

**Initiative #74
Criminal Accountability for Business Executives**

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

- 2 ♦ hold a business executive criminally responsible for the business's
3 failure to perform a duty required by law if the official knew of the duty
4 and the business's failure to perform it.

5 **Summary and Analysis**

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7 **Accountability of business entities.** Businesses are subject to a wide variety of
8 state and federal laws, including environmental protections, securities regulations, and
9 consumer protection guarantees. Colorado law criminalizes certain acts committed by
10 or on behalf of a business. Businesses may be held criminally accountable for the
11 failure to perform specific legal duties and for illegal conduct authorized or tolerated by
12 a governing board, manager, or executive. When these types of laws are violated,
13 companies may be assessed fines.

14 **Expansion of accountability for business executives.** In Colorado, individuals
15 may be prosecuted for illegal conduct performed on behalf of a business.
16 Amendment __ extends criminal accountability to business executives who were
17 aware of their business's failure to perform a legal duty. Amendment __ applies to an
18 officer, director, managing partner, managing member, or sole proprietor of a for-profit
19 business or nonprofit entity.

20 In conjunction with the new criminal provisions, Amendment __ applies existing
21 criminal penalties, including fines, imprisonment, or both, to business executives. The
22 measure provides a defense from prosecution for business executives who report
23 knowledge of their business's failure to comply with the law, as long as the report is
24 made prior to the filing of charges.

25 **Arguments For**

26 1) Amendment ____ addresses a gap in state law. While business entities
27 themselves can be prosecuted, their executives can currently avoid responsibility for
28 their businesses' failure to follow state law. The measure helps ensure that these
29 executives are held accountable when they know of a legal duty that their business
30 has failed to perform. Over time, Amendment __ can foster a business environment
31 that attracts and retains responsible employers.

32 2) Amendment __ may encourage a healthy and moral economic climate for
33 Colorado. When businesses fail to comply with state law, the state's economy can be
34 impacted in a variety of unexpected or far-reaching ways. The measure seeks to
35 eliminate cases where executives' failure to act or take responsibility for their

1 businesses' legal obligations affects the lives of employees, shareholders, or even the
2 state's citizens as a whole.

3 3) Amendment __ could lead to additional disclosure about and charges for illegal
4 corporate conduct. By establishing a defense from prosecution for executives, they
5 may feel more secure about reporting their business's failure to perform duties
6 required under the law.

7 **Arguments Against**

8 1) The implementation of Amendment ___ may lead companies to reconsider
9 locating in Colorado and negatively impact economic development. In the corporate
10 world, the new criminal accountability provisions could drive higher insurance costs for
11 executives and hinder recruitment of top business talent. Similarly, fear of prosecution
12 may leave community leaders reluctant to serve on nonprofit boards.

13 2) State and federal laws already hold business executives accountable. For
14 example, executives can be prosecuted under Colorado law for their own criminal
15 conduct on behalf of their business. Recent federal laws have strengthened criminal
16 and civil penalties for business executives who commit fraud. High-profile
17 prosecutions of business executives demonstrate that current laws are sufficient to
18 address corporate wrongdoing.

19 3) Rather than providing an effective tool to prosecute illegal conduct,
20 Amendment __ creates a way to avoid accountability. Business executives who are
21 aware of their business's failure to comply with the law, and who should be held
22 responsible, may escape prosecution through reports to the attorney general.

23 **Estimate of Fiscal Impact**

24 Amendment __ is not expected to have a significant impact on either state or local
25 government spending in Colorado, assuming business executives comply with laws.
26 However, it could increase the number of people incarcerated in both state prison (for
27 felonies) and county jail (for misdemeanors). If one person is sentenced to state
28 prison, costs would increase \$125,000 in budget year 2010 and \$28,800 in budget
29 year 2011. The first-year cost pays for expanding the state prison system to
30 accommodate an additional inmate sentenced to prison; the second-year cost is for
31 state prison operations related to that inmate. The state court system may also see
32 an increase in activity, although no significant increase in costs is anticipated. County
33 jail costs will vary, but average between \$45 and \$65 per day of incarceration.
34 Amendment __ will also increase state revenue from fines. Because the courts have
35 the discretion of sentencing a person to jail or imposing a fine, the exact impact on
36 county jails and fine revenue cannot be determined.