

**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. When these types of laws are violated, companies may be
11 assessed fines.

12 **Extension of accountability to business executives.** In Colorado, businesses
13 may be held criminally accountable for the failure to perform specific legal duties and
14 for an offense authorized by an employee acting on behalf of the business.
15 Amendment __ extends criminal accountability to business executives who were
16 aware of their business's failure to perform a legal duty. The provisions apply to an
17 officer, director, managing partner, managing member, or sole proprietor of a
18 company.

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

24 **Arguments For**

25 1) The measure addresses a gap in state law. While business entities
26 themselves can be prosecuted, their executives can currently avoid responsibility for
27 their businesses' failure to follow state law. The measure helps ensure that these
28 executives are held accountable when they know of a legal duty that their business
29 has failed to perform.

30 2) Amendment __ encourages a healthy and moral economic climate for
31 Colorado, which affects everyone. When corporations fail to comply with state law,
32 the state's economy can be impacted in a variety of unexpected or far-reaching ways.
33 The measure seeks to eliminate cases where executives' failure to act or take
34 responsibility for their businesses' legal obligations affects the lives of employees,
35 shareholders, or even the state's citizens as a whole.

1 **Arguments Against**

2 1) Amendment __ could have a negative effect on economic development in the
3 state. Companies looking to locate in Colorado may reconsider because of new
4 criminal accountability measures for business executives. Similarly, Colorado
5 companies, already in the midst of challenging economic times, may have difficulty
6 recruiting top executives. Ultimately, the new criminal accountability provisions could
7 drive higher insurance costs for executives, which can be passed along to consumers.

8 2) State and federal laws already hold business executives responsible in
9 important ways. For example, executives can be prosecuted under Colorado law for
10 criminal conduct that occurs on behalf of their business. Recent federal laws have
11 strengthened criminal and civil penalties for business executives who commit fraud.
12 High-profile prosecutions of business executives demonstrate that current laws are
13 sufficient to address corporate wrongdoing.

14 **Estimate of Fiscal Impact**