

Initiative #76
Allowable Causes for Employee Discharge or Suspension

1 Amendment ? proposes amending the Colorado Constitution to:

- 2 ◆ specify the reasons for which full-time private sector employees can be
- 3 fired or suspended by certain employers; and
- 4 ◆ provide legal remedies for an employee who believes he or she was
- 5 improperly fired or suspended.

6 **Summary and Analysis**

7 **Current limits on firing employees.** Under current law, most employers and
8 employees may end their relationship at any time and for any reason, an arrangement
9 commonly known as *at-will employment*. There are limits to at-will employment,
10 including a prohibition on firing an employee for discriminatory reasons such as the
11 employee's race, sex, religion, or age. Employers are also prohibited from firing an
12 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 morals crime;
- 22 ◆ employer bankruptcy; and
- 23 ◆ documented adverse economic circumstances affecting the employer.

24 The measure requires that an employer provide written documentation of the actions
25 that led to an employee's firing or suspension.

26 **Affected employers.** This measure applies to for-profit employers that employ
27 20 people or more, and nonprofit employers that employ 1,000 people or more. The
28 measure exempts government, and businesses where employees are covered by a
29 collective bargaining agreement that requires employers to show just cause for firing
30 or suspension.

31 **Affected employees.** Amendment ? affects employees who work full-time for at
32 least six consecutive months for certain private sector companies. The measure does
33 not define full-time employee. However, full-time employees typically work at least
34 40 hours per week and qualify for employee benefits.

1 **Legal remedies.** This measure 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, then it may order the employee to be rehired and award back
4 wages as well as compensation for damages. This measure also allows the court to
5 award attorneys fees to the winning party.

6 **Arguments For**

7 1) Being fired for no apparent reason can have a detrimental effect on a person
8 and his or her family. The measure allows employees who do a good job to work
9 without fear of losing their employment with no notice and for no reason. The
10 measure still allows employees to be fired for incompetence or neglect of duties, or if
11 the company faces difficult economic circumstances, but companies cannot fire
12 employees arbitrarily.

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

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

23 **Arguments Against**

24 1) Amendment ? hurts businesses by controlling basic economic decisions
25 concerning the size of operations. It prevents them from letting go of unnecessary
26 employees, automating operations, and reorganizing to improve efficiency and
27 increase profits. This reduced flexibility and potential for increased litigation costs
28 places Colorado businesses at a competitive disadvantage to businesses in other
29 states and may cause some businesses to relocate outside Colorado.

30 2) This measure discourages employers from hiring full-time employees,
31 adversely affecting both the employed and those seeking work. To avoid the new
32 requirements, employers may be inclined to convert full-time employees to part-time
33 employees, or independent contractors, in order to have more control over hiring and
34 firing employees.

35 3) This measure is unnecessary because the decision to fire an employee is
36 rarely taken lightly. Most businesses recognize that firing an employee results in lost
37 productivity, and finding a replacement employee can be difficult, expensive, and
38 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**