

Initiative #76
Allowable Reasons for Employee Discharge or Suspension

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2 ♦ prohibit private-sector employers from firing or suspending full-time
- 3 employees except for specific reasons; and
- 4 ♦ allow an employee who believes he or she was improperly fired or
- 5 suspended to sue the employer.

6 **Summary and Analysis**

7 ***Current limits on firing employees.*** Under current law, private-sector
8 employees typically can be fired or suspended at any time and for any reason, an
9 arrangement commonly known as at-will employment. There are limits to at-will
10 employment, including a prohibition on firing an employee for discriminatory reasons
11 such as the employee's race, sex, religion, or age. Employers are also prohibited
12 from firing an employee because of his or her unwillingness to perform an illegal act.

13 ***Proposed limits on firing or suspending employees.*** Amendment ? prohibits
14 private sector employers from firing or suspending full-time employees except for the
15 following reasons, which the measure defines as "just cause":

- 16 ♦ incompetence;
- 17 ♦ substandard performance or neglect of job duties;
- 18 ♦ repeated violations of an employer's written policies and procedures
- 19 relating to job performance;
- 20 ♦ gross insubordination or willful misconduct that affects job performance;
- 21 ♦ conviction of a crime involving moral turpitude;
- 22 ♦ employer bankruptcy; and
- 23 ♦ documented adverse economic circumstances that directly affect the
- 24 employer.

25 Amendment ? requires that an employer provide an employee with written
26 documentation of the actions that led to the employee's firing or suspension.

27 ***Affected employers and employees.*** Amendment ? applies to for-profit
28 employers that employ 20 people or more, and nonprofit employers that employ
29 1,000 people or more. It affects employees who work full-time for at least
30 six consecutive months for such employers. Amendment ? does not apply to
31 government entities or businesses where employees are covered by a collective
32 bargaining agreement requiring employers to show just cause for firing or suspension.

1 **Legal remedies.** Amendment ? allows an employee to file a lawsuit challenging a
2 firing or suspension. If the court determines that an employee was fired or suspended
3 without just cause, it may order the employee to be rehired and award back wages
4 and damages. This measure also allows the court to award attorneys fees to the
5 winning party.

6 **Arguments For**

7 1) Amendment ? allows employees who do a good job to work without fear of
8 losing their employment with no notice and for no reason. The measure still allows
9 employees to be fired for incompetence or neglect of duties, or if the company faces
10 difficult economic circumstances, but companies cannot arbitrarily fire employees.

11 2) Providing job security for employees may help improve Colorado's business
12 climate. Employers will have a larger pool of applicants to choose from if job seekers
13 are attracted to the security offered by the just cause requirements. Also, employees
14 who feel secure in their employment may be more likely to spend money, which could
15 improve the overall economy.

16 3) Amendment ? puts in law business practices that are followed by good
17 employers. Many companies document issues that result in firing or suspending an
18 employee. This measure provides employees of private sector companies with the
19 same protections available to most government employees and employees protected
20 by collective bargaining agreements.

21 **Arguments Against**

22 1) Amendment ? imposes inflexible constitutional restrictions on businesses that
23 may hurt Colorado's economy. By preventing businesses from making basic
24 economic decisions, such as eliminating unnecessary employees, automating
25 operations, or reorganizing to improve efficiency, the measure places them at a
26 competitive disadvantage with businesses in other states. The measure increases
27 administrative and litigation costs, which may discourage new businesses from moving
28 to Colorado or may cause existing businesses to relocate to another state.

29 2) This measure may hurt the people it is intended to help by discouraging
30 employers from hiring full-time employees. To avoid the new requirements, employers
31 may be inclined to convert full-time employees to part-time employees or to hire
32 independent contractors instead of regular full-time employees. Such responses by
33 employers would adversely affect both the employed and those seeking work.

34 3) Amendment ? is unnecessary because the decision to fire an employee is
35 rarely taken lightly. Most businesses recognize that firing an employee results in lost
36 productivity, and finding a replacement employee can be difficult, expensive, and
37 time-consuming. In addition, federal and state law already protect employees from

1 being fired for reasons unrelated to job performance, such as an employee's race,
2 sex, religion, or age.

3 **Estimate of Fiscal Impact**

4 Amendment ? is expected to result in roughly 3,750 new lawsuits per year by
5 employees who challenge their firing or suspension. These additional lawsuits will
6 increase both revenue and spending in the state judicial branch. Revenue from fees
7 paid when lawsuits are filed is expected to total \$1.4 million per year. Spending is
8 expected to increase by \$2.7 million per year, including salary, operating, and capital
9 costs for about 30 new state employees. The new employees include district court
10 judges and associated support staff.