

**Initiative #93
Additional Remedies for an Unsafe Workplace**

1 **Amendment ? proposes amending the Colorado statutes to:**

- 2 ♦ require every private employer in Colorado with ten or more employees
3 to provide a safe and healthy workplace; and
- 4 ♦ allow an injured employee to seek damages in court, in addition to
5 workers' compensation benefits, if the employer fails to provide a safe
6 and healthy workplace.

7 **Summary and Analysis**

8 Currently, federal and state safety standards exist to ensure safe working
9 conditions for employees. Companies may be fined if they do not meet these
10 standards. Further, employees who are injured at work receive benefits through
11 workers' compensation.

12 ***What remedies are available to injured employees under workers'***
13 ***compensation?*** State law requires employers with one or more full- or part-time
14 employees to provide workers' compensation coverage that pays for on-the-job
15 injuries or work-related diseases, regardless of who or what caused the injury. When
16 a workplace injury occurs, the injured employee may receive:

- 17 ♦ payment for reasonable and necessary medical expenses;
18 ♦ disability benefits for lost wages, which are determined based on the
19 duration and severity of the injury;
20 ♦ payment for disfigurement;
21 ♦ vocational rehabilitation; and
22 ♦ death benefits for surviving dependents.

23 An employee may appeal the determination of benefits through a state system, but
24 cannot seek additional damages in court. In exchange for the employee giving up his
25 or her right to sue, the employer pays all benefits required by law. In 2005, over
26 120,000 workplace injuries were reported, and of those approximately 85,000 resulted
27 in claims for medical payments.

28 ***What additional remedies are offered to injured employees under the***
29 ***measure?*** In addition to any remedies an injured employee receives under workers'
30 compensation, Amendment ? allows an injured employee to sue in court if he or she
31 believes that the employer failed to provide a safe and healthy workplace. However,
32 the employee cannot receive damages that he or she already received under workers'
33 compensation. Under Amendment ?, an employee may sue for the following:

- 34 ♦ past and future monetary losses;
35 ♦ pain and suffering;

- 1 ◆ emotional distress;
- 2 ◆ inconvenience;
- 3 ◆ mental anguish;
- 4 ◆ loss of enjoyment of life; and
- 5 ◆ other non-monetary losses.

6 **Arguments For**

7 1) The workers' compensation system does not always meet the needs of injured
8 employees. While an injured employee may be compensated for medical treatment
9 and wage replacement, he or she cannot be compensated for other losses, such as
10 pain and suffering. Further, if an injured employee is unable to work, wage
11 replacement is capped at about \$41,000 per year, which could be far below the
12 employee's previous earnings. By allowing the courts to review individual cases, the
13 measure establishes another avenue for employees to seek compensation for injuries
14 over and above the benefits provided by the workers' compensation system.

15 2) The measure encourages an increased focus on workplace safety, and both
16 employers and employees benefit from safe and healthy workplaces. Safe
17 workplaces allow employees to be efficient and productive, saving employers money.
18 Maintaining a safe workplace reduces employees' concerns about their day-to-day
19 safety and the likelihood of injury.

20 **Arguments Against**

21 1) Amendment ? is unnecessary. The current workers' compensation system
22 effectively balances the need for controlled costs for employers while ensuring prompt
23 delivery of benefits to injured workers. Amendment ? disrupts this balance. Moreover,
24 employers are already motivated to provide safe and healthy workplaces since their
25 workers' compensation premiums are directly related to the number and severity of
26 injuries at their workplace.

27 2) Because Amendment ? does not define safe, healthy, or workplace, employers
28 cannot know how to comply with the law, exposing them to additional liability and
29 increased legal fees. As a result of this measure, employers might increase prices for
30 goods and services, lower wages, reduce benefits, and eliminate jobs to offset the
31 costs associated with the additional liability. In addition, the measure could result in
32 significant litigation, adding to the current backlog of court cases.

33 **Estimate of Fiscal Impact**

34 Amendment ? is expected to lead to new court filings by employees injured at
35 work. Because the measure establishes a new right of action, there is no experience
36 available to estimate the number of filings that will result. Table 1 shows both revenue
37 and expenditure increases if either one percent or ten percent of workers'

1 compensation claims for lost wages result in new court cases. Revenue increases
 2 result from court filing fees, and expenditures increase to pay for additional court staff.
 3 As people become aware of their right of action under this measure, the potential for
 4 significant revenue and expenditure increases is real.
 5

6 **Table 1. State Revenue and Expenditures Under Amendment ?**

	1% of Claims Results in Court Case	10% of Claims Results in Court Case
Cases Filed	166	1,660
New Revenue	\$61,000	\$608,000
New Expenditures	\$119,000	\$1,225,000
New Employees	1.7	17.5