

**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**

6
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. In Colorado, businesses may be held criminally
11 accountable for the failure to perform specific legal duties and for illegal conduct
12 authorized or tolerated by a governing board, manager, or executive. When these
13 types of laws are violated, companies may be assessed fines.

14 **Extension of accountability to 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 __ encourages 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 **Arguments Against**

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

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

16 **Estimate of Fiscal Impact**

17 Amendment ___ is expected to increase the number of people incarcerated in both
18 state prison (for felonies) and county jail (for misdemeanors). At the state level, costs
19 are estimated to increase \$125,000 in budget year 2010 and \$28,800 in budget year
20 2011. First-year costs are for an expansion of the state prison system to
21 accommodate additional inmates sentenced to prison; second-year costs are for state
22 prison operations. The state court system may also see an increase in activity,
23 although no significant increase in costs is anticipated. County jail costs will vary, but
24 average between \$45 and \$65 per day of incarceration. Amendment ___ will also
25 increase state revenue from fines. Because the courts have the discretion of
26 sentencing a person to jail or imposing a fine, the exact impact on county jails and fine
27 revenue cannot be determined.