

**Initiative #76**  
**Allowable Causes for Employee Discharge or Suspension**

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

- 2     ◆ specify the allowable reasons for firing or suspending certain full-time
- 3         private sector employees; 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 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.*** Amendment ? applies to for-profit employers that employ  
28 20 people or more, and nonprofit employers that employ 1,000 people or more. The  
29 measure exempts all government entities, and businesses where employees are  
30 covered by a collective bargaining agreement requiring employers to show just cause  
31 for firing or suspension.

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

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, 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) 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. Most 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 restrictions on businesses that may hurt Colorado's  
23 economy. By preventing businesses from making basic economic decisions, such as  
24 eliminating unnecessary employees, automating operations, or reorganizing to  
25 improve efficiency, the measure places them at a competitive disadvantage with  
26 businesses in other states. The measure increases administrative and litigation costs,  
27 which may discourage new businesses from moving to Colorado or may cause  
28 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 rarely  
35 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 The measure is expected to result in an additional 3,750 lawsuits per year by  
5 employees who seek to challenge their firing or suspension. These additional lawsuits  
6 will increase both revenue and spending in the state judicial branch. Revenue from  
7 fees paid when lawsuits are filed is expected to total \$1.4 million per year. Spending  
8 is expected to increase by \$2.7 million per year, including salary, operating, and  
9 capital costs for about 30 new state employees. The new employees include district  
10 court judges and associated support staff.