Attachment N

To: MEMBERS OF HOUSE FINANCE COMMITTEE

From: SUPPORTERS OF HOUSE BILL 15-1154; including,
Colorado-Wyoming Petroleum Marketers Association,
Colorado Motor Carriers Association,
Rocky Mountain Food Industry Association,
Circle K Stores,
Kum & Go Stores,
7-11 Stores

Subject: The Facts About HB 1154 -- *Concerning a prohibition against the imposition of an Interchange Fee on the portion of the total amount of an electronic payment transaction that represents nonfederal taxes.*

Members, we know that you have received a number of negative assertions about this bill from those banks and card companies who are opposed. Most of those assertions are far from the truth.

We have taken some of those assertions (red color) directly from points made in correspondence to legislators, and added facts that we would like you to read to set the record straight before you vote on the bill. This bill could mean much in deserved savings to our state's merchants and consumers.

Thank you in advance for your consideration.

ASSERTION #1: Merchants have not passed along whatever savings they've derived to consumers from the 2010 "Durbin Amendment", an unsuccessful federal attempt to cap debit card swipe fees to benefit consumers. Consumers are actually paying 1.5% more at national retailers than before the Durbin Amendment took effect.

REALITY: In fact, the only actual economic analysis of debit reform to date demonstrates that **consumers saved $5.8 billion in the first year after those reforms alone**. Those lower costs also supported more than **37,000 jobs**. Merchants themselves saved $2.6 billion and much of those funds went toward job creation. The study shows that families in **every state** saved money as a result of reforming debit fees and that savings could have been even greater if the Federal Reserve had made deeper reductions. The full study can be found at this link: http://21353cb4da875d727a1d-ccea4d4b51151ba804c4b0295d8d06a4.r8.cf1.rackcdn.com/SHAPIROreport.pdf.
Banks have falsely claimed that consumers didn't save, but have never actually conducted an economic study looking at card fees and prices.

ASSERTION #2: The bill's prohibition will significantly harm the smallest financial institutions involved in this payment system—Colorado's local community banks, credit unions and thrifts.

REALITY: The bill will affect every bank in the same way. But banks have used small, sympathetic institutions to falsely try to block reform in the past. For example, when federal debit reform was passed, the claim was that small banks would suffer. But, instead, the Federal Reserve has found that small banks increased their debit market share due to reform and the Fed, FTC and GAO all found that small banks were able to charge the same fees they had previously once the reforms were put in place. **The truth is that the vast majority of swipe fees are charged by a very small number of giant banks that are not based in Colorado. In fact, the largest ten banks in the nation collect about 90 percent of all the credit card swipe fees in the nation.** The swipe fee game is rigged by the big banks, and is not much of a boost to small banks. So the argument about small banks is really a distraction from what is really happening.

ASSERTION #3: Only Colorado-based institutions will be subjected to these unfair restrictions.

REALITY: The banks may wish this were so, but it is not. State tax laws apply to banks, even national banks, and are not pre-empted. States have every right to protect their tax laws and tax collection systems from being undermined by national banks, among others. But this is **not fee regulation; it is protection of state tax collectors**. If the tax being collected for the state is partially taken away by banks, then the tax system as a whole is undermined. Colorado has the right to prevent that, and nothing allows national or out-of-state banks to undermine Colorado taxes by confiscating part of what merchants collect for the state.

ASSERTION #4: Since 2006, this style of interchange bill has been introduced in a number of states. **Merchants have put forth well over 100 of these proposals to date, and only one has ever emerged from its committee of origin.**

REALITY: This is an overstatement. Our coalition research found less than 20 bills to date. Merchants do have longstanding concerns about the fact that Visa and MasterCard price-fix the fees that banks across the United States charge. That price-fixing should be illegal and should be stopped. But this bill wouldn't go nearly that far. Its only purpose is to **ensure that merchants in Colorado are not punished for doing their duty to the state and collecting state taxes.** It avoids the larger problems associated with banks all agreeing to charge the same price-fixed fees and instead simply **ensures that part of the taxes for the state are not confiscated by banks.** ***That is a common-sense idea that everyone should support.***

ASSERTION #5: The total amount of **a transaction covered by this bill**—including the sales tax portion of the transaction—**is required by the payment card network to be 100% guaranteed by a bank, credit union or thrift** if the customer defaults or there is some attributable fraud.

REALITY: ***THIS ASSERTION IS REALLY MISLEADING!*** Merchants wish this were true, BUT IT IS NOT. Unfortunately, **merchants are stuck with more than half of all the fraud on credit cards and nearly half on debit cards.** This problem is particularly acute for merchants that sell gasoline. The Federal Reserve looked at fraud losses and found that on gas transactions, the merchant pays for 74 percent of all the fraud. 77 Fed. Reg. 46261, 46262 (Aug. 3, 2012). Card transactions are no more guaranteed by the bank than they are guaranteed by the merchant.

Merchants have to pay "chargebacks" on questionable transactions. These can be very costly for merchants. **Merchants pay ALL fraud fees upfront, so merchants are really paying for fraud costs TWICE.** In fact, swipe fees cover fraud plus more. There is .05% of fraud in all transactions, but merchants pay 2% of swipe fees in the transaction amount. Thus, they are paying **40 times more** in fraud fees.

In fact, **banks have fought hard against simple fraud protection measures** like the use of PIN numbers that have been found to cut fraud by 84 percent. Why? Because banks get higher fees when there is no PIN and merchants have to cover more of the fraud when there is no PIN used. Of course, when the bank is at risk like the merchant – when someone takes money out of an ATM – they require a PIN every time. But, the banks are not as concerned about merchants losing their inventory because the **banks don't give a guarantee.**

ASSERTION #6: While the *administrative burden* of assuring interchange fees are not charged on sales taxes it is imposed on the "payment card network", **the *economic burden* will be passed on to and fall squarely on Colorado's local community banks, credit unions and thrifts that issue the credit and debit cards.**

REALITY: Again, **Colorado banks issue very few credit cards.** ***This is a big bank game.*** The same is true of debit cards, though not to quite the same extent. The ten largest banks in the nation issue about 90 percent of credit cards and 50 percent of all debit cards. The big banks like to have community bankers out in front in their battles, but the swipe fees on taxes are not a material number for most small Colorado banks.