

Amendment 53
Criminal Accountability of Business Executives

1 **Ballot Title:** An amendment to the Colorado Revised Statutes extending the criminal
2 liability of a business entity to its executive officials for the entity's failure to perform
3 a specific duty imposed by law, and, in connection therewith, conditioning an executive
4 official's liability upon his or her knowledge of the duty imposed by law and of the
5 business entity's failure to perform such duty; and allowing an executive official who
6 discloses to the attorney general all facts known to the official concerning a business's
7 criminal conduct to use that disclosure as an affirmative defense to criminal charges.

8 **Text of Proposal:**

9 *Be it enacted by the People of the State of Colorado:*

10 **SECTION 1.** Section 18-1-606, Colorado Revised Statutes, is amended to read:

11 **18-1-606. Criminal liability of business entities and their executive officials.**

12 (1) A business entity is guilty of an offense if:

13 (a) The conduct constituting the offense consists of an omission to discharge a
14 specific duty of affirmative performance imposed on the business entity by law; or

15 (b) The conduct constituting the offense is engaged in, authorized, solicited,
16 requested, commanded, or knowingly tolerated by the governing body or individual
17 authorized to manage the affairs of the business entity or by a "high managerial agent"
18 acting within the scope of his or her employment or in behalf of the business entity.

19 (1.5) AN EXECUTIVE OFFICIAL IS GUILTY OF AN OFFENSE IF THE CONDUCT
20 CONSTITUTING THE OFFENSE CONSISTS OF AN OMISSION TO DISCHARGE A SPECIFIC DUTY
21 OF AFFIRMATIVE PERFORMANCE IMPOSED ON THE BUSINESS ENTITY BY LAW AND THE
22 EXECUTIVE OFFICIAL KNEW OF THE SPECIFIC DUTY TO BE PERFORMED AND KNEW THAT
23 THE BUSINESS ENTITY FAILED TO PERFORM THAT DUTY.

24 (2) As used in this section:

25 (a) "Agent" means any director, officer, or employee of a business entity, or any
26 other person who is authorized to act in behalf of the business entity, and "high
27 managerial agent" means an officer of a business entity or any other agent in a position
28 of comparable authority with respect to the formulation of the business entity's policy
29 or the supervision in a managerial capacity of subordinate employees.

1 (b) "Business entity" means a corporation or other entity that is subject to the
2 provisions of title 7, C.R.S.; foreign corporations qualified to do business in this state
3 pursuant to article 115 of title 7, C.R.S., specifically including federally chartered or
4 authorized financial institutions; a corporation or other entity that is subject to the
5 provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of
6 individuals doing business in the state.

7 (c) "EXECUTIVE OFFICIAL" MEANS ANY NATURAL PERSON WHO IS AN OFFICER,
8 DIRECTOR, MANAGING PARTNER, MANAGING MEMBER, OR SOLE PROPRIETOR OF A
9 BUSINESS ENTITY.

10 (3) Every offense committed by a corporation prior to July 1, 1985, which would
11 be a felony if committed by an individual shall subject the corporation to the payment
12 of a fine of not less than one thousand dollars nor more than fifteen thousand dollars.
13 For such offenses committed on or after July 1, 1985, the corporation shall be subject
14 to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401
15 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor
16 or petty offense if committed by an individual shall subject the corporation to the
17 payment of a fine within the minimum and maximum fines authorized by sections 18-
18 1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted.
19 For an offense committed on or after July 1, 2003, a business entity shall be subject to
20 the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1)
21 (a) (III). An offense committed by a business entity that would be a misdemeanor or
22 petty offense if committed by an individual shall subject the business entity to the
23 payment of a fine within the minimum and maximum fines authorized by sections 18-
24 1.3-501 and 18-1.3-503 for the particular offense of which the business entity is
25 convicted. FOR AN OFFENSE COMMITTED ON OR AFTER FEBRUARY 1, 2009, AN
26 EXECUTIVE OFFICIAL SHALL BE SUBJECT TO THE PAYMENT OF A FINE WITHIN THE
27 PRESUMPTIVE RANGES AUTHORIZED BY SECTION 18-1.3-401 (1) (a) (III) OR A TERM OF
28 IMPRISONMENT WITHIN THE PRESUMPTIVE RANGES AUTHORIZED BY SECTION 18-1.3-
29 401(1) (a) (V), OR BOTH. AN OFFENSE COMMITTED BY AN EXECUTIVE OFFICIAL THAT
30 WOULD BE A MISDEMEANOR OR PETTY OFFENSE SHALL SUBJECT THE EXECUTIVE OFFICIAL
31 TO THE PAYMENT OF A FINE WITHIN THE MINIMUM AND MAXIMUM FINES AUTHORIZED BY
32 SECTIONS 18-1.3-501 AND 18-1.3-503 OR A TERM OF IMPRISONMENT WITHIN THE RANGES
33 AUTHORIZED BY SECTIONS 18-1.3-501 AND 18-1.3-503, OR BOTH, FOR THE PARTICULAR
34 OFFENSE OF WHICH THE EXECUTIVE OFFICIAL IS CONVICTED.

35 (4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY EXECUTIVE OFFICIAL
36 CHARGED UNDER SUBSECTION (1.5) OF THIS SECTION THAT, PRIOR TO BEING CHARGED,
37 HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH
38 HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT THAT MET THE
39 CRITERIA SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION.