# THE HEALTH CARE REFORM LAW: ITS PRESENT AND FUTURE IMPACT ON SMALL BUSINESS AND JOB CREATION

## HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT, AND REGULATION

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

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# THE HEALTH CARE REFORM LAW: ITS PRESENT AND FUTURE IMPACT ON SMALL BUSINESSES AND JOB CREATION

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**FRIDAY, MARCH 16, 2012**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS,
OVERSIGHT AND REGULATIONS,
COMMITTEE ON SMALL BUSINESS,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:06 a.m., at the Greenwood Village City Hall Auditorium, 6060 South Quebec Street, Greenwood Village, Colorado, Hon. Mike Coffman [chairman of the subcommittee] presiding.

Present: Representative Coffman.

Chairman COFFMAN. Good morning. This hearing will come to order.

I would like to thank each of you, especially our witnesses, for taking time out of your schedules to be here with us today as we examine the impact of the President's health-care law on small businesses.

Before we begin, I would also like to sincerely thank all of the staff here at Greenwood Village City Hall for hosting this hearing.

Over the past few years, our committee has held several hearings on topics related to health care and small businesses. Many agreed the health-care system needed reform because the cost of health care continued to escalate.

Small-company owners said that although they had traditionally offered health care to their employees and wanted to continue to do so, the concentration of health insurers gave them few options for purchasing coverage, and those options were extremely expensive.

Witnesses at our hearing suggested a number of solutions, such as allowing small businesses to join together to purchase health insurance across State lines, which could increase competition and reduce costs; tort reform to bring down the cost of physicians' malpractice insurance; and permitting physicians assistants, nurses, and other health-care practitioners to expand their duties to reduce the cost of health-care delivery.

Very few of them suggested that we should mandate employers to provide health insurance, raise Medicare and other taxes, or increase penalties for health savings account withdrawals. Unfortunately, each of these provisions are found in the President's health-care law.

Of specific interest to us in this hearing is the employer mandate and how that provision will affect small-business job creation. Beginning in 2014, the new health-care law requires any employer with more than 50 full-time equivalent employees during the preceding calendar year to provide health insurance to their employees. If the employer fails to do so, he or she faces penalties up to $2,000 or $3,000 for each employee.

My concern is what happens to those businesses who are right around 50 employees, and there are a lot of these companies. According to the Small Business Administration Office of Advocacy, there are approximately 143,000 firms that employ between 40 and 74 people, with a total of about 7.5 million employees at those firms.

Is a company that is just below the 50-employee threshold likely to hire more workers if they are unable to provide health insurance? Is a company that has 52 employees going to maintain a contract in face of penalties?

Regardless of the answers to those questions, the greater concern here is why, with the economy struggling with historically high unemployment, is the President so intent on implementing laws that make small-business owners make those kinds of decisions. We ought to be making it easier for them to expand and produce jobs, not harder.

That leads me to another point I would like to discuss at this hearing, the confusion and uncertainty the President's health-care law is causing small businesses as it is implemented over the next few years.

Between now and full implementation in 2018, 46 new provisions will be implemented. This is on top of the 46 that have already been implemented over the past 2 years. The sheer number of things to track and comply with has got to be confusing for small mom-and-pop shops struggling to get by in difficult economic times. And it all goes back to the question: Why are we making hard things harder for small businesses instead of easier?

We have an excellent panel to discuss these issues, and I again would like to thank everybody for being with us today.

Our first witness is Dr. Keith Small from Denver. Dr. Small is the senior member of the Cody Dental Group, joining the staff in 1967. For 7 years, he was a member of the visiting faculty at the L.D. Pankey Institute for Advanced Dental Education in Key Biscayne, Florida.

He is currently a clinical associate professor in the Department of Restorative Dentistry at the University of Colorado School of Dentistry.

He also serves as mentor to the Centennial Dental Study Club in Denver, is a member of the Advisory and Leadership Board of Directors of the University of Colorado at Denver Health Sciences Center School of Dentistry, and is a member of the Denver Academy of Restorative Dentistry.

Thank you for being with us today, Dr. Small.

Dr. Small, could you go ahead and move that microphone closer to you? Thank you.

**STATEMENTS OF KEITH SMALL, DMD, CODY DENTAL GROUP DENVER, COLORADO; MATT TYNAN, SECRETARY AND TREASURER, TYNAN'S VOLKSWAGEN, NISSAN, KIA, AURORA, COLORADO, ON BEHALF OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION; JOHN W. LEEVERS, PRESIDENT, LEEVERS SUPERMARKETS INC., FRANKTOWN, COLORADO, ON BEHALF OF THE NATIONAL GROCERS ASSOCIATION; AND, MARK ROGERS, PRESIDENT AND CHIEF OPERATING OFFICER, ROARING FORK RESTAURANTS, CASTLE ROCK, COLORADO, ON BEHALF OF THE INTERNATIONAL FRANCHISE ASSOCIATION**

**STATEMENT OF KEITH SMALL**

Dr. SMALL. I would like to take this opportunity to thank you for this chance to present our small-business concerns of the health-care reform law, perhaps even to the continued existence of our 66-year-old dental practice.

Our corporation attorney for the professional corporation has advised us that if there are not significant changes, that it would raise question as to whether we can continue to exist in our existing organization. And part of that is that we are just above the 50 threshold of employees.

The Cody Dental Group was founded January 1, 1946, and is now the oldest dental group practice in the United States. We have 62 employees, 14 dentists, 14 hygienists, two x-ray technicians. And since 1986, we have had a cafeteria plan in place for our employees.

The cafeteria plan has three different components, the medical insurance category, the flexible spending accounts with a maximum of $8,000 per year, and the child or daycare with a maximum limit of $5,000 per year. The cost of the medical insurance aspect of the health plan right now seems to have more questions than it does answers, in terms of determining what those actual costs will be.

But with a typical overhead cost in a dental office easily in the range of 70 to 80 percent or more, the impact on small business is a major, major concern.

I would like to address some comments specifically to the flexible spending account portion, because that has such a major impact on our employees.

During the health-care reform legislative debate, there were numerous comments made to the media that there would be no adverse impact on the so-called middle class. I think that was defined as $200,000 per year income for single filers, or $250,000 for joint filers. And at the signing, President Obama had the observation that within 10 years, the new law would produce a $1.4 trillion surplus. I am not sure how that math comes about.

However, the major impact on the health-care reform law comes into the flexible spending category of the cafeteria plan. January 1, 2011, the coverage for over-the-counter medical-related products was deleted. And my observation is that probably has more of an impact on the family units with children.

But the biggest impact will be January 1, 2013, when the maximum flexible spending account will be lowered from $8,000 per year to $2,500 per year.

This represents an almost 70 percent reduction in coverage. Since 1986, employees in our office who were faced with major medical expenses were able to plan ahead and obtain coverage for the major part of those by setting aside up to the $8,000 limit in their cafeteria plan.

One of the current reference points in terms of cost is superior performing hearing aids will cost in the range from $7,000 to $8,000 today. The January 2013 maximum so then would not even cover the cost of one hearing aid. There are also a number of prescription costs, newer drugs, which typically are much higher in cost, where your annual cost will exceed $2,500 per year for that single prescription.

So I would submit that the severity of the reduction targets the very individuals in that so-called middle class that weren't really supposed to be severely impacted by this new law.

The flexible spending accounts do have a use-it-or-lose-it proposition, so there is built-in protection there against overuse, and the protection is also provided so there will not be a conduit for tax-free funds to flow to the pocket of that participant.

So basically, the abrupt change in the flexible spending account of the reduced medical over-the-counter items in January 2011, and then almost 70 percent reduction taking effect next January in 2013, does represent a major and sudden negative impact on the budget of the people who need the help the most.

Thank you.

Chairman COFFMAN. Thank you, Dr. Small.

Our next witness is Mr. John Leevers—oh, I'm sorry. I stand corrected.

Next, we have Mr. Matt Tynan, secretary and treasurer of Tynan's Volkswagen, Nissan, Kia in Aurora. A native of Denver, he earned his bachelor's of arts degree from Benedictine College in 1987, and a master of science degree from Emporia State University in 1990. Matt has previously served as cochair of the Legislative Policy Committee for the Colorado Automobile Dealers Association and as a trustee of the Catholic Foundation of Northern Colorado from 2005 through 2011.

He has been active in his family's automobile dealership since 1994. Combined, his company employs approximately 200 individuals in Aurora and Fort Collins.

Thank you for coming here and for your testimony, Mr. Tynan.

## STATEMENT OF MATT TYNAN

Mr. TYNAN. Thank you, Chairman Coffman, for holding this important hearing.

Again, I am Matt Tynan, secretary and treasurer of Tynan's Volkswagen and Tynan's Nissan in Aurora, Colorado, and Fort Collins Nissan, Kia in Fort Collins, Colorado.

I am here testifying on behalf of the Nation's 16,000 franchised automobile dealerships, and the almost 1 million people they employ who are represented by the National Automobile Dealers Association.

In 1963, my father, Edward Tynan, began Tynan's as a family business, and we are very proud to still be a family business. While we have remained in business for nearly 50 years, the last 10 or so have been extremely challenging. As reported by Tim Jackson in the Colorado Automobile Dealers Association, new car sales in Colorado reached 208,000 units in the year 2000. In 2009, new car sales in the State of Colorado had dropped 104,000 units. Obviously, this 50 percent reduction in new car sales negatively impacted our business and nearly every other new car dealer in the State.

Over that same period of time, to put this in perspective, sales at our Volkswagen dealership, a dealership that began operating in 1968, went from approximately 100 new units a month to 30 units per month.

Over these years, we took steps to reduce our expenses by eliminating certain positions, changing pay plans, and reducing benefits. Our most expensive line item is our people. Our people are also our most valuable asset.

The people we employ are some of the best and brightest in the industry. The calculation is simple: The greater their success, the greater the success for our dealership.

We make a real investment in our employees. We have to. To avoid regulatory entanglement, our sales and finance operations staff must be kept up-to-date on changes in the law, both at the State and Federal level. But it doesn't stop at that front office.

With the complexity of today's vehicles, servicing vehicles requires strong computer skills. We must invest in our technicians, provide them with training, special tools and equipment necessary to fix and maintain today's cars and trucks.

One way we attract and keep our staff is by providing competitive benefit packages, and this includes a rather costly health plan. Health care is a very personal issue for all of my employees and for me and my family. I see and talk to virtually every one of our employees in the Metro Denver stores on a daily basis, so I know how important this is.

I am not a large corporation. I do not work out of a penthouse office or behind a big mahogany desk. I get the same health coverage for my wife and five kids as we provide for our employees. These people are part of my family, and we want to do right by them. I might add that the same is true for thousands of other dealerships across the country.

Our H.R. people work each year to find the most affordable plans with the best coverage. Each year, that becomes increasingly challenging, and each year it becomes more difficult to build a business and hire additional staff.

Over the last 9 years, our health insurance premiums have remained relatively flat. We have accomplished this by increasing deductibles and co-pays, changing coverages, and aggressively shopping our health insurance plans. We have had to change carriers.

We are not alone. Every small business across Colorado that is trying to do the right thing faces exactly the same burden. In just 2 years, providing health coverage for the men and women who work for me and their families will be turned on its head and not for the better.

The implementation of the Patient Protection and Affordable Care Act, a centerpiece of this Administration's domestic agenda, will drive costs higher, not lower.

Since we employ more than 200 people, we would be required by law to offer our full-time employees health benefits with specified affordability and minimum value requirements. If the coverage does not satisfy these requirements, we pay a fine. Even if one full-time employee went to a new health exchange and purchased a government-subsidized plan, we pay a fine. If we choose not to offer health coverage, we pay a fine.

Instead of trying to do the best by our employees, it will become a simple math calculation: Is the fine less than providing coverage for our people?

The same law that mandates that we provide this coverage provides a loophole so we don't have to. How does this make sense?

Within a relatively short amount of time, the health-care delivery system will be less accessible and far more expensive than today. Supply and demand dictate what we can get for a new or used vehicle. With the economy suffering the past several years, the value of used cars is significantly higher, because demand for them is high. The same is true for health care.

With mandatory coverage, the demand for health care will sky rocket. With a limited supply of hospitals, doctors, and nurses, the price of care will go up and the cost to cover our employees will rise and continue to do so.

Eventually, health-care costs will escalate so high it will be impossible to offer an in-house plan, so our only option will be to pay the fine and to have our employees fend for themselves in the state-regulated, government-subsidized program.

Many other businesses will do the same calculation and see the State exchanges as a viable option. As the Government program becomes overwhelmed by people forced into the State exchanges, our Federal penalties and our State taxes will have to increase to cover the influx of people.

So how do we fix this problem? A simple solution is a complete repeal of the entire health-care reform bill, replacing it with an affordable system that preserves consumer choice while not sacrificing quality care. I am sure that is easier said than done.

Small steps have been made to reduce the burdens of health-care law. I applaud Congress for successfully repealing the 1099 tax-reporting requirement for any expenditure over $600. That provision alone would have been death by a thousand paper cuts. It would've cost our staff hours and hours of paperwork.

I want to thank Chairman Coffman for his efforts to eliminate that burden. It is a good first step, but it is far from enough.

Another important step would be to eliminate the so-called employer mandate to require employers to offer plans with certain coverage requirements. The mandate changes the meaning of full-time and leaves the unelected bureaucrats to define minimum health coverage, leaving small-business owners uncertain about the future.

I mentioned this earlier in my testimony, fortunately the American Job Protection Act, H.R. 1477, would repeal this mandate.

Chairman Coffman, I saw that you were an early cosponsor of that legislation, and I commend you for doing so.

H.R. 1477 removes any requirement that employers with over 50 or so employees provide insurance coverage or pay fines. Repealing this provision is absolutely critical to keeping this program from harming my dealership and small businesses throughout Colorado.

In closing, I want to thank Chairman Coffman for the opportunity to testify today. Our goal, as every other entrepreneur in Colorado, is to build a thriving, self-sustaining business to support our family and the families of the men and women who work for us.

I urge you to continue your work to fix the problems associated with the new health-care law, to do what you can to implement real, market-driven reforms that increase competition and make health insurance more affordable.

Thank you.

Chairman COFFMAN. Thank you, Mr. Tynan, for your testimony.

Our next witness is Mr. John Leevers, president of Leevers Supermarkets Inc. in Franktown. He is actively involved in the daily operations of LSI and has 22 years of experience in retail operations, human resources, and finance. Mr. Leevers is also responsible for long-range planning, evaluating acquisitions, establishing strategic direction, and initiating store expansions and capital investment.

He is a 1993 graduate of the University of Denver, with a degree specializing in finance and management.

I appreciate your participation, Mr. Leevers.

## STATEMENT OF JOHN W. LEEVERS

Mr. LEEVERS. Thank you. Good morning, Mr. Chairman, and thank you for the opportunity to testify on behalf of the National Grocers Association on an issue that will undoubtedly affect the way in which all small businesses operate.

The NGA is a national trade association representing and servicing the retail grocery and food companies and wholesale distributors that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food company operating in a variety of formats.

NGA members also include retail grocery or food companies, and wholesale distributors, affiliated associations, as well as manufacturers, service suppliers, and other entrepreneurial companies that support NGA's mission and philosophy.

My name is John Leevers, and I am the president of Leevers Supermarkets Inc. We were founded in 1938 by my grandfather. My brother and I are third-generation grocers, celebrating 75 years next year. I'm excited about that.

Like many small employers around the country, we have tried to make the best of difficult times and hope the worst is behind us. We have been fortunate in that we have recently been able to open three new stores here in Colorado.

But we fear our future growth will be stifled by the effects of Affordable Care Act. The Affordable Care Act has changed the way in which small businesses think about benefits. And in this new era, the decisions companies make with regard to benefit administration will affect their ability to compete.

As a result, we have spent a considerable amount of time and resources analyzing how to proceed in 2014, when what are key provisions for us are implemented—the most significant, the employer mandate. We welcome the opportunity to share these experiences with the committee.

Leevers Supermarkets today operates 13 stores and employs around 300 people here in Colorado. Eleven of our Leevers stores operate under the Save-a-lot banner, and as such utilize a price-driven format. The focus of this price-driven format is on efficiencies. We differ from traditional grocery stores in that we sell only a limited assortment of product, and our operations are extremely streamlined to keep costs low.

In 2014, we are faced with the decision to either continue to offer coverage as we have it today and absorb additional costs of administration burdens associated with the Affordable Care Act, or, alternatively, to drop coverage, as some of the others have suggested, leaving our employees to fend for themselves, despite our years of corporate support of our employees' benefits.

Simply put, neither decision is attractive to us, and both decisions could have significant repercussions on our business.

Over the years, as health-care costs have increased, we have seen erosion in the benefits we have been able to offer. In the not-so-distant past, we offered benefits to all employees and health-care coverage was free. More recently, in light of the cost of care, we have been forced to limit eligibility in our plans to full-time employees and individuals who hold certain jobs.

If the Affordable Care Act is maintained as written, we will have a very difficult decision in front of us beginning in 2014. It is likely that we will not be able to be in a position to afford health-care benefits of any kind.

For us, like most small employers, discontinuing coverage makes sense from an economic standpoint. As I stated earlier, our stores employ between 20 and 40 employees at each location, and we have roughly 300 employees.

Because of costs, we have had to restrict employee eligibility in our plan, and we currently have 65 individuals participating. We self-insure our health coverage and our costs are roughly $10,000 per covered life. Thus, the total cost of our health benefits for our company today is roughly $600,000. And we pay about 80 percent of such costs, or about $480,000.

The Affordable Care Act greatly expands the number of employees who would need to be covered on our plan by defining a full-time employee as an employee who has averaged at least 30 hours of service per week over the course of a month. According to the shared responsibility provisions of the Affordable Care Act, we must either provide such individuals with coverage or pay a penalty of $2,000 per full-time employee.

Prior to the Affordable Care Act, we would not have considered employees who worked 30 hours per week full-time and consequently would not have offered them the opportunity to enroll in the plan. This provision alone increases the number of eligible employees in our plan from 65 to around 250. If we were to continue coverage, even if our medical trend costs were to stay stable, which is not likely to be the case, the cost of our plan beginning in 2014 would skyrocket to around $2 million.

Again, the Affordable Care Act penalty for discontinuing coverage is $2,000 per full-time employee, disregarding the first 30 full-time employees. If the 30-hour workweek definition stands, our total number of employees defined as full-time for health-care benefits would rise to roughly 250. Thus, our liability under the shared responsibility provision would equal about $440,000.

As you can see, purely from a financial standpoint, the decision to drop coverage makes sense for us. This is especially true considering the fact that because of our size, there's very little we could do to bend the cost curve on the cost of benefits in the coming years. As you know, the cost of health-care coverage is heavily dependent on the size of your pool. In general terms, if you have a large pool, the impact of a catastrophic event will be spread over a large number of people and the per capita cost will be less. This is as true for self-insurance as it is for insurance. Thus, one strategy for lowering costs is becoming included in a larger pool. The Affordable Care Act, however, prohibits small businesses with more than 100 employees from purchasing coverage through an exchange. Thus, while other small employers may benefit from the aggregation possible through an exchange, we are, unfortunately, precluded from exploring this option.

However, if we must make the decision to discontinue coverage, we are cognizant that certain noneconomic factors can come into play. Like any business, our employees are our greatest asset. We understand that dropping coverage is likely to have a profound effect on employee relations.

Members of the committee, the Affordable Care Act has placed our business between a rock and a hard place. The shared responsibility provision forces us to try to decide between two bad decisions. We can choose to continue the provision of health benefits and be saddled by unsustainable costs, resulting from mandated increases not only on the number of beneficiaries we must cover under our plans, but also the richness of the benefits we must offer.

The alternative, discontinuing coverage, is equally problematic and forces us to ignore time-tested justifications for providing benefits that will result in severe employee-relations issues.

Thus, unless significant changes are made to the Affordable Care Act, it stands to do irreparable damage to many small businesses. Specifically, we recommend the definition of full-time employee be amended to reflect the way in which employers generally categorize employees as full-time or part-time.

I look forward to working with you on these changes and answering any questions you may have.

Chairman COFFMAN. Thank you, Mr. Leevers.

Our final witness is Mr. Mark Rogers, president and chief operating officer for Roaring Fork Restaurants. Mr. Rogers leads over 250 employees in several locations throughout Colorado. He also serves as the secretary and treasurer of the Colorado Restaurant Association. He received a bachelor of arts degree from Baylor University, and his masters in business administration from the University of Colorado.

Welcome to the committee, Mr. Rogers.

## STATEMENT OF MARK ROGERS

Mr. ROGERS. Thank you very much. Good morning, Mr. Chairman.

My name is Mark Rogers, and I'm grateful for the opportunity to address some of the ramifications the new health-care law will have on employers and the workforce, particularly the impacts the new law will have on small businesses and job creation.

While this law includes some important insurance reforms and increased access to coverage for many people, taken as a whole, the law is biased toward mandating coverage rather than providing meaningful cost control.

This legislation will create increased uncertainty in our long-term business planning and force employers to choose between absorbing rising premiums or paying mandated penalties, slowing the growth of small and midsized businesses as we struggle with the costly new requirements during a time of economic recovery.

I am a small-business owner and franchise partner for Cheddar's Casual Cafe, a company my father originally cofounded in 1978. Now, along with my father and sister, I have started a pair of companies called Roaring Fork Restaurants, Inc., to expand Cheddar's franchises across the State of Colorado, as well as Riverside Restaurant Group, LLC, which facilitates the purchase and construction of restaurant properties.

Our first Cheddar's franchise restaurant is Aurora; our second house in Colorado Springs. We truly are building this business from the ground up. My father made sure of such, as I have worked as a server, bartender, dishwasher, assistant manager, and manager, obviously, teaching me a great deal about the restaurant business.

As we continue our franchise expansion, I am particularly concerned about the health care employer mandate, which will prohibit and hamper our growth.

I am here today on behalf of the International Franchise Association, or IFA. The IFA's mission is to safeguard the business environment for franchising worldwide. IFA represents more than 90 franchised industries, including more than 11,000 franchisees, 1,100 franchisors, and 500 supplier members nationwide. There are more than 800,000 franchised establishments in the United States, creating 18 million American jobs and generating $2.1 trillion in economic output each year.

According to a study prepared for the IFA by the Hudson Institute, the franchise industry will be particularly hard hit by the employer mandate provision of the new health-care law.

The new law will affect tens of thousands of franchise businesses like mine, putting more than 3.2 million full-time employees earning their living in franchise business at risk of losing their jobs, and adding costs of more than $64 billion in employer mandate penalties, not including the additional costs in time for regulatory compliance.

The report also shows that the new law will make it harder for small businesses with 50 or more employees to compete with those that have fewer than 50 employees. Therefore, the effects of the new law are anti-small business growth by inadvertently discouraging many franchisees from owning and operating multiple locations, creating a competitive disadvantage for franchisees who do own more than one or two locations.

The study also demonstrates that the employer mandate provides an incentive for franchisors and franchisees to replace current full-time workers with part-time and temporary workers. This is the wrong direction for both our economy and millions of unemployed Americans.

The real irony here is that in the name of expanding health coverage, health-care coverage, Congress and the Administration are making it more difficult for workers to enter and eventually be promoted in the workforce at a time when we desperately need growth.

I will go off script here for a moment and say that this will change not only the restaurant industry in Aurora and Colorado, but across the entire country. It will either force restaurants to cut their staffs significantly, or it will create two kinds of employees, almost a class system of employees, those that are full-time, those that are part-time. Restaurants will absolutely have to cut those that are full-time, those that are working more than 30 hours a week, or else have to provide insurance coverage.

And in our case, and in many restaurants across the country, it is much more expensive to pay for that insurance coverage than pay for the penalty. So therefore, they will cut their staffs to almost strictly part-time employees.

I think that that class system within restaurants, at least, would be terrible for the entire industry, as well as the country.

I think it will also force people to get multiple jobs, and what you are going to see is there are servers and bartenders and cooks who work 40 to 42 hours a week, supplying their families with everything that they need. Well, with restaurants having to cut their staffs and cutting those folks to now less than 30 hours, or 29 and half hours per week, they will be forced to get a second job. So now you're going to be forcing many folks in the entire restaurant industry to now go get multiple jobs, which will make it more difficult for them, driving to multiple jobs. This is tax season—having to file multiple returns. It'll make it much were difficult.

It'll force restaurants to pass the costs as well on to the consumer. Our restaurant, and I look at our corporate entity as a whole, established that it will force us to raise our costs, our menu prices, 3 to 4 percent at minimum in order to deal with paying the penalty. And I would say that based on what we have established, we will pay the penalty, because it will be much more expensive to pay the coverage.

We assume that, as you said, with 250 employees, you're talking about more than $400,000 a year that it will cost our businesses just to pay those penalties at $2,000 per employee.

This new health-care law imposes yet another unnecessary layer of regulatory burden on business owners as we attempt to understand and comply with these new provisions and face the increasing costs of doing business. Because of the employer mandate, it will be more difficult for businesses to estimate the cost to expand and hire new workers for tens of thousands of business owners already struggling to recover from the deepest recession we have had since the Great Depression.

Franchise small-business owners should not be forced to choose between absorbing rising insurance premiums and paying tax penalties for noncompliance. The framework of the current law threatens the economic viability and job creation potential of franchised businesses vying to recover from the economic downturn by imposing excessive cost burdens on the backs of small businesses.

As one of those small-business owners, I urge Congress to further review the impacts and consequences of the health-care reform law as a whole and repeal this onerous employer-mandate provision.

I would also say, with regard to our business of over 200 employees, 200 to 250 employees, it will cost us $400,000 a year. I will say that even my father yesterday talked about changing our management structure, so you're not only talking about the hourly employees, you're talking about changing our management structure. We have four to five managers per restaurant. And you think, well, perhaps we have to change those from working 40 to 50 hours a week down to 30 hours a week, in order to just pay the penalties. Now you're talking about affecting the lives of all those managers.

And the last thing I wanted to say, and it struck me what these gentlemen said. I always tell people I'm in the people business. I am not in the restaurant business; I'm in the people business, whether that is our employees or our customers.

With our employees, I've paid for hotels, traveling, I've given advances, I've given loans, I've done everything I can to take care of our employees. Now I think of the fact that I'm going to be the one that is going to be cutting back on their benefits, and I'm to be the one making life harder for them just in order to survive, in order to be able to actually have employees and take care of customers, we will have to face paying the penalty instead of the costs of providing coverage to all those employees.

Thank you very much for the time.

Chairman COFFMAN. Mr. Rogers, thank you for your testimony.

I think all of you have well-expressed the unintended consequences of this legislation.

Let me ask some questions to all of you.

And the first one is, I think employers want to offer health insurance to their workers, both to do the right thing and to stay competitive. But thin margins leave employers unable to absorb these continuing cost increases.

First of all, do you think most small firms want to offer health insurance but simply can't in this economy?

Why don't we start with you, Mr. Small, and then we will go down.

Dr. SMALL. Yes, absolutely. It just becomes cost-prohibitive to be able to do this.

I moved to Denver in 1967. For the first 15, 18 years, we did pay all of the medical insurance costs for our employees. And then it got to the point, as costs were increasing, when I first got here, it was like $5,000, $6,000 to cover everybody on my 25-, 30-member staff. As we got larger, but particularly as the premiums skyrocketed, it got up to the point where we were up in the $50,000, $60,000 range. And the consultants told us that within 3 years, their estimate was that we would be between $104,000 and $120,000 in premiums. At that point, for the next 3 years, we froze what our participation was and had the employees pay that differential as that price went up.

In 3 years, we had exceeded the $120,000 limit for our staff premiums by about $20,000. And so at that point then, we stopped doing that. We had some other group plans, but those have faded also.

So there is no question, the desire would be to provide that kind of coverage for your staff. And they really are like family. I have four people I've worked with who have been on my staff, on our staff, for over 40 years.

Chairman COFFMAN. Thank you, Dr. Small.

Mr. Tynan, do you think that most small firms want to offer health insurance, but simply can't in this economy?

Mr. TYNAN. Yes, Mr. Chairman.

The car dealers that I am familiar with would like to offer those benefits to their employees, and the comments that you made in your opening statement about ways to address the increasing costs, I believe that our associations would be in concurrence with those comments about addressing tort reform, going across State lines, and the other comments that you made in terms of addressing health insurance.

Chairman COFFMAN. Okay, and just let me mention that we will have tort reform—there will be tort reform legislation on the floor of the House in April, next month.

Mr. Leevers, go beyond your firm. Do you think most small-business employers want to offer health insurance but simply can't do to the economic situation that we are all in right now?

Mr. LEEVERS. Certainly, every small-business person that I know, and entrepreneur that I know, would prefer to offer benefits. It is not only the right thing to do and people feel like it is the right thing to do, but it is what we need to do to be competitive with big firms and what is going on out there in the market. So the simple answer is, absolutely everyone would prefer to offer those benefits if they could afford to.

We used to offer them to everybody at no cost, and over the years, we have had to just maintain coverage, the best coverage we could, for the people that we could, we have had to cut back on who is eligible. And then we had to begin, since we are self-insured, we pay up to the first $40,000 of any individual claim. So I, effectively, have a $40,000 deductible with all my employees.

We have had to continue—we started out at $5,000. In order to make sure that our coverage stays as good as it can be, it went to $10,000, and to $20,000, and to $30,000, and to $40,000 over the years, just to maintain somewhere in the neighborhood of 8 to 10 percent increases on an annual basis.

So we certainly realize, I think, something needs to be done about the cost of the health care in this country, especially for small- and medium-size businesses. And everybody would certainly prefer to offer if they can, but we don't think this is the way to do it.

Chairman COFFMAN. Mr. Rogers.

Mr. ROGERS. I would say, of course, my business is a little different in the restaurant business, because it is such a transient workforce, it is difficult to think of providing health-care coverage for someone that might work for you for 3 weeks.

But I would say, as an entrepreneur, looking at the big picture, of course.

We have a young woman that is a cook for us. She started as a culinary assistant making $7.50 an hour in Aurora when we opened the restaurant 2 years ago. She has worked up now to make about $12.50 an hour. She doesn't have any health insurance.

And about 3 weeks ago, she was hobbling around. And she had ingrown toenail, but should have any health insurance, so she didn't want to have to go spend a bunch of money to get ingrown toenail fixed. She has a child home, and that was just too expensive.

Well, without insurance, it costs about $850 to have her ingrown toenail fixed, and you know, my father and I paid for her—I paid for her to go to the doctor and get it taken care of, because it was the right thing to do to help her.

In the greater scheme of things, I think that is what you're asking, of course, we want to take care of our employees and, of course, we want to provide insurance or health care for any and all of them.

If the restaurant business wasn't such a transient workforce, I would say, absolutely, we would want to provide for each and all of them. And you know, I think the case with that young worker, Justine, shows that we absolutely want to take care of any and all of our employees.

Chairman COFFMAN. Thank you.

And the next question I think some of you have certainly touched on this, but for the record, if you could just reiterate your position. One of the main things I wanted to highlight in this hearing is to show this law will impact job creation and business expansion.

As I mentioned in my opening statement, beginning in 2014, employers with 50 or more employees will have to provide insurance coverage to their employees or face financial penalties. My question to all of you, do you think a company that is just below the 50-employee threshold will be likely to hire more workers if they are unable to provide health insurance? Is a company that has 52 employees going to maintain or contract in the face of these penalties?

Any insights from your current employment levels could help as well.

And we will start with Dr. Small again.

Dr. SMALL. I don't think there's any question that if you're close to that 50 level, you are going to make sure you don't go above it or you don't go below it.

With 62 on our staff, we have looked at that and said, is there any way that we can get down below that 50 level. That is impossible for us. We are close, but not close enough.

We have, because of a dentist who just recently retired and moved to Florida, we have capacity to take two additional practices into our facility right now, but we're holding off because we are trying to find out some answers on subjects that we are talking about today before we do any kind of expansion. That kind of expansion would add at least six and maybe eight additional employees.

Chairman COFFMAN. Okay.

Mr. Tynan.

Mr. TYNAN. Mr. Chairman, I think any company would look at the situation if they were at that threshold level to see if pulling back to below 50 employees, if they could make their business operate and reduce their exposure to the mandates within the healthcare reform.

We have three separate corporations, and we group those three separate corporations together for the purposes of expanded our insured pool. And I would think we would have to look at breaking those three individually up, and perhaps even making one of our corporations, splitting it into two, to get below the 50-person threshold, if we thought that we could get adequate health insurance coverage at an affordable price with that smaller pool, vs. staying grouped together with all of our corporations.

I'm certain any company that was on the threshold at 50—our smallest corporation has 60 employees. Could we cut back to 49 people?

Chairman COFFMAN. Now, would that inherently cause an increase in premiums, because you're dealing with a smaller group? So you're fragmenting into smaller groups.

Mr. TYNAN. Right.

Chairman COFFMAN. So would the aggregate amount be more than you would have otherwise purchased for those groups?

Mr. TYNAN. Exactly. And that is why you have an insurance broker who is going to run the numbers for you and can say, if we break it up this way, it will be less expensive and you will have less exposure, or you will be better off paying the fine, going to the exchange, or you should continue your health insurance plan.

Chairman COFFMAN. Mr. Leevers.

Mr. LEEVERS. I would echo those sentiments. We're in an industry where the national average for grocery stores net profit is between 1 and 2 percent. That is published numbers.

When you have something that is such a significant cost as health care and other benefits are with employees, people are going to do whatever they need to do to figure out how to work with that, because the numbers I proposed earlier are just simply untenable.

As you proposed, would you look at separating, and other companies already do this for other reasons, but separating grocery stores into individual companies? Would you look at cutting back in certain areas? Changing the number of employees who are considered part-time or full-time, reducing hours under 30 to keep people outside of those?

Yes, there is no question that small businesses and individual stores, in particular, are going to have to look at changing the way they do business based on that law.

Chairman COFFMAN. Mr. Rogers.

Mr. ROGERS. So insurance for us costs well over $2,000 per employee.

Chairman COFFMAN. Today it does, okay.

Mr. ROGERS. Yes. I was thinking about the threshold that you said. If you're at 49 employees and you thought about going to 50, and let's say that it costs half of $2,000 just for coverage, you immediately are going to cost that company $50,000 if it costs $1,000 per person. If you add and hit the 50 threshold, you will immediately overnight cost the company $50,000.

So I don't think there's any question that none of those businesses at the threshold of 48, 49 people are ever going to want to go above at what it is going to cost them.

And in terms of growth, there are a few public restaurant companies today that look at their business as profit per employee. And I know one of them is Outback Steakhouse. And they figure their profit per employee is right at $2,000. And therefore, they figure for each person they are hiring, and they realize that they have to pay the penalty instead of covering folks, then in essence, take away all the other costs, at essence, they're getting zero profit by hiring one more person.

So the thought would be, let's keep the same workforce and try to get more out of that workforce. That is our only shot at trying to better our numbers.

It is a terrible way to look at business. I mean, it is awful. For the last several decades, you always, when you were doing well, you looked at growing, you looked at adding people to increase sales. And I think that people don't look at their business that way anymore, based on this new law.

Chairman COFFMAN. I'm going to start the reverse, with you, Mr. Rogers, this time.

Instead of mandates and penalties, that I believe will do little to actually lower health insurance and delivery costs, what other steps could be taken to reduce costs? Do you think being able to purchase health insurance across State lines or medical malpractice reform might help to reduce costs, or other ideas that you might have?

Mr. ROGERS. I think that being able to buy insurance across State lines would absolutely help. I think it would make it more competitive.

As it is today, our insurance continues to go up, regardless. So I think making it more competitive in any possible way would help.

And, yes, I think that tort reform there would help greatly, too. I think that helped where I'm from, the State of Texas, helped greatly. And I believe, if you could have Federal tort reform, of course that would help.

So anyway to make it more competitive would help all industries.

Chairman COFFMAN. Right. Thank you.

Mr. Leevers.

Mr. LEEVERS. I would agree that the tort reform, in our opinion, would be a significant step in the right direction.

Being able to pool and buy across State lines is significantly impactful to us, because we're big enough to be out of the small, but we are not big enough to get into any large pools. So that really has significant impact for us, being able to pool up with others.

In addition to that, again, the nature of our business is very part-time. We have a lot of people who don't look at our business as their primary. It might be a second job. It might be a high school job. It might be an evenings and weekends job for a housewife.

So that coupled with the fact that our business fluctuates fairly dramatically from the first of the month to the end of the month, and seasonally, makes these things very, very challenging.

So reforming the definition of a full-time employee on a per month basis is absolutely critical for us.

Chairman COFFMAN. Mr. Tynan.

Mr. TYNAN. Mr. Chairman, tort reform seems to me to be the single biggest issue that needs to be addressed.

Chairman COFFMAN. Dr. Small.

Dr. SMALL. I would second that comment.

Chairman COFFMAN. Thank you.

Let me ask a question for Mr. Rogers and then anybody else can respond to it.

You mentioned in your testimony that you essentially learned the restaurant business from the bottom up. In light of this law and the coming regulations, along with other regulations coming out of this Administration, I'm wondering if the Federal Government might be dampening the entrepreneurial spirit. Are these actions slowly but surely killing an entire generation of potential entrepreneurs? What do you think, Mr. Rogers?

Mr. ROGERS. Yes, I think without a doubt. I look at our parent company, when we purchased the rights to Colorado as a franchise territory, we became a franchisee instead of a franchisor. I saw my father was an entrepreneur for 34 years with this business, and I wanted to follow in his footsteps.

I look at it today, knowing that our corporate group has the opportunity to buy us out again, similar to the way we did when we sold out to them a few years ago. So I look at this opportunity and think, when I sell out, do I want to be an entrepreneur again and go start another restaurant company? I think, do I want to go out and purchase a small restaurant chain and grow it?

And just last night I told my wife I might not. I said it is so difficult today as an entrepreneur, especially in the restaurant business, and thinking about this health-care mandate, that it would be better, in my opinion, to go more of a corporate route. So I think there's no question it's killing the entrepreneur spirit of wanting to go in and start something and create something and grow something, because it is hard on the little guy.

And I see how easy it was, or, it was much easier to start businesses when my father created this company in 1978. And how much more difficult it is today, with all the regulation, and this, in a way, I agree with you, is absolutely killing the entrepreneur spirit.

Chairman COFFMAN. Mr. Leevers.

Mr. LEEVERS. My father's favorite saying is all I ever wanted to do is sell groceries for just a little bit more than I pay for them.

And somehow we've created so much regulation in general around business today that we have to do a whole lot more than sell groceries for a little bit more than we paid for them.

And I think it absolutely is dampening the spirits of entrepreneurs and their willingness to take the risks and incur the expenses and the risks involved with those, to comply with all kinds of regulations. This just layers on another huge chunk on top of what is already I think drowning small business in America.

Mr. TYNAN. Mr. Chairman, recently a customer who is purchasing a car on our Nissan showroom floor told me that there was more paperwork in buying a car than there was in buying their last home. And we are in a highly regulated industry, both at the State and Federal level, and we have revenue earners and revenue burners.

We need far more revenue earners in our business than burners. But regulations like this health-care mandate require so much time and energy to try to understand how to comply, what your potential costs are and the fines that you're going to face, that we're burning more revenue just trying to understand it. It is certainly stifling entrepreneurial spirit in our businesses.

Chairman COFFMAN. Dr. Small.

Dr. SMALL. I think there is no question that it stifles that spirit. In the dental field, we run a much smaller cottage industry. We don't have those kind of issues that these other three gentlemen have. But no question, it is a dampening effect.

Chairman COFFMAN. Well, let me tell you, I thank you so much for your testimony today. And if you have any additional comments, certainly you can submit them for the record. But I will also defer to you in a minute if you have something.

I just want to say that I think that there are tremendous unintended consequences with this legislation. And I'm concerned about it in terms of job creation. It seems to me that, from the testimony today, that certainly the cost, the increasing cost, is an unintended consequence, but also that for businesses to survive, for small businesses to survive, a push from full-time to part-time employees, to come under that threshold established in the law, and also for firms to say, you know, I'm not going to add that 50th employee. And so, I mean, this legislation is clearly, I think, as described today, is going to have a chilling effect on small businesses.

And of course, it's interesting to see in Washington, D.C., that some of the very large and politically connected employers are getting the kind of waivers that are not available to small businesses.

So are there any additional comments you would like to make today, anybody would like to make today?

Thank you so much for your testimony. It has been very instructive.

Okay, we'll close here. With that, as we conclude, I would like to mention for the record that members of the committee will have 5 legislative days to submit statements and supporting materials for the record.

[The information follows:]

Chairman COFFMAN. With that, the hearing is now adjourned.

[Whereupon, at 11:04 a.m., the subcommittee was adjourned.]

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CODY
DENTAL
GROUP

*Established 1946*

March 13, 2012

To: Representative Mike Coffman,
Chairman Subcommittee on Investigations, Oversight and Regulations.

From: Keith L. Small, DMD

SUBJECT:

Impact of The Health Care Reform Law on Cafeteria Plans -- Especially the Flexible Spending Account. (FSA)

HISTORY:

The Cody Dental Group, founded January 1, 1946, is now the oldest dental group practice in the United States. Currently there are 62 employees on our professional and auxiliary staff.

A Cafeteria Plan has been in place for our employees since 1986.

CAFETERIA PLANS:

The long-standing Cafeteria Plans have had three categories of coverage:

1.) Medical Insurance Premiums

2.) Flexible Spending Accounts (FSA) – maximum limit: $8,000/year.

3.) Child/Day Care. – maximum limit: $5,000/year

OBSERVATIONS:

I would like to focus attention on the Flexible Spending Account category of the Cafeteria Plan.

During the Health Care Reform legislative discussions/deliberations, numerous statements were made to the media that the new Health Care Reform Law would not negatively impact the "Middle Class" individuals with annual income below $200,000 for single filers and $250,000 for joint filers.

However, the new Health Care Reform Law has a MAJOR negative impact on the Flexible Spending Account category of the Cafeteria Plan:

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C O D Y
D E N T A L
G R O U P

*Established 1946*

January 1, 2011: Coverage of the Over-The-Counter (OTC) health-related products was deleted. This has the greatest negative impact on the family units with children.

Coverage for the OTC heath - - related products IS allowed with at physician's prescription - - but this places a time/overhead cost burden on the physician and perhaps an office visit fee on the patient.

January 1, 2013: The maximum Flexible Spending Account limit will now be reduced from $8,000/year to $2,500/year. This represents an almost 70% (68.75%) reduction in coverage!

For many years, individuals who were faced with major medical expenses in the coming year have been able to plan ahead and obtain coverage for the major costs. [For example - - the current cost for a pair of superior-performance hearing aids will range from $7,000 to $8,000.] The January 2013 maximum will not cover the cost of one hearing aid.

I would submit that this severe reduction does - - in fact - - target the very individuals at the lower end of the "Middle Class" salary scale that were "promised" that they would not be negatively "impacted" by the new Health Care Reform Law!

In the past, Flexible Spending Accounts were a "use it or lose it" proposition. Therefore, contributions to the FSA that were NOT used were forfeited. This provided the protection that there would not be a conduit that would allow unused Cafeteria Plan dollars to flow to the employee tax free.

Examples of two widely used prescription drugs and the annual costs involved:

Rx: Celebrex [Used to treat arthritis]
1 month supply: $321.98
1 year supply: $3,863.76

Rx: Nexium [Used to reduce stomach acid production]
3 month supply: $605.85
1 year supply: $2,423.40

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ONE LAST OBSERVATION:

The third Cafeteria Plan category is Child /Day Care. The maximum limit has been $5,000/year for one parent. $5,000/year will cover the typical cost for one child, but not for two or more children. However, if both parents have a Cafeteria Plan at their respective employment then that family-unit has a maximum of $10,000/year to use for their Child/Day Care expenses. Since in our society there are many single-parent family units, would it not be more equitable to have a yearly maximum for the family unit, for this example, of $10,000/year?

SUMMARY:

The Cafeteria Plan, in the format that has existed since 1986, has been a huge benefit to the employees in our small business. The abrupt change in the FSA medical OTC allowance on January 1, 2011 and the 68.75% reduction in the maximum benefit as of January 1, 2013, represents a major, sudden negative impact on the budgets of many of the fine, talented, hard-working employees with whom it is my privilege to work.

IF this is, in fact, an unintended consequence of the rushed passage of The Health Care Reform Law then corrective legislation would certainly be in order.

Keith L. Small, D.M.D.

*Restorative Dentistry*
Keith L. Small, D.M.D.
Bruce R. Dunn, D.D.S.
Charles K. Chew, D.D.S.
Gene S. Bloom, D.D.S.
Douglas W. Smith, D.D.S.
Matthew T. Dunn, D.D.S.
David M. Singer, D.D.S.
Robert L. Bunch, D.D.S.
Laura S. Brenner, D.D.S.
James B. Moses, D.D.S.

*Pediatric Dentistry*
Nancy T. Simons, D.D.S.

*Periodontics*
Richard W. Metcalfe, D.D.S., M.S.
Jonathan C. Boynton, D.M.D.

*Orthodontics*
Charles F. Reed, D.D.S., M.S.

*Oral & Maxillofacial Surgery*
Ole T. Jensen, D.D.S., M.S.

*Group Consultants*
Ray Hailey, D.D.S.
Alan A. Keimig, D.D.S.
G. Pat Wancka, D.D.S.

*Executive Director*
Wesely K. Chambers, M.B.A.

**Testimony of Mr. Matt Tynan**
Secretary and Treasurer
Tynan's VW and Tynan's Nissan
Aurora, Colorado

On behalf of the **National Automobile Dealers Association (NADA)**
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**Before the House of Representatives Small Business Subcommittee on Investigations, Oversight and Regulations**
The Health Care Reform Law: Its Present and Future Impact on Small Businesses and Job Creation

March 16, 2012

Thank you Chairman Coffman for holding this important hearing. Again, I am Matt Tynan, Secretary and Treasurer of Tynan's VW and Tynan's Nissan in Aurora, CO and Fort Collins Nissan Kia in Fort Collins, Colorado. I am here testifying on behalf of the nation's 16,000 franchised automobile dealerships and the almost one million people they employ who are represented by the National Automobile Dealers Association.

In 1963, my father, Edward T. Tynan, began Tynan's as a family business and we are very proud to still be a family business. While we have remained in business for nearly 50 years, the last ten or so have been extremely challenging. As reported by the Colorado Auto Dealers Association, new car sales in Colorado reached 208,000 units in the year 2000. In 2009 new car sales in the state of Colorado had dropped to 104,000 units. Obviously this 50% reduction in new car sales negatively impacted our business and nearly every other new car dealer in the state. Over that same period of time, sales at our Volkswagen dealership – a dealership that has been operating since 1968 – went from approximately 100 units a month to 30 units per month.

Over these years we took steps to reduce our expenses by eliminating certain positions, changing pay plans and reducing benefits. Our most expensive line item is our people – our people are our most valuable asset.

The people we employ are some of the best and the brightest in the industry. The calculation is simple: the greater their success; the greater success for our dealership.

We make a real investment in our employees. We have to. To avoid regulatory entanglement, our sales and finance operations staff must be kept up to date on changes in the law, both at the state and federal level. But it doesn't stop at the front office. With the complexity of today's vehicles, servicing vehicles requires strong computer skills. We must invest in our technicians, provide them with the training necessary to fix and maintain today's cars and trucks.

One way we attract and keep our staff is by providing competitive benefits packages—and this includes a rather costly health plan. Healthcare is a very personal issue for all of my employees and for me and my family. I see and talk to virtually every one of my employees each day, so I know how important this is. I am not large corporation. I do not work out of a penthouse office behind a big mahogany desk. I get the same health coverage for my wife and kids as we provide for our employees. These people are part of my family and we want to do right by them. I might add that the same is true of thousands of dealerships across the country.

Our HR people work each year to find the most affordable plans with the best coverage. Each year that becomes increasingly challenging and each year it becomes more difficult to build our business and hire additional staff.

Over the last nine years, our health insurance premiums have remained relatively flat. We accomplished this by increasing deductibles and copays, changing coverages, and aggressively shopping our health insurance plan. We have had to change carriers.

We are not alone. Every small business across Colorado that is trying to do the right thing faces exactly the same burden. In just two years, providing health coverage for the men and women who work for me and their families will be turned on its head, and not for the better. The implementation of the Patient Protection and Affordable Care Act, a centerpiece of this administration's domestic agenda, will drive costs higher, not lower.

Since we employ more than 250 people, we would be required by law to offer our full-time employees health benefits with specified affordability and minimum value requirements. If the coverage does not satisfy these requirements, we pay a fine. Even if one full-time employee went to a new health exchange and purchased a government subsidized health plan, we pay a fine. If we chose not to offer health coverage, we pay a fine.

Instead of trying to do the best by our employees, it will become a simple math calculation. Is the fine less than providing coverage for our people? The same law that mandates we provide this coverage provides a loophole so we don't have to? How does that make sense?

Within a relatively short amount of time, the health care delivery system will be less accessible and far more expensive than today. Supply and demand dictate what we can get for a new or used vehicle. With the economy suffering the past several years, the value of used cars is significantly higher because demand for them is high. The same is true for healthcare. With mandatory coverage, the demand for healthcare will skyrocket. With a limited supply of hospitals, doctors and nurses, the "price" of care will go up and the costs to cover our employees will rise and continue to do so. Eventually healthcare costs will escalate so high, it will be impossible to offer an in-house plan. So our only option will be to pay the fine and have our employees fend for themselves in a state-regulated, government subsidized program.

Many other businesses will do the same calculation and will see the state exchanges as a viable option. As the government program becomes overwhelmed by people forced into the state exchanges, our Federal penalties and our state taxes will have to increase to cover this influx of people.

So how do we fix this problem? The simple solution is a complete repeal of the entire healthcare reform bill, replacing it with an affordable system that preserves consumer choice while not sacrificing quality care. I'm sure that is easier said than done.

Small steps have been made to reduce the burdens of the health-care law. I applaud Congress for successfully repealing the 1099 tax reporting requirement for any expenditure over $600. That provision alone would have been "death by a thousand papercuts." It would have cost our staff hours and hours of paperwork. I want to thank Chairman Coffman for his efforts to eliminate this ridiculous burden. It is a good FIRST step, but is far from enough.

Another important step would be to eliminate the so-called employer mandate to require employers to offer plans with certain coverage requirements. The mandate changes the meaning of "full-time" and leaves the unelected bureaucrats to define "minimum health coverage," leaving small business owners uncertain about their future. I mentioned this earlier in my testimony. Fortunately, the American Job Protection Act, H.R. 1477 would repeal this mandate. Chairman Coffman, I saw that you were an early cosponsor of that legislation and I commend you for doing so. H.R. 1477 removes any requirement that employers with over 50 or so employees provide insurance coverage or pay fines. Repealing this provision is absolutely critical to keeping this program from harming my dealership and small businesses through Colorado.

In closing, I want to thank Chairman Coffman for the opportunity to testify today. Our goal—as every other entrepreneur in Colorado—is to build a thriving, self sustaining business to support my family and the families of the men and women who work for us. I urge you to continue your work to fix the problems associated with the new health care law and do what you can to implement real, market-driven reforms that increase competition and make health insurance more affordable.

"The Health Care Reform Law: Its Present and Future Impact on Small Business and Job Creation"

Testimony of
John W. Leevers
President
Leevers Supermarkets, Inc.

On Behalf of
The National Grocers Association

Before the
U.S. House of Representatives
Committee on Small Business
Subcommittee on Investigations, Oversight and Regulations

March 16, 2012

Good morning Chairman Coffman and thank you for the opportunity to testify on behalf of the National Grocers Association ("N.G.A.") on an issue that will undoubtedly affect the way in which all small businesses operate. The N.G.A. is the national trade association representing and serving the retail grocery/food companies and wholesale distributors that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. N.G.A. members also include retail grocery/food companies and wholesale distributors, affiliated associations, as well as manufacturers, service suppliers, and other entrepreneurial companies that support N.G.A.'s philosophy and mission.

My name is John W. Leevers and I am the President of Leevers Supermarkets, Inc. Like many small employers around the country, we have tried to make the best of a difficult economy and hope the worst is behind us. We have been fortunate in that we have recently been able to open three new stores, but we fear that our future growth will be stifled by the effects of the Affordable Care Act. The Affordable Care Act has changed the way in which small businesses think about benefits and, in this new era, the decisions companies make with regard to benefit administration will affect their ability to compete. As a result, we have spent a considerable amount of time and resources analyzing how to proceed in 2014, when key provisions of the Affordable Care Act and, most significantly, the employer mandate are implemented. We welcome the opportunity to share these experiences with the Committee.

Leevers Supermarkets operates 13 stores and employs roughly 300 employees in Colorado. 11 of Leevers Supermarkets operate under the "Save-a-lot" banner and, as such, utilize a price-driven format. The focus of price-driven supermarkets is on efficiency. We differ from traditional grocery stores in that we sell only a limited assortment of products and our operations are streamlined to keep costs low.

For example, a traditional grocery store may offer five brands of ketchup in five sizes. By contrast, our stores offer one brand, in one bottle size. By focusing our nationwide buying power on one brand, in one size, we are able, in many cases, to become the largest national buyer of that product and, as a result, we are able to obtain favorable pricing. On the goods we offer, we are roughly 40 percent cheaper than traditional chain grocery stores and 15 percent cheaper than big box stores.

Our staffing and our floor space are each designed to be as efficient as possible. For example, stocking in our stores is achieved by driving the pallets used to ship the products directly onto the sales floor. This saves cost when compared with a traditional grocery store that hires stocking clerks to remove the products from packaging and stock them on the shelves. As a result, our stores employ roughly 20 to 40 individuals per store whereas traditional grocery stores typically employ between 100 to 200 individuals.

The total adherence to efficiency in our business model is necessary because our business is a low margin endeavor. However, we are also a main street employer and hire individuals from within the communities we serve. Being a community focused company we have always felt it was important to provide our employees with health coverage if possible.

Unfortunately, the Affordable Care Act pits these two competing concerns against each other. In 2014, we are faced with the decision to either continue to offer coverage and absorb the additional costs and administrative burdens associated with the Affordable Care Act or, alternatively, to drop coverage, leaving our employees to fend for themselves—despite our years of corporate support of our employees' benefits. Simply put, neither decision is attractive to us and both decisions could have significant repercussions to our business.

Over the years, as health care costs have increased, we have seen erosion in the benefits we have been able to offer. In the not so distant past, we offered benefits to all employees and health coverage was free. More recently, in light of the cost of care we have been forced to limit eligibility in our plan to full-time individuals and individuals who hold certain jobs. If the Affordable Care Act is maintained as written, we have a very tough decision in front of us, and beginning in 2014, it is likely we will not be in a position to be able to offer health benefits of any kind.

For us, like most small employers, discontinuing coverage makes sense from an economic standpoint. As I stated earlier, our stores employ between 20 and 40 employees at each location and we have roughly 300 total employees. Because of costs, we have had to restrict eligibility in our plan and we currently have 65 individuals participating. We self-insure our health coverage and our costs are roughly $10,000 per covered life. Thus, the total cost of health benefits for our company is roughly $600,000 per year and we pay 80 percent of such costs or $480,000.

The Affordable Care Act greatly expands the number of employees who would need to be covered by our plan by defining a "full-time" employee as an employee who has averaged at least 30 hours of service per week over the course of a month. According to the "Shared Responsibility" provisions of the Affordable Care Act, we must either provide such individuals with coverage or pay a penalty of $2,000 per full-time employee.

Prior to the Affordable Care Act, we would not have considered employees who work 30 hours per week "full-time" and consequently we would not offer them the opportunity to enroll in the plan. This provision alone increases the number of eligible individuals in our plan from 65 to around 250. If we were to continue coverage, even if our medical trend costs were to stay stable, which is likely not the case,[1] the costs of our plan beginning in 2014 would skyrocket to around $2,000,000.

Again, the Affordable Care Act penalty for discontinuing coverage is $2,000 per full-time employee disregarding the first 30 "full-time" employees. If the 30 hour a week definition stands, our total number of employees defined to be "full-time" for health benefits purposes would rise to roughly 250. Thus, our liability under the "Shared Responsibility" provision would equal $440,000.

As you can see, from a purely financial standpoint the decision to drop coverage makes sense for us. We are a low margin business and the additional costs of coverage, coupled with the increased number of beneficiaries eligible for our plan, will be a tremendous cost burden. This is especially true

[1] It is likely that pent-up demand for medical services exists from employees who were previously not eligible for coverage and as a result have not sought regular medical care. Further, the Affordable Care Act mandates new coverages that were previously not covered by the plan.

considering the fact that, because of our size, there is little we can do to bend the cost curve on the cost of benefits in the coming years.

As you know, the cost of health coverage is heavily dependent upon the size of your pool. In general terms, if you have a large pool, the impact of any catastrophic event will be spread over a larger number of people and the per capita costs will be less. This is as true for self-insurance as it is for insurance. Thus, one strategy for lowering costs is to become included in a larger pool. The Affordable Care Act, however, prohibits small businesses with more than 100 employees from purchasing coverage through an exchange. Thus, while other small employers may benefit from the aggregation possible through an exchange, we are unfortunately precluded from exploring this option.

However, if we must make the decision to discontinue coverage, we are cognizant that certain non-economic factors can come into play. We will be ignoring the traditional reasons why we provided benefits in the first place. In addition, we recognize that we are potentially exposing ourselves to other risks that could have a significant impact on our business. Like any business our employees are our greatest asset. We understand that dropping coverage is likely to have a profound effect on employee relations.

Employee benefits are recruitment and retention tools, and the benefit package offered is an important factor employees consider when determining whether to take a new job or remain at their current job. If we drop coverage in 2014, it is going to be more difficult to keep key employees, especially if competitors continue to offer health benefits. Further, it will become increasingly difficult to attract the employees we need to compete in the future.

We are cognizant of the fact that if we drop coverage in 2014, our employees are likely to become dissatisfied and may demand higher wages. This dynamic will be facilitated by the Affordable Care Act's requirement that the value of employer-sponsored coverage be included on an employee's W-2. If we drop coverage, employees will likely perceive the absence of the cost of coverage on their W-2 as a wage loss.

We understand that healthy employees are productive employees. The only control we currently have to ensure that our employees are healthy is by providing them with health insurance. Should we drop coverage, we will lose all ability to ensure that our employees are healthy and consequently productivity could suffer.

In addition, dropping health coverage will lead to adverse tax outcomes. The cost of providing health insurance coverage to an employee is a tax-deductible expense by the employer. However, the Affordable Care Act states that the cost of the "Shared Responsibility" penalty is not tax deductible. Thus, by dropping coverage we would lose the tax favored status of our plan.

Members of the Committee, the Affordable Care Act has placed our small business between a "rock and a hard place." The "Shared Responsibility" provision forces us to try and decide between two bad decisions. We can choose to continue the provision of health benefits and be saddled by unsustainable costs resulting from a mandated increase not only in the number of beneficiaries we must cover under our plans, but also the richness of the benefit we must offer. The alternative, discontinuing coverage, is equally problematic, and forces us to ignore time tested justifications for providing benefits that will result in severe employee relations issues.

Thus, unless significant changes are made to the Affordable Care Act, it stands to do irreparable damage to many small businesses. Specifically, we recommend the definition of "full-time" employee be amended to reflect the way in which employers generally categorize employees as "full-time" or "part-time."

I look forward to working with you on these changes and answering any questions you may have.

IFA INTERNATIONAL FRANCHISE ASSOCIATION Franchising Building local businesses, one opportunity at a time.

**Statement of Mark Rogers**
**President/CEO, Roaring Fork Restaurants**
**On behalf of the**
**International Franchise Association**

**Before the House Committee on Small Business**
**Subcommittee on Investigations, Oversight and Regulations**

**Hearing on the "The Health Care Reform Law: Its Present and Future Impact on Small Businesses and Job Creation"**

**March 16, 2012**

Good morning Chairman Coffman. My name is Mark Rogers, and I am grateful for the opportunity to address some of the ramifications the new health care law will have on employers and the workforce, particularly the impacts the new law will have on small businesses and job creation.

While this law includes some important insurance reforms that increase access to coverage for many people, taken as a whole, the law is biased towards mandating coverage rather than providing meaningful cost control. Over the next several years, this legislation will create increased uncertainty in our long term business planning and force employers to choose between absorbing rising premiums or paying mandated penalties. This will ultimately slow or stall the growth of small and midsized businesses as we struggle with the costly new requirements during a time of economic recovery.

I am a small business owner and franchise partner for Cheddar's Casual Cafe, the company my father originally co-founded in 1978, where he envisioned an inviting neighborhood restaurant offering handmade, high quality food at a reasonable price. Now, along with my father and sister I have started a pair of companies called Roaring Fork Restaurants, Inc., to expand Cheddar's franchises across the state of Colorado, and Riverside Restaurant Group, LLC which facilitates the purchase and construction of restaurant properties.

Our first Cheddar's franchise restaurant is in Aurora, and our second is in Colorado Springs. We are truly building this business from the ground up. I have worked as a cook, assistant manager, and general manager at Cheddar's to get a true feel for the operations and learn more about restaurant management. As we look to continue our franchise expansion across the state, I am particularly concerned about the health care employer mandate, which may prohibit or hamper our growth.

I am here today on behalf of the International Franchise Association (IFA). As the largest and oldest franchising trade group, the IFA's mission is to safeguard the business environment for franchising worldwide. IFA represents more than 90 franchised industries, including more than 11,000 franchisees, 1,100 franchisors and 500 supplier members nationwide. According to a study conducted for the IFA Educational Foundation, there are more than 800,000 franchised establishments in the U.S., creating 18 million American jobs and generating $2.1 trillion in economic output each year.

According to a study prepared for the IFA by the Hudson Institute, the franchise industry will be particularly hard hit by the employer mandate provision of the new health care law. The mandate will add costs and regulatory burdens by subjecting small business owners to a penalty of $2,000 per full-time worker for businesses with over 50 employees if they choose not to cover all employees. The law further confines workplace flexibility by defining a full-time employee as one who works at least a four day per week schedule. Additionally, small businesses will also be required to calculate on a monthly basis the variable schedules of hourly employees to determine requirements under the new law and the associated penalties, adding in burdensome compliance time and costs.

According to the Hudson Institute report, the new law will affect tens of thousands of franchise businesses like mine, putting more than 3.2 million full-time employees earning their living in franchised businesses at risk of losing their jobs and adding costs of more than $64 billion in employer mandate penalties, not including the additional cost and time of regulatory compliance.

The report also shows that the franchise industry will be particularly hard hit because the new law will make it harder for small businesses with 50 or more employees to compete with those that have fewer than 50 employees. The law discourages franchisees like me from expanding and owning multiple locations. Therefore, the effects of the new law are anti-small business growth, by inadvertently discouraging many franchisees from owning and operating multiple locations, creating a competitive disadvantage for franchisees who do own more than one or two locations, and barriers to entrepreneurs who are looking to capitalize on the franchise business model to grow their business and hire more workers.

The study also demonstrates that the employer mandate provides an incentive for franchisors and franchisees to replace current fulltime workers with part-time and temporary workers. This is the wrong direction for both our economy and for millions of unemployed Americans. The real irony here is that in the name of expanding health care coverage, Congress and the administration are making it more difficult for workers to enter and eventually be promoted in the workforce at a time when we need job growth.

Another piece of the Hudson Institute study focuses particularly on multi-unit franchisees, like me, that own and operate more than half of the nation's franchised establishments. When a franchisor or franchisee employs 50 or more persons at several locations, it must compete against independent establishments with fewer than 50. The study shows that if our businesses choose not to offer health insurance when it becomes mandatory in 2014, we could face more than $3.5 billion in penalties. In particular, some sectors such as the restaurant industry, which has a large number of multi-unit franchisees like me, will be affected by penalties approaching $2 billion.

The new law imposes yet another unnecessary layer of regulatory burden on business owners as we attempt to understand and comply with these new provisions and face the increasing cost of doing business. Because of the employer mandate it will be more difficult for businesses to estimate the costs to expand and hire new workers for tens of thousands of business owners already struggling to also recover from the deepest recession since the Great Depression. Franchise small business owners should not be forced to choose between absorbing rising insurance premiums and paying tax penalties for non-compliance. The framework of the current law threatens the economic viability and job creation potential of franchised businesses vying to recover from the economic downturn by imposing excessive cost burdens onto the backs of small business. As one of those small business owners, I urge Congress to further review the impacts and consequences of the health care reform law as a whole and to repeal this onerous employer mandate provision.

# 2011 Economic Impact Report

**The Economic Impact of Franchised New Car Dealerships on the Colorado Economy**

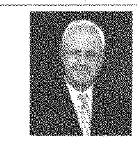
**Sponsored by:**

Colorado Automobile Dealers Association

DIRECTOR'S MESSAGE & BACKGROUND

# INTRODUCTION

## President's Message



Tim Jackson
President

This Automotive Industry Economic Impact Study has been conducted to show the significant contribution our industry makes to the Colorado economy.

The Metro Denver Automobile Dealers Association was founded in 1914. The Colorado Automobile Dealers Association was formed in 1933 to represent the interests of new car truck dealers in the state. The two associations merged in 2009. The primary purpose then and now has been to make it as easy as possible for dealers and their customers to buy, sell, and maintain automotive vehicles.

Dealers provide tens of thousands of jobs to Colorado residents, and are an important component of the state's economy. Colorado franchised new vehicle dealers are very proud of their contributions to economic growth and development throughout.

## Introduction

This report provides an in-depth analysis of the economic impact of Colorado new car and truck dealers on the State's economy. It includes estimates of direct and indirect employment, personal income, and tax collections generated by Colorado automotive dealers. Also included is a review of dealership financial statistics and operations. This report was prepared by Auto Outlook, Inc., an independent automotive market analysis firm, and was sponsored by the Colorado Automobile Dealers Association.

**Colorado Automobile Dealers Association**

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EXECUTIVE SUMMARY

# PRIMARY CONCLUSIONS

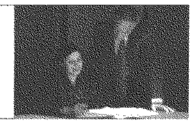
**Colorado Franchised New Vehicle Dealers**

**Vital contributors to the state's economy in 2011:**

- Total jobs in Colorado attributable to franchised new vehicle dealerships .......... 26,800
- Number of jobs per new vehicle dealership .......... 70
- Total earnings for Colorado residents attributable to dealership operations .......... $1.51 billion
- Average dealership payroll expense (including fringe benefits) .......... $4.12 million
- Total state and local taxes collected or paid .......... $459 million
- Total federal payroll taxes collected or paid .......... $218 million
- Total dealership sales (dollars) .......... $11.45 billion
- Average number of vehicles serviced by dealerships .......... 16,900
- Average dealership sales (dollars) .......... $46.9 million
- Average dealership retail new and used vehicle sales (units) .......... 1,325 units
- Average dealership expenditures on capital improvements in 2010 and 2011 .......... $475,000
- Total dealership contributions to charitable causes .......... $5.49 million
- Average dealership advertising expenses .......... $555,000

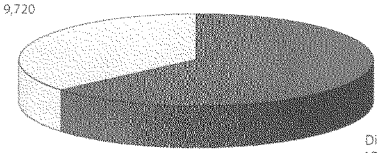
DEALERSHIP EMPLOYMENT TRENDS

# EMPLOYMENT



## Employment Totals for New Vehicle Retailing Industry - 2011

(Direct: at dealerships; Indirect: elsewhere in economy

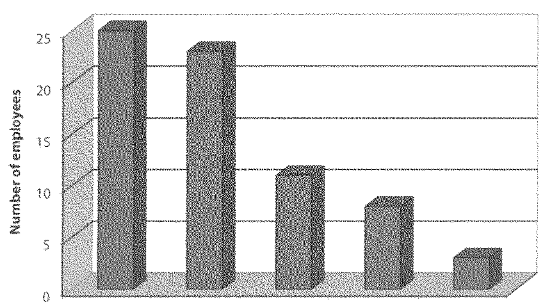



| Dealership Contribution to Total Non-Farm Employment in Colorado - 2011 | |
|---|---|
| Total employment resulting from auto dealerships | 26,800 |
| Total non-farm employment in Colorado | 2,497,297 |
| Dealership percentage of State employment | 1.1% |

### Observations

- In 2011, Colorado new vehicle dealerships directly employed a total of 17,080 individuals.
- An additional 9,720 individuals were employed due to the indirect impact of dealership operations.
- Automobile dealership operations accounted for 1.1 percent of total non-farm employment in the state. (This included both direct and indirect employment.

## Dealership Employment by Department



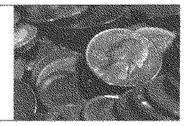

### Observations

- The average dealership in Colorado employed 70 people.
- 35.7% of dealership staff are employed in the Service Department, while 32.9% are in New and Used vehicle sales departments.

| Percentage of Dealership Employment by Department | |
|---|---|
| Service | 35.7% |
| Vehicle Sales | 32.9% |
| Administration & Other | 15.7% |
| Parts & Accessories | 11.4% |
| Body Shop | 4.3% |

EMPLOYEE PAYROLL & TAX REVENUE

# PAYROLL AND TAXES



**Employee Compensation Due to New Vehicle Retailing Industry-2011**

| Industry Total | Direct | Indirect | TOTAL |
|---|---|---|---|
| Payroll | $873,520,000 | $447,242,240 | $1,320,762,240 |
| Fringe Benefits | $131,760,000 | $67,461,120 | $199,221,120 |
| TOTAL | $1,005,280,000 | $514,703,360 | $1,519,983,360 |

| Average Dealership Payroll | Direct |
|---|---|
| Payroll | $3,580,000 |
| Fringe Benefits | $540,000 |
| TOTAL | $4,120,000 |

**Observations**

- In 2011, the average Colorado dealership paid $4.12 million to its employees (including fringe benefits). Including both direct and indirect sources, the new vehicle retailing industry resulted in over $1.51 billion of total compensation to Colorado residents!

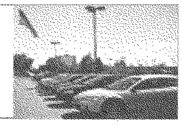
**Tax Revenue Generation - 2011**

| Tax Category | Average Per Dealer | Auto Retailing Industry Total |
|---|---|---|
| State sales tax collected | $1,220,082 | $297,700,008 |
| State and local payroll taxes | $168,000 | $40,992,000 |
| Real estate and other local taxes | $495,000 | $120,780,000 |
| Colorado Total | $1,883,082 | $459,472,008 |
| | | |
| Federal Payroll Taxes | $895,000 | $218,380,000 |

**Observations**

- In 2011, new franchised automobile dealerships in Colorado collected or paid more than $459 million in state and local taxes, an average of over $1.88 million per dealership.

# COLORADO MARKET SUMMARY



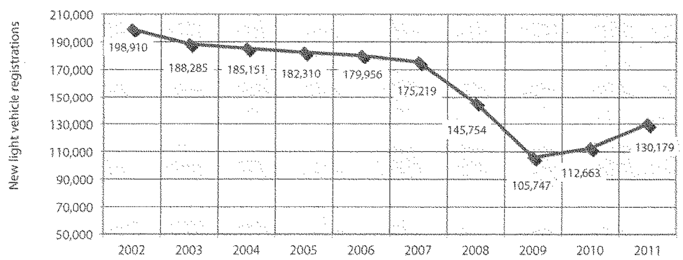
## Departmental Sales (dollars) - 2011

| Department | Average Per Dealer | Auto Retailing Industry Total |
|---|---|---|
| New vehicle | $22,555,330 | $5,503,500,520 |
| Used vehicle | $17,010,000 | $4,150,440,000 |
| Service and parts | $5,910,000 | $1,442,040,000 |
| Other | $1,450,900 | $354,019,600 |
| Total | $46,926,230 | $11,450,000,120 |

### Observation

- Total sales for franchised new vehicle dealerships in Colorado during 2011 exceeded $11.45 billion, an average of nearly $47 million per dealership.

## New Retail Car and Light Truck Registrations in Colorado - 2002 thru 2011

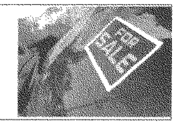



### Observation

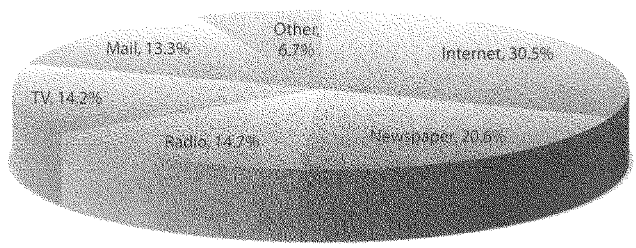
- As shown on the graph, combined new retail car and light truck registrations in Colorado improved in 2010 and 2011, following a sharp decline between 2007 and 2009.

DEALERSHIP ADVERTISING & INDUSTRY QUICK FACTS

# ADVERTISING AND DEALERSHIP PROFILE



Percentage of Dealership Advertising Spending by Media Type-2011




### Observations

- New vehicle dealerships in Colorado had advertising expense of over $135 million in 2011.
- Over 30% of dealership advertising expenditures were devoted towards the Internet.

### Quick Facts on Colorado Automotive Retailing

**Dealership Financial Summary**

- Average dealership total sales during 2011: $46.9 million.
- Average dealership expenditures on capital improvements during 2010 and 2011 combined: $475,000.
- Average dealership contributions to charitable causes during 2011: $22,500.
- Number of vehicles serviced by average dealership during 2011: 16,900.

**Dealership Vehicle Sales Summary**

- Average dealership new and used vehicle sales during 2011: 1,325 units.

## Background and Methodology

Dealership financial data (and other information cited in the report) was collected from a detailed survey sent to all new vehicle automotive retailers in Colorado. The response rate (41% of surveys were returned) was sufficient to form a statistically reliable data base of financial and operational indicators.

Economic impact is separated into two main categories: direct and indirect. Direct impact comprises economic activity at automotive dealerships themselves, such as dealership employment and compensation to employees. Indirect impact occurs away from the dealership, and takes into account the extended contribution dealerships and their employees make to the Colorado economy.

The indirect economic impact of automotive retailers was estimated by Auto Outlook, Inc. Estimates were based on previous impact studies that relied upon regional input-output economic computer models. Indirect economic estimates in this report are intentionally conservative, and therefore, may underestimate the overall contribution automotive retailers make to the Colorado economy. Auto Outlook, Inc. is a regional automotive market analysis firm providing market research services to automotive dealers. Jeffrey Foltz, the President of Auto Outlook, Inc., obtained a Masters Degree in Economics from the University of Delaware in 1985, and has conducted many research projects analyzing state and regional economies.

Colorado Automobile Dealers Association

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