

**THOUGHT LEADERSHIP**

LEGAL UPDATES

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## Minnesota Expands its Fair Lending Statute to Cover Gender Identity Discrimination

Minnesota has expanded its fair lending statute to prohibit discriminating against a person in the extension of credit or in the requirements of obtaining credit because of gender identity. Prior to this amendment, the Minnesota fair lending statute prohibited credit discrimination on the basis of “race, color, creed, religion, disability, national origin, sex, sexual orientation, or marital status, or due to the receipt of federal, state, or local public assistance including medical assistance.”

The recent amendment also added a new definition of “gender identity” and revised the existing definition of “sexual orientation.” “Gender identity” means:

A person’s inherent sense of being a man, woman, both, or neither. A person’s gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics. A person’s gender identity is not necessarily visible to others.

As revised, “sexual orientation” means “to whom someone is, or is perceived of as being, emotionally, physically, or sexually attracted to based on sex or gender identity. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities.” Both of these definitions describe protected classes under Minnesota law.

Like the federal Equal Credit Opportunity Act (ECOA), Minnesota’s fair lending statute applies to consumer credit and business credit. However, the Minnesota fair lending statute is broader in some respects than the federal ECOA in that Minnesota sets forth protected classes that do not appear in the ECOA such as “disability.”

The Minnesota fair lending statute appears in the Minnesota Human Rights Act. The revisions to the fair lending statute were part of an overall effort to revise the Human Rights Act to more expressly recognize gender identity.

### **What this means to you**

The federal ECOA and Regulation B do not preempt state fair lending laws to the extent that the state fair lending law is more protective than federal law. As a result, creditors should be aware of and comply with state fair lending laws like Minnesota's law that go beyond the protections set forth in the federal ECOA and Regulation B.

Fair lending and equal access to credit have been top regulatory priorities for both federal and state regulators. For example, in March 2021, the Consumer Financial Protection Bureau (CFPB) issued an interpretative rule clarifying that the prohibition against sexual discrimination under the ECOA and Regulation B includes sexual orientation discrimination and gender identity discrimination.

In addition, over the past year, the CFPB has encouraged states to (i) regulate areas beyond the preemptive reach of federal consumer credit laws and (ii) use states' authority under the Dodd-Frank Act to bring enforcement actions for violations of the Consumer Financial Protection Act, including the federal prohibition on unfair, deceptive, or abusive acts or practices. With this encouragement, we could see an uptick in states promulgating and enforcing consumer protection statutes.

### **Contact us**

We regularly help clients with multi-state compliance and advise on federal preemption of state laws. With respect to fair lending, we have conducted mock CFPB exams for creditors, assisted with reviews of marketing and advertising campaigns, performed full fair lending audits, reviewed traditional and artificial intelligence/machine learning underwriting models, and represented lenders involved in fair lending and fair housing litigation and enforcement actions.

If you have a question about the Minnesota fair lending statute or other federal or state fair lending laws, contact Susan Seaman, Marci Kawska, Natalia Kruse, or your Husch Blackwell attorney.