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## BEFORE THE COLORADO SENATE JUDICIARY COMMITTEE

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Thank you, Chairperson Carroll and members of the Committee for this opportunity to present testimony. I am a Senior Policy Analyst in the Economic Opportunity Program at Dēmos. We are a national, non-partisan research and advocacy organization, established in 2000 and headquartered in New York City. The Dēmos Economic Opportunity Program works to achieve a more equitable economy with opportunity for all.

I am pleased to be here today to testify on Senate Bill 3, the Employment Opportunity Act, which prohibits the use of consumer credit information for employment purposes if the information is unrelated to the job.

Over the past nine years, Dēmos has conducted extensive research on credit card debt among low- and middle-income households. As part of this research, we have become increasingly concerned with how families are being financially penalized for being in debt, making it difficult, if not impossible, for them to ever get out of debt. The proliferation of the use of credit reports and scores in particular have resulted in families in debt being forced to pay more for basic services, such as water and gas, being denied a rental apartment, being charged more for auto or homeowners' insurance, or, as I'll discuss today in more detail, being denied a job—which is the very thing they need to get out of debt.

Credit checks are an unnecessary barrier to employment: by restricting their use, this legislation will help put people back to work and ensure that all job seekers have a fair shot at gainful employment.

### CREDIT CHECKS INCREASINGLY USED FOR EMPLOYMENT—DESPITE A LACK OF EVIDENCE FOR THEIR VALIDITY

Six out of ten American employers now look at a job applicant's credit report when hiring for some or all positions.[1] A brief, informal survey of job listings throughout the state of Colorado reveals that employers today are requiring credit checks for positions as diverse as maintenance work, telephone tech support, plumbing, work as a home care aide, and scooping frozen yogurt.[2]
Employment credit checks have become commonplace because employers are looking for a way to pre-

dict if a potential employee will be honest, if they will handle money responsibly, if they are likely to steal or commit fraud.[3] For-profit credit reporting agencies take advantage of these concerns to market credit reports to employers. However, reviewing the social science research on this issue, I have found no credible evidence that credit reports reveal this information.[4] In fact, a spokesperson for one of the major credit reporting agencies has admitted that he has seen no evidence to support the use of credit checks for employment purposes.[5]

It's important to emphasize that credit reports evolved as a means for lenders to evaluate whether someone would be a good credit risk based on their past payment history. These reports detail whether someone has fallen behind on their bills, whether they have had to declare bankruptcy, and if they've faced foreclosure. In fact, credit reports can be a good indicator of the tremendous economic stresses that are facing Colorado families during these difficult economic times. Demos' research on credit card debt among middle- and low-income households has found that most indebted families go into debt to pay for basic expenses: groceries, utilities, child care, and health care. In a 2008 survey we commissioned of low-and-moderate income households, 37% of credit card indebted families had used their credit cards to pay for basic expenses and 52% had used them to pay for medical care in the past year.[6] Simply put, Americans are borrowing to make ends meet.

You can often see the effects of that economic hardship in a credit report. What a credit report will not reveal is how well applicants are likely to perform on the job. The use of credit reports for employment purposes has no validity—and it's our position that there is no job category in which they have proven to be useful or reliable.

## EMPLOYMENT CREDIT CHECKS ARE DISCRIMINATORY

In addition to their irrelevance, employment credit checks are also discriminatory, and I urge the committee to think of SB 3 as a piece of civil rights legislation. The reality is that employment credit checks disproportionately impact Latinos and African Americans, whose credit histories have suffered as a result of discrimination in lending, housing and employment itself.[7] Employment credit checks can perpetuate and amplify this historic injustice. For this reason organizations including the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP have taken repeated stands against employment credit checks.[8] The Equal Employment Opportunity Commission has sued two employers for the discriminatory impact of their use of credit reports as a hiring tool, demonstrating that credit reports may introduce legal liability to employers.

## EMPLOYMENT CREDIT CHECKS ARE A VIOLATION OF PRIVACY

I'd also like to raise the issue of privacy, because that is another concern as we consider employment credit checks. Americans should not have to expose the details a painful divorce or past medical condition just to get a job. Yet because family break-up and medical problems are among the leading reasons that Americans become unable to pay their debts, these deeply personal concerns are often revealed in an employment credit check, particularly if an applicant is asked by a prospective employer to "explain" their imperfect credit history.

## EXEMPTIONS ARE UNNECESSARY

I would like to take a moment to address the exemption in this legislation. As it is currently written, SB 3 permits the continued use of employment credit checks for positions where an employee "has access to money or asset-management decisions." I would urge you to reconsider this exemption as there is no evidence that credit checks are useful or reliable for determining who can safely handle money or make management decisions. In addition, this exemption has the potential to be interpreted far more broadly than it might have been intended: a wide range of employees, including front-line retail workers and people employed in food service, have access to money at work. Weak credit should not be a reason to deny them access to employment.

## CONCLUSION

The unwarranted exemption aside, the Employment Opportunity Act will remove an unnecessary barrier that prevents qualified Coloradans from getting the work they need. By enacting this bill, the state will join the growing number of jurisdictions—including seven states, from California to Illinois to Connecticut—that have taken action to restrict the use of credit checks in employment. I urge you to pass this legislation. Thank you.

## ENDNOTES

1. Society of Human Resources Management, Background Checking: Conducting Credit Background Checks, January 22, 2010.
2. Based on the author's review of Colorado job postings on Craigslist.org on January 30, 2012.
3. See: Kelly Gallagher, "Rethinking the Fair Credit Reporting Act: When Requesting Credit Reports for Employment Goes Too Far," Iowa Law Review, 91, p. 1593-1621, 2006.
4. See: Shawn Fremstad and Amy Traub, "Discrediting America: The Urgent Need to Reform the Nation's Credit Reporting Industry," Demos, 2011. http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf
5. Andrew Martin, "As a Hiring Filter, Credit Checks Draw Questions," The New York Times, April 9, 2010.
6. Jose Garcia and Tamara Draut, "The Plastic Safety Net: How Households are Coping in a Fragile Economy," Demos, 2009. http://www.demos.org/sites/default/files/publications/PlasticSafetyNet_Demos.pdf
7. Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit," 2007; Federal Trade Commission, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance," 2007; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, 2004; Matt Fellowes, "Credit Scores, Reports, and Getting Ahead in America," Brookings Institution, 2006.
8. See, for example, "Letter in Support of the Equal Employment for All Act" signed by the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP among other organizations. http://www.lawyerscommittee.org/admin/employment_discrimination/documents/files/Equal-Employment-for-All-Support-Letter.pdf

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