

## Amendment 53 Criminal Accountability for Business Executives

1 **Amendment 53 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 and, in some  
16 cases, for failure to perform a legal duty. Amendment 53 extends criminal  
17 accountability to business executives who were aware of their business's failure to  
18 perform a legal duty. Amendment 53 applies to an officer, director, managing partner,  
19 managing member, or sole proprietor of a for-profit business or nonprofit entity.

20       In conjunction with the new criminal provisions, Amendment 53 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 53 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 53 can foster a business environment  
31 that attracts and retains responsible employers.

32       2) Amendment 53 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 53 could lead to additional disclosure about and charges for illegal  
4 corporate conduct. The measure establishes a defense from prosecution for  
5 executives, which may make executives feel more secure about reporting their  
6 business's failure to perform duties required under the law.

## 7 **Arguments Against**

8 1) Amendment 53 may negatively impact a business climate in which most  
9 businesses and their executives comply with the law. For example, the new criminal  
10 penalties could drive higher insurance costs for law-abiding executives, which may  
11 ultimately be passed along to consumers. Additionally, fear of prosecution could  
12 hinder recruitment of top business talent and may leave community leaders reluctant  
13 to serve on nonprofit boards.

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

20 3) Amendment 53 creates a way to avoid accountability. Business executives  
21 who are aware of their business's failure to comply with the law, and who should be  
22 held responsible, may escape prosecution through reports to the attorney general.

## 23 **Estimate of Fiscal Impact**

24 Amendment 53 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 But, because law enforcement officials have the discretion to bring charges and the  
27 courts have discretion over imposing criminal penalties for people convicted of a  
28 crime, the exact fiscal impact cannot be determined. In the event that a person is  
29 convicted of an offense, the measure could increase state spending for offenders  
30 sentenced to state prison (for felonies) and local government spending for offenders  
31 sentenced to county jail (for misdemeanors). The state court system may also see an  
32 increase in activity, but no significant increase in costs is anticipated. Any conviction  
33 that includes a fine would increase state revenue.