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<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT APR 01 2008 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> <p>▲ COURT USE ONLY ▲</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board</p>	
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007- 2008, #57</p> <p>JOSEPH BLAKE, OBJECTOR,</p> <p>Petitioners,</p> <p>v.</p> <p>JOANNE KING AND LARRY ELLINGTON, PROponents; AND WILLIAM A. HOBBS, DANIEL L. CARTIN AND DANIEL DOMENICO, TITLE BOARD,</p> <p>Respondents.</p>	<p>Case No.: 08 SA 91</p>
<p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record</p>	<p>OPENING BRIEF OF TITLE BOARD</p>

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William A. Hobbs, Daniel L. Cartin and Daniel Domenico, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their Answer Brief.

STATEMENT OF THE ISSUES

The Board adopts the statement of issues set forth in the Objector's Petition for Review.

STATEMENT OF THE CASE

On February 8, 2008 the proponents filed Proposed Initiative #57 (#57) with the Secretary of State. The Board held a hearing to set the titles on February 20, 2008. The Board concluded that #57 had a single subject and set a title.

On February 27, 2008, Joseph Blake, the Objector, filed a motion for rehearing. He alleged that #57 contained multiple subjects; the text of the measure was unclear; the titles were misleading, incomplete, confusing and inaccurate; the titles included a catch phrase; and the proponents made substantive amendments to the measure without first submitting it to the directors of Legislative Council and the Office of Legislative Legal Services.

On March 5, 2008, the board denied the motion for rehearing. The Objector filed this appeal.

STATEMENT OF THE FACTS

Section 18-1-606, C.R.S. (2007) defines circumstances under which a business entity may be criminally responsible for certain conduct. Pursuant to the present version of the statute, a business entity is guilty of an offense if “the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on the business entity by law” or “the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the governing body or individual authorized to manage the affairs of the business entity or by a high managerial agent acting within the scope of his or her employment or in behalf of the business entity.” Section 18-1-606(1), C.R.S. (2007).

#57, if enacted, would amend § 18-1-606, C.R.S. (2007) to extend criminal liability of business entities to include individuals who are agents or high managerial agents of the business. An individual may avoid liability if, prior to being charged, the person reports to the office of the attorney general all facts which he or she was aware concerning the business entity’s conduct that meets the criteria set forth in statute. The measure also allows Colorado residents to seek civil damages against any business entity, agent or high managerial agent for specified offenses. Any damages collected must be paid to the Colorado General

Assembly. Any such damages are exempt from restrictions on state spending and appropriations established in § 24-75-201.1, C.R.S. (2007).

SUMMARY OF THE ARGUMENT

#57 contains only one subject: extension of liability for criminal conduct of a business to a business entity's directors, officers, employees and agents who formulate a business's policies or supervise employees.

The titles set by the Board are fair, clear and accurate. Although the titles do not describe all of the details of the proposed measure, they do include its central features.

The phrase "criminal conduct" is not a catch phrase.

The proponents did not amend the measure in violation of the requirement that substantial amendments to the petition must be resubmitted to the directors of legislative council and legislative legal services, other than an amendment in direct response to the comments made by the directors. The amendments were made in response to suggestions proffered by the directors.

ARGUMENT

I. #57 contains one subject: Establishing when an agent or high managerial agent of a business may be liable for an offense.

The Objector contends that the Board should not have set titles because #57 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it “relate[s] to more than one subject and ... [has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2005-2006* #55, 138 P.3d 273, 277 (Colo. 2002)(Colo. 2006) (#55) A proposed initiative that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000* #25, 974 P.2d 458, 463 (Colo. 1999). The single subject rule both

prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. #55, 138 P.3d at 277 *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02* #43, 46 P.3d 438, 442 (Colo. 2002)(#43).

The Court will not address the merits of a proposed measure, interpret it or construe its future legal effects. #43, 46 P.3d at 443. . *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #258(A), 4 P.3d 1094, 1097-98 (Colo. 2000). The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. *In re Title, Ballot Title and Submission Clause for 2001-2002* #21 and #22, 44 P.3d, 213, 216 (Colo. 2002). The single subject rule must be liberally construed to avoid unduly restricting the right of initiative. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98* No. 74, 962 P.2d 927, 929 (Colo. 1998). Sections of a measure that include “implementation or enforcement details directly tied to the single subject will not, in and of themselves, constitute a single subject.” *Title, Ballot Title and Submission Clause, and Summary for 2005-2006* #73, 135 P.3d 736, 739 (Colo. 2006).

The measure has only one subject: extending existing liability of businesses for certain conduct to agents or high managerial agents of business entities. All of the sections of the measure relate to this subject. Section 4 of the measure establishes grounds by which establishes the principle that an employee may not be discharged or suspended without just cause. Section 5 authorizes private rights of action to collect civil damages for criminal conduct.

The Objector's argument is without merit. With regard to the argument that the measure would criminalize traditional civil concepts such as breach of fiduciary duties and duty of loyalty, the claim is without any support. Part 6 of article, title 18 does not define offenses. It merely describes when a person is deemed a party to an offense. #57 says only that agents and high managerial agents of business entities will be subject to the same criminal penalties as the business entities for which they work.

The Objector also contends that the addition of civil penalties constitutes a separate subject. Civil penalties attached to criminal statutes and enforced through private actions are not unusual. The connection was recently acknowledged in *Animal Legal Defense Fund v. Mendes*, 72 Cal. Rptr.3d 553 (Cal. App. 2008). Violations of criminal law can result in civil actions, can establish a breach of

standard of care, or can be used to supplement criminal penalties. *Id.* at 556. A criminal statute can form the basis for a private right of action seeking monetary damages. *Oja v. Grand Chapter of Theta Chi Fraternity, Inc.*, 684 N.Y.S.2d 344, 346 (1999).

Objector also contends that the enforcement of the civil penalties by any private resident constitutes a separate subject. The measure merely authorizes *qui tam* enforcement. *Qui tam* proceedings are enforcement mechanisms which can be brought by any citizen, acting as a private attorney general, to enforce statutes with the proceeds divided between the citizen and the government. *United States ex rel. LeBlanc v. Raytheon Co.*, 913 F.2d 17, 19 n.2 (1st Cir. 1990), *cert. denied*, 499 U.S. 921 (1991).¹ The enforcement details do not, by themselves, constitute a separate subject. *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.2d 237, 239 (Colo. 2006). The fact that action is brought by a private attorney general and the proceeds are paid to the state's general fund does not transform the enforcement provision into something other than an enforcement provision.

¹ *Qui tam* proceedings are authorized in the Colorado Constitution. Voters recently have authorized citizens to act as private attorneys general to enforce penalties. Colo. Const. art. XXVIII, § 9(1)(f); Colo. Const. art. XXIX, § 5(2)(f) (“Any person may file a written complaint with the independent ethics commission”)

Because all sections of the measure are related to its main subject, the Court must conclude that the measure meets the single subject requirement.

II. The titles are fair, clear and accurate.

Section 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles.

It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246, 256 (Colo. 2000) However, the Board is not required to set out every detail. #21, 44 P.3d at 222. In setting titles, the Board may not ascertain the measure’s efficacy, or its

practical or legal effects. #256, 12 P.3d at 257; *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. #256, at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

Objector asserts that the title is defective because (1) it fails to define the parties affected by the civil provisions, (2) it fails to properly reference that the act is a new substantive crime, (3) it does not properly reference new substantive crimes that apply to individuals, and (4) it incorrectly states that civil liability attaches only to criminal conduct when it may be applied to traditional civil duties. The Court must reject Objector's contentions.

The titles accurately mirror the measure. The titles state that the business entities and their agents are subject to civil penalties. "Agent" encompasses "high managerial agent." Contrary to Objector's assertion, the act is not a new substantive crime that applies to other persons. Instead, it merely adds agents and high managerial agents to persons who may be parties to offenses already existing

in law. Finally, Objector's assertion that the measure extends liability to traditional civil duties is incorrect. The measure limits civil damages to "conduct that meets the criteria set forth in subsection 1 of this section." Section 1 refers to "offenses". Section 18-1-104(1), C.R.S. (2007) states that "[t]he terms 'offense' and 'crime' are synonymous and mean a violation of, or conduct defined by, any state statute for which a fine or imprisonment may be imposed." Thus, contrary to the Objector's argument, #57 does not impose liability for civil offenses. The titles accurately reflect that the measure imposes damages for criminal offenses.

III. The measure does not include a catch phrase.

The Objectors contend that the term "criminal conduct" is a catch phrase. The Court must reject this argument.

"Catch phrases are words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *In re Ballot Title 1999-2000 No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). The existence of a catch phrase is determined in the context of contemporary political debate. *In re Title, Ballot Title and Submission Clause and*

Summary for 1999-2000 #227 and #228, 3 P.3d 1, 7 (Colo. 2000). The person asserting the existence of a catch phrase must offer convincing evidence. *Id.*

The term is nothing more than shorthand for the phrase “conduct constituting the offense” used in section 18-1-606(1)(a) and (1)(b). Words that are used as a legal standard cannot be catch phrases. *In re Title, Ballot Title and Submission Clause, and Summary for 2005-2006 #75*, n. 4 (Colo. 2006) (phrase “term limits” used in prior court opinions not a slogan or catch phrase). Moreover, Objector has not provided any evidence to show that the term is a catch phrase.

IV. Changes made by the proponents were made in direct response to comments by the Directors of Legislative Council and Legislative Legal Services.

Finally, the Objector asserts that the proponents should be required to resubmit the initiative because the final version of the draft of the measure submitted to the Board did not accurately reflect the changes suggested by legislative staff. The Court must reject this argument.

An original draft of a proposed initiative must be submitted to the directors of legislative council and the office of legislative legal services. The directors hold a public meeting at which they may raise questions and editorial comments. Section 1-45-105(1), C.R.S. (2007). After the meeting, proponents may amend their measures. Any substantial amendment, other than one made in direct

response to comments, must be resubmitted to the directors. Section 1-40-105(2), C.R.S. (2007).

Section § 18-1-606(1) of the original draft of the measure stated:

A business entity AND ANY ASSOCIATED PERSON is guilty of an offense if:

Subsection (2) (a.1) stated:

“ASSOCIATED PERSON” MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MEMBER, PARTNER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY COVERED BY THIS SECTION.

The directors posed technical comments and questions. First, in technical comment 5, they noted:

The change to the introductory portion of subsection (1) of the proposed initiative states “business entity AND ASSOCIATED PERSON is guilty” If the proponents intended to use the “AND”, the “is” should be changed to “ARE” or if the proponents intend to use “is”, the it should be “business entity OR ASSOCIATED PERSON.

In substantive question 4c, they asked:

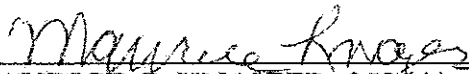
What is the difference between the definition of “associated person” and “agent” in section 18-1-606, Colorado Revised statutes?

In the final draft, the proponents removed the phrase "associated person" and revised subsection 1 of § 18-1-606 to read, "A business entity, AGENT, OR HIGH MANAGERIAL AGENT ARE GUILTY of an offense if:" Thus, it is obvious that the changes were made in direct response to the comments of the directors. As such, the Board could set the titles.

CONCLUSION

For the above-stated reasons, the Board respectfully requests that the Court approve the titles set by the Board.

JOHN W. SUTHERS
Attorney General

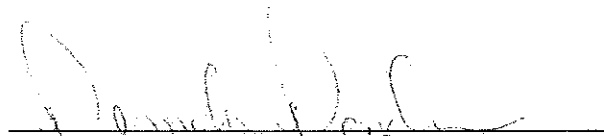

MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same, overnight by DHL, at Denver, Colorado, this 1st day of April 2008 addressed as follows:

Douglas Friedmash
Fairfield and Woods, PC
1700 Lincoln Street, Suite 2400
Denver, CO 80203-4524

Mark Grueskin
Isaacson and Rosenbaum PC
633 17th Street, Suite 2200
Denver, CO 80202



A handwritten signature in dark ink, appearing to read "Douglas Friedmash", is written over a solid horizontal line.



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **MIKE COFFMAN**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, memo from legislative legal services, versions of text submitted, and the rulings thereon of the Title Board on Proposed Initiative "2007-2008 #57".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 1st day of April, 2008.

A handwritten signature in cursive script, reading "Mike Coffman", is written over a horizontal line.

SECRETARY OF STATE

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FEB 08 2008

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

Final Text #57
2007-2008

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

18-1-606. Criminal liability of business entities.

(1) A business entity, AGENT, OR HIGH MANAGERIAL AGENT ARE guilty of an offense if:

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

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

(2) As used in this section:

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

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

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted. For an offense committed on or after July 1, 2003, a business entity shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). An offense committed by a business entity that would be a misdemeanor or petty offense if committed by an individual shall subject the business entity to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the business entity is convicted.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY INDIVIDUAL CHARGED AS AN AGENT OR HIGH MANAGERIAL AGENT UNDER SUBSECTION (1) OF THIS SECTION THAT, PRIOR TO BEING CHARGED, HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(5) (a) ANY INDIVIDUAL RESIDING IN COLORADO MAY SEEK CIVIL DAMAGES AGAINST ANY BUSINESS ENTITY, AGENT, OR HIGH MANAGERIAL AGENT FOR THEIR CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(b) ANY SUCH AWARD OF DAMAGES SHALL BE PAID TO THE GENERAL FUND OF THE STATE OF COLORADO TO BE APPROPRIATED BY THE GENERAL ASSEMBLY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) OF THIS SECTION SHALL APPLY TO CIVIL ACTIONS INITIATED UNDER THIS SUBSECTION (5).

(d) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM THE PROVISIONS OF SECTION 24-75-201.1, COLORADO REVISED STATUTES.

(e) IF AN AWARD IS MADE UNDER THIS SUBSECTION (5), THE CITIZEN FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.

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February 8, 2008

via HAND DELIVERY
Ms. Cesi Gomez
Colorado Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, Colorado 80290

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FEB 08 2008

**ELECTIONS / LICENSING
SECRETARY OF STATE**

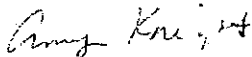
Re: Initiative 2007-08 #57
Initiative 2007-08 #62

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-08 #57 and Initiative 2007-08 #62 which our office is filing on behalf of the Proponents for each measure.

Thank you very much.

Sincerely,



Amy Knight
Legal Assistant to Mark G. Grueskin

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enclosure
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FEB 27 2008

ELECTIONS
SECRETARY OF STATE

OH
5:50 PM

COLORADO TITLE SETTING BOARD

In re Proposed Initiative 2007-2008 # 57 ("Criminal and Civil Liability of Businesses and Individuals for Business Activities"¹)

MOTION FOR REHEARING

On behalf of Joseph B. Blake, a registered elector of the State of Colorado, the undersigned hereby files this Motion for Rehearing in connection with the Proposed Initiative 2007-2008 #57 ("Criminal and Civil Liability of Businesses and Individuals for Business Activities", hereinafter described as the "Initiative") which the Title Board heard on February 20, 2008.

1. The Board lacks jurisdiction to set a title for this Initiative as it contains multiple, unrelated, subjects in violation of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5. "The prohibition against multiple subjects serves to defeat voter surprise by prohibiting proponents from hiding effects in the body of an initiative. *In the Matter of the Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 282 (Colo. 2006). An initiative that joins multiple subjects poses the danger of voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. *In re Title, Ballot Title and Submission Clause 2007-2008, #17*, 172 P.3d 871, 875 (Colo. 2007).

¹ Unofficially captioned "Criminal and Civil Liability of Businesses and Individuals for Business Activities" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

“We must examine sufficiently on initiatives central theme to determine whether it contains hidden purposes under a broad theme.” *Id.*

The Colorado Supreme Court rejected Initiative 55 under the single subject rule stating, “We identify at least two unrelated purposes grouped under the broad theme of restricting non-emergency government services: decreasing taxpayer expenditures that benefit the welfare of members of the targeted group and denying access to other administrative services that are unrelated to the delivery of individual welfare benefits.” *See In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55, supra*, 138 P.3d at 280; *see also, In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249 (Colo. 1999) (proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the State Constitution’s single-subject requirement). There, the complexity and omnibus provisions were hidden from the voter. In failing to describe non-emergency services by defining, categorizing, or identifying subjects or purposes, the Initiative failed to inform voters of the services the passage would affect.

The Supreme Court rejected a proposed ballot initiative which sought to amend the Taxpayer Bill of Rights under the Colorado Constitution because it violated the constitution’s single-subject requirement where the proposed initiative created a tax cut, imposed new criteria for voter approval of revenue and spending increases, and imposed likely reductions in state spending on state programs. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 37*, 977 P.2d 845 (Colo. 1999) (citing Colo. Const. art. V, § 1(5.5); art. X, § 20).

In *In re "Public Rights in Waters II,"* 898 P.2d 1076 (Colo. 1995), the Court held that grouping the distinct purposes of water conservation district elections and the "Public Trust Doctrine" under the theme of water did not satisfy the single-subject requirement because such a connection was too broad and too general to make them part of the same subject.

The Colorado Supreme Court has found numerous other situations where the single subject rule was violated. See e.g., *In re the Title, Ballot Title, and Submission Clause for 2007–2008 #17*, 172 P.3d 871 (Colo. 2007) (initiative sought to create an environmental conservation mission; however, a plain reading of the language also revealed the inclusion of a public trust standard for agency decision-making); *In re Title, Ballot Title and Submission Clause 1999–2000 #258(A)*, 4 P.3d 1094 (Colo. 2000) (elimination of school board's power to require bilingual education was not a separate subject so as to violate single-subject requirement); *In re Proposed Initiative for 1997-1998 # 30*, 959 P.2d 822, 823 (Colo. 1998) (court disapproved of an initiative burying unrelated revenue and spending increases within tax cut language).

The Initiative contains multiple provisions, which (1) relate to more than one subject and (2) have at least two distinct and separate purposes that are not dependent upon or connected with each other. See *In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55*, 138 P.3d at 277. The topics include:

(a) Dramatically expanding existing laws for criminal liability of business entities to all individual employees, officers, directors, high managerial employees, and any other person who is authorized to act on behalf of a business entity. The effect of this is to create dozens of new crimes, with the procedural and substantive changes. The proposed extension would incorporate criminalizing traditional civil concepts including, but not limited to, breach of

fiduciary duties, duty of fidelity, good-faith, loyalty, prudence, exercising business judgment, duty to give warning of a dangerous condition, duty to act, and, duty of supervision. Ultimately, the existence and scope of a legal duty is a question of law. In either event, the proposed measure provides an affirmative defense to criminal charges if such persons disclose to the attorney general all facts known to them concerning a business's criminal conduct provided that this disclosure occurs before the person is charged.

(b) Allowing any Colorado resident to bring an action for civil damages against any business entity, employee, officer, director, high managerial agent, employee, and any other person who is authorized to act on behalf of a business entity. The plain reading of the initiative provides, as described by legislative staff, that the measure provides liability not just for criminal conduct, but all types of civil business activities, including, but not limited to, breach of fiduciary duties, duty of fidelity, good-faith, loyalty, prudence, exercising business judgment, duty to give warning of a dangerous condition, duty to act, and, duty of supervision. The Amendment differentiates itself from traditional private rights of action, because the party bringing the action does not need to have to be injured by the conduct that was allegedly caused by the business, its employees or agents. *Cf. Coors v. Security Life of Denver Co.*, 91 P.3d 393, 398 (Colo. App. 2003) (citing Colo. Rev. Stat. §6-1-101 *et. seq.*).²

(c) Any such award of damages is paid to the general fund of the State of Colorado. These monies when appropriated shall be exempt from all revenues and spending limits.

² An extension of the single subject/clear title limitation applicable to bills, Colorado Constitution prohibits voter initiatives from containing multiple subjects. Here, the civil private right of action clearly fails to fall under the title of Colo. Rev. Stat. §18-1-606 Criminal Liability for Business Entities.

(d) The Title Board accepted the proponents' revised draft of the initiative and assisted the proponent in drafting new "single subject" language: "An amendment to the Colorado Revised Statutes concerning liability for criminal conduct of businesses." The true intent of the initiative does not concern this subject, however. The initiative imposes civil liability for the conduct of a business entity and its "agents" or "high managerial agents." Although the January 18, 2008 Memorandum to the proponents pointed out that "[C.R.S. § 18-1-606 describes the circumstances in which a business may be guilty of an offense, it is not an offense itself." The Memorandum further states that C.R.S. § 18-1-607 is the statute that imposes criminal liability on individuals for their corporate wrongdoing. Thus, the initiative imposes civil liability for failure to discharge a specific duty provided by law. It imposes that liability on business entities, and agents or high managerial agents. It is not limited to criminal conduct of businesses; it may provide criminal charges for alleged tortious actions and other civil wrongs. Further, it is not limited to businesses, only. It is likely to include their agents and high managerial agents.

2. The text of the Initiative is inherently unclear, inaccurate, incomplete, confusing, and misleading as to its reach and purpose, such that the Board is precluded from setting a ballot title. See *In re Proposed Initiative 1999-2000 #37*, 977 P.2d 845, 846 (Colo. 1999) (holding that titles and summary may not be presented to voters because more than one subject and confusing). The Board's chosen language for the titles and summary must be fair, clear, and accurate, and the language must not mislead the voters. *In re Ballot Title 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). "In fixing titles and summary, the Board's duty is 'to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter

choice.” *Id.* (quoting *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999)). *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249 (Colo. 1999) (initiative’s “not to exceed” language, repeated without explanation or analysis in summary, created unconstitutional confusion and ambiguity). This requirement helps to ensure that voters are not surprised after an election to find that an initiative included a surreptitious, but significant provision that was obfuscated by other elements of the proposal. *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3e 438, 442 (Colo. 2002). Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes. *Id.*; *see also, In re Ballot Title 1997-1998 #62*, 961 P.2d at 1082.

In 258(A) the titles were materially defective for failure to include a key feature of the initiative which resulted in misleading and confusing the voters. The title board failed to articulate in the titles that school districts and schools cannot be required to offer bilingual programs. Voters could assume that parents of non-English speaking students will have a meaningful choice between an English immersion program and a bilingual program, and thus, favor the proposal as assuring both programs. “It is well established that the use of catch phrase or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board. *In re Ballot Title 1999-2000 #258(A)*, *supra*, 4 P.3d at 1100; *In re Amend Tabor No. 32*, 908 P2d 125, 130 (Colo. 1995). This rule recognizes that the particular words chosen by the Title Board should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words’ appeal to emotion. *Id.*; *see also, In Re Ballot Title*

1999-2000 # 215, 3 P.3d 11, 14 (Colo. 2000) (allowing the term “open mining” as sufficiently clear because defined by statute).

3. The initiative is misleading, incomplete, confusing and inaccurate for the following reasons:

(a) Fails to properly define the parties that are specifically affected by the civil provisions. The criminal component of the ballot title provides that it applies to “directors, officers, employee and high managerial agents who formulate a business’s policies or supervise employees”. Conversely, the civil reference of the Ballot Title merely provides that liability exists with respect to “agents”. This variance implies a more limited civil component, which is inaccurate and misleading.

(b) Fails to properly reference the numerous new substantive crimes that apply to employees, officers, directors, high managerial agents and those persons who are affiliated with the entity.

(c) Improperly suggests that civil liability only attaches to criminal conduct when the statute goes far beyond such a restrictive application by applying to traditionally civil duties created by law.

(d) “Criminal conduct” is a catch phrase. Clearly, the measure criminalizes the mere failure to perform duties that are clearly not criminal in nature. Catch phrases are words that work to a proposal’s favor without contributing to voter understanding. *See In re Ballot Title 1999-2000 #258(A), supra*. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of each phrase. *Id.* at 1100.

Catch phrases may also form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment, thus further prejudicing voter understanding of the issues actually presented. Slogans are catch phrases tailored for political campaigns-brief striking phrases for use in advertising or promotion. They encourage prejudice in favor of the issue and, thereby, distract voters from consideration of the proposals merits. *Id.* (*i.e.*, be taught English “as rapidly and effectively as possible”). They mask the policy question.

(e) Fails to specify that disclosure must occur prior to being charged.

(f) Fails to identify that damages awarded and appropriated to the general fund are exempted from popular revenue and spending limits.

4. Proponents substantively amended the title without submitting it to the directors of the Legislative Council and Office of Legislative Legal Services.

The proponents submitted an amended title to the title board at the February 20, 2008 Title Board Hearing without having first submitted it to the directors of the Legislative Council and Office of Legislative Legal Services. Because proponents made substantive changes to the title, these bodies must be given a new opportunity to review the title. “The requirement that the original draft be submitted to the legislative council and office of legislative legal services permits the proponents to benefit from the experience of experts in constitutional and legislative drafting, and allows the public to understand the implications of a proposed initiative at an early stage in the process.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246 (Colo. 2000) (citing *See In re Proposed Initiated Constitutional Amend. Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963, 966 (Colo. 1992)).

The original text that the proponents submitted to the directors included a definition of "Associated Person," which was defined as "any natural person who is an officer, director, member, partner, or sole proprietor of a business entity covered by this section." Original Text, proposed § 18-10-106(2)(a.1). In the initiative submitted to the Title Board, this provision was deleted and new provisions to proposed § 18-1-606(1) included the new terms, "Agent, or High Managerial Agent § 18-10-106(2)(1)":

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

The directors of the Legislative Council and Office of Legislative Legal Services had not seen or commented on this new, substitute term. Nonetheless, this became the final text for the Title.

Had the directors of the Legislative Council and Office of Legislative Legal Services directed the proponents to make this material change in the draft, it might have been proper. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256, supra*, 12 P.3d at 251. The directors did not give such an instruction, however. The terms do not share a common definition. The term "agent" is defined in current statute at Colo. Rev. Stat. § 18-6-606(2)(a), as "any director, officer, or employee . . . or any person who is authorized to act on behalf of the business entity." The same section defines the term "high managerial agent" as "an officer . . . or any other agent in a position of comparable authority with respect to the formulation of . . . business policy . . . or supervision of . . . subordinate employees." *Id.*

The proponents had defined the excised term, "associated person," to include persons that are neither "agent" nor "high managerial agent;" namely they now include, a "member" and a "partner." Members of a limited liability company or partners of a general partnership or limited partnership may or may not possess the authority of an "agent" or a "high managerial agent." The change of definition changes the persons to whom the statute applies. This is a substantive change. The proponents must refile their initiative with the directors of the Legislative Council and the Office of Legislative Legal Services.

Furthermore, the proponents should be required to resubmit the initiative for further review and comment because it did not provide the Title Board with a final text of their initiative that fairly and accurately amends the Colorado Revised Statutes. The Legislative Council Staff and the Office of Legislative Legal Services expressly states:

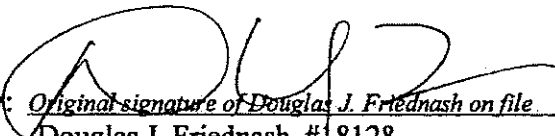
The change to the introductory portion of subsection (1) of the proposed initiative states "business entity AND ASSOCIATED PERSON is guilty." If the proponents intended to use the "AND" then, the "is" should be changed to "ARE" or if the proponents intend to use "is", then it should be "business entity OR ASSOCIATED PERSON." Proponents draft to the Title Board read: "(1) a business entity, AGENT OR HIGH MANAGERIAL AGENT ARE guilty of an offense if: . . ."

It must be AND or OR. If it is AND, the verb agreement must be to the plural subject, or "are." If it is OR, the agreement must be to the singular, or "is." As written, voters and the courts could interpret the language to refer to a joint liability rather than several liability. The language could mean that the business and the Agent or High Managerial Agent are guilty of an offense only if a crime is committed in concert or it could mean that either the business or its Agent or High Managerial Agent is guilty of any offense, but not both.

Please set a rehearing in this matter for the next Title Board Meeting.

Respectfully submitted this 27th day of February, 2008.

FAIRFIELD AND WOODS, P.C.


By: Original signature of Douglas J. Friednash on file
Douglas J. Friednash, #18128
John M. Tanner, # 16233
Susan F. Fisher, #33174


Petitioners Address:

1445 Market Street.
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was Hand Delivered and sent U.S. Mail as follows to:

Mark G. Grueskin
Isaacson Rosenbaum P.C.
633 Seventeenth St., Suite 2200
Denver, CO 80202


s/ *Monica Houston*

Monica Houston

Ballot Title Setting Board

Proposed Initiative 2007-2008 #57¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado Revised Statutes concerning liability for criminal conduct of businesses, and, in connection therewith, extending criminal liability to a business entity's directors, officers, and employees and agents who formulate a business's policies or supervise employees, if the business fails to perform duties that are required by law or if management engages in, authorizes, solicits, requests, commands, or knowingly tolerates the business's criminal conduct; allowing any Colorado resident to bring an action for civil damages against a business or its agent for such criminal conduct; requiring that awards in civil actions be paid to the general fund of the state of Colorado; permitting an award of attorney fees and costs to a citizen who brings a successful civil action; and allowing persons who disclose to the attorney general all facts known to them concerning a business's criminal conduct to use that disclosure as an affirmative defense to criminal or civil charges.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado Revised Statutes concerning liability for criminal conduct of businesses, and, in connection therewith, extending criminal liability to a business entity's directors, officers, and employees and agents who formulate a business's policies or supervise employees, if the business fails to perform duties that are required by law or if management engages in, authorizes, solicits, requests, commands, or knowingly tolerates the business's criminal conduct; allowing any Colorado resident to bring an action for civil damages against a business or its agent for such criminal conduct; requiring that awards in civil actions be paid to the general fund of the state of Colorado; permitting an award of attorney fees and costs to a citizen who brings a successful civil action; and allowing persons who disclose to the attorney general all facts known to them concerning a business's criminal conduct to use that disclosure as an affirmative defense to criminal or civil charges?

Hearing February 20, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 10:19 a.m.

Hearing March 5, 2008:

Motion for Rehearing denied.

Hearing adjourned 12:07 p.m.

¹ Unofficially captioned "Criminal and Civil Liability of Businesses and Individuals for Business Activities" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

February 8, 2008

via **HAND DELIVERY**
Ms. Cesi Gomez
Colorado Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, Colorado 80290

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**ELECTIONS / LICENSING
SECRETARY OF STATE**

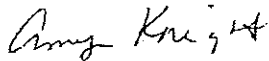
Re: Initiative 2007-08 #57
Initiative 2007-08 #62

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-08 #57 and Initiative 2007-08 #62 which our office is filing on behalf of the Proponents for each measure.

Thank you very much.

Sincerely,



Amy Knight
Legal Assistant to Mark G. Grueskin

aak
enclosure
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Submitted by Mr. Graesl
3/5/08

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
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Charles W. Pike, Director
Office of Legislative Legal Services

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091 State Capitol Building
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E-Mail: olls.ga@state.co.us

MEMORANDUM

January 18, 2007

TO: Joanne King and Larry Ellingson

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #57, concerning criminal and civil liability of businesses and individuals for business activities

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be to:

1. Create criminal liability for an associated person who violates section 18-1-606, Colorado Revised Statutes, concerning the criminal liability of business entities.
2. Define an associated person as a natural person who is an officer, director, member, partner, or sole proprietor of a business entity covered by section 18-1-606, Colorado Revised Statutes.
3. Provide a criminal affirmative defense to a charge pursuant to section 18-1-606, Colorado

Revised Statutes, when the associated person, prior to being charged, reports to the attorney general all of the facts she or he was aware of concerning the conduct of the business entity that is covered by section 18-1-606, Colorado Revised Statutes.

4. Allow a citizen to bring a civil cause of action on behalf of the state against a business entity or associated person for conduct covered by section 18-1-606 (1), Colorado Revised Statutes.
5. Pay any damages awarded as a result of the civil cause of action to the general fund of the state of Colorado and to make those moneys exempt from the revenue and spending provisions of section 20 of article X of the Colorado constitution.
6. Permit a citizen who is successful in a civil cause of action to recover reasonable attorneys fees and costs.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical Comments:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado." To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. Standard drafting practice requires the use of an amending clause that identifies the statutory provision being amended and describes how it is being amended. The amending clause for the submission should look like this:

SECTION 1. 18-1-606, Colorado Revised Statutes, is amended to read:
3. When adding a new paragraph that would require using a decimal as you have done with paragraph (a.1) of subsection (2) of the proposed initiative, standard drafting practice calls for starting with (a.5) rather than (a.1), so that additional paragraphs may be added in the future either before or after the new paragraph.
4. Standard drafting practice requires the phrase "of this section" to follow any reference to a subsection. As an example, "under subsection (1) of this section that" There are a number of subsection references that do not include the "of this section" language.
5. The change to the introductory portion of subsection (1) of the proposed initiative states "business entity AND ASSOCIATED PERSON is guilty". If the proponents intended to use the "AND" then, the "is" should change to "ARE" or if the proponents intend to use "is", then it should be "business entity OR ASSOCIATED PERSON".

6. Statutory provisions are usually divided into component parts using the following structure: Subsection, or, for example, "(1)", followed by paragraphs, or, for example, "(a)" followed by subparagraphs, for example, "(I)", ending with sub-subparagraphs, or, for example, "(A)". There are a two places in subsection (5) of the proposed initiative that misidentify subsections as paragraphs.
7. Subsection (5) of the proposed initiative creates a civil cause of action. Generally, a civil cause of action is placed in title 13 of the Colorado Revised Statutes.
8. There are a few places in the proposed initiative in which the words "State" and "Constitution" are capitalized. Standard drafting practice calls for the words "state" and "constitution" to be in all lowercase letters.
9. In paragraph (c) of subsection (5) of the proposed initiative, the word "this" should be added before the phrase "subsection (5)" to conform with standard drafting practices.
10. Paragraph (e) of subsection (5) of the proposed initiative begins with "Where", however the sentence is not expressing a place, but rather it is expressing a condition, so "If" would be a more appropriate word choice.
11. In paragraph (e) of subsection (5) of the proposed initiative, "(5)" should be added after the phrase "this subsection" to conform with standard drafting practices.
12. In paragraph (e) of subsection (5) of the proposed initiative uses the term "ATTORNEYS FEES", standard drafting practice uses the term "ATTORNEY FEES"

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
4. Section 18-1-606, Colorado Revised Statutes describes the circumstance under which a business may be guilty of an offense, it is not an offense itself.
 - a. What is the intent of adding an "associated person" to the description of how a business may commit a criminal offense? How does that intent differ with section 18-1-607, Colorado Revised Statutes that describes criminal liability of an individual for corporate conduct.
 - b. What is the intent of providing an affirmative defense for an individual ("associated person") in a section of law dealing with organizational culpability?

- c. What is the difference between the definition of "associated person" and "agent" in section 18-1-606, Colorado Revised statutes?
5. Subsection (4) of the proposed initiative provides a complete affirmative defense if the person "reported to the office of the attorney general all facts of which he or she was aware concerning the business entity's conduct covered by this section."
 - a. Who does the person make the report to in the attorney general's office?
 - b. What actions would satisfying reporting to the office of the attorney general? Does the report need to be in writing from the person? How long before charging do they have to go to the attorney general?
 - c. What is the obligation of the attorney general in taking a report pursuant to subsection (4) of the proposed initiative? If an oral report is provided, how does the attorney general document the report? How should the attorney general retain a report? Is the report considered private or is it a public document?
 - d. Is it the proponents intent to provide the affirmative defense to an actor who took positive actions toward the commission of the offense or only to those who become aware of the actions after the fact?
 - e. What is the significance of a complete affirmative defense as compared to an affirmative defense?
6. Paragraph (a) of subsection (5) of the proposed initiative creates a civil cause of action "for conduct covered by paragraph (1) (sic) of this section."
 - a. The phrase "for conduct covered by paragraph (1) (sic) of this section" is vague. Generally when creating a civil cause of action the statute specifically delineates the elements necessary to prove a successful civil cause of action. Would the proponents consider specifying the elements of the claim?
 - b. The civil cause of action is available only to Colorado citizens. Who is a Colorado citizen?
7. In proposed Section 18-1-606 (5), C.R.S., "any citizen of Colorado may seek civil damages against any business entity or associated person for conduct covered by paragraph (1)" However, the award for damages does not go to the plaintiff (or citizen filing the suit), but rather to the state.
 - a. The plaintiff would only receive "reasonable attorneys fees and costs for defending the interests of the State" Why?
 - b. What is the incentive for a person to sue if they do not receive any damages?

- c. Did you consider as an alternative stating that the Attorney General could file a civil lawsuit on behalf of the citizens rather than stating that any citizen may seek civil damages?
8. Paragraph (d) of subsection (5) of the proposed initiative states that "Such moneys shall be exempt from the revenue and spending provisions of section 20 of article X of the Colorado Constitution."
 - a. To which revenue and spending provisions of section 20 of article X of the Colorado constitution are the proponents referring?
 - b. What do the proponents intend to exempt by the provision in paragraph (d) of subsection (5) of the proposed initiative?
 - c. The definition of "fiscal year spending" in section 20 of article X and section 24-75-201, Colorado Revised Statutes, excludes damage awards. What does the provision in paragraph (d) of subsection (5) of the proposed initiative add to or change in the current law?
 - d. The proposed initiative would credit the awards to the general fund. Those awards would then be subject to the six percent limit on appropriations found in section 24-75-201.1, Colorado Revised Statutes. Do the proponents intend for the limitation in section 24-75-201.1, Colorado Revised Statutes, to apply to the awards?
9. Paragraph (e) of subsection (5) of the proposed initiative permits a successful citizen to receive reasonable attorneys fees and costs for defending the interests of the state. Could a citizen also be compensated for his or her own time and costs associated with the lawsuit?
10. What form of civil damages would be available in a successful suit?

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

File # Text #57
2007-2008

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

18-1-606. Criminal liability of business entities.

(1) A business entity, AGENT, OR HIGH MANAGERIAL AGENT ARE guilty of an offense if:

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

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

(2) As used in this section:

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

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

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted. For an offense committed on or after July 1, 2003, a business entity shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). An offense committed by a business entity that would be a misdemeanor or petty offense if committed by an individual shall subject the business entity to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the business entity is convicted.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY INDIVIDUAL CHARGED AS AN AGENT OR HIGH MANAGERIAL AGENT UNDER SUBSECTION (1) OF THIS SECTION THAT, PRIOR TO BEING CHARGED, HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(5) (a) ANY INDIVIDUAL RESIDING IN COLORADO MAY SEEK CIVIL DAMAGES AGAINST ANY BUSINESS ENTITY, AGENT, OR HIGH MANAGERIAL AGENT FOR THEIR CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(b) ANY SUCH AWARD OF DAMAGES SHALL BE PAID TO THE GENERAL FUND OF THE STATE OF COLORADO TO BE APPROPRIATED BY THE GENERAL ASSEMBLY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) OF THIS SECTION SHALL APPLY TO CIVIL ACTIONS INITIATED UNDER THIS SUBSECTION (5).

(d) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM THE PROVISIONS OF SECTION 24-75-201.1, COLORADO REVISED STATUTES.

(e) IF AN AWARD IS MADE UNDER THIS SUBSECTION (5), THE CITIZEN FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.

Joanne King
8306 Katherine Way
Denver, CO 80221
303-429-2191

Larry Ellingson
8517 Bluegrass Circle
Parker, CO 80134
720-530-5592

February 8, 2008

via **HAND DELIVERY**
Ms. Cesi Gomez
Colorado Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, Colorado 80290

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FEB 08 2008

**ELECTIONS / LICENSING
SECRETARY OF STATE**

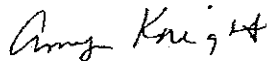
Re: Initiative 2007-08 #57
Initiative 2007-08 #62

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-08 #57 and Initiative 2007-08 #62 which our office is filing on behalf of the Proponents for each measure.

Thank you very much.

Sincerely,



Amy Knight
Legal Assistant to Mark G. Grueskin

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FEB 08 2008

CR. WISOM.
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Original Text
2007-2008
#57

ELECTIONS AND CRIMINAL LIABILITY FOR CORPORATE WRONGDOING
SECRETARY OF STATE

18-1-606 Criminal Liability of Business Entities

(1) A business entity AND ANY ASSOCIATED PERSON is guilty of an offense if:

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

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

(2) As used in this section:

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

(a.1) "ASSOCIATED PERSON" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MEMBER, PARTNER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY COVERED BY THIS SECTION.

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

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted. For an offense committed on or after July 1, 2003, a business entity shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). An offense committed by a business entity that would be a misdemeanor or petty offense if committed by an individual shall subject the business entity to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the business entity is convicted.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY INDIVIDUAL CHARGED AS AN ASSOCIATED PERSON UNDER SUBSECTION (1) THAT, PRIOR TO BEING CHARGED, HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT COVERED BY THIS SECTION.

(5) (a) NOTWITHSTANDING PARAGRAPH (4), ANY CITIZEN OF COLORADO MAY SEEK CIVIL DAMAGES AGAINST ANY BUSINESS ENTITY OR ASSOCIATED PERSON FOR CONDUCT COVERED BY PARAGRAPH (1) OF THIS SECTION.

(b) ANY SUCH AWARD OF DAMAGES SHALL BE PAID TO THE GENERAL FUND OF THE STATE OF COLORADO TO BE APPROPRIATED BY THE GENERAL ASSEMBLY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) SHALL NOT APPLY TO CIVIL ACTIONS INITIATED UNDER SUBSECTION (5).

(d) SUCH MONEYS SHALL BE EXEMPT FROM THE REVENUE AND SPENDING PROVISIONS OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION.

(e) WHERE AN AWARD IS MADE UNDER THIS SUBSECTION, THE CITIZEN FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ATTORNEYS FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.

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FEB 08 2008

INDIVIDUAL LIABILITY FOR CORPORATE WRONGDOING

Amended Text
2007-2008
57

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

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

18-1-606. Criminal liability of business entities ~~Liability of Business Entities.~~

(1) A business entity, ~~AGENT, OR HIGH MANAGERIAL AGENT ARE AND ANY ASSOCIATED PERSON~~ is guilty of an offense if:

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

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

(2) As used in this section:

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

~~(a.1) "ASSOCIATED PERSON" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MEMBER, PARTNER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY COVERED BY THIS SECTION.~~

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

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted. For an offense committed on or after July 1, 2003, a business entity

shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). An offense committed by a business entity that would be a misdemeanor or petty offense if committed by an individual shall subject the business entity to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the business entity is convicted.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY INDIVIDUAL CHARGED AS AN ~~ASSOCIATED PERSON~~ AGENT OR HIGH MANAGERIAL AGENT UNDER SUBSECTION (1) OF THIS SECTION THAT, PRIOR TO BEING CHARGED, HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT ~~COVERED BY PARAGRAPH~~ THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(5) (a) ~~NOTWITHSTANDING PARAGRAPH (4), ANY CITIZEN OF~~ ANY INDIVIDUAL RESIDING IN COLORADO MAY SEEK CIVIL DAMAGES AGAINST ANY BUSINESS ENTITY, AGENT, OR HIGH MANAGERIAL AGENT ASSOCIATED PERSON FOR THEIR CONDUCT COVERED BY PARAGRAPH THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(b) ANY SUCH AWARD OF DAMAGES SHALL BE PAID TO THE GENERAL FUND OF THE STATE OF COLORADO TO BE APPROPRIATED BY THE GENERAL ASSEMBLY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) OF THIS SECTION SHALL ~~NOT~~ APPLY TO CIVIL ACTIONS INITIATED UNDER THIS SUBSECTION (5).

(d) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM THE REVENUE AND SPENDING PROVISIONS OF SECTION 24-75-201.1, COLORADO REVISED STATUTES SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION.

(e) ~~WHERE~~ IF AN AWARD IS MADE UNDER THIS SUBSECTION (5), THE CITIZEN FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ~~ATTORNEYS~~ ATTORNEY FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.



Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

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ELECTIONS
SECRETARY OF STATE

NOTICE

PUBLIC INITIATIVE HEARING

Tuesday, January 22, 2008

The Colorado Constitution authorizes the registered electors of Colorado to propose changes in the state Constitution and the laws by petition. The original draft of the text of proposed initiated constitutional amendments and laws must be submitted to the General Assembly's legislative research and legal services offices for review and comment. Pursuant to the requirements of Article V, Section 1 (5), Colorado Constitution, the offices must submit comments to proponents at a meeting open to the public.

The directors of the Legislative Council Staff and the Office of Legislative Legal Services will hold a meeting with the proponents of the attached initiative proposal, unless the proposal is withdrawn by the proponents prior to the meeting.

Proposal Number: 2007-2008 #57

Time and Date of Meeting: 01:30 PM, Tuesday, January 22, 2008

Place of Meeting: HCR 0109, State Capitol

Topic of Proposal: Criminal and Civil Liability of Businesses and Individuals for Business Activities

January 8, 2008

Kirk Mlinek, Director
Colorado Legislative Council Staff
Room 209
State Capital Building
RE: Initiative Proposal

Dear Mr. Mlinek,

Our proponents of this initiative are as follows:

1. Joanne King
Phone (303) 429.2191
Address 8306 Katherine Way
Denver, CO 80221

2. Larry Ellingson
Phone (720) 530.5592
Address 8517 Bluegrass Circle
Parker, CO 80134

Please see the proposal attached.

Thank you,

INDIVIDUAL LIABILITY FOR CORPORATE WRONGDOING

18-1-606 Criminal Liability of Business Entities

(1) A business entity AND ANY ASSOCIATED PERSON is guilty of an offense if:

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(2) As used in this section:

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

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(d) SUCH MONEYS SHALL BE EXEMPT FROM THE REVENUE AND SPENDING PROVISIONS OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION.

(e) WHERE AN AWARD IS MADE UNDER THIS SUBSECTION, THE CITIZEN FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ATTORNEYS FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.

