

**Microenterprise Policy Review –
A Regional Comparison of Key Issues: Health Insurance, Workers' Compensation
and Business Personal Property Taxes**

Production of this report was made possible by generous support from:



Executive Summary

The microenterprise business sector accounts for approximately 20% of employment in Colorado¹, provides stability and steady growth in times of economic crisis, and encourages innovation and vitality in Colorado communities. The microenterprise business sector must be recognized for its contributions to the economy and be provided the opportunity of sustainability and expansion through support from those investing in Colorado's future: local, state, and federal government officials and policymakers, philanthropists, and the Colorado community at large.

Colorado policymakers demonstrated their confidence in microenterprises as a valuable sector of Colorado's economy by passing the Microenterprise Development Act. In June 2003, Governor Bill Owens signed Colorado House Bill 1354, establishing the Microenterprise Development Act and the Microenterprise Development Advisory Council (MDAC) to advise Colorado's elected officials on strategies to assist the development of the sector. The legislation mandates both the production of an annual report on the state of microenterprises to be delivered to the Colorado General Assembly in January of every year and that the Colorado Alliance for Microenterprise Initiatives (CAMI) act as administrator of the Advisory Council. As administrator of the Council, CAMI is principally responsible for the facilitation and completion of the annual reports.

The intent of these annual reports is to serve as a tool for public education and advocacy. The extensive inaugural report, distributed in January 2005, provided a historical overview of the industry, defined microenterprise, identified regulations and issues facing microenterprise owners, gathered and analyzed employment statistics, and most important, conducted a survey of Colorado microentrepreneurs about the services they need most and critical issues affecting them. The inaugural report, which was facilitated by CAMI and conducted by the University of Colorado Leeds School of Business, detailed the impact and the need for increased awareness and support of the microenterprise business sector to many constituencies, including state government, the private sector, and the non-profit community.

The purpose of the 2006 MDAC report, "A Regional Comparison of Key Issues: Health Insurance, Workers' Compensation and Business Personal Property Taxes," is to compare specific legislation that impacts microenterprises in Colorado. It builds upon the findings of the inaugural report with a policy comparison that addresses critical issues identified as barriers to microenterprise success. Comparing legislation that regulates health insurance, workers' compensation, and business personal property taxes in New Mexico, Arizona, Nebraska, and Kansas with that of Colorado highlights effective legislation designed to confront barriers to success for microenterprises and small businesses.

¹ Association for Enterprise Opportunity (AEO). "Microenterprise Economic Statistics for Colorado." www.microenterpriseworks.org. January 2006.

Currently, little microenterprise- specific legislation exists. In legislation, microenterprises — businesses with fewer than five employees and often lacking access to capital -- tend to be grouped into the same category as small businesses, usually defined as employing between 2 and 50 employees. Too often, legislation that benefits small employers overlooks microenterprise interests.

Similarly, there is very little existing research regarding microenterprises. Although there is a significant distinction between small businesses and microenterprises, in some cases during the compiling of information for this report, only pertinent information based on businesses with 50 or fewer could be found. In these cases, information and statistics were used to highlight burdens that are placed on microenterprises, as a subsection of the small business definition. This predicament highlights a need for further research on the impacts of economic trends, legislation, and other external factors affecting the microenterprise business sector.

Although demonstrable impact of the microenterprise business sector on the Colorado economy has been established, there is a dearth of financial and legislative resources to assist in the sustainability and growth of the sector. It is the aim of the Microenterprise Development Advisory Council to, with the distribution of this report, garner increased attention for this dynamic sector by state officials and policymakers.

Below is an overview of the three topics addressed in the policy comparison: Health Insurance, Workers' Compensation, and Business Personal Property.

Health Insurance

The inaugural MDAC report conducted by the University of Colorado Leeds School Of Business identified the cost and availability of health insurance as one of the greatest hindrances for maintaining a successful microbusiness. The Congressional Budget Office estimates every 1% increase in health insurance premiums results in an additional 200,000 uninsured Americans.² It is essential that microenterprise owners have access to affordable health insurance to obtain coverage for themselves and their employees in order to avoid costly medical bills that ultimately slow or stop business activity due to injury or illness.

The Kaiser Commission on Medicaid and the Uninsured reports that 25% of self-employed workers go without health insurance. Employees of small businesses and microenterprises do not fare much better, as these workers are more likely to be uninsured than their counterparts in larger companies. According to the Commission, “33% of workers are uninsured in firms with less than 10 employees vs. 8% of workers in firms with 100 or more employees.”³ In total, the Heritage Foundation recounted that

² Price Waterhouse Coopers Report for American Association for Health Plans “The Factors Fueling Rising Healthcare Costs” April 2002.

³ The Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, “Uninsured Workers in America” July 2004.

49% of uninsured workers are self-employed or work for firms with fewer than 25 employees.

In a separate study conducted by the National Federation for Independent Business in 2003, the number one reason cited why businesses with fewer than 10 employees did not provide coverage was because the business could not afford the costs. New Mexico, Arizona, Nebraska, Colorado and Kansas have enacted legislation intended to alleviate the problem of scarce availability and sky-rocketing costs of small employer group health plans.

All five states in this comparison have passed similar legislation that requires guaranteed-issuance and renewability of small group plans for any eligible small employer that applies. The states in this comparison share similar requirements, such as, the only acceptable reason for excluding an applicant is because the employer location is outside the geographic service area covered by the carrier and health care providers or because accepting a new group results in an undue financial burden for the carrier. Once accepted to a carrier, all small group plans are guaranteed to be renewed under state law. No group may be denied renewability of coverage on account of a member becoming seriously ill.

Premium-setting regulations across all five states mandate that premiums be rated using a list of eligible criteria. In most cases, insurance carriers are legally entitled to set higher rates for specified reasons, but limits have been established to preclude insurance providers from raising prices unreasonably. Additionally, limitations exist to protect small employer groups that do not exist to protect larger groups.

Of the five states compared, many took similar approaches in addressing small group coverage problems, but Colorado, Arizona, and New Mexico excel in providing coverage for microenterprise owners through “business group of one” coverage. Given that sole proprietors -- individuals without employees -- account for the majority of microenterprises, providing “business group of one” policies is important. Colorado has taken a direct approach to this matter by enacting legislation that guarantees a self-employed individual the opportunity to qualify for a small group policy as a business group of one. Neither Arizona nor New Mexico permit a self-employed worker to qualify under a group coverage plan but do allow such an individual to qualify for coverage using the state-run healthcare group plans. This signifies guaranteed issuance and renewability of coverage. All three states have enacted progressive legislation that illustrates an awareness of the need for the self-employed to have affordable health care.

Kansas has enacted an exemplar measure that extends tax incentives to small business owners to entice participation in a group health insurance plan. Tax credits in the amount of \$70 per employee per month are awarded to employers who have not provided insurance to employees within the previous two years. The credit is extended for a three year period, with decreasing awards over the consecutive years. Kansas is one of the few states in the nation to provide this incentive.

Workers' Compensation

All five states require the purchase of workers' compensation insurance to protect an employer against the legal and financial ramifications of an injury or fatality occurring as a result of a work-related accident. A second purpose of workers' compensation insurance is to ensure employees receive adequate compensation in wages and medical care if injured on the job; it also provides for the dependents of an employee should the worker die from a job-related accident.

Workers' compensation continuously proves to be an expensive obstacle for employers. States have enacted legislation that allows employers to provide voluntary coverage for particular professions or for a particular number of hired workers. Exclusions exist for employees who have recklessly performed on the job, eliminating eligibility for claims benefits. When filing a medical claim, some states have allowed employers to make the initial decision regarding physician choice, and others allow the employee to decide which doctor to visit. Still other states allow employees to decide whether or not to accept the provisions set forth by the state's workers' compensation act. These employees may elect to reject coverage at the beginning of their working term.

Colorado workers' compensation legislative efforts to shield business owners from undue burdens are comparable to the other states. A large number of exempted professions and premium cost containment efforts demonstrate Colorado's effort to assist business owners. The attempt to reward employers with lower monthly premiums for maintaining safe work environments is an excellent measure towards ensuring greater compliance with the workers' compensation laws. However, Colorado's willful negligence policies are insufficient in protecting employers; however, a large number of exempted professions

In an effort to protect employers from paying compensation for illegitimate claims, all five states in this comparison have enacted legislation reducing or eliminating compensation for injury or death in cases of willful negligence or self-inflicted injury. New Mexico and Colorado, while they offer similar legislation, provide employees with more lenient conditions. In Colorado, willful negligence, the failure to obey safety procedures or the use of illicit drugs or alcohol by an employee hurt on the job, results in a compensation reduction of only 50%. Despite a worker's negligent or irresponsible behavior, the employee is still entitled to half of the workers' compensation benefits, and the employer is liable to pay. Although New Mexico allows no compensation for a worker injured on the job while under the influence of drugs or alcohol, it is similar to Colorado in that the state reduces workers' compensation by only 10% in the case of a worker willfully disobeying safety procedures.

The Colorado General Assembly has taken steps to promote low cost premiums for compliant employers by allowing adjustments to premiums on the basis of establishing workplace safety programs.⁴ Prior to the issuance of this legislation, variance in policy premiums could only be set on the basis of "equity, rate adequacy, fairness, and insurer

⁴ Colorado Revised Statutes, 8-14.5-102

compliance with Colorado insurance rating laws.”⁵ Cost-containment legislation takes into account the adoption of workplace safety programs, which encourage responsible workplace practices. These cost alleviators provide great financial benefits for employers, especially microenterprises whose financial base generally is not large.

Business Personal Property

Business personal property taxes are a heavily debated topic and widely scrutinized within the business community. The National Federation for Independent Business classifies the tax as one of the greatest burdens facing small employers. Despite this, according to the 2000 US Census, 40 states administered some type of business personal property tax to generate government revenue. Business personal property is defined as any “taxable, tangible personal property that is used to produce income or is depreciated or expensed for IRS purposes,” according to the Kansas Division of Property Valuation.

In 1982, Colorado voters passed the Gallagher Amendment to decrease the hefty tax burden shouldered by residential property owners, establishing a permanently fixed ratio between taxes collected by non-residential and residential property owners at 55:45. The Gallagher Amendment resulted in a fixed 29% assessment rate for non-residential or business property, while the residential assessment rate has consistently decreased from 21% to 7.96% between the years of 1983 and 2004.⁶ During 2003 in Colorado, there were about \$8.2 billion in assessed personal property, and of that, \$634.4 million in property taxes was collected locally, accounting for 13.8% of the total \$4.6 billion taxes collected state-wide.⁷

Colorado places a 29% assessment rate on all non-residential property, which does not compare favorably among the five states in this comparison. However, the commercial, industrial, and agricultural assessment rate is 33.3% in New Mexico, by far the highest business personal property assessment rate in the comparison. Arizona calculates property based on the original retail cost and the age of the property. The Arizona assessment rate of 25% is multiplied by the full cash value after application of a \$57,632 exemption.⁸ Kansas also assesses at 25% of the retail cost when new (RCWN). Nebraska utilizes the Federal Depreciation Schedule to determine value.

All five states in this comparison recognize the importance of fostering an economic environment that is hospitable to business and have encouraged business growth by providing tangible property exemptions. Businesses that face this tax burden have been

⁵ Colorado Revised Statutes, 8-14.5-102

⁶ Colorado General Assembly, Colorado Legislative Council Staff. House Joint Resolution 03-1033 Study: TABOR, Amendment 23, the Gallagher Amendment, and Other Fiscal Issues. Publication No. 518. September 2003.

⁷ Colorado General Assembly, Colorado Legislative Council Staff. Recommendations for 2005: Interim Committee on Economic Development- Business Personal Property Tax. Research Publication No. 532, November 2004.

⁸ Arizona Department of Revenue. “Arizona Personal Property Tax.” Publication 545. March 2004.

granted certain exemptions, including agricultural equipment and machinery, business inventories, and livestock. In an effort to promote business activity, Colorado has provided incentives to establish a new business facility or to expand an existing one by increasing the number of possible business property tax exemptions. One example is an exemption for business personal property valued at \$2,500 or less. Items that have a useful life of one year or less, called consumable goods, are also exempt from taxation, regardless of the initial cost of the good. Any item that when purchased costs less than \$250 is exempt too. Intangible personal property, which includes stocks, bonds, patents, trademarks, copyrights, or computer software, is not subject to business property taxation. Although, Colorado compares well with the other states on the assessment rate, the \$2,500 exemption falls significantly short of Arizona's \$57,632 exemption.

Since personal property taxes are assessed and collected on a county-by-county basis, many states have allowed for the board of education, county, or municipality to negotiate an incentive payment or credit with any taxpayer who establishes a new business facility or expands an existing establishment in their jurisdiction. In Colorado, such a credit is not to exceed more than 50% of the amount of the taxes levied upon the taxable personal property located in the new or expanded business facility, and the credit must be used for the principle purpose of earning income. Moreover, a greater incentive or tax credit may be received by a business for establishing a new business facility or expanding an existing one within an enterprise zone.

Overall, despite a lack of microenterprise-specific legislation, state governments have taken numerous steps to alleviate the burdens faced by small businesses. Issuance of legislation to regulate insurance carriers allows businesses greater protection from abusive premium rating practices by carriers and encourages employers to provide coverage for both health and workers' compensation insurance. Greater tax breaks can advance economic development, and since microenterprises are often stable business entities, the growth of this sector can only benefit the economy.

Introduction

The microenterprise industry is still a relatively underrepresented sector both nationally and in Colorado. While small business development has received a great deal of publicity, microenterprises remain wholly underpublicized. There is not even a widely accepted definition. Microenterprise definitions vary greatly, from “10 employees or less” to “small-scale enterprise” to a “part-time business operating from home.”

What is a microenterprise?

According to the Association for Enterprise Opportunity (AEO), the national association for microenterprise development programs, a microenterprise is defined as a “business with five or fewer employees, which requires \$35,000 or less in start-up or business capital, and which does not have access to the traditional commercial banking sector. For the majority of microenterprises, the owner is the sole operator and employee.” A microenterprise business can “range from self-employed contractors to family-owned shops, restaurants, auto body shops, and child day care centers. Ultimately, the goal of the microentrepreneur is to enhance their economic and social mobility through business ownership.”⁹

Microenterprises are vital to any economy because they “provide moderate and low-income individuals a viable alternative to minimum wage labor and public assistance.” These businesses make up 17.2% of all private employment in the United States. Within Colorado, microenterprise businesses account for 19.4% of all employment, 2.2% higher than the national average, underscoring the importance of this economic sector in the state. AEO illustrates the importance and scope of “microenterprise development... as a holistic approach, embracing poverty alleviation, human development, and economic development strategies.”

For the purpose of this policy comparison, the working definition used in the Colorado General Assembly’s Microenterprise Development Act best serves as our definition for microenterprise:

“Microenterprise means a sole proprietorship, partnership, limited liability company, or corporation that has fewer than five employees and generally lacks access to conventional loans, equity, or other banking services.”

What is the economic capacity of the microenterprise business sector?

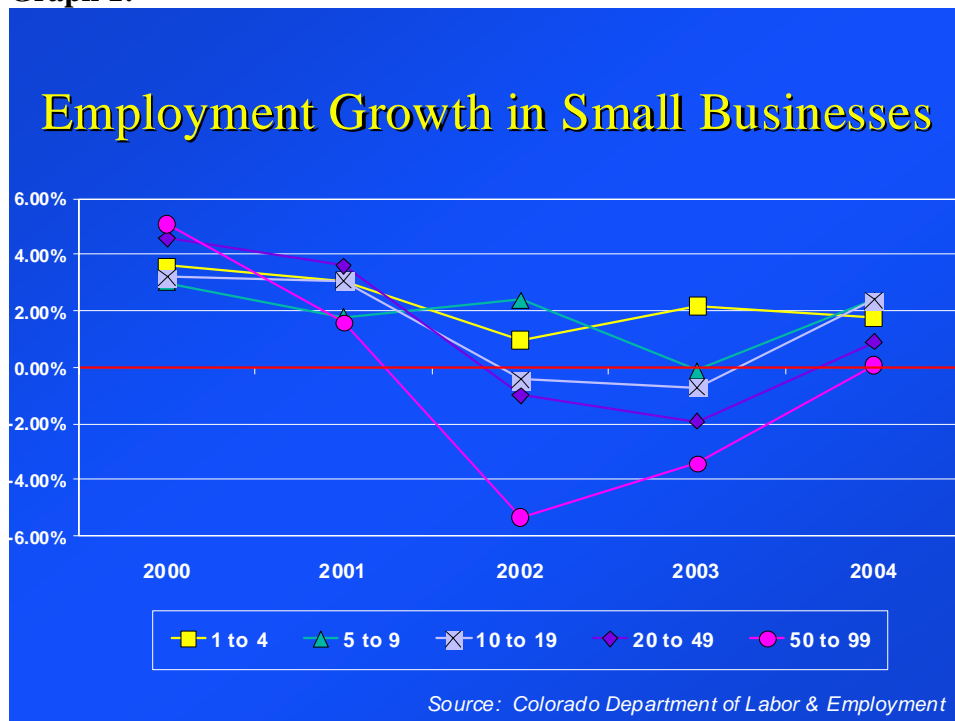
Microenterprise owners operate businesses in a variety of industry sectors. The industries with the largest number of microenterprises are Professional, Scientific, Technical Services, Construction, Retail, Consumer and Personal Services, Real Estate and Rental and Leasing. Microenterprises are established in both urban and rural Colorado. Almost 78% of Colorado microenterprises are located within 12 counties with

⁹ Association for Enterprise Opportunity

Metropolitan Statistical Areas, but microbusinesses are also critical in rural Colorado. In 37 counties, mostly rural, microenterprises account for over 30% of the total jobs in the county.¹⁰

Microenterprises have proven to be the most stable business subsection within the small business sector and contribute to the strength of Colorado’s economy. These businesses assist the state in recuperating from economic hard times. As evidenced by graph 1 below, businesses with one to four employees (excluding sole proprietors) have been a critical sector in Colorado’s economy as their growth has remained relatively stable while other groups have declined as a result of the most recent economic recession. Larger business entities, especially those with 50-99 employees, were crippled by the economic downturn and, thus, had to downsize or halt business activity, but the recession left the microenterprise business sector relatively unscathed. Since many microenterprises have a smaller capital base, the effects of recessions generally bypass these businesses, allowing for the continuation of production without hindrance.

Graph 1:



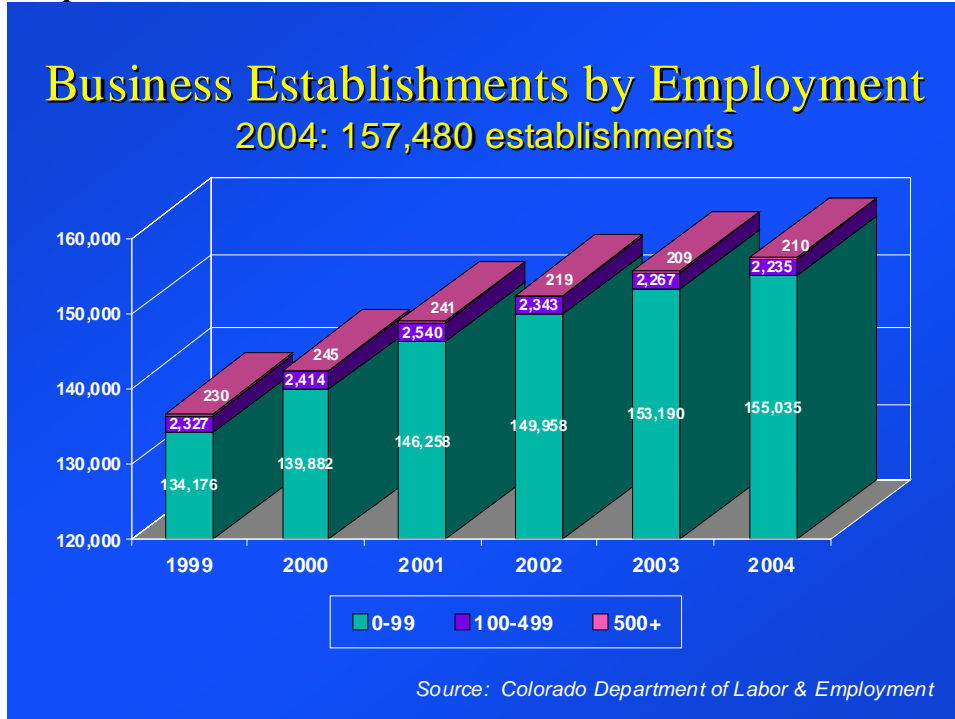
Source: Denver Metro Chamber of Commerce. “State of Small Business Presentation,” http://www.denverchamber.org/small_biz/index.asp

To emphasize the above, the Denver Metro Chamber of Commerce utilized a report conducted by the Development Research Partners that states between 1999- 2004 small

¹⁰ Business Research Division Leeds School of Business, University of Colorado at Boulder. Analysis of Microenterprise Business Segment in Colorado. December 2004.

business entities in Colorado with less than 100 employees saw a steady increased growth from 134,176 to 155,035, while businesses with more than 500 employees decreased from 230 to 210 as seen in graph 2. This demonstrates that during hard times, small business entities, including microenterprises, can still maintain and even advance normal business activity and production while larger firms might relocate or halt production.

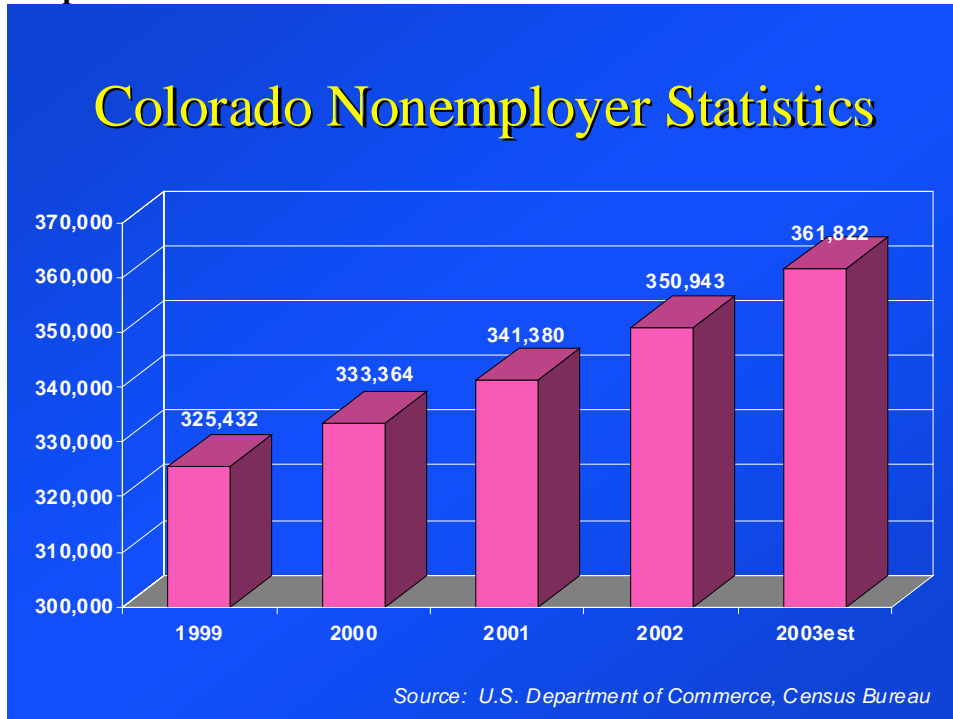
Graph 2:



Source: Denver Metro Chamber of Commerce. “State of Small Business Presentation,” http://www.denverchamber.org/small_biz/index.asp

Furthermore, sole proprietors, those small business owners that employ only themselves, grew from 325, 432 to 361,822 during 1999-2003. This portion of the microenterprise business sector accounts for 80.9% of total Colorado microenterprises. The number of operating sole proprietorships was overall not greatly affected by the recession. It can even be said that during economic downturns, while larger business entities relocate or stop production, individual turns towards microenterprises and sole proprietorships for employment possibilities, demonstrating the business sector’s stability and strength.

Graph 3:



Source: Denver Metro Chamber of Commerce. “State of Small Business Presentation,” http://www.denverchamber.org/small_biz/index.asp

In total, the microenterprise business sector in Colorado has been a consistently stable entity, contributing to the growth and well-being of the state. Despite the overwhelming evidence of the crucial role the sector plays in Colorado’s economy, a majority of microenterprise owners believe they are lacking the services that they most need and perceive themselves as too often grouped together with small businesses in matters of legislation and accessibility to resources. In an effort to sustain the economic vitality of microenterprises, it is critical to promulgate legislation that advances economic opportunities for microenterprises.

Purpose of Report

The Microenterprise Development Advisory Council (MDAC), administered by CAMI, released its inaugural report on the state of the microenterprise business sector in early 2005, which effectively advocated for microenterprises as both a viable economic development strategy and an anti-poverty tool, affirming the critical role of microenterprises in the Colorado economy. Given the importance of this key sector in economic growth, the annual MDAC reports are critical to both identifying key concerns facing microenterprise owners and presenting those issues in a format that can be easily understood by partners, donors, and policymakers. The large presence and diversity of

the microenterprise sector in Colorado highlights the need to present a cohesive analysis of legislation to policymakers and those investing in the future of Colorado.

In the 2005 annual report, conducted by the University of Colorado Leeds School of Business, researchers administered a survey of microentrepreneurs to better understand “funding sources used by Colorado microenterprises, some of the problems they face, and their perception of the importance and availability of assistance to microenterprises in Colorado.” From this, researchers comprised a list of the ten most critical issues facing Colorado microentrepreneurs. Respondents were asked to score the severity of an issue by using a scale of 1 to 5, assigning a “5” to a critical issue and a “1” to an unimportant issue. The outcome of the survey is listed below in Table 1.

Table 1: Top 10 Most Critical Problems Facing Colorado Microenterprises

Problem	Percentage of “4” Or “5” Ratings
Cost of Health Insurance	72.8%
Federal Taxes on Business Income	46.1
FICA (Social Security Taxes)	39.5
Controlling My Own Time	39.1
Cost and Availability of Liability Insurance	38.3
Ability to Cost- Effectively Advertise	35.7
Property Taxes	34.4
State Taxes on Business Income	32.8
Cash Flow	32.6
Federal Paperwork	29.1

Source: CU Leeds Microenterprise 2005 Survey from “Analysis of Microenterprise Business Segment in Colorado.”

From these outcomes, MDAC selected three identified problems for further research in this year’s annual report: health insurance, workers’ compensation/liability, and business personal property taxes. A policy comparison between Colorado, Arizona, New Mexico, Kansas, and Nebraska regarding these critical issues and their impact on microenterprises provides policymakers, microenterprises, and service providers an informed perspective of how Colorado fares in comparison to neighboring states with similar economic sectors and tax schemes. This report will discuss the steps state legislators have taken or need to take to ameliorate the concerns identified in the 2005 survey.

The table below displays a national rank, based on how many microenterprise establishments are registered in the state and the percentage of the non-farm private employment comprised by the microenterprise sector.

Table 2: State Microenterprise Statistics

State	Arizona	Colorado	Kansas	Nebraska	New Mexico
National Rank	37 th	7 th	39 th	41 st	21 st
Total Number of Microenterprises	380,876	454,276	209,371	137,410	131,078
Percentage of all Private (non-farm) Employment	16.8%	20.4%	16.7%	16.5%	17.5%
National Private Employment Average	17.9%				

Source: Association for Enterprise Opportunities, “2003 State Spreadsheets.”

Methodology

The Colorado Alliance for Microenterprise Initiatives conducted both primary and secondary research, including research of all five states’ Revised/ Annotated statutes regarding health insurance, workers’ compensation, and business personal property tax. CAMI identified critical statutes that affect microenterprises and searched for publications promoted by private think tanks and non- profits for further evidence. CAMI used information gathered from the Association for Enterprise Opportunity, the Kaiser Commission, the Commonwealth Fund, the Independence Institute, and the National Federation for Independent Business, among others. Additionally, research of statutes/regulations/laws was conducted using state department and/or agency websites for supplementary information, publications, and brochures, including but not limited to the Department of Labor and Employment, Revenue, Workers’ Compensation, Insurance, Local Affairs, and Commerce.

Microenterprise- Specific Legislation

In the history of the five states, there have existed few instances of microenterprise-specific legislation. Both Colorado and Nebraska have passed legislation recognizing the importance of developing the microenterprise business sector. The Colorado Microenterprise Act created the Microenterprise Development Advisory Council to advise microenterprise development strategy whereas the Nebraska Microenterprise Act developed a fund to provide financial resources for microloans.

The purposes of the Microenterprise Partnership Act (LB 327), which became law on July 1, 1997 (Nebraska Revised Statutes, Sections 81-1295 to 81-12,105), are to:

- (1) Better assure that Nebraska's microenterprises are able to realize their full potential to create jobs, enhance entrepreneurial skills and activity, and increase

low-income households' capacity to become self-sufficient;

(2) Provide funding to foster the creation of microenterprises;

(3) Establish the Department of Economic Development as the coordinating office for the facilitation of microlending and microenterprise development;

(4) Facilitate the development of a permanent, statewide infrastructure of microlending support organizations to serve Nebraska's microenterprise and self-employment sectors;

(5) Enable the department to provide grants to community-based microenterprise development organizations in order to encourage the development and growth of microenterprises throughout Nebraska; and

(6) Enable the department to engage in contractual relationships with statewide microlending support organizations which have the capacity to administer grants subject to the requirements of the act and where such relationships would leverage additional nonstate support funds.

The key points of Colorado's Microenterprise Development Act, listed below, differ from those of Nebraska's:

(a) There is a need to develop and expand businesses in economically distressed communities in both rural and urban areas in Colorado and to assist residents who are unemployed, underemployed, or in low-income jobs;

(b) Small businesses that generally lack access to conventional financing, known as microenterprises, can provide a means for unemployed, underemployed, or low-income individuals to find and sustain productive work and provide opportunities for economically distressed communities to thrive;

(c) Many low-income microentrepreneurs in Colorado lack access to the capital, training, and technical assistance they need in order to start, operate, or expand their businesses;

(d) Local microenterprise support organizations have demonstrated cost-effective delivery methods for providing technical assistance to low-income microentrepreneurs, and a statewide program for the development of microenterprises would leverage charitable foundation support, federal program funding, and private sector support;

By issuing this Act, the Colorado General Assembly encourages the development of the microenterprise business sector. However, there is a significant difference between the two states' microenterprise legislation: the Nebraska Microenterprise Development Act designates state funds to advance the development of the microenterprise sector and

establishes the Nebraska Office of Economic Development as responsible for “coordinating...the facilitation of the microlending,” whereas the Colorado Microenterprise Development Act only states support of the sector and creates a Council for future policy recommendations.

Nebraska has also recently issued the “Nebraska Advantage Microenterprise Tax Credit Act,” which allows for microenterprises operating and investing in economically distressed areas to receive tax credits. The purpose of the act, which takes effect January 2006, is to “provide investment tax credits (equal to 20 percent of the investment) to applicants for creating or expanding micro businesses (5 or fewer employees) that contribute to the revitalization of economically depressed areas through the creation of new or improved income, self-employment, or other new jobs in the area.”¹¹ Approved applicants must establish or expand business production in areas of economic depression. The aim of this Act is to invest in distressed communities and expand job opportunities for Nebraskans.

In addition to the issuance of the Microenterprise Acts in Colorado and Nebraska, and Nebraska’s Advantage Microenterprise Tax Credit Act, legislation has been passed in all five states to lessen the administrative and financial burdens to small businesses, into which category microenterprises fall. In this comparison, CAMI investigates the legislation affecting microenterprises that states have passed to regulate health insurance, workers’ compensation, and business personal property tax.

¹¹ Center for Rural Affairs. “New Economic Development Opportunities in Nebraska,” December 2005.

Health Insurance

The inaugural MDAC annual report, conducted by the University of Colorado Leeds School of Business, identified health insurance as one of the greatest hindrances to maintaining a successful microbusiness. Availability and affordability top the list of barriers that impede microentrepreneurs from securing health insurance for employees. Fortunately, most states have acknowledged these problems and have attempted to provide solutions in the form of legislation.

The Arizona Department of Insurance clearly states the problem faced by microenterprise owners: “Rising health care costs have made it very expensive to be injured or ill. If you do not have good medical insurance to help pay the bills, a serious injury or illness can create major financial problems.”¹² Both uninsured employees and employers run the risk of bankruptcy from medical bills if a truly necessary hospital visit or medical treatment is required but cannot be paid, and employers risk losing employees to prolonged sickness due to the worker’s limited access to health care. Uninsured employees are less likely to go to the doctor to avoid paying high prices than insured workers are. Waiting to seek medical care can often worsen the condition, leaving the employee out of work and without pay longer than intended and leaving the employer without a productive employee. Both parties suffer on account of not having insurance coverage.

The Congressional Budget Office estimates every 1% increase in health insurance premiums results in an additional 200,000 uninsured Americans, and increasing government health benefit mandates account for the 15% overall increase in those premiums.¹³ It is essential to provide microenterprise owners affordable health insurance premiums in order to provide coverage for all workers and to protect against production slowdowns due to illness or injury. This problem is much more critical to small businesses, especially microenterprises, than large firms because small business often cannot absorb the accrued health costs.

The Kaiser Commission on Medicaid and the Uninsured reports that the primary source of health insurance coverage is through employer- sponsored insurance. Despite this, 14.8% of employed workers, or 18.5 million adult workers, did not have health insurance in 2001. Unfortunately, self- employed individuals are less likely to be insured than other workers because so often they do not have access to group coverage, a more affordable method of providing coverage. In total, 25% of self- employed workers go without health insurance.

Employees of small businesses do not fare much better, as workers in small businesses are more likely to be uninsured than their counterparts in larger firms. According to the Commission, “33% of workers are uninsured in firms with less than ten employees vs.

¹² Arizona Department of Insurance. “A Consumer’s Guide to Group Health Insurance in Arizona.” (Revised) April 2001.

¹³ Price Waterhouse Coopers

8% of workers in firms with 100 or more employees.”¹⁴ Furthermore, only 54% of employees working for a business with ten or fewer workers are employed by a company that actually sponsors health insurance compared to 95% of employees working for companies with more than 100 employees. In total, the Heritage Foundation recounted that 49% of uninsured workers are self-employed or work for firms with fewer than 25 employees. This underscores the importance of providing small employers a secure means of accessing and maintaining health insurance.

The following table illustrates the number of insured individuals by state. It further breaks down into groups of people who are insured through their employer, are covered using another source, or are not insured at all.

Table 3: Coverage by Employer- Based Insurance (EBI) 2002-04

State	Arizona	Colorado	Kansas	Nebraska	New Mexico
Total State Population	5,595,364	4,493,352	2,680,479	1,719,688	1,871,004
Insured	4,643,406	3,740,190	2,390,014	1,531,014	1,470,875
Uninsured	951,957	753,162	290,465	188,655	400,129
Covered by EBI	3,024,670	2,793,942	1,710,878	1,055,827	937,976
Not Covered by EBI	2,570,694	1,699,410	969,601	663,841	933,028
Not Covered by EBI, Insured	1,618,737	946,248	679,136	475,186	532,899
Not Covered by EBI, Uninsured	951,957	753,162	290,465	188,655	400,129
Percentage not covered	17%	16.8%	10.8%	11.0%	21.4%

Source: U.S. Census Bureau, CPS Data: 3 Year average for 2002 to 2004 Data (Numbers in whole numbers)

In a separate study conducted by the National Federation for Independent Business in 2003, pollsters asked small business owners questions regarding health insurance in an attempt to understand the lack of employer-based coverage. Forty-one percent of businesses polled with fewer than ten employees provided health insurance coverage, while over seventy-nine percent of businesses with greater than twenty employees did. Employers cited “it’s the right thing to do” as a major reason for providing coverage. The number one reason why small businesses with fewer than 10 employees did not provide coverage was because the business could not afford the costs. The typical small business with fewer than 10 employees paid an average of \$393 per employee per month for premium costs.

¹⁴ The Henry J. Kaiser Family Foundation

Small group insurance plans are highly beneficial solutions for small businesses, especially microenterprises. Small group policies must be issued on a guaranteed basis, and members cannot be turned down because of health status. Qualifications for small group plans are generally between two and 50 employees. These insurance policies provide greater financial security than self-insurance pools by spreading the financial responsibility between all the members of the group instead of resting solely upon the employer. Additionally, most insurance premiums can be considered for a federal tax deduction. No state in this comparison requires obligatory health insurance coverage, but providing such coverage is an excellent method to attract and keep good employees.

Although insurance coverage is not required, every state has included legislation that requires small group insurance to be provided to small employers by participating carriers if requested. All states include provisions protecting small employer groups from denial of coverage for discriminatory reasons. Small employers or their employees can only be denied on the basis of residing outside of the carrier's coverage area or if it can be proven that accepting the new group will put an undue financial burden upon the carrier, crippling the degree of service and coverage that it can provide for already accepted clients. Health status, previous health issues, and claims experience cannot be taken into account when accepting a small employer plan.

Colorado

Colorado legislators have recognized the need to protect small business interests and have passed Revised Statute 10-16-105, Small Group Sickness and Accident Insurance. This particular legislation requires that every small group insurance carrier is mandated to provide all small employers the choice of a basic health or standard benefit plan. However, the basic and standard plans are set to repeal on July 1, 2006, unless the General Assembly acts to extend the date. Additionally, all small group policies must be renewable to all eligible employees (working full-time 24 hours or more per week and not covered under another policy) and their dependents. All small group providers must disclose the services, benefits, and the method of establishment and changes of premium rates to the insured parties in the manner prescribed by the commissioner. Colorado policymakers demand explanation of benefits and premium rating to be delivered to small employer groups in a manner that is easily understood.

In Colorado, extensive health care regulations require health insurance carriers to sell a small group policy to any requesting small business. Neither the group nor an individual in the group can be denied coverage on the basis of health status. The insurance companies must offer the two state standard small business plans. Small businesses can decide between offered policies, and uniformity among small group policies is mandatory. An insurance company is allowed to exclude incoming members for a pre-existing condition no longer than six months.

Minimum percentage of participation by eligible employees or employer contributions to monthly premiums can be required, or else the carrier has the right to terminate the policy. The insurer cannot terminate the policy as a result of a member becoming ill.

The only legitimate reasons for termination or refusal to renew coverage are failure to pay premiums in a timely manner, fraud, discontinuance of the group market entirely, or if the group moves outside of the geographic coverage area.

Despite the widespread regulations, the cost of premiums is not dictated by the legislature. Insurance providers can legally charge higher premiums for a small group plan based on the group's age, occupation, family size, tobacco use, and geographic location but not because of the group's incurred medical expenses. If a group member becomes seriously ill, the premium rate can increase on an individual basis.

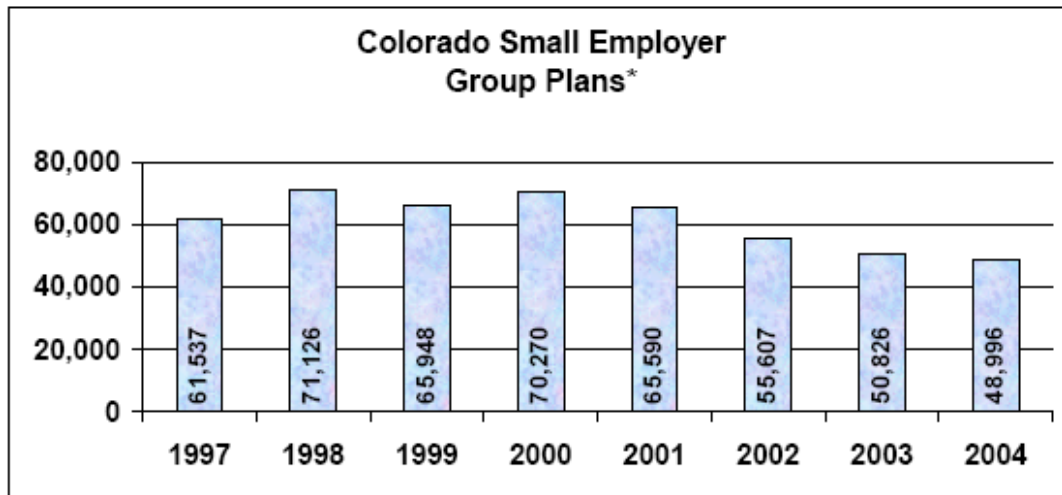
Colorado is advanced in terms of health care coverage by allowing "business groups of one" policies to be purchased by sole proprietors or the sole employee of an employer. This significantly benefits microenterprises by lessening the threat of bankruptcy due to unwieldy health care costs from illness and hospital treatment. Anyone who applies for coverage as a group policy cannot be denied coverage, whereas an individual can be turned down for an individual policy. Business group of one policies are guaranteed issuance but can ultimately be charged higher premiums than an individual policy. An individual who qualifies as a business group of one must apply for coverage during the annual open enrollment period, which is a 31- day period following the employee's birthday. As in all states in this comparison, if a self- employed individual covers his own health insurance, s/he is entitled to deduct 100% of the cost of the premium from federal income taxes.

In 2003, Colorado lawmakers addressed the financial burdens from health insurance premiums paid by microenterprise and small business owners by passing a "mandate light" bill. Mandate light policies reduce premiums by decreasing the number of covered services in comprehensive health benefits plans. This bill allows small business group policies to suspend five health benefit mandates of the basic plan, like mammograms and prostate cancer screening or behavioral health care. It gives small business owners greater leeway and more options when choosing a health plan and essentially gives them greater control over premium costs by providing them a choice of plans with varying cost ranges. Instead of a "one size fits all" approach to health policies, small employers can tailor a policy with a best fit for employees. Employers who previously could not afford to provide health insurance to employees have greater flexibility in purchasing and pricing.

Despite these implementations, the Colorado Department of Insurance disclosed in April 2005 that small group participation has decreased over the past four years. According to State Coverage Initiatives, "although limited-benefit plans do reduce costs, they do so only marginally, on average reducing the premium between 5 and 9 percent."¹⁵ As evidenced by the graph below, these advancements in health insurance legislation are not enough to convince small employers to continue coverage. Activity in the business group of one market has also fallen dramatically over the past four consecutive years.

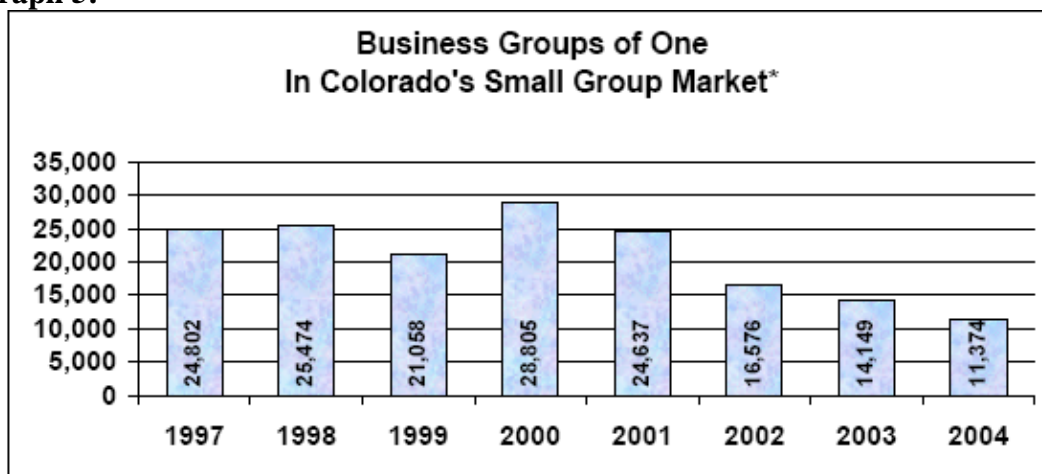
¹⁵ State Coverage Initiatives. "Limited Benefits Plans," <http://www.statecoverage.net/matrix/limitedbenefitplans.htm>. Updated November 2005.

Graph 4:



Source: Colorado Division of Insurance (4/12/05) *As of December 31, 2004

Graph 5:



Source: Colorado Division of Insurance (4/12/05) *As of December 31, 2004

Arizona

Arizona has provided protection for its small employers by enacting Accountable Health Plan legislation. An accountable health plan provider is a company that is authorized to issue group health policies. Legislation requires that “as a condition of doing business in this state each accountable health plan shall offer at least one health benefits plan on a guaranteed issuance basis to small employers as required by this section. All small employers qualify for this guaranteed offer of coverage. The accountable health plan shall provide a health benefits plan to each small employer without regard to health status-related factors if the small employer agrees to make the premium payments and to satisfy any other reasonable provisions of the plan that are not inconsistent with this

chapter.”¹⁶ Arizona takes great strides to ensure that all small employers and their employees who apply for health insurance coverage be granted such request. The only legal reasons why an accountable health plan provider can reject a small employer applicant are if the addition of a new client impairs the services for all existing members or if the employer is outside of the geographic service area. Arizona law not only guarantees issuance of coverage but also uniformity among policies. If an accountable health plan provides more than one health plan to small employers, then every small employer that applies for coverage shall be offered a choice of any issued plan.

Small employer protection is critical to ensuring employers receive all pertinent information and are not beguiled by the insurance provider. As such, each accountable health plan must make “reasonable disclosure” of information to the employer, which includes the provisions of coverage and the benefits and premiums that are available under any particular plan. The provisions of coverage include:

- “(a) The accountable health plan's right to change premium rates and the factors that may affect changes in premium rates.
- (b) Renewability of coverage.
- (c) Any preexisting condition exclusion.
- (d) Any affiliation period applied by a health care services organization.
- (e) The geographic areas served by health care services organizations.”¹⁷

Furthermore, for every plan that the carrier provides, a description of each plan must be presented to the employer, which includes:

- “1. An outline of coverage that describes the benefits in summary form.
- 2. The rate or rating schedule that applies to the product, preexisting condition exclusion or affiliation period.
- 3. The minimum employer contribution and group participation rules that apply to any particular type of coverage.
- 4. In the case of a network plan, a map or listing of the areas served.”¹⁸

This degree of detail that each insurance provider must meet ensures quality service and protects the small employer from hidden language not readily observed by an ordinary person. It is critical that a small employer receive the most competitive service while being given the most benefits possible in order to ensure continuance of the policy into the future.

Once a small employer group is accepted, coverage must be offered to every eligible employee (an employee working full- time 20 hours or more per week and not covered by another policy). No form of discrimination may be utilized to deny coverage for a potential member, including health status, but the insurer may exclude coverage for pre-existing conditions for a period no longer than 12 months. Furthermore, coverage may

¹⁶ Arizona Revised Statutes, 20-2304

¹⁷ Arizona Revised Statutes 20-2304

¹⁸ Arizona Revised Statutes 20-2304

not be refused to the spouse or dependents of an eligible employee. The only acceptable reasons for exclusion from coverage are late enrollment or a waiting period for newly hired employees. Late enrollees can be excluded for up to 18 months and may enroll for coverage during the next open enrollment.

While health status information cannot be used to deny coverage, a coverage provider may request a health screening to determine initial premiums, evaluating plan options, and reinsurance decisions. Small groups must meet the minimum enrollment standards or face termination of policy. Health insurance carriers can require a certain percentage of participation by eligible employees and that the employer contributes to a portion of the premium on behalf of the employees.

A provider may not refuse to renew coverage for any member except for the following reasons: if the employer fails to pay the premiums on time, commits an act of fraud, or if the carrier has discontinued coverage for the group market entirely. Additionally, any employee who moves outside of the geographic coverage area is not guaranteed renewed membership into the policy.

Premium rates continually prove to be a challenge for small employers, especially microenterprises with limited funding. To protect microenterprises and small businesses from abusive practices, Arizona has placed a restriction on premium rating. According to Revised Statute 20-2311, an accountable health plan cannot charge a rate during a rating period that varies more than 60% from the index rate for health benefit plans with similar coverage, family size and composition, and geographic area. If an accountable health plan makes adjustments to one plan with similar demographics, it must do so uniformly for all plans. The providers can augment premiums on the basis of age, gender, and health status within limitations but cannot cancel a small group policy on the basis of illness. Only small group plans benefit from this legislation, and large group policies are not qualified for limitation of premiums.

In recognizing the importance of offering coverage to microenterprises and small businesses using accredited health insurance providers, the state-sponsored Healthcare Group of Arizona program has been established to “allow willing contractors to deliver health care services”¹⁹ to eligible small employers. The Group Administration contracts with health plans to provide health insurance coverage to small employer groups. An employer with five or fewer eligible employees and who enrolls one hundred percent of the employees into the plan is eligible. Additionally, if the business has greater than six employees, at least 80% of all eligible employees must enroll in the plan in order for the small employer group to qualify for coverage.

The administration offers this coverage immediately to employers whose accountable health plan has discontinued services in the group market. However, a small employer who has voluntarily stopped coverage by an accountable health plan may only be enrolled by the administration after 180 days. Coverage is offered on a guaranteed basis for all small employers. Employers and employees share the cost of the premiums, and

¹⁹ Arizona Revised Statute 36-2912

the administration must provide the same reasonable disclosure of information that an accountable health plan is liable for producing. Essentially, the administration functions as an alternative to the accountable health plans. This effort by the government is a further step towards ensuring the greatest maximum coverage for all employees of small employers. As of February 2004, about 11,100 workers and their dependents were enrolled in this program. A total of 3,816 businesses participated, and of that, 92% of the businesses entities employed between 1-3 employees, illustrating that primarily microenterprises utilized this service.²⁰

Unlike Colorado, Arizona does not allow “business group of one” policies to be purchased by sole proprietors using accountable health plans. Despite this, they are eligible for Healthcare Group coverage, and all health premiums can be utilized for a federal income tax credit.

Kansas

The intent of the Kansas “Small Employer Health Care Plans Act” is to promote the availability of small employer coverage

“regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre-existing condition exclusions, to provide for development of "basic" and "standard" health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”²¹

The Act requires the Commissioner of Insurance to assist small business owners in the procurement of small employer coverage. The commissioner must also issue a certificate of insurance, which entitles each small employer to a tax credit. Additionally, this Act gives small employers leverage for negotiating with insurance carriers, including the ability to contract out with more than one carrier and to arrange for the coverage of family members included in the group policy.

Employers with 2-50 employees are eligible to apply for small group coverage; eligible employees must work on a full- time basis, 30 or more hours per week, and not be covered by another policy. Kansas enforces the provision of “guaranteed- issue basis,” requiring group insurance carriers that sell small group policies to issue such a policy to any small employer if requested, regardless of pre- existing conditions, claims history, or health status. Carriers that do not issue or are not eligible to sell small business coverage can reject small group applicants.

²⁰ The Commonwealth Fund. “Arizona: Healthcare Group of Arizona” http://www.cmwf.org/tools/tools_show.htm?doc_id=235064. October 2004.

²¹ Kansas Annotated Statutes, 40-2209b

Kansas utilizes the principle of non-discrimination in determining a group's acceptance and premiums. As a group, the policy cannot be denied because of health status, age, or any other factor that might predict the use of health services nor can the policy be cancelled if a member becomes sick.²² However, insurance carriers can preclude applicants for a specified exclusion period for a pre-existing condition. This exclusion period can last up to 90 days, and in the interim, the business owner or employee is responsible for all assessed health costs. Employers, too, may issue a waiting period for newly hired employees before benefits are extended. Even switching health insurance carriers can result in a new pre-existing condition exclusion period. Pregnancy, genetic makeup, and a newly adopted child are not legitimate pre-existing conditions. Newborns, recently adopted children, and dependents of a member who were already covered by the old policy cannot be subjected to the exclusion.

A group can be charged a higher premium for health, risk, and demographic characteristics of the group. There is, however, a limitation on the degree of variance in premiums between members of like characteristics and for annual increases for small group policies. This limit does not exist for groups larger than 51.

Kansas operates on a guaranteed-renewability principle. Once accepted by the carrier, a policy is guaranteed to be renewed as long as the premiums have been paid on time and the information supplied by the group is not fraudulent. Policies can also be denied renewal if the small employer did not meet the requirements for minimum percentage of eligible employees participating or did not contribute to employees' monthly premiums. Also, if the carrier discontinues coverage in the entire small group market, renewal is not guaranteed. The policy cannot be cancelled because a member becomes ill.

Unfortunately, there is no provision for self-employed individuals. These individuals are not eligible to purchase group health plans. They can deduct 100% of the cost of the premium from their federal income tax if they provide themselves with health insurance.

Kansas has enacted a progressive measure to extend tax incentives to small employers who provide insurance to their employees. Tax credits of \$70 per month per eligible employee are issued to small employers who make contributions to a health savings account or an insurance plan. The credit continues for a three-year period, decreasing from \$70 the first year to \$50 the second year and \$35 the third year. Beyond the fourth year, the small employer is no longer eligible for the credit. Eligible employers are those who have not contributed to a health savings account or a health insurance premium for the past two years on behalf of any employee. The credit helps small employers absorb the initial costs when first beginning coverage and entices them to begin coverage.

Additional legislation assists small employers in obtaining health insurance coverage. In addition to recognizing the importance of controlling high premium costs for small employers, Kansas has gone one step further to curb rising costs by creating a non-profit partnership that guarantees small employer coverage. In conjunction with the preceding

²² Georgetown University Health Policy Institute. "Health Insurance Consumer Guide for Kansas." www.healthinsuranceinfo.net. Updated August 2004.

Small Employer Act, the establishment of the “Kansas Business Health Partnership” committee encourages employers to participate in health insurance plans that the committee developed specifically for low- and modest- wage employees of small employers. The Business Health Partnership “provides health insurance through multiple unaffiliated participating carriers to small employers and their eligible employees.”²³

The main responsibility of the committee includes evaluating subsidy criteria for low- and modest- wage employees of small employers. Employees are eligible for a subsidy provided that the small employer has not previously offered health insurance coverage within the two years preceding the date upon which health insurance is offered or if the small employer has previously offered health insurance coverage and a majority of such small employers’ employees are low- wage or modest- wage earners. Subsidy criteria are also considered for any small employers’ eligible employee with a child or for small employers that have at least 70% of eligible employees without group health insurance. Subsidies combined from federal, state, and employer contributions combine to create a mechanism with which an employee can purchase affordable coverage. Most important, the committee is responsible for arranging for affordable opportunities for eligible employees to seek coverage and to improve health care plans provided by plans in the small group health insurance program.

In addition to subsidy evaluation, the Health Partnership is required by law to develop two or more health benefit plans to be offered small employers by participating carriers (40-4704). In compliance with this, the Partnership must make available one or more supplemental health benefit plans or one or more other benefit options so that the total package of health benefits are available to children who are eligible for the state children’s health insurance program. The law gives the insurance carriers the leeway to create a small group policy as long as it is in accordance with the required state mandates.

New Mexico

Small employers in New Mexico are issued a variety of small group health insurance plans on a guaranteed- issue basis. The providers must offer the same small group health plans that they offer to any other small employer. While acceptance is virtually guaranteed, an insurance carrier can require the small employer to meet several requirements to secure and maintain insurance. They can require that a minimum percentage of eligible employees (working full- time 20 hours or more per week and not covered by another policy) participates in the policy and that the employer contribute to a portion of the premium. Providers can take into account health status, age, gender, habits (tobacco use), and geographic location when setting the initial premium. New Mexico allows for exclusion from coverage for up to six months for a pre-existing condition, but new exclusion periods for pre-existing conditions cannot be instituted when switching companies.

Small groups are guaranteed renewability, protected under the Small Group Rate Renewability Act. Under this Act, small employers’ policies cannot be terminated

²³ Kansas Annotated Statutes, 40-4701

because someone in the group becomes ill. The intention of the Act is to “promote the continuing availability of health insurance coverage to small employers, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals and to improve the efficiency and fairness of the small group health insurance marketplace.”²⁴ An insurer can refuse to renew coverage if the monthly premiums are not paid in a timely manner, fraud is committed, or if the all group policies are being discontinued.

Insurance carriers can legally charge higher premiums to small groups on the basis of health status, age, gender, geography, occupation, and smoking status of the group by using the “modified community rating” method. This rating method allows an insurance company to legally charge an individual in the group a higher premium based on qualifications that are not health related; however, the state does limit the amount premiums can be raised. Annual increases in premiums are also limited; these limitation protections are not provided to groups larger than 51, making it exclusively a small employer protection.

In New Mexico, policy has been passed to secure small group health coverage for small employers and self-employed individuals, created under the auspices of the “New Mexico Health Insurance Alliance (59A-56-4).” This body is a non-profit public corporation created for “the purpose of providing increased access to health insurance in the state” in the form of an HMO, PPO, or indemnity plan for small employers and self-employed individuals. From this Act, a board of directors must be created; five of the members must be officers or employees of members and must consist of one representative of a non-profit health care plan, two representatives from a health maintenance organization, and two representatives from other member types. Additionally, five directors must be proprietors of small businesses and four directors who are employees of small employers, giving small employers direct discretion over the issues discussed.

In order to qualify as a small group under the Alliance, several group eligibility criteria must be met:

- “1. To determine if the employer group is eligible to participate they must have:
 - At least 2 and no more than 50 eligible employees; or
 - 2 employees of which 1 has Medicare but working 20+ hours/wk; or
 - 2 employees with one waiving coverage; or
 - Self-employed person + at least 1 dependent
2. At least 50% of the all employees (eligible or not) must live within New Mexico
3. Minimum allowable hours for any self-employed person and all employees who comprise the employer group is 20 hours per week
4. An employer contribution is not required

²⁴ New Mexico Annotated Statutes, 59A-23C-2

5. Fifty- percent (50%) participation of eligible employees is required (does not include those waiving for other coverage)
6. The Alliance plan will not co- exist with another group plan (an employer paying for individual policies for their employees constitutes another group plan)
7. Minimum waiting period is 30 days, maximum waiting period 180 days. The waiting period must be the same for all employees
8. Management carve- outs are not acceptable through the Alliance.”²⁵

Small employers in the Alliance are not subject to premium contributions on behalf of the employees but must comply with minimum participation regulations. The employer cannot already offer coverage to employees.

Small group employers that decide to insure through the Alliance are also provided with benefits that are not guaranteed when choosing other carriers. There is no medical screening for coverage; coverage is available for groups as small as one to two. Coverage cannot be refused, and premiums cannot be inflated for health or occupation. There are no pre- existing conditions for the HMO.

Generally, self- employed individuals cannot purchase coverage outside of the Alliance. Those who are self- employed qualify for coverage if the individual and at least one other family member want to purchase a policy. Business group of one policies are not offered outside of the Alliance.

Nebraska

Nebraska legislators fought for the advancement of small and microbusiness owners by enacting the Small Employer Health Insurance Availability Act and the Small Employer Health Insurance Program. The purpose of the Act is to “promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre- existing condition exclusions, to provide for development of basic and standard health benefits plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”²⁶ While the intent to make health insurance readily available for small businesses, the Act unfortunately does not make any provisions for cost containment of premiums.

One clause in the Act requires small employer carriers to *actively* offer to small employers all health benefit plans. It is also illegal to advise an employer to purchase coverage through another carrier or to choose a differing plan than the one preferred.

²⁵ New Mexico Annotated Statutes 59A-56-14

²⁶ Nebraska Revised Statutes, 44-5224

What's more, under the Reinsurance Program, the creation of the Nebraska Small Employer Health Reinsurance board evolved. This non-profit entity includes representatives of small employers and small employer carriers to determine the rules and conditions for rating premiums and reinsuring groups. The board serves as a mechanism for small employers' to have their concerns heard and have the authority to influence important decisions.

Nebraska is lenient on establishing health insurance regulations, allowing for many to be voluntarily complied with. Despite this, a health carrier is not allowed to exclude any individuals from coverage with a group nor can they charge higher premiums for individuals similarly situated in the health benefit plan. Nebraska also employs an exclusion period for any pre-existing conditions that can last up to 12 months. Like Kansas, switching carriers can also result in an exclusion period. Children less than 18 years old or newly adopted children are exempt from an exclusion period. However, once accepted, small group policies are legally guaranteed renewability by a carrier as long as the group has paid on time and has not committed fraud when providing information.

The cost and availability of coverage can be issued on the basis of health status of members. There is no law regulating carriers' establishment of premium costs, giving them freedom over setting prices. When a small group gains membership with a carrier, the policy cannot be terminated because a member becomes ill.

Conclusion:

All states in this comparison have taken some measure to ensure small businesses are able to secure and maintain health insurance coverage. Whether by enacting legislation or by creating a non-profit that provides either insurance or additional regulation, legislators have taken a proactive stance on this issue.

Below is a table that illustrates the legislative differences of each state regarding health insurance regulation:

Legislation	CO	AZ	KS	NE	NM
Business of One Coverage Provided	X	X			X
Employee Subsidy			X		
Employer Tax Credit			X		
Guaranteed Issuance/Renewability	X	X	X	X	X
Mandate Light	X				
Premium Cost Containment		X	X		X
State-sponsored Insurance for Small Employers		X			X

Colorado tends to fare better than the other states, having enacted legislation allowing for mandate light small group policies, although increased coverage due to the legislation remains to be seen. Few other states in the nation have taken such a progressive step towards ameliorating financial hardships endured by high insurance premiums in this manner.

Also, considering many microenterprises are in fact sole proprietors, it is critical that states promulgate legislation to guarantee coverage for business groups of one. As of yet, only Colorado, Arizona, and New Mexico have issued regulations to protect sole proprietors' interests.

Kansas, however, is the only state in this comparison that rewards small employers with a credit for providing health insurance coverage to their employees. This policy is an excellent way to entice small employers to provide critical coverage.

Nebraska, New Mexico, and Kansas have enacted virtually identical legislation that condemns abusive rating practices by carriers, which illustrates state legislators' recognition of the overwhelming effects of the health insurance market on small businesses and microenterprises. Unfair premiums can result in dramatic changes for the small employer and employees, including inability to maintain coverage or worse, downsizing or closure due to financial complications associated with health insurance costs.

Despite legislation in each state intended to increase small employer-sponsored health plans, the percentage of health plans offered by firms with fewer than 50 employees is still vastly lower than those that employ over 50 employees. Even more discouraging, the percentage of small employers offering coverage in all five states lags behind the national average of 43.2%. The below table illustrates how each state in this comparison fares among firm size.

Table 4: Percentage of Private Sector Establishments That Offer Health Insurance to Employees, by Firm Size, 2003

State	Firm Size	
	Less than 50 employees, offering coverage	More than 50 employees, offering coverage
Arizona	38.5%	91.9%
Colorado	40.8%	92.8%
Kansas	41.4%	97.3%
Nebraska	31.5%	94.8%
New Mexico	37.6%	92.4%

Source: The Henry J. Kaiser Family Foundation. "Health Coverage and the Uninsured." www.statehealthfacts.org.

Workers' Compensation

All but two states in this country require the purchase of workers' compensation insurance to protect an employer against the legal and financial ramifications of an injured or killed employee as a result of a work-related accident. Workers' compensation insurance also ensures that employees receive adequate compensation in wages and medical care if injured on the job; it also provides for the dependents of an employee should the worker die from a job-related accident. Unfortunately for employers, insurance premiums continue to creep every year. Rising costs of workers' compensation premiums concerns both small and large employers alike. The 2005 survey conducted by the Leeds School of Business reports rising liability costs are a critical issue facing microenterprise owners.

Of the fifty states in the United States, North Dakota, Ohio, Washington, West Virginia, and Wyoming require employers to purchase coverage exclusively through state-operated funds. Thirteen other states offer purchasing through a state fund, including Arizona and Colorado but also allow for private insurance companies to compete. Only Texas and New Jersey offer employers the choice to provide voluntary coverage for employees, although the employer is not excused of the liability for an injury to a worker.

All five states in this comparison require compulsory coverage for an employer and allow employers to provide workers' compensation insurance using a private carrier, the individual employer, or a group of employers. Nebraska is the only state in this comparison that does not allow for employer group coverage. This range of choice allows an employer the opportunity to provide coverage in the most convenient and cost efficient manner to meet their business needs.

In no state may an employer deny an employee wages, salary, or commission to pay policy premiums. To do so is considered a felony in all five states. Employers must place posters providing information about coverage and what steps to follow in case of a workplace accident in accessible places.

This section about workers' compensation gives a detailed description of the differences and similarities that exist between the five states in the comparison.

Willful Negligence

In addition to rising costs of premiums, another burden endured by employers is excessive compensation claims. In an effort to protect employers from paying compensation for illegitimate claims, all five states in this comparison have enacted legislation reducing or eliminating compensation for injury or death in cases of willful negligence or self-inflicted injury. The "Employers' Guide", a pamphlet produced by the Colorado Division of Workers' Compensation, delineates examples of why benefits would be reduced or eliminated: "the employee willfully failed to use a safety device, the employee willfully failed to obey a reasonable safety rule that was written and posted, the employee willfully misled you about his physical ability to perform the job, the injury

resulted from the use of drugs or alcohol.” Arizona, Nebraska, and Kansas have enacted legislation that eliminates compensation for intentional violations of safety, failure to disclose all pertinent physical/ personal history information, or willful intoxication of alcohol or an illicit substance, enforcing an environment of zero tolerance of this behavior. These states offer greater protection for the employer from illegitimate compensation claims.

New Mexico and Colorado, while they offer similar legislation, provide employees with more lenient conditions. In Colorado, according to Revised Statute 8-42-112, “the compensation provided for in articles 40 to 47 [the Colorado Workers’ Compensation Act] of this title shall be reduced *fifty percent*: (a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer; (b) Where injury results from the employee’s willful failure to obey any reasonable rule adopted by the employer for the safety of the employee;... or (d) Where the employee willfully misleads an employer concerning the employee’s physical ability to perform the job, and the employee is subsequently injured on the job as a result of the physical ability about which the employee willfully misled the employer.”

Furthermore, use of a controlled substance in excess results in only a *fifty percent* decrease in non- medical benefits in Colorado: “(1) Non- medical benefits otherwise payable to an injured worker shall be reduced fifty percent where injury results from the presence in the workers’ system, during working hours, of *not medically prescribed controlled substances*, as defined in section 12-22-303 (7), C.R.S., or of a *blood alcohol level at or above 0.10 percent*, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a forensic drug or alcohol test conducted by a medical facility or laboratory licensed or certified to conduct such tests” (*emphasis added*). Despite a workers’ negligence or irresponsible behavior, the employee is still entitled to half of the workers’ compensation benefits, and the employer is liable for damages.

Legislation in New Mexico disallows compensation for injury or death to any employee who was willfully under the influence of alcohol or a depressant, stimulant, hallucinogenic, or narcotic drug, unless the drug was dispensed to the person from a licensed practitioner. However, there is only a partial reduction in benefits by ten percent for an employee’s failure to use provided safety devices, thus maintaining an employer’s liability to provide benefits. Failure of an employer to provide safety devices results in a ten percent increase in benefits for injury or death resulting from a work- related accident if the specific missing safety device can be identified. In both Colorado and New Mexico, employers are still responsible to dispense compensation in the case of employee negligence, placing a greater burden upon employers in these two states than in Arizona, Kansas, and Nebraska.

Number of Employees for Mandatory Coverage

While all five states in the comparison require by law that employers secure workers’ compensation insurance, each state issues different criteria regarding the number of

employees for mandatory compensation coverage. The table below gives an overview of how each state decides when coverage is required.

Table 5: Number of Workers for Mandatory Coverage

State	Arizona	Colorado	Kansas	Nebraska	New Mexico
Number of Employees for Mandatory Compensation Coverage	1 or more employees	1 or more employees	No numerical exemptions; Employers are exempt if they have a total gross annual payroll of less than \$20,000 for all workers	1 or more employees	3 or more employees

Source: www.workerscompensation.com

Colorado requires an employer to obtain compensation insurance if one or more employees comprise the workforce. Sole proprietors and partnerships are therefore exempt from required coverage. In 1999, non-employer statistics (a firm with only a sole proprietor and no employees) topped 325,432, and by 2003 the number had risen to 361,822. Considering firms with more than 100 employees have decreased in establishment size, and sole proprietors are increasing in number, the requirement to cover all employees has a large impact on the microenterprise sector.

New Mexico is the most flexible in this requirement, affecting microenterprise owners by allowing employers that are not in the construction or building industry and with fewer than three employees to escape mandatory coverage. This exemption excuses employers from any legal ramifications that might arise from a work-related injury. Given that a microenterprise is four employees or less, this legislation provides choices for many New Mexican microenterprises.

Kansas approaches mandatory coverage in a different manner—by concentrating upon wages that are compensated to employees instead of the number of employees. If an employer does not pay more than \$20,000 in wages to employees, the employer is exempt from providing workers' compensation coverage. Since many microenterprises are very small, it is possible that the employer might not pay salaries that exceed \$20,000, thus alleviating the employer's financial and legal responsibility. Again, Kansas established workers' compensation legislation that creates an environment that makes it easier on microenterprises to conduct business.

Like Colorado, Arizona and Nebraska mandate all employers with one or more employees to carry obligatory coverage, but sole proprietors are exempt from having to carry workers' compensation coverage.

Exempted Professions

Not all states regulate workers' compensation in the same way. State governments maintain authority over which professions are required to be covered by workers' compensation. Each state in the comparison permits several professional exemptions for employers, allowing those microenterprise owners a lessened financial burden. However, some are more generous in granting exemptions than others. In the case of allowing both professional and numerical exemptions, the employee is not entitled to recourse if an accident occurs at the workplace. The employer is protected from being sued and from paying any medical or non- medical benefits to such employees

Table 6: Exempted Professions

State	Arizona	Colorado	Kansas	Nebraska	New Mexico
Exempted Professions	Domestic servants; independent contractors	Maintenance; real estate agents, domestic servants, independent contractors; volunteer ski area; drivers operators; home services; Casual farm and ranch labor	Agricultural; domestic servants; real estate agents	Railroad workers; domestic servants; agricultural	Agricultural; real estate agents; domestic servants

Source: www.workerscompensation.com

Colorado allows the most exemptions of all the states in the comparison:

- 1 "Certain casual maintenance or repair work performed for a business for under \$2,000 per calendar year
- 2 Certain domestic work, maintenance, or repair work for a private homeowner that is not done full time
- 3 Licensed real estate agents and brokers working on commission
- 4 Independent contractors who perform specific for- hire transportation jobs
- 5 Drivers under a lease agreement with a common or contract carrier
- 6 Any person who volunteers time or services for a ski area operator
- 7 Persons who provide host home services as part of residential services and supports
- 8 Independent contractors

- 9 Railroad employees (covered by federal compensation)
- 10 Inmates working for a private employer that are otherwise obliged to provide coverage to their own employees.”²⁷

The Colorado General Assembly additionally permits employers of casual ranch and farm labor to provide voluntary coverage for those workers earning less than \$2000 per calendar year. These professional exemptions remove employers from legal liability if an employee is injured on the job and allows the employer the choice to pay for coverage or not.

Arizona, like Colorado, does not allow for agricultural workers to be exempt from compulsory compensation coverage. Domestic servants and independent contractors who are not directly employed by the business, but serve as their own employer, are the only exempt professions from compulsory workers compensation coverage.

Kansas allows employers in the agricultural profession and real estate agents acting as independent contractors to provide voluntary coverage for employees. Domestic servants earning less than \$20,000 per year are also exempt.

Nebraska excludes employers of railroad workers who operate interstate business, household domestic servants engaged in private residences, and agricultural workers from providing required coverage. However, a stipulation must be made for agricultural employers. The employer is exempt from providing any coverage if said employer employs workers related to the agricultural profession. If an employer employs ten or more unrelated, full-time employees each calendar year for more than 13 weeks, consecutive or not, coverage for these employees is then required. If any exempt employer chooses not to provide coverage, a written notice must be provided to employees at the time of hiring that they are not covered by the Nebraska Workers' Compensation Act.

New Mexico allows for real estate agents, domestic servants, and farm and ranch laborers to be exempt from coverage. Again, Colorado allows for the greatest number of professional exemptions and creates favorable conditions for conducting business here.

Decision of Physician Selection

A concern for both employer and employee is the selection of a well-qualified physician when an employee is injured on the job. An employee will seek a doctor they trust who will provide prompt and effective medical care; however, they may have little concern about the cost if they pay no out-of-pocket expenses. However, from the employer's viewpoint, s/he will want to ensure his employee is cared for and recovers in a timely manner to return quickly to the job but within a manageable price range. If an employer chooses a physician based solely on low cost, rather than qualifications, the result could

²⁷ Colorado Department of Labor and Employment, Division of Workers' Compensation. "Employer's Guide." July 2005.

be additional medical treatment from a second or third physician, costing the employer more than initially anticipated. Additionally, non- medical benefits will continue to be paid to the employee for the duration the employee is out of work. It is in the best interest of the employer to provide the employee with a trustworthy and competent doctor to ensure the best and quickest recovery possible. By maintaining control over the physician decision, an employer can defend against employee efforts to manipulate the care which could result in slow recovery time and multiple doctors' care. This decision allows an employer to shop around to ensure cost efficiency.

Table 7: Decision of Physician

State	Arizona	Colorado	Kansas	Nebraska	New Mexico
Physician Selection	Initial Choice by Employee	Employer Initial Choice, but may be changed by a State Agency	Employer Selection of Physician	Initial Choice by Employee	Employer Initial Decision; After specified periods as state in law, employee has free choice

Source: www.workerscompensation.com

Employees in Arizona maintain the initial choice of a medical care provider and must submit to periodic medical examinations at the behest of the employer, the insurance carrier, or the commissioner at a place that is reasonably convenient to the employee. If the employee refuses to submit to a medical examination, the worker is no longer eligible for compensation.

The right of choosing a physician remains with the employer in Colorado. However, if the employee does not approve of the selection and neither party can agree on a medical physician, a written request for an Independent Medical Examiner (IME) shall be made by the disputing party, including a proposal of one or more suitable IMEs.

Kansas awards the initial decision of choosing a medical care provider to the employer. However, should a conflict arise between the employer and employee regarding the employer's choice and the director of workers' compensation finds that the physician care is not satisfactory, the Kansas director may appoint one from a list of three neutral health care providers provided by the employer or allow the injured party to select from the list.

In Nebraska, the employee is able to seek care from the physician that already holds the employee's medical records and has documented history of treatment prior to the injury. However, if the employee does not exercise the right to elect the physician in a timely manner, the employer then assumes the right to choose a doctor. To protect the

employer, however, the compensation court has the authority to limit the extent of medical fees absorbed by the employer.

New Mexico allows the employer to make the initial physician selection or to delegate the selection to the injured employee. This permits employers to choose a doctor in the most efficient manner possible. Because the initial choice remains with the employer, this process guarantees cost- efficiency and quality.

Option to Waive Coverage

When an offer of employment is accepted by an employee, an implicit or explicit agreement is made between the two parties that the employer will provide workers’ compensation coverage to the employee. Either manner secures a legally binding contract between the two parties. By assuming coverage, an employee relinquishes the right to sue an employer for accidents occurring on the job. However, in some circumstances, the employee may choose to waive the right to be covered by workers’ compensation insurance and maintain the right to sue the employer. Additionally, in some instances when an employee chooses to waive coverage, the employee may receive a stipend in place of workers’ compensation premiums that would have been paid by the employer.

Table 8: Option to Waive Coverage

State	Arizona	Colorado	Kansas	Nebraska	New Mexico
Option to Waive Coverage	Yes	No	No	No	Yes

Source: www.workerscompensation.com

According to Arizona Revised Statute 23-906, coverage is optional for any employees, from any profession, who are covered by their employers’ coverage. Those employees who reject coverage maintain the right to sue the employer in civil court. The employee may refuse coverage by submitting in writing prior to an injury on the job that the worker is refusing coverage.

In New Mexico, executive employees of a corporation or limited liability corporation or a sole proprietor may elect to waive the right to compensation and may do so by filing with the office of the director in writing that he/ she has elected to refuse coverage. For the purpose of this legislation, an executive employee “means the chairman of the board, president, vice president, secretary, treasurer or other executive officer, if he owns ten percent or more of the outstanding stock, of the professional or business corporation or a ten percent ownership interest in the limited liability company”; and sole proprietor “means a single individual who owns all the assets of a business, is solely liable for its debts and employs in the business no person other than himself.”²⁸ Any other employees not covered by this definition do not have the option to refuse coverage.

²⁸ New Mexico Annotated Statutes, 52-1-7.

Colorado does not allow for any waiver of compensation by an employee who is subject by law to the workers' compensation act. Like New Mexico however, corporate officers and members of a limited liability corporation who own 10% or more of the company are given the choice to refuse coverage by submitting a refusal in writing with the understanding that s/he will not be provided any sort of compensation for injury or death resulting from a work-related accident. The Division of Workers' Compensation must first approve the refusal notice before it is considered valid.

In Kansas, any corporate employee who owns 10% or more of the outstanding stock may elect to not accept the provisions of the Workers' Compensation Act. All other employees may not choose to refuse coverage and thus are required to relinquish up the right to sue if injured.

Nebraska gives executive officers of a corporation who owns more than 25% of the common stock or an executive officer of a non-profit whose wages do not exceed \$1,000 are not considered employees by Nebraska's Workers' Compensation laws and are, therefore, not covered by the policy.

Giving sole proprietors the choice to not purchase workers' compensation insurance positively affects these microenterprise owners. In this respect, the state legislature allows these workers more control over their own financial decisions. Sole proprietors can choose to not purchase coverage and save money by not paying high premium rates.

However, allowing all employees in Arizona the right to waive the right to insurance reinstates the right to sue for benefits and damages from injury or death, placing employers at a greater legal risk. Employers who are sued could end up paying more in legal costs than they would have originally paid through monthly premiums.

Additional Legislative Advancements

In addition to the preceding topics delineated for workers' compensation, each state has recognized the importance of supplying affordable coverage to business owners and ensuring they maintain coverage for their employees. As such, each state has passed subsequent legislation to guarantee the greatest compliance by employers.

New Mexico passed the Employers' Mutual Employment Act 133, in which "the legislature finds the cost, service and benefits of workers' compensation and occupational disease disablement insurance are of utmost importance to the health, welfare and economic well-being of all the citizens of New Mexico. To help provide competitive workers' compensation insurance coverage, the legislature enacts the Employers' Mutual Company Act."²⁹ The New Mexico General Assembly recognized that small and medium businesses can encounter obstacles in purchasing affordable coverage that larger employers do not. The purpose of the Act is to create an insurance entity in the form of a non-profit that provides business owners workers' compensation coverage with manageable premiums, giving preference to small and medium businesses.

²⁹ New Mexico Annotated Statutes 52-9-2.

Nebraska enacted a measure, “Workplace Safety Consultation Program,” which protects employees by allowing the Department of Labor to conduct inspections to ensure employers are complying with safety standards. Moreover, January 1, 1994 marked the commencement for the requirement that every public and private employer form a Safety Committee. An employer must compensate employees who participate on the committee at their regular hourly wage plus benefits.

Kansas takes measures to ensure that each insurance company or group- funded self- insurance plan provides purchasers of workers’ compensation coverage accident prevention programs as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs include

“surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with [accredited] field safety representatives.”³⁰

These safety programs highlight the efforts made by Kansas legislators to decrease on- sight injuries and deaths and thus, workers’ compensation claims. Fewer claims can translate into lower monthly premiums for employers.

Arizona insurance carriers may deny coverage to an employer based on previous claims history. In order to ensure that all employers are provided access to workers’ compensation coverage, Arizona has developed a state-run assigned risk plan for employers who have been denied coverage two or more times. All insurance carriers provide workers’ compensation policies must participate in the assigned risk plan. Each is designated a certain number of high- risk employers in proportion to the amount of workers’ compensation policies already held by the carrier. Although the premiums for these plans often cost more than a competitive insurance carrier’s rate, the employer is provided insurance coverage instead of being forced to cease production.

Colorado legislators recognize the importance of maintaining current coverage. The Colorado Division of Workers’ Compensation developed a method for assuring compliance by all employers (Statute 8-47-111), including cross- referencing employer records of the Division of Employment and Training and the Division of Workers’ Compensation. All insurance carriers that provide workers’ compensation policies are required to provide any information requested by the Division, and the Division uses all available means to ensure that an employer secure coverage for the employees.

The Colorado General Assembly has taken steps to promote low cost premiums for compliant employers by allowing adjustments to premiums for good employer practices. Prior to the issuance of this legislation, variance in policy premiums could only be set on the basis of “equity, rate adequacy, fairness, and insurer compliance with Colorado

³⁰ WorkersCompensation.com. “State ‘Quick Facts’” www.workerscompensation.com. September 2005.

insurance rating laws.”³¹ Cost-containment legislation takes into account the effort an employer has taken to institute workplace safety programs, which should diminish the number of on- site accidents. These cost alleviators provide great financial benefits for employers, especially microenterprises whose financial base generally is not large. These incentives promote greater workplace safety and training in an effort to receive the financial benefits, and in general, improve the all- around productivity and efficiency of microenterprise workplaces.

Conclusion

Each state in this comparison has taken a varied approach in establishing workers’ compensation legislation. Colorado allows a greater number of exempted professions of all the other states in the comparison but does not protect employers as well as Arizona, Kansas, or Nebraska regarding an employee’s act of willful negligence. Colorado also allows for the employer to make the initial decision after an on- site accident occurs. The legislation enacted to contain premium costs is an excellent movement towards ensuring greater compliance with the workers’ compensation law, which other states have not yet attempted.

New Mexico is the only state in the comparison that has created a non-profit entity whose sole purpose is to ensure small employers can easily secure affordable workers’ compensation coverage. While many states have taken this step to ensure access to affordable health insurance plans, New Mexico proves to be advanced in extending this step to workers’ compensation legislation.

Development of safety programs by Kansas insurance carriers is another innovative way to protect small employers. Establishing these programs attempts to decrease the number of on- site injuries and deaths. Fewer accidents can result in lower premiums for employers and fewer claims filed.

³¹ Colorado Revised Statutes, 8-14.5-102

Business Personal Property Tax

The collection of business personal property taxes evokes conflicting opinions among the business and legislative sector. The National Federation of Independent Business classifies the tax as one of the greatest burdens facing small employers. Despite this, according to the 2000 US Census, 40 states administered some type of business personal property tax to generate government revenue. Colorado's own free market think tank, the Independence Institute, argues that Colorado's high tax rate discourages out of state businesses from relocating to Colorado. However, property taxes cannot be stricken from the Constitution as they provide critical funding principally for public schools and transportation.

For tax purposes, personal property is considered all types of property except real estate. Taxable personal property includes property used for commercial, industrial, and agricultural purposes. Business personal property is distinguished from residential personal property when its principle use is to generate revenue for the owner. Personal property purchased and owned for domestic uses and not to generate income is not taxable.

Business personal property is defined as any "taxable, tangible personal property that is used to produce income or is depreciated or expensed for IRS purposes," according to the Kansas Division of Property Valuation. Office supplies, computers, chairs, machinery, equipment, and furniture are among a few examples of personal property that are subject to taxation. This type of property is typically portable and not permanently attached to real property. Individuals items are given an annual assessed value by the county assessor, to which the tax rate is then applied, giving the actual amount of taxes owed or tax liability. The tax rate varies by county according to the number of mill levies.

In 1982, Colorado voters passed the Gallagher Amendment in response to increasing residential property assessments, establishing a permanent, fixed ratio between taxes collected by non- residential and residential property owners at 55:45. This means 55% of property taxes are collected from non- residential (commercial) property owners and 45% of property taxes are collected from residential property owners. The Gallagher Amendment resulted in an assessment rate for non- residential or business property fixed at 29%, while the residential assessment rate has consistently decreased from 21% to 7.96% between the years of 1983 and 2004.³² This means that the actual value of business property, or the market value of a good, is multiplied by 29% to get the assessed value. Then the assessed value is multiplied by the mill levy to determine the tax bill. Personal property is reassessed every year by the county assessment commissioner, according to the depreciation schedule for property items.

In Colorado, the business personal property tax that is collected is distributed as such: 25% to the county, 6% to the city, 54% to the school district, and 11% for bond

³² [House Joint Resolution 03-1033 Study: TABOR, Amendment 23, the Gallagher Amendment, and Other Fiscal Issues](#)

obligations.³³ Rural counties tend to be more dependent upon the property tax for generating revenues than urban ones.

Table 9: Estimated Personal Property Tax Revenues Collected by Local Governments (Calendar Year 2003)

Local Government	Percentage	Amount (in millions)
Counties	25%	\$159
Cities	6%	\$38
Special Districts	15%	\$95
School Districts	54%	\$342
Total	100%	\$634

Source: Interim Committee on Economic Development- Business Personal Property Tax, “Recommendations for 2005.”

In 2003, there was about \$8.2 billion in assessed personal property, and of that, \$634.4 million in property taxes were collected locally, accounting for 13.8% of the total 4.6 billion taxes collected state- wide.³⁴ Personal property accounts for about 42% of total taxable property. Unfortunately, the business personal property tax makes Colorado unattractive to certain businesses, especially construction companies that are heavily invested in capital items. Additionally, it discourages already established businesses from purchasing new equipment and machinery. According to an article by the Independence Institute, Colorado ranks among the highest business personal property tax rate in the nation.

However, any exemption of business personal property has fiscal repercussions for the state. The Gallagher Amendment requires that the residential assessment rate (RAR) and the nonresidential assessment rate (NAR) remain at the set 55:45 ratio. If the business personal property tax is eliminated, the required RAR adjustment must also decrease to maintain the 55:45 ratio. This would result in both a decrease in RAR and NAR, translating into a loss of about \$7.3 billion in residential assessed value and about \$560 million in property tax revenue. Overall, a total exemption of business personal property would decrease total property tax revenues by an estimated \$1.2 billion.³⁵ Consideration must be given not only to the loss of revenues generated by business personal property but also the decrease in revenues collected from residential real property. Since the ratio between revenues raised by non-residential property and residential property must be kept the same as established with the Gallagher Amendment, losses in revenue on one side would result in loss of revenue from the other side.

³³ Recommendations for 2005: Interim Committee on Economic Development- Business Personal Property Tax.

³⁴ Recommendations for 2005: Interim Committee on Economic Development- Business Personal Property Tax.

³⁵ Colorado General Assembly, Colorado Legislative Council Staff. “Memorandum to Committee on Economic Development.” July 19, 2004.

Personal Property Assessment/ Valuation

As stated previously, Colorado places a 29% assessment rate on all non-residential property. This percentage is multiplied by the market value to obtain the assessed value. Then the assessed value is multiplied by the mill levies to reach the tax liability. The property is reassessed in value every year according to the depreciation schedule produced by the county assessor's office.

Arizona calculates property based on the original retail cost and the age of the property. The county assessor decides the current replacement cost. The assessed value is based on the full cash value after application of a \$57,632 exemption and the assessment ratio for the legal class of property.³⁶ For commercial and industrial property, an assessment rate of 25% is assessed. For agricultural property, only a 16% assessment rate is issued. The tax rates of each county are then applied to the assessed value.

Kansas business personal property is assessed at 25% of the retail cost when new (RCWN). Additionally, "commercial and industrial machinery and equipment, which, if its economic life is seven years or more, shall be valued at its retail cost when new less seven- year straight- line depreciation. Or which, if its economic life is less than seven years, shall be valued at its retail cost when new less straight- line depreciation over its economic life, *except* that, the value so obtained for such property, notwithstanding its economic life and as long as such property is being used, shall not be less than 20% of the retail cost when new of such property."³⁷

Business personal property is assessed at its net book value in Nebraska, which is the "acquisition value less any year to year depreciation attributable to that property according to a state enacted depreciation schedule."³⁸ The depreciated property is taxed based on a depreciation factor calculated using the acquisition year and recovery period, which is equivalent to the Federal Modified Accelerated Cost Recovery System.

For non-residential property in New Mexico, the assessment rate is 33.3% for commercial, industrial, and agricultural. The tax rate ranges from \$11 to \$48 per \$1,000 of net taxable value. The statewide average rates in 1999 were about \$25 per \$1,000 for residential property and \$28 per \$1,000 for non- residential property, or about .8% of assessed value.

Property Exemptions

All five states in this comparison recognize the importance of fostering an economic environment that is hospitable to businesses and have encouraged business growth by providing businesses with tangible property exemptions.

³⁶ Arizona Department of Revenue

³⁷ Kansas Department of Revenue. "Property Classification and Assessment."
<http://www.ksrevenue.org/pdf/ppvg4.pdf>. October 2005.

³⁸ Nebraska Revised Statutes, 77-120

In an effort to promote business activity, Colorado has provided businesses with incentives to establish a new business facility or to expand an existing one by increasing the number of exemptions. According to the Department of Local Affairs, "an exemption is allowed if the total actual value of taxpayer's taxable personal property per county is less than or equal to \$2,500... For personal property with a total actual value greater than \$2,500, the full value is taxable."³⁹ The upside of this exemption is that microenterprises that do not possess more than \$2,500 of capital goods are not liable for the tax. However, once they expand and purchase more personal property, they are then responsible for not only the new items, but the original \$2,500 worth of property as well. Microenterprises that are not involved in capital-intensive business activities can benefit from this exemption.

Items that have a useful life of one year or less, called consumable goods, are also exempt from taxation, regardless of the initial cost of the good. Any item that when purchased cost less than \$250 is exempt too. Intangible personal property, which includes stocks, bonds, patents, trademarks, copyrights, or computer software, is not subject to business property taxation.

Colorado allows particular tangible property used specifically for generating income to be exempt from taxation. The exemptions include: non-producing, unpatented mining claims, inventories or merchandise, materials and supplies held by a business, livestock, agricultural and livestock products, agricultural equipment used on a farm or ranch, and intangible property. This range of exemptions assists business owners across a broad variety of sectors and size.

Kansas does not favor any one particular sector of business over another, except for agriculture. There is no distinction between large or small firms, and both are subject to the same tax policies. Similar to Colorado, Kansas allows exemptions on all merchants', manufacturers' and motor vehicle dealers' inventories, as long as the inventory is held for sale in the ordinary course of business, is in the process of production for sale, or is going to be utilized for the production of a finished good. Additionally, there is no taxation on all livestock or farm machinery and equipment. Business aircraft can be included for exemption as long as it is regularly used and its sole purpose is for earning income. Household goods and personal effects used in a private home are exempt from taxation unless they are used to produce income. However, property used for home day care purposes and bed and breakfasts businesses are exempt. Hand tools used for construction with an initial retail price of less than \$400 are awarded a tax exemption.

Kansas exceeds Colorado's consumable property exemption, which is \$250, by allowing machinery, equipment, materials, and/ or supplies whose retail cost when new is \$400 or less to be exempt from taxation.

Nebraska's Department of Revenue is not as generous as Kansas' and Colorado's in allowing business personal property exemptions. In 1966, voters elected to eliminate the

³⁹ Colorado Department of Local Affairs. "Property Valuation and Taxation for Business and Industry in Colorado" January 2004.

property tax as a mechanism for generating state revenue. Instead, property taxes were collected solely for local governments. In 1967, the personal property tax on intangible property and household goods was eliminated, and by 1977, a change to the constitution allowed for full exemption of manufacturing, agricultural, and horticulture income-producing machinery and equipment, business and agricultural inventory, including raw materials, goods in process, and finished goods, livestock, grain and seed, poultry, fish, and fur-bearing animals. Also, non-depreciable business equipment is included in the tax exemption.

Once depreciated business personal property reaches a net book value of zero according to the depreciation table, the item is no longer subject to taxation in the state of Nebraska. The average useful life of most business equipment is between five and seven years. Any personal property with a valuable life of less than one year is exempt from taxation.

New Mexico provides the least amount of exemptions of any of the five states in the comparison. Inventory, registered aircraft, and business personal property that is not depreciated for federal income make up the BPP exemptions. Livestock, manufactured homes, aircraft not registered with the Aircraft Registration Act, private railroad cars, property that is used, produced, manufactured, held for sale, leased, or maintained by a person for the purposes of the person's profession, business, or occupation are all BPP that are subject to taxation. New Mexico does not favor agriculture above any other profession and does not try to alleviate any of the tax burdens that fall upon farmers or ranchers.

Arizona allows business inventory, raw materials and merchandise held for resale, and most livestock to be exempt from the property tax. Additionally, the first \$57,632 cash value of personal property at each business location is exempt from taxation as well.⁴⁰ This exemption increases every year.

New Mexico makes compliance with the tax the most difficult. Few exemptions are awarded to businesses to alleviate the tax burden. Colorado compares well with the other states in the comparison. However, the \$2,500 exemption for property does not compare in even the same category as Arizona's \$57,632 initial exemption.

Business Incentives and Tax Credits

In Colorado, tangible property may be purchased but will not be taxed until it is used for business purposes. Although many microenterprises do not fall into this category, the purpose of this legislation is to encourage large manufacturing businesses to relocate to Colorado or for existing companies to replace old equipment and machinery. What's more, business personal property that has fully depreciated according to the county assessor's schedule of depreciation is no longer subject to taxation.

⁴⁰ Arizona Department of Revenue.

Since personal property taxes are assessed and collected on a county by county basis, the Colorado General Assembly has allowed for the board of education, county, or municipality to negotiate an incentive payment or credit with any taxpayer who establishes a new business facility or expands an existing establishment in their jurisdiction. The credit is not to exceed more than 50% of the amount of the taxes levied upon the taxable personal property located in the new or expanded business facility, and the credit must be used for the principle purpose of earning income. Moreover, a greater incentive or tax credit may be received by a business for establishing a new business facility or expanding an existing one within an enterprise zone.

The relief that Colorado legislators have provided from business personal property taxes has been aimed primarily at small businesses, including microenterprises. In years of revenue surplus, businesses that pay \$700 or more in business personal property taxes are refunded the first \$700 in full. Any additional taxes above \$700 are refunded at a rate of just over 16%. However, due to the recent recession and lack of state surplus, businesses did not receive refunds in 2002, 2003, and 2004.

Nebraska businesses have been provided a business incentive for expanding or establishing businesses called the Employment and Investment Growth Act. However, this personal property tax exemption is limited to businesses that invest at least \$10 million and employ at least 100 new workers, excluding microenterprises from benefiting from the tax break.

The administration of Nebraska's property tax is a convoluted effort, as nearly 3,000 political subdivisions have the authority to levy property taxes. However, legislative restrictions curb these districts from establishing extremely high levies. For a few examples, cities and counties are allowed a maximum of \$.50 per \$100 in assessed property. Natural resource districts have a limit of \$.045 per \$100; educational service units may not exceed 1.5 cents and community college areas no more than 7 cents. This constraint on government collection protects businesses from having to pay astronomically high property taxes.

Like Colorado, Kansas legislation allows cities and counties to negotiate with businesses for a full or partial business personal property exemption for up to ten years in exchange for establishing a new business facility or expanding an existing one. Businesses can qualify as long as the property is used exclusively for manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce.

Kansas businesses may receive an exemption of property by the board of county commissioners of any county if the property is funded from Industrial Revenue Bonds (IRBs). An IRB is issued by a city or county for the purpose of purchasing, constructing, improving, or remodeling a facility for agricultural, commercial, hospital, industrial, natural resources, recreational development, or manufacturing purposes. Despite these qualifications, a certain property will not qualify under any circumstances for this credit: an agreement was reached between the city and/or county and the business that the

taxpayer would not seek a tax exemption for: property purchased using IRBs, property located within a redevelopment project area, a retail business identified under the standard industrial classification codes unless the facility is used to house the headquarters or back office operations, property used for a poultry or rabbit containment facility or a swine production facility.

Kansas Department of Revenue allows an income tax credit equal to 20% of the amount of property taxes paid on Commercial and Industrial Machinery and Equipment.

New Mexico also allows businesses using Industrial Development Bonds (IDB) (similar to Kansas' Industrial Revenue Bonds) to qualify for a credit equal to 5% of the value of the qualified equipment and used in a manufacturing plant in New Mexico, as long as the manufacturer hires additional workers. The property tax exemption is valid for up to 20 years.

An allowance in the New Mexico constitution, the Community Development Incentive, allows municipalities and cities to negotiate with businesses to create a development incentive in the form of a property tax exemption. Either the municipality or the city can grant a tax exemption for up to 20 years for personal property for the expansion of an existing business facility or the establishment of a new one. This provides an alternative to Industrial Development Bonds (IDB), especially when a project is too small to receive IDBs.

Arizona also offers property tax reductions to qualified manufacturing companies that locate in economically distressed areas called Enterprise Zones. They are eligible for an assessment ratio of five percent on all personal and real property in the zone for five years if they are a manufacturer and have invested at least \$2 million in fixed assets in the zone and are small (100 employees or less or less than \$4 million in gross receipts) or are owned by women or minorities.

The state of Arizona has also allowed for an accelerated depreciation schedule for business personal property (class 1 and 2), which covers a four- year period and applies to the scheduled depreciated value for each item over that period. For the first year, the accelerated depreciation rate is 35%; the second year is 51%, the third 67%, and the fourth 83%. This allows for businesses to take the additional savings and invest in capital projects.

Conclusion

While it is evident that the effect of the Gallagher Amendment leaves businesses bearing the brunt of paying high property taxes, it must be taken into consideration that "Colorado's tradition of strong local government causes its local taxes to rank among the highest in the country, while state taxes typically rank among the lowest."⁴¹ According to the Colorado Legislative Council, "Colorado had the lowest state tax collections (\$44.57)

⁴¹ Colorado General Assembly, Colorado Legislative Council Staff. How Colorado Compares in State and Local Taxes. Issue Brief No 05-01. January 24, 2005.

per \$1,000 of personal income in FY 2003-04. It was the second consecutive year that Colorado had the lowest state tax burden.”⁴² Since property and sales taxes account for the largest sources of revenue for local governments, these burdens must remain high to achieve sufficient funding for local entities. While it may seem that the collection of the business personal property tax is too high, businesses escape other state- assessed taxes instead. Despite this, Colorado only ranks as the 30th highest state in local *property* taxes collected, illustrating that officials in Colorado have taken steps to ensure that businesses do not pay an unfair amount of taxes.

Given that the elimination of the business personal property tax is not a feasible choice for any state, tax exemptions have made the tax more tolerable. All five states have provided business with property exemptions that lessen the tax liability. What’s more, businesses that pay business property tax can receive a tax rebate in Colorado and Kansas. Business incentives for establishing and expanding business facilities in certain areas of the states may be considered for tax exemptions. States have taken steps to ease the tax burden of small businesses.

⁴² [How Colorado Compares in State and Local Taxes](#)

Conclusion

A lack of microenterprise- specific legislation characterizes Colorado and the four additional states analyzed in this comparison: Arizona, Kansas, Nebraska and New Mexico. Each state has taken steps to improve its legislative environment affecting small businesses, into which category microenterprises fall. Unfortunately the range of businesses categorized as small business is large and the microenterprise sector—that is, businesses with fewer than five employees, including the hundreds of thousands of self-employed individuals —do not have a voice. It is imperative that legislators increase their awareness of the effects of legislation on the microenterprise business sector to ensure that this integral sector contributing stability and vitality to our economy has the capacity and flexibility to succeed.

As illustrated throughout the comparison, the microenterprise business sector provides vital employment opportunities. Microenterprises provide both state economic advancement and an alternative for citizens in low-income jobs. However, due to lack of financial and business development resources, microenterprises are subject to greater setbacks that larger entities can more easily anticipate and avoid. Small changes in legislation and regulations can greatly affect business activity in the microenterprise business sector.

Health insurance coverage is vital to maintaining a productive workforce. Individuals lacking health care coverage are less likely to visit the doctor when needed and may experience sickness or injury longer than anticipated from an untreated illness. Unfortunately, many microbusiness owners cannot afford to provide employer- based coverage because of high premium costs. As is often the case, both employers and employees of microenterprises tend to be low- or modest- wage earners and cannot afford coverage outside of employment.

Colorado's small employer health care policy is distinguished by allowing for mandate light health insurance policies to be issued. As one of 13 states offering limited benefits coverage, a mandate light policy excludes up to five otherwise required health benefits from coverage, which gives employers greater flexibility in choosing plans based on price. The law allows insurers to exclude five benefit mandates and offer "bare-bones" packages to small employer groups at a reduced premium. However, Kansas far exceeds Colorado's efforts to provide low- and modest- wage employees with government and employer- sponsored subsidies. These subsidies assist in the procurement of reliable health care.

Employers find themselves in similar situations when purchasing workers' compensation coverage. Employers may attempt to forego coverage because they cannot afford insurance. Issuance of legislation to make workers' compensation coverage affordable in Colorado based on good performance and safety programs provides employers with incentives to improve workplace safety and pursue coverage to be in compliance with the law. State legislators have eliminated high costs for employers by permitting several allowances for number of employed workers and the type of profession. This allows

employers from a broad range of professions to benefit from the exemptions and be removed from legal liability. Less financial responsibility frees up more capital for owners to invest or improve productivity.

However, while other state legislatures have provided employers the protection from paying claims for willfully negligent injuries, Colorado's microenterprise owners are at risk of paying benefits for accidents that arise from an employee's negligence. This particular legislation can leave an employer vulnerable to unjust claims and financial setbacks from illegitimate claims payments.

Requiring employees to accept the conditions of Colorado's workers' compensation act shields employers from legal ramifications. Arizona, however, places employers in a more vulnerable situation by allowing employees to file a claim within the civil court system. Owners can ultimately pay higher fees from legal costs than if they had purchased workers' compensation insurance and paid monthly premiums.

Although the Colorado business personal property tax legislation may be contentious, the government must be able to collect revenues in order to provide the services citizens demand. Elimination of the business personal property tax is not a viable option, as it funds important areas such as education and transportation. However, tax exemptions give businesses a break in tax liability and can spur economic growth. All five states have provided businesses with exemptions on specific personal property, usually agricultural, livestock, and inventories. Additionally, some states, like Arizona, Colorado, and Kansas permit a minimum allowance of property to be purchased before it is taxed. This amount ranges from \$2,500 to over \$57,000, with Colorado at the low end of the range.

Tax incentives entice businesses to expand or establish facilities in enterprise zones, for use of Industrial Revenue Bonds, or when specifically agreed upon with government entities while limiting the amount that government can collect. This measure promotes economic development in struggling areas. Tax refunds or credits are available to businesses that pay a certain amount of taxes, and many states do not collect taxes upon property that has reached a totally depreciated value according to government-established depreciation lines. Governments attempt to ease business tax burdens without sacrificing state and local funding.

Nebraska has recently issued the "Nebraska Advantage Microenterprise Tax Credit Act," which, although not a business personal property tax exemption, allows for microenterprises operating and investing in economically distressed areas to receive tax credits. Approved applicants must establish or expand business production in areas of economic depression. A microbusiness can receive a tax credit for up to 20% of an investment it made to start or expand a business in economically depressed areas.

Overall, despite a lack of microenterprise-specific legislation, state governments have taken numerous steps to alleviate the burdens small businesses face. Legislation regulating insurance carriers allows small businesses greater protection from abusive

premium rating practices by carriers and encourages employers to provide coverage for both health and workers' compensation insurance. Through legislation, agencies have been established to provide and regulate insurance practices, and exemptions have been created to lessen insurance mandates and tax burdens on small businesses. This legislation has been passed with little policymaker understanding of the microenterprise business sector. There is a clear need for both advocacy of the sector and increased research of the effects of legislation on microenterprises. The verified stability and vitality of the microenterprise business sector proves that legislative support of the growth of this sector can only benefit Colorado's economy.

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