and not just an administrative fine imposed by the commissioner of agriculture.
2. Whether the Board erred in failing to inform voters of the significant civil remedy that is available to "any person," is not a "fine," and is different in every material respect from enforcement tools referred to in the titles.
3. Whether the Board erred in failing to inform voters that the measure subjects agricultural producers, as well as the sellers of their products, to court-ordered auctions of, and liens on, their land and equipment.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that titles set for #314 are unfair, inaccurate, incomplete and misleading to voters, and direct the Title Board to correct the title to address the deficiencies outlined by Petitioners.

Respectfully submitted this 30th day of April, 2020.

s/ Mark G. Grueskin

Mark G. Grueskin, #14621

RECHT KORNFELD, P.C.

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ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #314 (“CONCERNING FARM ANIMAL CONFINEMENT”)** was sent electronically via CCEF this day, April 30, 2020, to the following:

Counsel for the Title Board:
Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Counsel for the Designated Representatives:
Christopher Jackson
Holland & Hart
555 17th Street, #3200
Denver, CO 80202

/s Erin Holweger _____

DATE FILED: April 30, 2020 4:05 PM



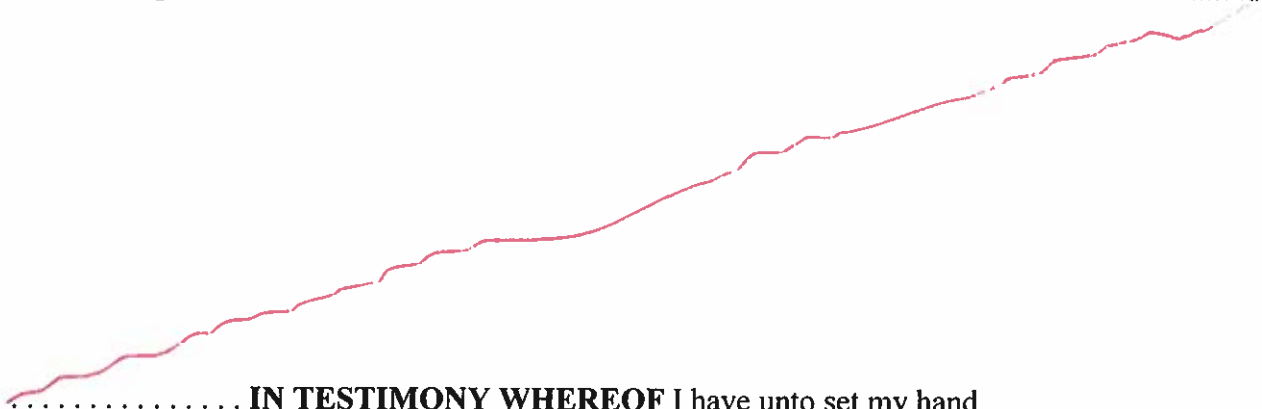
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

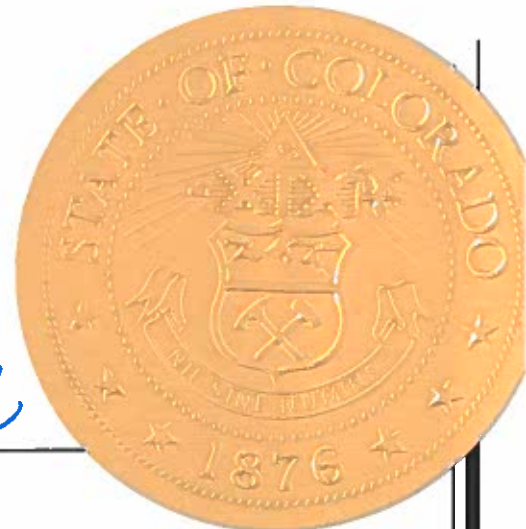
the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #314 'Concerning Farm Animal Confinement'"



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 27th day of April, 2020.

Jena Griswold

SECRETARY OF STATE



RECEIVED

By Steven Ward at 11:36 am, Apr 03, 2020

2019-2020 #314 – FINAL

#314

Be it enacted by the people of the state of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 2 to article 21 of title 35 as follows:

PREVENT CRUELTY TO FARM ANIMALS

35-21-201. Legislative declaration. THE PURPOSE OF THIS PART 2 IS TO PREVENT ANIMAL CRUELTY BY PHASING OUT EXTREME METHODS OF FARM ANIMAL CONFINEMENT. EXTREME METHODS THREATEN THE HEALTH AND SAFETY OF COLORADO CONSUMERS AND INCREASE THE RISK OF FOOD-BORNE ILLNESS AND ASSOCIATED NEGATIVE FISCAL IMPACTS ON THE STATE OF COLORADO.

35-21-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) “BUSINESS OWNER OR OPERATOR” MEANS ANY PERSON WHO OWNS OR CONTROLS THE OPERATIONS OF A BUSINESS.

(2)(a) “CAGE-FREE HOUSING SYSTEM” MEANS AN INDOOR OR OUTDOOR CONTROLLED ENVIRONMENT FOR EGG-LAYING HENS WITHIN WHICH:

(I) THE HENS ARE FREE TO ROAM UNRESTRICTED;

(II) THE HENS ARE PROVIDED ENRICHMENTS THAT ALLOW THE HENS TO EXHIBIT NATURAL BEHAVIORS, INCLUDING, AT A MINIMUM, SCRATCH AREAS, PERCHES, NEST BOXES, AND DUST BATHING AREAS; AND

(III) FARM EMPLOYEES CAN PROVIDE CARE WHILE STANDING WITHIN THE HENS’ USABLE FLOOR SPACE.

(b) “CAGE-FREE HOUSING SYSTEM” INCLUDES, IF THE SYSTEM MEETS THE DEFINITION IN SUBSECTION (2)(a) OF THIS SECTION:

(I) MULTI-TIERED AVIARIES IN WHICH HENS HAVE ACCESS TO MULTIPLE ELEVATED PLATFORMS THAT PROVIDE HENS WITH USABLE FLOOR SPACE BOTH ON TOP OF AND UNDERNEATH THE PLATFORMS;

(II) PARTIALLY-SLATTED SYSTEMS IN WHICH HENS HAVE ACCESS TO ELEVATED FLAT PLATFORMS UNDER WHICH MANURE DROPS THROUGH THE FLOORING TO A PIT OR LITTER REMOVAL BELT BELOW; AND

(III) SINGLE-LEVEL ALL LITTER FLOOR SYSTEMS BEDDED WITH LITTER AND IN WHICH HENS HAVE LIMITED OR NO ACCESS TO ELEVATED FLAT PLATFORMS.

(c) “CAGE-FREE HOUSING SYSTEM” DOES NOT INCLUDE SYSTEMS COMMONLY DESCRIBED AS BATTERY CAGES, COLONY CAGES, ENRICHED CAGES, ENRICHED COLONY CAGES, MODIFIED CAGES, CONVERTIBLE CAGES, FURNISHED CAGES, OR SIMILAR CAGE SYSTEMS.

(3) “COVERED ANIMAL” MEANS ANY EGG-LAYING HEN THAT IS KEPT ON A FARM.

(4) "EGG-LAYING HEN" OR "HEN" MEANS A FEMALE OF THE FOLLOWING DOMESTICATED SPECIES KEPT TO PRODUCE EGGS: CHICKEN, TURKEY, DUCK, GOOSE, OR GUINEA FOWL.

(5) "ENCLOSURE" MEANS A STRUCTURE USED TO CONFINED A COVERED ANIMAL OR ANIMALS.

(6) "FARM" MEANS THE LAND, BUILDING, SUPPORT FACILITIES, AND EQUIPMENT THAT ARE WHOLLY OR PARTIALLY USED FOR THE COMMERCIAL PRODUCTION OF ANIMALS FOR FOOD OR FIBER OR ANIMAL PRODUCTS USED FOR FOOD OR FIBER. "FARM" DOES NOT INCLUDE LIVE ANIMAL MARKETS, ESTABLISHMENTS AT WHICH MANDATORY INSPECTION IS PROVIDED UNDER THE FEDERAL "MEAT INSPECTION ACT", 21 U.S.C. SEC. 601 ET SEQ., OR OFFICIAL PLANTS AT WHICH MANDATORY INSPECTION IS MAINTAINED UNDER THE FEDERAL "EGG PRODUCTS INSPECTION ACT", 21 U.S.C. SEC. 1031 ET SEQ.

(7) "FARM OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS OR CONTROLS THE OPERATIONS OF A FARM.

(8) "FULLY EXTENDING THE ANIMAL'S LIMBS" MEANS FULLY EXTENDING ALL LIMBS WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE OR ANOTHER ANIMAL, INCLUDING, FOR EGG-LAYING HENS, FULLY SPREADING BOTH WINGS WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE OR ANOTHER ANIMAL.

(9) "LIQUID EGGS" MEANS THE EGGS OF AN EGG-LAYING HEN THAT ARE BROKEN FROM THE SHELLS AND THAT ARE INTENDED FOR HUMAN FOOD. "LIQUID EGGS" DO NOT INCLUDE COMBINATION FOOD PRODUCTIONS, INCLUDING PANCAKE MIXES, CAKE MIXES, COOKIES, PIZZAS, COOKIE DOUGH, OR ICE CREAM THAT INCLUDE EGGS AS ONE OF MULTIPLE INGREDIENTS IN THE PRODUCT; EXCEPT THAT MERELY ADDING SUGAR, SALT, WATER, SEASONING, COLORING, FLAVORING, PRESERVATIVES, STABILIZERS, OR SIMILAR FOOD ADDITIVES DOES NOT MAKE AN EGG PRODUCT A COMBINATION FOOD PRODUCT.

(10) "SALE" MEANS A COMMERCIAL SALE BY A BUSINESS THAT SELLS ANY ITEM COVERED BY THIS PART 2, BUT DOES NOT INCLUDE ANY SALE UNDERTAKEN AT AN ESTABLISHMENT AT WHICH MANDATORY INSPECTION IS PROVIDED UNDER THE FEDERAL "MEAT INSPECTION ACT", 21 U.S.C. SEC. 601 ET SEQ., OR ANY SALE UNDERTAKEN AT AN OFFICIAL PLANT AT WHICH MANDATORY INSPECTION IS MAINTAINED UNDER THE FEDERAL "EGG PRODUCTS INSPECTION ACT", 21 U.S.C. SEC. 1031 ET SEQ.

(11) "SHELL EGG" MEANS A WHOLE EGG OF AN EGG-LAYING HEN IN ITS SHELL, IF THE EGG IS INTENDED FOR USE AS HUMAN FOOD.

(12) "TURNING AROUND FREELY" MEANS TURNING IN A COMPLETE CIRCLE WITHOUT ANY IMPEDIMENT, INCLUDING A TETHER, AND WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE OR ANOTHER ANIMAL.

(13) "USABLE FLOOR SPACE" MEANS THE TOTAL SQUARE FOOTAGE OF FLOOR SPACE PROVIDED TO EACH COVERED ANIMAL, AS CALCULATED BY DIVIDING THE TOTAL SQUARE FOOTAGE OF FLOOR SPACE PROVIDED TO THE ANIMALS IN AN ENCLOSURE BY THE NUMBER OF ANIMALS IN

THAT ENCLOSURE. IN THE CASE OF EGG-LAYING HENS, "USABLE FLOOR SPACE" INCLUDES BOTH GROUND SPACE AND ELEVATED LEVEL FLAT PLATFORMS UPON WHICH HENS CAN ROOST, BUT DOES NOT INCLUDE PERCHES OR RAMPS.

35-21-203. Prohibitions (1) ON OR AFTER DECEMBER 31, 2021:

(a) A FARM OWNER OR OPERATOR WITHIN THE STATE OF COLORADO SHALL NOT KNOWINGLY:

(I) CAUSE ANY COVERED ANIMAL TO BE CONFINED IN A CRUEL MANNER THAT PREVENTS THE ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING THE ANIMAL'S LIMBS, OR TURNING AROUND FREELY, AND

(II) CONFINED AN EGG-LAYING HEN WITH LESS THAN THE AMOUNT OF USABLE FLOOR SPACE PER HEN REQUIRED BY THE 2017 EDITION OF THE UNITED EGG PRODUCERS' ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG-LAYING FLOCKS: GUIDELINES FOR CAGE-FREE HOUSING, OR IN AN ENCLOSURE THAT IS NOT A CAGE-FREE HOUSING SYSTEM.

(b) A BUSINESS OWNER OR OPERATOR SHALL NOT KNOWINGLY ENGAGE IN THE SALE WITHIN THE STATE OF COLORADO OF ANY:

(I) SHELL EGG THAT THE BUSINESS OWNER OR OPERATOR KNOWS OR SHOULD KNOW IS THE PRODUCT OF A COVERED ANIMAL THAT WAS CONFINED IN A CRUEL MANNER THAT PREVENTS THE ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING THE ANIMAL'S LIMBS, OR TURNING AROUND FREELY AND CONFINES AN EGG-LAYING HEN WITH LESS THAN THE AMOUNT OF USABLE FLOOR SPACE PER HEN REQUIRED BY THE 2017 EDITION OF THE UNITED EGG PRODUCERS' ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG-LAYING FLOCKS: GUIDELINES FOR CAGE-FREE HOUSING, OR IN AN ENCLOSURE THAT IS NOT A CAGE-FREE HOUSING SYSTEM; AND

(II) LIQUID EGGS THAT THE BUSINESS OWNER OR OPERATOR KNOWS OR SHOULD KNOW IS THE PRODUCT OF A COVERED ANIMAL THAT WAS CONFINED IN A CRUEL MANNER THAT PREVENTS THE ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING THE ANIMAL'S LIMBS, OR TURNING AROUND FREELY AND CONFINES AN EGG-LAYING HEN WITH LESS THAN THE AMOUNT OF USABLE FLOOR SPACE PER HEN REQUIRED BY THE 2017 EDITION OF THE UNITED EGG PRODUCERS' ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG-LAYING FLOCKS: GUIDELINES FOR CAGE-FREE HOUSING, OR IN AN ENCLOSURE THAT IS NOT A CAGE-FREE HOUSING SYSTEM.

(III) A SALE IS DEEMED TO OCCUR AT THE LOCATION WHERE THE BUYER TAKES PHYSICAL POSSESSION OF AN ITEM COVERED BY THIS PART 2.

35-21-204. Exceptions. (1) SECTION 35-21-203 DOES NOT APPLY DURING:

(a) MEDICAL RESEARCH;

(b) EXAMINATION, TESTING, INDIVIDUAL TREATMENT, OR OPERATION FOR VETERINARY PURPOSE, BUT ONLY IF PERFORMED BY OR UNDER THE DIRECT SUPERVISION OF A VETERINARIAN LICENSED UNDER COLORADO LAW;

(c) TRANSPORTATION;

(d) A STATE OR COUNTY FAIR EXHIBITION, A 4-H PROGRAM, AND SIMILAR EXHIBITIONS;

(e) SLAUGHTER, IF DONE IN ACCORDANCE WITH AN APPLICABLE LAW; OR

(f) TEMPORARY PERIODS FOR ANIMAL HUSBANDRY PURPOSES FOR NO MORE THAN SIX HOURS IN ANY TWENTY-FOUR-HOUR PERIOD AND NO MORE THAN TWENTY-FOUR HOURS TOTAL IN ANY THIRTY-DAY PERIOD.

35-21-205. Penalty.

(a) A FARM OWNER OR OPERATOR OR BUSINESS OWNER OR OPERATOR WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF ONE THOUSAND DOLLARS PER VIOLATION, PER ANIMAL, PER DAY.

(b) IF THE COMMISSIONER IS UNABLE TO COLLECT A CRIMINAL PENALTY OR IF A FARM OWNER OR OPERATOR OR BUSINESS OWNER OR OPERATOR FAILS TO PAY ANY PORTION OF A CRIMINAL PENALTY IMPOSED UNDER THIS SECTION, THE COMMISSIONER MAY RECOVER THE AMOUNT OF THE PENALTY, PLUS COSTS AND ATTORNEY FEES, BY AN ACTION IN A COURT. THE COMMISSIONER IS AUTHORIZED TO PLACE A LIEN ON OR SEEK A COURT-ORDERED PUBLIC AUCTION OF, OR BOTH PLACE A LIEN ON AND SEEK A COURT-ORDERED PUBLIC AUCTION OF, ANY FARM PROPERTY OR EQUIPMENT NECESSARY TO RECOUP UNPAID PENALTIES UNDER THIS SECTION.

(c) IN ADDITION, A VIOLATION OF THIS PART 2 CONSTITUTES UNFAIR AND DECEPTIVE TRADE PRACTICES FOR WHICH ANY PERSON MAY COMMENCE A CIVIL ACTION UNDER SECTION 6-1-113 OF THE "COLORADO CONSUMER PROTECTION ACT".

35-21-206. Enforcement – Rules.

(a) THE COMMISSIONER SHALL ENFORCE THIS PART 2. A FARM OWNER OR OPERATOR OR BUSINESS OWNER OR OPERATOR SHALL ALLOW THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS DURING REGULAR BUSINESS HOURS TO THE FARM OR BUSINESS, VEHICLES, AND RECORDS PERTINENT TO ACTIVITIES REGULATED IN THIS PART 2.

(b) THE COMMISSIONER SHALL PROMULGATE RULES GOVERNING THE ENFORCEMENT OF THIS PART 2, INCLUDING RULES GOVERNING THE INSPECTION OF FARMS, SHELL EGGS, AND EGG PRODUCTS SOLD IN COLORADO THAT ARE PRODUCED IN COMPLIANCE WITH THIS PART 2.

(c) THE COMMISSIONER MAY NOT USE A THIRD PARTY OR PRIVATE INSPECTION OR PROCESS VERIFICATION PROVIDER TO ENSURE COMPLIANCE WITH THIS PART 2.

35-21-207. Effects on other animal welfare laws. (1) THIS PART 2 DOES NOT LIMIT OR REPLACE ANY OTHER STATE STATUE OR RULE THAT PROTECTS THE WELFARE OF ANIMALS. THIS PART 2 DOES NOT PREEMPT A LOCAL GOVERNING BODY FROM ADOPTING AND ENFORCING ITS OWN ANIMAL WELFARE ORDINANCE, RULE, RESOLUTION, OR CHARTER PROVISION THAT IS MORE STRINGENT THAN THIS PART 2.

SECTION 2. In Colorado Revised Statutes, **replace** article 50.5 of title 35 with the following:

35-50.5-101. Legislative declaration. THE PURPOSE OF THIS ARTICLE IS TO PREVENT ANIMAL CRUELTY BY PHASING OUT EXTREME METHODS OF FARM ANIMAL CONFINEMENT. EXTREME METHODS THREATEN THE HEALTH AND SAFETY OF COLORADO CONSUMERS AND INCREASE THE RISK OF FOOD-BORNE ILLNESS AND ASSOCIATED NEGATIVE FISCAL IMPACTS ON THE STATE OF COLORADO.

35-50.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "BREEDING PIG" MEANS A FEMALE PIG OF THE PORCINE SPECIES THAT IS KEPT FOR THE PURPOSE OF COMMERCIAL BREEDING AND THAT IS 6 MONTHS OF AGE OR OLDER OR PREGNANT.
- (2) "BUSINESS OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS OR CONTROLS THE OPERATIONS OF A BUSINESS.
- (3) "CALF RAISED FOR VEAL" MEANS ANY CALF OF THE BOVINE SPECIES KEPT FOR THE PURPOSE OF PRODUCING THE FOOD PRODUCT DESCRIBED AS VEAL.
- (4) "COVERED ANIMAL" MEANS ANY CALF RAISED FOR VEAL OR BREEDING PIG THAT IS KEPT ON A FARM.
- (5) "ENCLOSURE" MEANS A STRUCTURE USED TO CONFINE A COVERED ANIMAL OR ANIMALS.
- (6) "FARM" MEANS THE LAND, BUILDING, SUPPORT FACILITIES, AND EQUIPMENT THAT ARE WHOLLY OR PARTIALLY USED FOR THE COMMERCIAL PRODUCTION OF ANIMALS FOR FOOD OR FIBER OR ANIMAL PRODUCTS USED FOR FOOD OR FIBER. "FARM" DOES NOT INCLUDE LIVE ANIMAL MARKETS, ESTABLISHMENTS AT WHICH MANDATORY INSPECTION IS PROVIDED UNDER THE FEDERAL "MEAT INSPECTION ACT", 21 U.S.C. SEC. 601 ET SEQ., OR OFFICIAL PLANTS AT WHICH MANDATORY INSPECTION IS MAINTAINED UNDER THE FEDERAL "EGG PRODUCTS INSPECTION ACT", 21 U.S.C. SEC. 1031 ET SEQ.
- (7) "FARM OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS OR CONTROLS THE OPERATIONS OF A FARM.
- (8) "FULLY EXTENDING THE ANIMAL'S LIMBS" MEANS FULLY EXTENDING ALL LIMBS WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE OR ANOTHER ANIMAL.
- (9) "PORK MEAT" MEANS MEAT OF A PIG OF THE PORCINE SPECIES INTENDED FOR USE AS HUMAN FOOD.
- (10) "SALE" MEANS A COMMERCIAL SALE BY A BUSINESS THAT SELLS ANY ITEM COVERED BY THIS ARTICLE, BUT DOES NOT INCLUDE ANY SALE UNDERTAKEN AT AN ESTABLISHMENT AT WHICH MANDATORY INSPECTION IS PROVIDED UNDER THE FEDERAL "MEAT INSPECTION ACT", 21 U.S.C. SEC. 601 ET SEQ., OR ANY SALE UNDERTAKEN AT AN OFFICIAL PLANT AT WHICH MANDATORY INSPECTION IS MAINTAINED UNDER THE FEDERAL "EGG PRODUCTS INSPECTION ACT", 21 U.S.C. SEC. 1031 ET SEQ.

(11) "TURNING AROUND FREELY" MEANS TURNING IN A COMPLETE CIRCLE WITHOUT ANY IMPEDIMENT, INCLUDING A TETHER, AND WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE OR ANOTHER ANIMAL.

(12) "UNCOOKED" MEANS RAW AND NOT SUBJECTED TO HEAT OR OTHER COOKING METHODS THAT COULD BE CONSIDERED TO MAKE THE PRODUCT NO LONGER RAW.

(13) "USABLE FLOOR SPACE" MEANS THE TOTAL SQUARE FOOTAGE OF FLOOR SPACE PROVIDED TO EACH COVERED ANIMAL, AS CALCULATED BY DIVIDING THE TOTAL SQUARE FOOTAGE OF FLOOR SPACE PROVIDED TO THE ANIMALS IN AN ENCLOSURE BY THE NUMBER OF ANIMALS IN THAT ENCLOSURE. IN THE CASE OF EGG-LAYING HENS, "USABLE FLOOR SPACE" INCLUDES BOTH GROUND SPACE AND ELEVATED LEVEL FLAT PLATFORMS UPON WHICH HENS CAN ROOST, BUT DOES NOT INCLUDE PERCHES OR RAMPS.

(14) "VEAL MEAT" MEANS MEAT OF A CALF RAISED FOR VEAL INTENDED FOR USE AS HUMAN FOOD.

(15) "WHOLE PORK MEAT" MEANS ANY UNCOOKED CUT OF PORK, INCLUDING BACON, HAM, CHOP, RIBS, RIBLET, LOIN, SHANK, LEG, ROAST, BRISKET, STEAK, SIRLOIN, OR CUTLET THAT IS COMPRISED ENTIRELY OF PORK MEAT, EXCEPT FOR SEASONING, CURING AGENTS, COLORING, FLAVORING, PRESERVATIVES, AND SIMILAR MEAT ADDITIVES. "WHOLE PORK MEAT" DOES NOT INCLUDE COMBINATION FOOD PRODUCTS, INCLUDING SOUPS, SANDWICHES, PIZZAS, HOT DOGS, OR SIMILAR PROCESSED OR PREPARED FOOD PRODUCTS THAT ARE COMPRISED OF MORE THAN PORK MEAT, SEASONING, CURING AGENTS, COLORING, FLAVORING, PRESERVATIVES, AND SIMILAR MEAT ADDITIVES.

(16) "WHOLE VEAL MEAT" MEANS ANY UNCOOKED CUT OF VEAL, INCLUDING CHOP, RIBS, RIBLET, LOIN, SHANK, LEG, ROAST, BRISKET, STEAK, SIRLOIN, OR CUTLET THAT IS COMPRISED ENTIRELY OF VEAL MEAT, EXCEPT FOR SEASONING, CURING AGENTS, COLORING, FLAVORING, PRESERVATIVES, AND SIMILAR MEAT ADDITIVES. "WHOLE VEAL MEAT" DOES NOT INCLUDE COMBINATION FOOD PRODUCTS, INCLUDING SOUPS, SANDWICHES, PIZZAS, HOT DOGS, OR SIMILAR PROCESSED OR PREPARED FOOD PRODUCTS THAT ARE COMPRISED OF MORE THAN VEAL MEAT, SEASONING, CURING AGENTS, COLORING, FLAVORING, PRESERVATIVES, AND SIMILAR MEAT ADDITIVES.

35-50.5-103. Prohibitions.

- (a) A FARM OWNER OR OPERATOR WITHIN THE STATE OF COLORADO SHALL NOT KNOWINGLY:
- (I) CAUSE ANY COVERED ANIMAL TO BE CONFINED IN A CRUEL MANNER THAT PREVENTS THE ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING THE ANIMAL'S LIMBS, OR TURNING AROUND FREELY; AND
 - (II) ON OR AFTER DECEMBER 31, 2021:
 - (A) CONFINE A CALF RAISED FOR VEAL WITH LESS THAN 43 SQUARE FEET OF USABLE FLOOR SPACE PER CALF;
 - (B) CONFINE A BREEDING PIG WITH LESS THAN 24 SQUARE FEET OF USABLE FLOOR SPACE PER PIG.

(b) ON OR AFTER DECEMBER 31, 2021 A BUSINESS OWNER OR OPERATOR SHALL NOT KNOWINGLY ENGAGE IN THE SALE WITHIN THE STATE OF COLORADO OF ANY:

(I) WHOLE VEAL MEAT THAT THE BUSINESS OWNER OR OPERATOR KNOWS OR SHOULD KNOW IS THE MEAT OF A COVERED ANIMAL THAT WAS CONFINED IN A CRUEL MANNER THAT PREVENTS THE ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING THE ANIMAL'S LIMBS, OR TURNING AROUND FREELY AND CONFINES THE ANIMAL WITH LESS THAN 43 SQUARE FEET OF USABLE FLOOR SPACE PER CALF; AND

(II) WHOLE PORK MEAT THAT THE BUSINESS OWNER OR OPERATOR KNOWS OR SHOULD KNOW IS THE MEAT OF A COVERED ANIMAL THAT WAS CONFINED IN A CRUEL MANNER THAT PREVENTS THE ANIMAL FROM LYING DOWN, STANDING UP, FULLY EXTENDING THE ANIMAL'S LIMBS, OR TURNING AROUND FREELY AND CONFINES THE ANIMAL WITH LESS THAN 24 SQUARE FEET OF USABLE FLOOR SPACE PER PIG.

(III) A SALE IS DEEMED TO OCCUR AT THE LOCATION WHERE THE BUYER TAKES PHYSICAL POSSESSION OF AN ITEM COVERED BY THIS ARTICLE.

35-50.5-104. Exceptions. (1) SECTION 35-50.5-103 DOES NOT APPLY DURING:

(a) MEDICAL RESEARCH;

(b) EXAMINATION, TESTING, INDIVIDUAL TREATMENT, OR OPERATION FOR VETERINARY PURPOSE, BUT ONLY IF PERFORMED BY OR UNDER THE DIRECT SUPERVISION OF A VETERINARIAN LICENSED UNDER COLORADO LAW;

(c) TRANSPORTATION;

(d) A STATE OR COUNTY FAIR EXHIBITION, A 4-H PROGRAM, AND SIMILAR EXHIBITIONS;

(e) SLAUGHTER, IF DONE IN ACCORDANCE WITH AN APPLICABLE LAW;

(f) TEMPORARY PERIODS FOR ANIMAL HUSBANDRY PURPOSES FOR NO MORE THAN SIX HOURS IN ANY TWENTY-FOUR-HOUR PERIOD AND NO MORE THAN TWENTY-FOUR HOURS TOTAL IN ANY THIRTY-DAY PERIOD; OR

(g) TO A BREEDING PIG FIVE DAYS IMMEDIATELY BEFORE THE BREEDING PIG'S EXPECTED DATE OF GIVING BIRTH, AND ANY DAY THAT THE BREEDING PIG IS NURSING PIGLETS.

35-50.5-105. Penalty.

(a) A FARM OWNER OR OPERATOR OR BUSINESS OWNER OR OPERATOR WHO VIOLATES THIS ARTICLE IS GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF ONE THOUSAND DOLLARS PER VIOLATION, PER ANIMAL, PER DAY.

(b) IF THE COMMISSIONER IS UNABLE TO COLLECT A CRIMINAL PENALTY OR IF A FARM OWNER OR OPERATOR OR BUSINESS OWNER OR OPERATOR FAILS TO PAY ANY PORTION OF A CRIMINAL PENALTY IMPOSED UNDER THIS SECTION, THE COMMISSIONER MAY RECOVER THE AMOUNT OF THE PENALTY, PLUS COSTS AND ATTORNEY FEES, BY AN ACTION IN A COURT. THE COMMISSIONER IS AUTHORIZED TO PLACE A LIEN ON OR SEEK A COURT-ORDERED PUBLIC

AUCTION OF, OR BOTH PLACE A LIEN ON AND SEEK A COURT-ORDERED PUBLIC AUCTION OF, ANY FARM PROPERTY OR EQUIPMENT NECESSARY TO RECOUP UNPAID PENALTIES UNDER THIS ARTICLE.

(c) IN ADDITION, A VIOLATION OF THIS ARTICLE CONSTITUTES UNFAIR AND DECEPTIVE TRADE PRACTICES FOR WHICH ANY PERSON MAY COMMENCE A CIVIL ACTION UNDER SECTION 6-1-113 OF THE "COLORADO CONSUMER PROTECTION ACT".

35-50.5-106. Enforcement – Rules.

(a) THE COMMISSIONER SHALL ENFORCE THIS ARTICLE. A FARM OWNER OR OPERATOR OR BUSINESS OWNER OR OPERATOR SHALL ALLOW THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS DURING REGULAR BUSINESS HOURS TO THE FARM OR BUSINESS, VEHICLES, AND RECORDS PERTINENT TO ACTIVITIES REGULATED IN THIS ARTICLE.

(b) THE COMMISSIONER SHALL PROMULGATE RULES GOVERNING THE ENFORCEMENT OF THIS ARTICLE, INCLUDING RULES GOVERNING THE INSPECTION OF FARMS, WHOLE PORK MEAT, AND WHOLE VEAL MEAT SOLD IN COLORADO THAT ARE PRODUCED IN COMPLIANCE WITH THIS ARTICLE.

(c) THE COMMISSIONER MAY NOT USE A THIRD PARTY OR PRIVATE INSPECTION OR PROCESS VERIFICATION PROVIDER TO ENSURE COMPLIANCE WITH THIS ARTICLE.

35-50.5-107. Effects on other animal welfare laws. (1) THIS ARTICLE DOES NOT LIMIT OR REPLACE ANY OTHER STATE STATUE OR RULE THAT PROTECTS THE WELFARE OF ANIMALS. THIS ARTICLE DOES NOT PREEMPT A LOCAL GOVERNING BODY FROM ADOPTING AND ENFORCING ITS OWN ANIMAL WELFARE ORDINANCE, RULE, RESOLUTION, OR CHARTER PROVISION THAT IS MORE STRINGENT THAN THIS ARTICLE.

.....
Two Colorado Registered Voters:

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Ballot Title Setting Board

Proposed Initiative 2019-2020 #314¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the confinement standards for certain farm animals used in commercial production, and, in connection therewith, prohibiting the confinement without adequate space of egg-laying hens of domesticated fowl, calves raised for veal, and breeding pigs; prohibiting a business from selling eggs or meat produced from covered farm animals confined without adequate space; allowing certain exceptions to the requirement for adequate space for covered farm animals; imposing a fine for violations of the confinement standards; and directing the commissioner of agriculture to enforce the provision.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the confinement standards for certain farm animals used in commercial production, and, in connection therewith, prohibiting the confinement without adequate space of egg-laying hens of domesticated fowl, calves raised for veal, and breeding pigs; prohibiting a business from selling eggs or meat produced from covered farm animals confined without adequate space; allowing certain exceptions to the requirement for adequate space for covered farm animals; imposing a fine for violations of the confinement standards; and directing the commissioner of agriculture to enforce the provision?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:02 p.m.

¹ Unofficially captioned “**Concerning Farm Animal Confinement**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

By Steven Ward at 4:04 pm, Apr 22, 2020

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Brett Rutledge and Joyce R. Kelly, Objectors,

vs.

John Seber and John Surenkamp, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2019-2020 #314

Brett Rutledge and Joyce R. Kelly (“Objectors”), registered electors of Yuma and Weld Counties respectively as well as of the State of Colorado, through undersigned counsel, submit this Motion For Rehearing on Initiative 2019-2020 #314 (“#314”), pursuant to C.R.S. § 1-40-107, and states:

On April 15, 2020, the Title Board set titles for Initiative 2019-2020 #314. The ballot title and submission clause as designated and fixed by the Board reads:

Shall there be a change to the Colorado Revised Statutes concerning the confinement standards for certain farm animals used in commercial production, and, in connection therewith, prohibiting the confinement without adequate space of egg-laying hens of domesticated fowl, calves raised for veal, and breeding pigs; prohibiting a business from selling eggs or meat produced from covered farm animals confined without adequate space; allowing certain exceptions to the requirement for adequate space for covered farm animals; imposing a fine for violations of the confinement standards; and directing the commissioner of agriculture to enforce the provision?

A. The titles set are unfair, inaccurate, and misleading.

- 1. “Confinement” and “confined” represent a political catch phrase, intended to inflame voter passions rather than educate voters.**

“Confinement” and “confined” are politically loaded terms that make this title something other than the neutral summary it is supposed to be. Catch phrases are words that can “form the basis of a slogan for use by those who expect to carry out a campaign” on the measure. *In re Title, Ballot Title, Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). They are “**tailored for political campaigns** – brief striking phrases for use in advertising or promotion.” *Id.* (emphasis added). A catch phrase will “encourage prejudice in favor of the issue and, thereby, distract voters from consideration of the proposal’s merits.” *Id.*

“[T]he state of being confined” and “a period of confinement” are equated with “imprisonment.” *Tapia v. United States*, 564 U.S. 319, 329 (2011) (citing Black’s Law Dictionary 825 (9th ed. 2009) and Webster’s Third New International Dictionary 1137 (1993)). The notion of “imprisoning” as applied to #314 is an emotional, nonsubstantive, and inaccurate representation that is inconsistent with the Board’s primary objective, “a proper fair title.” C.R.S. § 1-40-106(1).

A term’s campaign potential is judged “in the context of contemporary political debate.” 258(A), *supra*, 4 P.3d at 1100. The terms “confined” and “confinement” are featured on a webpage about a recent California ballot measure, “Why Mercy for Animals is **Tirelessly Campaigning for YES** on 12.” <https://mercyforanimals.org/why-mercy-for-animals-is-tirelessly-campaigning> (emphasis added) (last viewed April 21, 2020). Notably, Mercy for Animals’ website lists one of Initiative #314’s two Designated Representatives as its Senior Vice President of Advocacy¹ and describes its California ballot measure advocacy by emphasizing:

- “mother pigs confined in gestation crates;”
- “animals confined in California’s factory farms;” and
- “forms of extreme confinement.”

In the same campaign, this group sent other messages to the same effect, such as the one titled, “Yes on Prop 12! Early Voting Begins for CA Law to End Extreme Farmed Animal **Confinement**.” <https://mercyforanimals.org/yes-on-prop-12-early-voting-begins-for-ca> (referencing “extreme cage confinement”) (emphasis added) (last viewed on April 21, 2020). Besides using “confinement” for campaign advantage, this organization routinely uses that term for other political positioning.²

#314’s legislative declaration – actually, its very first sentence – ties “animal cruelty” to “extreme methods of farm animal confinement.” Proposed Section 35-21-201. If there was any question about the expected campaign usage of this term, that provision in #314 answers it.

¹ <https://mercyforanimals.org/about> (see bio of John Seber) (last viewed on April 21, 2020).

² The aforementioned organization advocates on its website for new laws relating to:

- “production and sale of meat and eggs from intensively confined animals;”
- “production and sale of eggs from hens confined in cages;”
- “confinement law for hens;”
- “intensive confinement... for egg-laying hens, pigs used for breeding, and calves used for veal;”
- “intensively confined animals;” and
- “cage confinement.”

<https://mercyforanimals.org/2019-august>; <https://mercyforanimals.org/progress-oregon-bans-cage-confinement-of> (emphasis added) (last viewed April 21, 2020).

The Title Board erred in using “confinement” and “confined” four (4) times in seven (7) lines of the title. Those terms reflect and consolidate political rhetoric – and have been used as part of admitted “tireless campaigning.”

The fact that #314’s text uses “confinement” does not mean it is any less of a catch phrase. “While we agree that the initiative contains this language, the Title Board is not free to include this wording in the titles if, as here, it constitutes a catch phrase.” 258(A), *supra*, 4 P.3d at 1100.

There are suitable, non-inflammatory alternatives. Instead of “confined,” the Board could use “housed” or “maintained.” Such terms lend themselves to voter understanding, not voter sympathy or passions, and the Board should employ one here.

2. The title improperly refers to animal housing that lacks “adequate space.”

“Adequate space,” used three times in the titles, does not reflect the language of the initiative and is qualitative, subjective phrasing without being informative or fair. The measure itself provides specific space dimensions for affected animals. A ballot title cannot use wording that generally but inaccurately describes the measure. *See In re Proposed Election Reform Amendment*, 852 P.2d 28, 35 (Colo. 1993) (Board erred by stating measure would just “revise” certain constitutional provisions where it actually materially changed or repealed both procedural and substantive law).

Advocates on both sides of this issue could disagree over whether #314’s detailed dimensions provide – or fail to provide³ – “adequate space.” But this Board has no basis to judge if the stated dimensions provide the listed animals “adequate space.”

Instead, the Board should use “according to specified dimensions for each animal” or some comparable phrase that is accurate without being subjective.

3. The titles are incomplete, and thus inaccurate, in describing fines that can be imposed under this measure.

The titles fail to inform voters about key elements of the fines for violations, namely:

- Fines are criminal in nature, stemming from the status of a violation as a misdemeanor and the measure’s express references to “criminal penalty; and
- Fines are imposed on a “per animal, per day” basis.

The fact that the measure uses something other than a simple administrative penalty and that it uses not one but two multipliers (per animal and per day) to heighten the penalty are central features of #314.

³ In California, Proposition 12 set forth space-related requirements for farm animals but was still criticized by animal activist groups because it did not go far enough and thus were inadequate. <https://www.peta.org/blog/prop-12-cage-free-misleads-consumers/> These spacing provisions could trigger similar reactions from other organizations and interested parties.

Failing to provide the specifics of key portions of an initiative represents reversible error. *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, 34, 369 P.3d 565, 570 (Board erred by writing a title that was “so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative”). Thus, the ballot title should be revised to reflect these two factors – the criminal nature of this fine and the fact that the significant multipliers are mandated for calculating these fines.

4. The titles are incomplete, and thus misleading, by not stating that government officials are authorized to seek liens against a person’s real property and equipment as well as institute court-ordered auctions of such property or equipment.

These extra remedies reflect a key element of the measure. They present a more severe burden than a mere monetary fine, as they directly implicate agricultural producers’ and grocers’ abilities to earn livings (literally taking the tools of their livelihoods away) and fulfill their respective roles in the state’s food supply chain.

5. The titles are incomplete, and thus incorrect, in stating the measure will be enforced, seemingly alone, by the commissioner of agriculture.

The commissioner is authorized to take certain steps, but the judiciary will actually enforce many of these provisions. For instance, the courts will be involved in adjudicating lien requests and/or hearings for court-ordered auctions. Thus, there is not simply an administrative remedy that will be triggered by the measure. It is simply inaccurate to say that the commissioner alone is involved in enforcing this measure.

6. The titles are incomplete, and thus incorrect, in stating that fines are imposed only “for violation of the confinement standards,” given that (a) criminal fines are levied for sales of certain agricultural products and (b) even if sellers only “should have known” about producers’ animal housing practices.

In addition and of greater possible effect to voters/consumers, fines can be imposed against “business owners or operators” who engage in the sale of agricultural products raised without complying with the new provisions relating to housing of animals. Therefore, retail sellers are subject to these penalties even though they did not violate the specified housing standards. Proposed Sections 35-21-203(b), 35-50.5-103(b).

Specifically, voters should know that sellers can receive criminal fines. In this regard, the titles are incorrect that sellers are just “prohibit[ed]... from selling” affected agricultural products. The titles are also incomplete for failing to state that penalties can be imposed where sellers “should have known” of animal housing practices, not (as voters might presume) just where they had actual knowledge of such practices. #73, *supra*, 369 P.3d at 570 (overly general title language can be misleading to voters).

7. The titles fail to disclose the significant private party enforcement role provided by the measure.

Initiative #314 gives private parties a cause of action under C.R.S. § 6-1-113, a consumer protection statute. This law allows persons to sue to obtain, among other remedies, treble damages against a defendant. In light of the ability to sue “business owners or operators,” the private right of action will be a substantial element of the potential liability created by #314, a factor that voters should understand through the ballot title.

Because the private right of action is not limited to Colorado residents, C.R.S. § 6-1-113(1)(a)-(c); Proposed Sections 35-21-205(c) and 35-50.5-105(c) (authorizing suit by “any person”), the fact that so many agricultural products are sold outside of Colorado renders this threat a significant one. Normally, 48% of Colorado’s agricultural goods are sold outside the state; at present, it’s 90%.⁴ The initiative’s authority for this civil liability against Colorado producers must be disclosed.

8. “Covered animals” is a vague and potentially misleading phrase

Used twice in the titles without context, “covered animals” is non-specific and does not communicate to voters that it refers to animals affected by this measure.

More importantly, “covered” is susceptible to multiple meanings that will confuse voters, particularly in a measure related to animal housing. The primary meaning of “covered” is “to place something on, over, or in front of, so as to conceal, protect, or close.” *Webster’s New World Dictionary*, Third College Edition 320 (1988).

In other words, it describes adding an additional layer. As such, “covered” can be interpreted by voters as suggesting roofs or other extra protection in the housing or physical structures – which are very much at issue here – in which animals are kept.

9. Reference to “the provision” in the final clause of the title is non-specific and will be confusing to voters.

This term lacks meaning and context as to what the commissioner will be enforcing. It will therefore confuse voters.

B. The abstract is misleading.

1. The abstract fails to state the fiscal impact of #314 on the judicial department.

As noted above, the judicial department will be involved in enforcing this measure. The abstract is silent on this issue, even if only to note that such impact is currently indeterminate. The abstract thus does not fulfill the requirement that it provide an

⁴ <https://www.denverpost.com/2020/04/19/colorado-farms-face-new-worries-as-coronavirus-threatens-food-supply/> (last viewed April 21, 2020).

“estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if the measure is enacted.” C.R.S. § 1-40-105.5(3)(c).

2. The abstract understates the number and cost of department personnel, as well as travel costs, required to enforce this measure.

The fiscal impact statement estimates 2.0 FTE (one compliance specialist and one administrative assistant) to administer this program. The measure specifically requires the Department to “**ensure** compliance” directly and not to use third party contractors. Proposed Sections 35-21-206(c), 35-50.5-106(c) (emphasis added).

The Department of Agriculture estimates there are 34,000 farms and ranches in the state.⁵ As such, these two individuals would each have to guarantee compliance of more than 46 farms and ranches every day – assuming they worked 365 days a year including all holidays. Given that there are approximately 250 work days (365 minus weekends and holidays) and that the inspections can occur only “during regular business hours,” Proposed Sections 35-21-206(a) and 35-50.5-206(a), each of the two staff persons would have to inspect almost 70 farms and ranches of every work day – or 9 each hour daily.

In addition, there are tens of thousands of grocery stores, convenience stores, butcher shops, and vendors at farmers markets (among others) who would be “business owners or operators” whose sales activities would also have to be monitored for compliance. It is just not reasonable to think that two government employees will be sufficient to meet the measure’s mandate of “ensur[ing] compliance.”

Likewise, it is common sense that the mandate of inspection for 34,000 farms and ranches and many thousands of retailers of these food products cannot be met with a travel budget of \$4,151.

These personnel and travel estimates must be revised to reflect the actual requirements that must fulfilled by regulators to comply with C.R.S. § 1-40-105.5(3)(c).

WHEREFORE, the Title Board should correct the titles and abstract set on April 15, 2020 for Initiative #314 as provided herein.

Respectfully submitted this 22nd day of April, 2020.

s/ Mark G. Grueskin
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⁵ <https://www.growingyourfuture.com/student-center/colorado-agriculture-fun-facts/> (last viewed April 21, 2020).

Objectors Addresses:

Brett Rutledge
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Yuma, Colorado 80759

Joyce R. Kelly
23101 County Road 64
Greeley, Colorado 80631

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the Motion For Rehearing for Initiative 2019-2020 #314, was sent this 22nd day of April, 2020 by email to counsel of record for the designated representatives at:

Christopher Jackson
cmjackson@hollandhart.com

s/ Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2019-2020 #314¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the confinement standards for certain farm animals used in commercial production, and, in connection therewith, prohibiting confinement that does not meet specified space requirements for egg-laying hens of domesticated fowl, calves raised for veal, and breeding pigs; prohibiting a business from selling eggs or meat produced from covered farm animals confined in violation of the measure; allowing certain exceptions to the confinement standards for covered farm animals; imposing a fine for violations of the measure; and directing the commissioner of agriculture to enforce the measure.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the confinement standards for certain farm animals used in commercial production, and, in connection therewith, prohibiting confinement that does not meet specified space requirements for egg-laying hens of domesticated fowl, calves raised for veal, and breeding pigs; prohibiting a business from selling eggs or meat produced from covered farm animals confined in violation of the measure; allowing certain exceptions to the confinement standards for covered farm animals; imposing a fine for violations of the measure; and directing the commissioner of agriculture to enforce the measure?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:02 p.m.

Rehearing April 23, 2020:

Motion for Rehearing granted only to the extent that the Board made changes to the titles.

Hearing adjourned 3:17 p.m.

¹ Unofficially captioned “**Concerning Farm Animal Confinement**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



**Legislative
Council Staff**
Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: April 14, 2020

Fiscal Analyst: Clare Pramuk (303-866-2677)

LCS TITLE: CONCERNING FARM ANIMAL CONFINEMENT

Fiscal Impact Summary		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	-	\$290,635

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

The measure establishes enclosure standards for farm owners or operators (producers) to house egg-laying hens, breeding pigs, and calves raised for veal. Egg-laying hens include female domesticated chickens, turkeys, ducks, geese, or guinea fowl (hens) kept for the purpose of commercial egg production. Beginning December 31, 2021, hens, breeding pigs, and calves raised for veal (covered animals) must be able to lie down, fully extend all of their limbs, and turn around freely without touching the side of an enclosure or another animal. The measure includes specific enclosure standards for each type of covered animal.

Exceptions to the enclosure standards include:

- medical research;
- veterinary care;
- transportation;
- exhibitions;
- slaughter; or
- temporary periods for animal husbandry purposes.

The measure also restricts retail sellers from knowingly selling eggs, pork or veal products that were confined in ways that conflict with the requirements of the measure.

The Commissioner of Agriculture is required to promulgate rules for enforcement, including inspection of farms, shell eggs, egg products, whole pork meat, and whole veal meat to ensure compliance with the enclosure standards. The commissioner may not use a third-party or private inspection process or process verification provider to ensure compliance. Individuals who violate the enclosure requirements are guilty of a misdemeanor and subject to a fine of up to \$1,000 per violation, per animal, per day. The measure provides legal recourse for the commissioner if she is unable to collect a criminal penalty. Violations also constitute unfair and deceptive trade practices under the Colorado Consumer Protection Act and are subject to civil action.

Background and Assumptions

Egg dealers. The Colorado Department of Agriculture (CDA) currently oversees the Egg Program that licenses egg dealers. Dealers are inspected for compliance with state food safety regulations and educated in the proper care and handling of eggs. This involves annually inspecting the six farmers that currently produce eggs in Colorado and 2,500 to 3,000 retail sellers to ensure eggs are labeled correctly and in good condition. Retail sellers are inspected on a tiered inspection schedule, so they could be inspected annually or up to once every four years. There are 16 field inspectors who split their time between multiple programs, including egg inspections.

Breeding pigs and calves raised for veal. Current law requires that breeding pig and calves raised for veal be kept in a manner that allows the animals to stand up, lie down, and turn around without touching the sides of its enclosure with some exceptions. The fiscal impact statement assumes there are currently 76 pork producers and no veal producers in Colorado. The CDA does not currently track or inspect pork or veal production in Colorado.

Unclassified misdemeanor. This bill creates a new unclassified misdemeanor for violations of the measure's enclosure requirements and a related civil penalty of a deceptive trade practice. The fiscal note assumes that individuals will comply with the law and that there will be minimal or no additional case filings or convictions for the new offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note.

State Expenditures

The measure will increase state General Fund expenditures by \$290,635 and 1.4 FTE in FY 2021-22 for the CDA. The measure does not create a funding source, therefore expenditures are assumed to require General Fund. These costs are shown in Table 2 and explained below.

Table 2
Expenditures Under Initiative #314

	FY 2020-21	FY 2021-22
Department of Agriculture		
Personal Services	-	\$65,674
Operating Expenses	-	\$2,160
Capital Outlay Costs	-	\$12,400
Travel	-	\$4,151
Computer Programming	-	\$139,500
Centrally Appropriated Costs	-	\$66,750
Total Cost	-	\$290,635
Total FTE	-	1.4 FTE

Colorado Department of Agriculture. The CDA will add 2.0 FTE, prorated to 1.4 FTE to reflect an October 1, 2021, start date, in FY 2021-22, to administer the measure. New staff will include a compliance specialist II and an administrative assistant III. The CDA will develop rules with legal support from the Department of Law within existing resources. Additional staffing and resources are required to conduct an increased number of inspections of both producers and retail sellers; to develop a registration tracking database for producers and retail sellers; and to support the registration system. The staff will also provide education and outreach to producers and retail sellers. The CDA will expand its existing registration and licensing system, AgLicense, to accommodate the new registration categories and to provide a user interface.

Economic Impact

To the extent that producer and retail seller costs increase to meet the standards under the measure, these costs may reduce spending elsewhere in the economy.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Agriculture
Law

Information Technology
Public Health and Environment

Judicial

Other Sources Considered

Not applicable.

Abstract of Initiative 314: CONCERNING FARM ANIMAL CONFINEMENT

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 14, 2020, identifies the following impacts:

State expenditures. The measure will increase state General Fund expenditures by \$290,635 and 1.4 FTE in FY 2021-22.

Economic impacts. To the extent that producer and retail seller costs increase to meet the standards under the measure, these costs may reduce spending elsewhere in the economy.