

Trade Groups Challenge New Nevada Law Allowing Credit Applicants to Rely on Spousal Credit History

October 31, 2019 | [Erik Kosa](#)

Several trade groups, including the American Financial Services Association, Nevada Credit Union League, and Nevada Bankers Association have filed a lawsuit challenging a new Nevada law aimed at allowing credit applicants with no credit history to use the credit history of their spouses.

The new law, SB 311, which went into effect October 1, 2019, allows an applicant for credit to request that a creditor deem the credit history of the applicant to be identical to the credit history of the applicant's spouse which was established during the marriage. If evidence of the existence of the marriage is provided, the creditor must deem the credit history of the applicant to be identical to the credit history of the applicant's spouse. Violation of this new requirement is deemed to be discrimination based on marital status, which is illegal under Nevada law. On October 8, 2019 the trade groups filed a motion for preliminary injunction barring Nevada officials from enforcing the law until the lawsuit is resolved. The groups argue that SB 311 is preempted by federal law, specifically the Fair Credit Reporting Act (FCRA) and Equal Credit Opportunity Act (ECOA).

With respect to the FCRA, the FCRA's list of permissible purposes to obtain a consumer report is expressly enumerated and is exclusive. But section 3 of SB 311 requires a creditor, upon an applicant's request, to deem the credit history of the applicant to be identical to the credit history of the applicant's spouse as established during the marriage, which requires creditors to thus ascertain what the credit of that spouse was. The FCRA does not allow creditors to obtain and use credit reports about an applicant's living spouse or ex-spouse unless there are written instructions from that spouse.

With respect to ECOA, SB 311 appears to violate the proscription on inquiries relating to marital status. The general rule under Regulation B is that a creditor may not request any information concerning the spouse or former spouse of an applicant, subject to a few narrow exceptions that SB 311 does not fit within. Creditors in non-community property states generally cannot request information relating to marital status unless the applicant is relying on property in a community property state as the basis for repayment of the requested credit or is acting as the agent of the non-applicant spouse. A state law authorization to obtain marital status and spouse or former spouse information thus makes it impossible to comply with ECOA.

Nevada's response to the trade groups' motion is due by November 12.

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