

## Initiative #93 Additional Remedies for Injured Employees

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, beyond workers'  
5         compensation benefits, if the employee believes that the employer  
6         failed to provide a safe 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. Employees who are injured at work receive benefits through workers'  
11         compensation.

12         ***What remedies are available to injured employees under workers'***  
13         ***compensation?*** Workers' compensation is the exclusive remedy for on-the-job  
14         injuries. State law requires all employers with one or more full- or part-time  
15         employees to provide workers' compensation benefits for on-the-job injuries or  
16         work-related diseases, regardless of who or what caused the injury. Employees are  
17         entitled to specific benefits, which are outlined in state law, without going to court.  
18         When a workplace injury occurs, an injured employee receives the following benefits,  
19         depending on the circumstances:

- 20         ◆ reasonable and necessary medical care, at no cost to the employee;
- 21         ◆ tax-free payment for lost wages up to two-thirds of the injured  
22         employee's salary;
- 23         ◆ payment for disfigurement;
- 24         ◆ vocational rehabilitation;
- 25         ◆ funeral expenses; and
- 26         ◆ death benefits for surviving dependents.

27         An employee may appeal the determination of benefits through a state system,  
28         but cannot seek damages in court. In 2005, over 120,000 workplace injuries were  
29         reported, and of those, approximately 85,000 resulted in claims for medical care and  
30         16,600 resulted in claims for lost wages.

31         ***What additional remedies are offered to injured employees under***  
32         ***Amendment (?)?*** In addition to any remedies received under workers'  
33         compensation, Amendment ? allows an injured employee to sue in court if he or she  
34         believes that the employer failed to provide a safe and healthy workplace.  
35         Amendment ? applies to employees working at private companies with ten or more  
36         employees. An employee cannot receive damages that he or she already received

1 under workers' compensation. Under Amendment ?, examples of damages that an  
2 employee may sue for include:

- 3 ◆ past and future monetary losses;
- 4 ◆ pain and suffering;
- 5 ◆ emotional distress;
- 6 ◆ inconvenience;
- 7 ◆ mental anguish;
- 8 ◆ loss of enjoyment of life; and
- 9 ◆ other non-monetary losses.

## 10 **Arguments For**

11 1) The workers' compensation system does not always meet the needs of injured  
12 employees. While an injured employee receives medical care at no cost, the choice of  
13 doctor and treatment options are limited. Further, an injured employee who is unable  
14 to work may receive wage payments that are far below the employee's previous  
15 take-home earnings. By allowing the courts to review individual cases, Amendment ?  
16 establishes another avenue for employees to seek compensation for injuries, such as  
17 pain and suffering, beyond the benefits provided by workers' compensation.

18 2) Amendment ? encourages an increased focus on workplace safety, and both  
19 employers and employees benefit from safe and healthy workplaces. Safe  
20 workplaces allow employees to be efficient and productive, saving employers money.  
21 Maintaining a safe workplace reduces employees' concerns about their day-to-day  
22 safety and the likelihood of injury. Amendment ? provides a mechanism to financially  
23 penalize employers who endanger the safety of their employees.

## 24 **Arguments Against**

25 1) Amendment ? is unnecessary. The current workers' compensation system  
26 effectively balances the needs of employees and employers. It ensures prompt  
27 delivery of benefits to injured employees without the delay, expense, and risk involved  
28 with a lawsuit and controls costs for employers. Allowing injured employees to sue for  
29 additional benefits disrupts this balance. Moreover, employers are already motivated  
30 to provide safe and healthy workplaces to comply with safety regulations, lower costs  
31 for worker replacement and insurance premiums, and increase employee productivity.

32 2) The negative effect of Amendment ? on the state's economy outweighs any  
33 potential benefits to some injured employees. It exposes employers to increased  
34 liability and legal costs. These increased costs are likely to be passed on to  
35 consumers and employees through increased prices for goods and services, lower  
36 wages, and reduced employee benefits. Amendment ? may increase unemployment  
37 by discouraging businesses from locating or expanding in Colorado. It could also  
38 result in significant litigation, adding to the current backlog of court cases.

1 **Estimate of Fiscal Impact**

2 Amendment ? is expected to lead to new court filings by employees injured at  
 3 work. Because the measure establishes a new right of action, there is no experience  
 4 available to estimate the number of filings that will result. Table 1 shows both annual  
 5 state revenue and spending increases if 1 percent, 10 percent, or 25 percent of  
 6 workers' compensation claims for lost wages result in new court cases. Revenue  
 7 increases result from court filing fees, and spending increases pay for additional court  
 8 staff. As people become aware of their right of action under this measure, the  
 9 potential for significant revenue and spending increases is real.

11 **Table 1. Annual State Revenue and Spending Increases**  
 12 **Under Amendment ?\***

	<b>1% of Claims Result in a Court Case</b>	<b>10% of Claims Result in a Court Case</b>	<b>25% of Claims Result in a Court Case</b>
<b>Cases Filed</b>	166	1,660	4,150
<b>New Revenue - Fees</b>	\$61,000	\$608,000	\$1,520,000
<b>New Spending</b>	\$139,000	\$1,433,000	\$3,583,000
<b>New Employees</b>	2	18	44

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20 \* Table 1 shows only government spending and does not include costs to private companies.