No. 20-2064

UNITED STATES COURT OF APPEALS
For The First Circuit

CONSUMER DATA INDUSTRY ASSOCIATION,
Plaintiff - Appellee,

v.

AARON M. FREY, in his capacity as the Attorney General of the State of Maine; WILLIAM N. LUND, in his capacity as Superintendent of the Maine Bureau of Consumer Credit Protection

Defendants – Appellants.

ON APPEAL FROM THE DISTRICT OF MAINE (CASE NO. 1:19-cv-438-GZS)

BRIEF OF DEFENDANTS-APPELLANTS
AARON M. FREY AND WILLIAM N. LUND

AARON M. FREY
Attorney General

CHRISTOPHER C. TAUB
Chief Deputy Attorney General
Bar Number 65217
Six State House Station
Augusta, ME 04333-0006
(207) 626-8800
Attorneys for Appellants

TABLE OF CONTENTS

Table of Authorities iii

Introduction 1

Jurisdictional Statement 4

Statement of the Issues 4

Statement of the Case 5

Summary of the Argument 14

Standard of Review 16

Argument 17

I. Section 1681t(b)(1)(E) Does Not Preempt the Maine Laws 17

A. Section 1681t(b)(1)(E) Must Be Narrowly Construed to Avoid Preemption 17

B. CDIA's Broad Interpretation of Section 1681t(b)(1)(E) Would Result in Surplus Language 20

C. A Narrow Interpretation of Section 1681t(b)(1)(E) Is Consistent With Holdings From Other Courts 22

D. The District Court Did Not Properly Analyze the Preemptive Scope of Section 1681t(b)(1)(E) 28

E. The Maine Laws Do Not Impose Prohibitions or Requirements With Respect to Subject Matter Regulated Under Section 1681c 31

II. Section 1681t(b)(5)(C) Does Not Preempt the Economic Abuse Debt Reporting Law 33

Conclusion 36

Certificate of Compliance 37

Certificate of Service 38

Addendum

Order on Motions for Judgment on a Stipulated Record........... Add – 1

Judgment..Add - 16

10 M.R.S. § 1310-H...Add - 17

15 U.S.C. § 1681t ....Add - 19

15 U.S.C. § 1681c..Add - 23

15 U.S.C. § 1681c-2 ....Add - 28

TABLE OF AUTHORITIES

Cases

Aghaeepour v. N. Leasing Sys., Inc., 378 F. Supp.3d 254 (S.D.N.Y. 2019) 11

Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n, 410 F.3d 492 (9th Cir. 2005)..........19

Aldaco v. RentGrow, Inc., 921 F.3d 685 (7th Cir. 2019).......... 29, 32

Bates v. Dow Agrosciences LLC, 544 U.S. 431 (2005)..........24

Boston Five Cents Sav. Bank v. Sec'y of Dept. of Hous. & Urban Dev., 768 F.2d 5 (1st Cir. 1985) 17

Brown v. Mortensen, 253 P.3d 522 (Cal. 2011) 22-25, 27

Carlson v. Trans Union, LLC, 259 F.Supp.2d 517 (N.D. Tex. 2003)..........23

Cipollone v. Liggett Grp., Inc., 505 U.S. 504 (1992) 18, 19

Dornhecker v. Ameritech Corp., 99 F.Supp.2d 918 (N.D. Ill. 2000) 24

Duncan v. Walker, 533 U.S. 167 (2001)..........20

EEOC v. Massachusetts, 987 F.2d 64 (1st Cir. 1993) 18

Gottman v. Comcast Corp., 2018 WL 1071185 (E.D. Cal. Feb. 23, 2018).......... 25-28, 32, 33

Grant's Dairy--Maine, LLC v. Comm'r of Maine Dept. of Agric., Food & Rural, Res., 232 F.3d 8 (1st Cir. 2000) 18

Hillsborough County, Fla. v. Automated Medical Labs., Inc., 471 U.S. 707 (1985)..........18

Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9 (1st Cir. 2018) 21

Mass. Ass'n of Health Maint. Orgs. v. Ruthardt, 194 F.3d 176 (1st Cir. 1999)......19

Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996) 19

N.Y.S. Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995) 17

Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16 (1st Cir. 2006)..............21

Pasternak v. Trans Union, 2008 WL 928840 (N.D. Cal.2008)...............................23

Rice v. Norman Williams Co., 458 U.S. 654 (1982)...35

Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947) 17, 18

Simon v. DirectTV, Inc., 2010 WL 1452853 (D. Colo. Mar. 19, 2010).................27

Stafford v. Cross Country Bank, 262 F. Supp.2d 776 (W.D. Ky. 2003).......... 11, 24

Thompson v. Cloud, 764 F.3d 82 (1st Cir. 2014) 16

TRW Inc. v. Andrews, 534 U.S. 19 (2001)..20

Tsoulas v. Liberty Life Assur. Co. of Boston, 454 F.3d 69 (1st Cir. 2006).............16

United States v. Ven-Fuel, Inc., 758 F.2d 741 (1st Cir. 1985) 20

Statutes

10 M.R.S. § 1310-H(2-A) 7, 8, 35

10 M.R.S. § 1310-H(4) 5

19-A M.R.S. § 4002(3-B) 8, 34

15 U.S.C. § 1681 11

15 U.S.C. § 1681(a)(4)...31

15 U.S.C. § 1681(b) 31

15 U.S.C. § 1681a(p) 32

15 U.S.C. § 1681a(q)(3)..34

15 U.S.C. § 1681c .... passim

15 U.S.C. § 1681c-2... passim

15 U.S.C. § 1681c-2(a) 35

15 U.S.C. § 1681c-2(b) 35

15 U.S.C. § 1681c-2(c)(1)....................36
15 U.S.C. § 1681c(a)(2)....................27
15 U.S.C. § 1681c(a)(5).................... 27, 29
15 U.S.C. § 1681c(a)(6)....................32
15 U.S.C. § 1681c(a)(7).................... 32, 33
15 U.S.C. § 1681c(a)(8).................... 32, 33
15 U.S.C. § 1681c(a).................... 27, 28, 31
15 U.S.C. § 1681c(b) 31
15 U.S.C. § 1681c(d) 31
15 U.S.C. § 1681c(e)....................31
15 U.S.C. § 1681c(f) 31
15 U.S.C. § 1681c(g) 31
15 U.S.C. § 1681c(h) 31
15 U.S.C. § 1681c(h)(1)....................26
15 U.S.C. § 1681c(h)(2)....................26
15 U.S.C. § 1681t(a) 11
15 U.S.C. § 1681t(b)(1) .... passim
15 U.S.C. § 1681t(b)(5) .... passim
28 U.S.C. § 1291 4
28 U.S.C. § 1331 4

Other Authorities

Preventing Preemption: Finding Space for States to Regulate Consumers' Credit Reports, 2016 B.Y.U. L. Rev. 365 (2016) 6

Consumer Credit Reports: A Study of Medical and Non-Medical Collections, Report of the Consumer Financial Protection Bureau, December, 2014 7

Data Point: "Medical Debt and Credit Scores, Report of the Consumer Financial Protection Bureau, May 2014 7

Pub. L. 91-508, § 622 11

Me. Public Law 2019, ch. 77 5

Me. Public Law 2019, ch. 407 7

S. Rep. No. 517 12

INTRODUCTION

Consumer reports (sometimes referred to as "credit reports") can have a profound impact on a person's life. They can determine whether, and on what terms, a person may obtain a mortgage, a student loan, a credit card, or other financing. They may also affect whether a person can get rental housing, a job, or even basic utilities. To help ensure that consumer reports do not unfairly include prejudicial information that may have no real bearing on a person's credit worthiness or fiscal responsibility, Maine's Legislature passed two laws in 2019 amending Maine's Fair Credit Reporting Act. One law, referred to here as the "Medical Debt Reporting Law," prohibits consumer reporting agencies from reporting debt arising from medical expenses when the debt is less than 180 days old or when the consumer has paid or settled the debt in full. Further, if the consumer is making periodic payments on the debt pursuant to an agreement with the medical provider, the consumer reporting agency must report the debt in the same manner as debt related to a consumer credit transaction would be reported. It is appropriate to treat medical debt differently because it is usually not one that is voluntarily incurred (and thus not reflective of fiscal irresponsibility) and can be massive, thus having a disproportionate impact on consumers' credit reports.

The second law, referred to here as the "Economic Abuse Debt Reporting Law," requires credit reporting agencies to conduct an investigation if a consumer

provides documentation that a debt is the result of economic abuse (for example, withholding a person's access to a bank account or coercing a person into co-signing a loan). If an agency confirms that the debt is the result of economic abuse, it must remove the debt from the consumer's credit report. As a person testifying in favor of the law noted, most survivors of domestic abuse also experienced economic abuse, and this can make it difficult for survivors to create financial independence and stability for themselves and their families.

The Appellee, the Consumer Data Industry Association ("CDIA"), a trade association that includes the three nationwide credit reporting agencies (Experian, Equifax, and Trans Union) argues that the two laws, referred to here collectively as the "Maine Laws," are expressly preempted by the federal Fair Credit Reporting Act ("FCRA"). CDIA is wrong. Subject to certain exceptions, FCRA preserves state laws regulating the collection and use of information relating to consumers, so long as such laws are not inconsistent with any FCRA provision. With respect to both of the Maine Laws, CDIA primarily relies on one exception, which states: "No requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681c of this title, relating to information contained in consumer reports. . . ." 15 U.S.C. § 1681t(b)(1)(E). According to CDIA, this provision broadly preempts States from regulating anything relating to the content of consumer reports. CDIA is wrong.

Narrowly construed, as is necessary when it comes to express preemption provisions, and interpreting the provision to avoid surplusage, the provision preempts only those state laws relating to subject matter "regulated under" 15 U.S.C. § 1681c. Section 1681c does not regulate the reporting of debt resulting from economic abuse at all and regulates the reporting of only veterans' medical debt. The Maine Laws thus do not impose requirements or prohibitions regarding subject matter regulated by Section 1681c and they are not preempted by Section 1681t(b)(1)(E).

In support of its argument that the Economic Abuse Debt Reporting Law is preempted, CDIA also cites to 15 U.S.C. § 1681t(b)(5)(C), which states: "No requirement or prohibition may be imposed under the laws of any State . . . with respect to the conduct required by the specific provisions of . . . section 1681c-2 of this title." Section 1681c-2 dictates certain actions credit reporting agencies must take when a consumer reports that information about him or her is the result of alleged identity theft. 15 U.S.C. § 1681c-2. Identity theft is not the same as economic abuse, and that Congress dictated how credit reporting agencies must respond to reports of identity theft does not preempt States from dictating how they must respond to reports that debt was incurred as the result of economic abuse.

In sum, neither of the Maine Laws is expressly preempted by FCRA.

JURISDICTIONAL STATEMENT

Below, CDIA brought claims against Maine's Attorney General and the Superintendent of the Maine Bureau of Consumer Credit Protection (the "State Defendants") seeking a declaratory judgment that pursuant to the Supremacy Clause, the Maine Laws are expressly preempted by the federal Fair Credit Reporting Act. Appendix ("App.") 7-14. The district court had jurisdiction pursuant to 28 U.S.C. § 1331.

The parties filed cross-motions for judgment on a stipulated record. On October 8, 2020, the district court (Singal, J.) entered an order granting CDIA's motion and denying the State Defendants' motion. Addendum ("Add.") 1-15. That same day, the court entered final judgment in favor of CDIA and against the State Defendants. Add. 16.

On November 3, 2020, the State Defendants filed a notice of appeal to obtain review of the district court's order. App. 6. The Court has jurisdiction over this appeal from a final decision pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. Whether the Medical Debt Reporting Law and the Economic Abuse Debt Reporting Law are expressly preempted by 15 U.S.C. § 1681t(b)(1)(E).

II. Whether the Economic Abuse Debt Reporting Law is preempted by 15 U.S.C. § 1681t(b)(5)(C).

STATEMENT OF THE CASE

The Maine Laws

The Medical Debt Reporting Law

In early 2019, L.D. 110, "An Act Regarding Credit Ratings Related to Overdue Medical Expenses," was introduced to the First Regular Session of the 129th Legislature. The bill was subsequently amended and enacted as Maine Public Law 2019, ch. 77 and codified at 10 M.R.S. § 1310-H(4). As enacted, the law states:

> Notwithstanding any provision of federal law, a consumer reporting agency shall comply with the following provisions with respect to the reporting of medical expenses on a consumer report.
>
> A. A consumer reporting agency may not report debt from medical expenses on a consumer's consumer report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported.
>
> B. Upon the receipt of reasonable evidence from the consumer, creditor or debt collector that a debt from medical expenses has been settled in full or paid in full, a consumer reporting agency:
>
> (1) May not report that debt from medical expenses; and
>
> (2) Shall remove or suppress the report of that debt from medical expenses on the consumer's consumer report.
>
> C. As long as the consumer is making regular, scheduled periodic payments toward the debt from medical expenses reported to the consumer reporting agency as agreed upon by the consumer and medical provider, the consumer reporting agency shall report that debt from medical expenses on the consumer's consumer report in the same manner as debt related to a consumer credit transaction is reported.

10 M.R.S. § 1310-H(4).

The sponsor, Representative Chris Johansen, explained the purpose of the law:

> This bill was written to protect people from the ramifications of sometimes hard to avoid bad credit reports associated with medical bills. Medical bills are unique in that they are usually an unplanned for expense. You can have insurance but sometimes not enough. The debt I have acquired for my car or home is planned for usually with the help of my lender.

See Johansen Test., Feb. 12, 2019 (App. 26); *see also* Superintendent of Bureau of Consumer Credit Protection Test., Feb. 5, 2019 (App. 29) ("Many instances of medical debt are unplanned – it's not like deciding to purchase a car or house."); Cashman Test. (on behalf of Maine Association of Realtors), Feb. 12, 2019 (App. 32) (stating that it is "unfair" for a consumer to be disqualified from financing because of medical debt that is being paid off through a payment plan "because medical debt is generally not indicative of poor personal financial management but rather, often, the result of catastrophic medical events").

There was good reason for the Legislature to give special treatment to medical debt. "Even one single medical bill can keep someone from receiving credit at a desirable rate, or perhaps from receiving credit at all." Elizabeth D. De Armond, *Preventing Preemption: Finding Space for States to Regulate Consumers' Credit Reports*, 2016 B.Y.U. L. Rev. 365, 378 (2016). Moreover, "no one has demonstrated a clear link between financial competence and medical debt, and it is not intuitively obvious that such a link exists, as few people voluntarily or

frivolously take on expensive medical care." *Id*. Research by the Consumer Financial Protection Bureau "demonstrate[d] that a large portion of consumers with medical debts in collections show no other evidence of financial distress and are consumers who ordinarily pay their other financial obligations on time." *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, Report of the Consumer Financial Protection Bureau, December, 2014, at p. 38;[1] *see also Data Point: "Medical Debt and Credit Scores*, Report of the Consumer Financial Protection Bureau, May 2014, at p. 5 (finding that medical and non-medical collections are not equally predictive about the subsequent respective credit performance of consumers).[2]

The Economic Abuse Debt Reporting Law

Also in early 2019, L.D. 748, "An Act to Provide Relief to Survivors of Economic Abuse," was introduced to the First Regular Session of the 129th Legislature. The bill was amended and enacted as Maine Public Law 2019, ch. 407. A provision relating to consumer reports was codified at 10 M.R.S. § 1310-H(2-A):

> Except as prohibited by federal law, if a consumer provides documentation to the consumer reporting agency as set forth in Title 14, section 6001, subsection 6, paragraph H that the debt or any

[1] Available at https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf, *accessed on* Jan. 18, 2021.
[2] Available at http://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf, *accessed on* Jan. 18, 2021.

> portion of the debt is the result of economic abuse as defined in Title 19-A, section 4002, subsection 3-B, the consumer reporting agency shall reinvestigate the debt. If after the investigation it is determined that the debt is the result of economic abuse, the consumer reporting agency shall remove any reference to the debt or any portion of the debt determined to be the result of economic abuse from the consumer's credit report.

10 M.R.S. § 1310-H(2-A). "Economic abuse" is defined to mean

> causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medications or shelter

19-A M.R.S. § 4002(3-B).

The primary sponsor of the bill stated that one in four women and one in nine men experience domestic abuse, and that the vast majority of domestic abuse cases include economic abuse. *See* Rep. Fay Test., April 3, 2019 (App. 35). She stated: "Power and control is at the root of domestic violence and controlling finances is another very effective way for an abuser to achieve that." *Id*. (App. 36). She also noted that an abuser's control of finances can make it difficult for the victim to leave. *Id*. (App. 36).[3]

---

[3] The primary sponsor submitted to the legislative committee a publication from the National Coalition Against Domestic Violence, which stated that 94-99% of domestic violence survivors also experienced economic abuse and that 21-60% of

Citing to a recently completed report, a representative of the Maine Coalition to End Domestic Violence noted that 81% of domestic abuse survivors cited economic abuse as an obstacle to separating from their abusers. *See* Mancuso Test., April 2, 2019 (App. 40). She stated that victims often need "relatively short-term economic stability while they create an independent household and untangle themselves from the financial mess their abuser has created," and that the bill would help provide such stability by, among other things, providing "debt collection and credit repair relief." *Id*. (App. 40-41). She explained:

> With respect to the credit report relief, the reasoning is simple: credit ratings that have been tarnished by economic abuse, and coerced debt in particular, result in longer shelter stays, victims returning to their abusers, or victims calculating that they can't afford to leave their abuser in the first place. Employers, landlords and utility companies make extensive use of credit histories in screening potential employees, tenants and customers. Credit abuse is a tactic that abusers use to maintain control over their victim, because abusers understand that without a job, rental housing, reliable transportation and basic utilities (all of which are hard to accomplish with damaged credit), it is almost impossible for a survivor to be economically stable, secure, and independent.

Id. (App. 42). She concluded by noting that with "approximately half of the state's homicides and assaults each year being a result of domestic violence," and "81% of survivors here in Maine noting economic abuse as a barrier to separation," "we have to make economic abuse relief an overt and accessible part of the safety net."

---

domestic violence victims lose their jobs as result of the abuse. *See* "Facts About Domestic Violence and Economic Abuse" (App. 37-38).

Id. (App. 42); *see also* Golden-Bouchard Test. (App. 53) (Pine Tree Legal Assistance staff attorney testifying that economic abusers tell victims that "they can't leave because no one will rent to them or give them an account for lights or heat because their credit is destroyed," and that "the victim feels they can't survive on their own and often times they are right" and "resign themselves to being trapped in the abusive relationship").[4]

Various survivors of domestic abuse explained how the accompanying economic abuse had impacted their credit scores and made it more difficult to create stable lives for themselves after leaving their abusers. *See* Davis Test. (App. 45-46); Glaser Test. (App. 47-48); McLean Test. (App. 49-50); Oren Test. (App. 51).

The Federal Fair Credit Reporting Act

Recognizing that "[c]onsumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers," Congress enacted FCRA in 1970 to ensure "reasonable procedures for meeting the needs of commerce … in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper

[4] The bill was also supported by the Maine Women's Lobby (App. 55-56), the Maine Commission on Domestic and Sexual Abuse (App. 60-61), Maine Equal Justice (App. 62-65), and Legal Services for the Elderly (App. 69-70).

utilization of such information." 15 U.S.C. § 1681. As originally enacted, FCRA had a savings clause broadly preserving State authority:

> This title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

Pub. L. 91-508, § 622 (codified at former 15 U.S.C. § 1681t). The Consumer Credit Reporting Reform Act of 1996 amended this savings clause by carving out certain areas in which States would be precluded from regulating. The current version of the savings clause states:

> Except as provided in subsections (b) and (c), this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

15 U.S.C. § 1681t(a). So, unless a state law falls within one of the exceptions in subsections (b) and (c), it is preempted only to the extent it is inconsistent with FCRA. *See Stafford v. Cross Country Bank*, 262 F. Supp.2d 776, 786 (W.D. Ky. 2003) ("in § 1681t(a) Congress provided that states were free to enact laws regulating consumer credit reporting" and then "enumerated several exceptions").[5]

[5] A state law is "inconsistent" with a FCRA provision only when compliance with the former would result in a violation of the latter. *See Aghaeepour v. N. Leasing*

Section 1681t(b)(1) sets forth various exceptions to the general rule of non-preemption, and all of the exceptions follow a similar pattern. The section begins by stating that "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under" various other sections of FCRA. 15 U.S.C. § 1681t(b)(1). Those sections are then listed out, along with a description of each section. So, for example, it lists "subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports" and "subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer." 15 U.S.C. § 1681t(b)(1)(A), (C). In each case, a specific FCRA provision is identified followed by a "relating to" clause providing a general description of the identified provision.

CDIA primarily argues that the Maine Laws are preempted by 15 U.S.C. § 1681t(b)(1)(E),[6] which prohibits States from imposing requirements or

---

Sys., Inc., 378 F. Supp.3d 254, 263 (S.D.N.Y. 2019) ("The Senate Report directly explains how this savings clause functions, providing that the phrase 'State laws which are inconsistent with Federal law are preempted to the extent [of] the inconsistency' means that 'no State law would be preempted unless compliance would involve a violation of Federal law.'" (citing S. Rep. No. 517, 91st Cong., 1st Sess. 8 (Nov. 5, 1969)).

[6] In its complaint, CDIA alleged only that Section 1681t(b)(1)(E) preempts the Maine Laws. *See, e.g.,* Complaint, ¶¶ 12, 22, 24 (App. 10, 13). During briefing, CDIA argued that the Economic Abuse Debt Reporting Act is alternatively preempted by Section 1681t(b)(5)(C), which preempts states from imposing requirements or prohibitions regarding conduct required by a section of FCRA

prohibitions "with respect to any subject matter regulated under. . . section 1681c of this title, relating to information contained in consumer reports."[7] According to CDIA, this means that "any state law that attempts to regulate the content of consumer reports is preempted under the FCRA (unless it was in effect on September 30, 1996)." Complaint, ¶ 12 (App. 10). This, though, reads out of the statute the express reference to "subject matter regulated under" Section 1681c. If, as CDIA claims, Congress intended to preempt all state laws regulating the content of consumer reports, it could have simply said that. Instead, Congress chose to expressly reference Section 1681c, and that can only mean that one must look to Section 1681c to determine whether a particular law is preempted. And because the Maine Laws do not regulate subject matter regulated by Section 1681c, the Maine Laws are not preempted.

Procedural History

On September 26, 2019, CDIA filed a lawsuit against the Maine Attorney General and the Superintendent of the Maine Bureau of Consumer Credit Protection seeking a declaration that the Maine Laws are preempted by 15 U.S.C. §

---

relating to the blocking of information regarding transactions resulting from alleged identify theft. The district court did not reach this argument, Add. 15, but the State will address it below.

[7] There is an exception to the exception for state laws in effect on September 30, 1996, but that does not apply to the Maine laws which, as discussed above, were enacted in 2019.

1681t(b)(1)(E) and an injunction barring defendants from enforcing the Maine Laws. App. 7-14. The parties agreed to resolve the matter via cross-motions for judgment on a stipulated record. App. 19-21. The stipulated record consisted of 1) a seven-paragraph stipulation of facts (App. 15-18); 2) the complaint (App. 7-14); 3) the answer (App. 22-25), and 4) the testimony and other materials submitted to the Maine Legislature's committees of jurisdiction in connection with the Maine Laws (App. 26-128). On October 8, 2020, the district court (Singal, J.) entered an order holding that both Laws are preempted and granted CDIA's motion and denied the State Defendants' motion. Add. 1-15. This appeal followed.

SUMMARY OF THE ARGUMENT

Neither the Medical Debt Reporting Law nor the Economic Abuse Debt Reporting Law is preempted by FCRA. Subject to certain exceptions, FCRA preserves State authority over the regulation of the collection, distribution and use of information on consumers, so long as such laws are not inconsistent with FCRA. CDIA does not claim that the Maine Laws are inconsistent with FCRA. Rather, CDIA primarily relies upon an exception that expressly preempts States from imposing any "requirement or prohibition . . . with respect to any subject matter regulated under . . . section 1681c . . . relating to information contained in consumer reports." 15 U.S.C. § 1681t(b)(1)(E). Consistent with principles of federalism, this express preemption provision must be narrowly construed to avoid

preemption. Further, under principles of statutory interpretation, the provision must be interpreted to avoid surplusage. Applying these principles, Section 1681t(b)(1)(E) does not broadly preempt all state laws touching upon the content of credit reports. Rather, as the provision expressly states, it preempts only a subset of such laws – those that relate to "any subject matter regulated under" Section 1681c. If Congress had intended to essentially occupy the field when it comes to the content of credit reports, it easily could have explicitly said so. For example, it could have preempted state laws "relating to information contained in consumer reports." Congress did not do so, and instead inserted the "subject matter regulated under" phrase and thereby limited preemption to only those matters Congress actually regulates.

The district court erred in finding preemption based on Congress' purported intent to make credit reports subject to uniform federal standards. It is the express language of the preemption provision that controls, and nothing in that provision or anywhere else in FCRA suggests that Congress intended federal uniformity when it comes to credit reports. Again, Congress easily could have expressly preempted all state laws relating to the content of credit reports, but it did not do so.

Applying the correct test for preemption – whether the state law imposes a requirement or prohibition regarding a subject matter regulated under Section 1681c – the Maine Laws are not preempted. Section 1681c does not regulate at all

the reporting of information relating to economic abuse, and regulates the reporting of medical debt only with respect to veterans. Thus, the Maine Laws do not regulate matters regulated by Section 1681c.

CDIA's claim, which it did not allege in its complaint, that the Economic Abuse Debt Reporting Law is preempted by Section 1681t(b)(5)(C), similarly fails. That provision preempts state laws imposing prohibitions or requirements relating to the obligations of consumer reporting agencies when a consumer reports that he or she has been the victim of identity theft. Economic abuse is not the same as identity theft, and it is troubling that CDIA does not understand the difference. Economic abuse is forcing an individual to become financially dependent by controlling the individual's finances. Identity theft is assuming another person's identity for pecuniary gain. That Congress has dictated what credit reporting agencies must do when presented with claims of identity theft does not preempt States from dictating how the agencies must respond to claims of economic abuse.

In sum, neither of the Maine Laws are preempted by FCRA.

STANDARD OF REVIEW

In an appeal from a decision on a stipulated record, this Court reviews the district court's legal conclusions de novo and its factual findings for clear error. *Thompson v. Cloud*, 764 F.3d 82, 90 (1st Cir. 2014); *Tsoulas v. Liberty Life Assur.*

Co. of Boston, 454 F.3d 69, 76 (1st Cir. 2006); *Boston Five Cents Sav. Bank v. Sec'y of Dept. of Hous. & Urban Dev.*, 768 F.2d 5, 12 (1st Cir. 1985).[8]

ARGUMENT

I. Section 1681t(b)(1)(E) Does Not Preempt the Maine Laws.

As discussed above, Section 1681t(b)(1)(E) prohibits States from imposing requirements or prohibitions "with respect to any subject matter regulated under. . . section 1681c of this title, relating to information contained in consumer reports." While CDIA argues that this provision preempts States from imposing any regulations relating to information contained in consumer reports, this is not so. Rather, under a narrow construction as is appropriate when interpreting express preemption provisions, applying the interpretative principle that surplusage is to be avoided, and consistent with the holding of other courts, this provision only preempts States from intruding into areas actually regulated by Section 1681c.

A. Section 1681t(b)(1)(E) Must Be Narrowly Construed to Avoid Preemption.

Consistent with bedrock federalist principles, the Supreme Court has long recognized a presumption against federal preemption of state law. *N.Y.S. Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654-55 (1995); *see also Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). As

---

[8] As the district court correctly recognized, this case presents no material factual disputes. Add. 1-2.

this Court has noted, "[p]reemption is strong medicine, not casually to be dispensed." *Grant's Dairy--Maine, LLC v. Comm'r of Maine Dept. of Agric., Food & Rural Res.*, 232 F.3d 8, 18 (1st Cir. 2000). "Consideration of issues arising under the Supremacy Clause 'start[s] with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (quoting *Rice*, 331 U.S. at 230).

Federal law may supersede state law in three different ways: 1) Congress can include language in the law that expressly preempts certain state laws; 2) the federal law can create a scheme of regulation that is so comprehensive that it essentially "occupies the field" and leaves no room for state regulation; or 3) the state law actually conflicts with federal law. *See, e.g., Hillsborough County, Fla. v. Automated Medical Labs., Inc.*, 471 U.S. 707, 713 (1985). CDIA argues only that express preemption applies here.

"Express preemption occurs when Congress states in the text of legislation that it intends to preempt state legislation in the area." *EEOC v. Massachusetts*, 987 F.2d 64, 67 (1st Cir. 1993); *see also Grant's Dairy--Maine*, 232 F.3d at 15 ("Express preemption occurs only when a federal statute explicitly confirms Congress's intention to preempt state law and defines the extent of that preclusion.").

> Two presumptions inform the process of determining the scope of an express preemption clause. First, the familiar assumption that preemption will not lie absent evidence of a clear and manifest congressional purpose must be applied not only when answering the threshold question of whether Congress intended any preemption to occur, but also when measuring the reach of an explicit preemption clause. Second, while the scope determination must be anchored in the text of the express preemption clause, congressional intent is not to be derived solely from that language but from context as well.

Mass. Ass'n of Health Maint. Orgs. v. Ruthardt, 194 F.3d 176, 179 (1st Cir. 1999) (emphasis in original) (citations omitted). The Supreme Court has been clear that express preemption provisions must be narrowly construed. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996); *Cipollone*, 505 U.S. at 518 (express preemption provisions must be construed "in light of the presumption against the pre-emption of state police power regulations" and "[t]his presumption reinforces the appropriateness of a narrow reading of [the express preemption provision at issue]"); *see also Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 496 (9th Cir. 2005) ("This presumption against preemption leads us to the principle that express preemption statutory provisions should be given a narrow interpretation."). Here, narrowly construed, the FCRA provisions CDIA relies upon do not preempt either of the Maine Laws.

B. CDIA's Broad Interpretation of Section 1681t(b)(1)(E) Would Result in Surplus Language.

.

CDIA's argument that every state law "regulat[ing] the content of consumer reports is preempted" would render superfluous Congress's express reference to "subject matter regulated under . . . Section 1681c." "It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see also United States v. Ven-Fuel, Inc*., 758 F.2d 741, 751–52 (1st Cir. 1985) ("All words and provisions of statutes are intended to have meaning and are to be given effect, and no construction should be adopted which would render statutory words or phrases meaningless, redundant or superfluous.").

Here, the relevant language states: "No requirement or prohibition may be imposed under the laws of any State. . . with respect to any subject matter regulated under . . . section 1681c of this title, relating to information contained in consumer reports." 15 U.S.C. § 1681t(b)(1)(E). CDIA's interpretation would turn into surplusage the phrase "subject matter regulated under. . . section 1681c." If Congress had wanted to broadly preempt States from regulating the content of credit reports, it could have left out reference to Section 1681c and instead stated: "No requirement or prohibition may be imposed under the laws of any State

relating to information contained in consumer reports." Of course, this is not what Congress said; rather, it expressly referenced "subject matter regulated under . . . section 1681c," and the Court should reject an interpretation that would make this surplusage. *See, e.g., Lawless v. Steward Health Care Sys., LLC,* 894 F.3d 9, 23 (1st Cir. 2018) ("courts should try to avoid interpretations that render statutory language mere surplusage"); *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 26 (1st Cir. 2006) ("We must read statutes, whenever possible, to give effect to every word and phrase.").

Applying the principle that an interpretation making language surplusage is to be avoided, the phrase "relating to information contained in consumer reports" is best understood as a general description of Section 1681c and not as the scope of preemption. Indeed, Section 1681c is entitled "Requirements relating to information contained in consumer reports." 15 U.S.C. § 1681c. The same convention is used throughout Section 1681t. For example, state laws are preempted if they relate to subject matter regulated under 1) "subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;" 2) "subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;" 3) "section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes;" and, 4) "subsections (i) and (j) of section

1681c-1 of this title relating to security freezes." 15 U.S.C. § 1681t(b)(1)(A), (C), (H), (J). In other words, Section 1681t's overall approach is to define the scope of preemption by reference to matters regulated by specific statutes and then give a general description of each such statute. It is hard to imagine that Congress intended the description of the statute to define the scope of preemption and, again, that would make references to the statutes surplusage. It would also dramatically expand the scope of preemption to subject matters beyond those actually regulated by the identified statutes. The presumption against preemption, the requirement to narrowly construe express preemption provision, and the duty of courts, when it comes to ambiguous statutes, to accept the reading that disfavors preemption, all warrant rejecting CDIA's argument that Section 1681t broadly preempts entire subject areas regardless of whether they are actually regulated by the identified FCRA provisions.

C. A Narrow Interpretation of Section 1681t(b)(1)(E) Is Consistent With Holdings From Other Courts.

Although a different provision of 15 U.S.C. § 1681t(b)(1) was at issue, the California Supreme Court held that in deciding whether a state law is preempted, the relevant inquiry is whether the FCRA provision at issue actually regulates the same duties as the state law. *See Brown v. Mortensen*, 253 P.3d 522 (Cal. 2011). In *Brown*, the plaintiffs claimed that a debt collector, working for their dentist, violated state law by disclosing their confidential medical information to consumer

reporting agencies. *Id*., at 524-25. The debt collector argued that plaintiffs' claims were preempted by 15 U.S.C. § 1681t(b)(1)(F), which states: "No requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under. . . section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies." The lower court had held that "all state law claims arising from the furnishing of information to consumer reporting agencies are preempted" by this provision. *Id*., at 525.

The California Supreme Court reversed. It looked at the precise scope of Section 1681s-2 and found that it "regulates the actions of furnishers in two areas: it imposes a duty to provide accurate information and it dictates what furnishers must do upon receiving official notice from a consumer reporting agency of a dispute concerning the completeness or accuracy of information they have provided." *Id*., at 528 (citations omitted). It found that there were two possible interpretations of the "subject matter regulated" under Section 1681s-2. On the one hand, it could be "read as preempting only state laws that attempt also to regulate a furnisher's duties with respect to accuracy or the handling of disputes after receiving official notice," which, the court noted, was the view adopted by "[n]umerous federal district courts." *Id*. (citing *Pasternak v. Trans Union*, 2008 WL 928840, *3-4 (N.D. Cal.2008); *Carlson v. Trans Union, LLC*, 259 F.Supp.2d

517, 521–522 (N.D. Tex. 2003); *Stafford v. Cross Country Bank*, 262 F.Supp.2d 776, 785–87 (W.D. Ky.2003); *Dornhecker v. Ameritech Corp*., 99 F.Supp.2d 918, 930–31 (N.D. Ill. 2000). In other words, only claims arising out of duties actually regulated by Section 1681s-2 would be preempted. *Id*. On the other hand, the court noted,

> the subject matter of section 1681s–2 could be read more broadly as encompassing all "[r]esponsibilities of furnishers of information to consumer reporting agencies," as the provision is captioned, and thus preempting any attempt by the several states to enforce laws imposing on furnishers duties additional to the two specific duties imposed by the section—that is, as embodying a congressional determination to impose on furnishers these, and only these, duties and to immunize them from any other legal obligations.

Id.

In resolving the ambiguity, the court recognized that "[t]he presumption against preemption applies fully in cases considering whether Congress intended by passage of the FCRA and subsequent amendments to displace state law." *Id*., at 526. It held that "the presumption against preemption is sufficiently powerful to impose upon courts a 'duty to accept the reading that disfavors pre-emption' as among equally plausible interpretations of an express preemption clause." *Id*., at 529 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)). The court also considered the legislative history of the Consumer Credit Reporting Reform Act of 1996 and found evidence that with respect to Section 1681t(b), "Congress intended preemption only in a few discrete areas where it had in fact

adopted a standard intended to serve as a uniform national standard" and that Section 1681t(b)(1)(F) was not intended to be "an act of mini-field preemption, intended to preempt all state laws implicating any duty that could have been regulated by section 1681s–2 but was not." *Id*., at 532.[9]

Accordingly, the court applied a narrow interpretation of the preemption provision and held that "section 1681t(b)(1)(F) preempts state law claims only insofar as they arise out of a requirement or prohibition with respect to the <u>specific furnisher duties regulated by section 1681s-2</u>, i.e., the duties to provide accurate information and to take action upon being notified of a dispute." *Id*., at 533 (emphasis added). The court ultimately held that the plaintiffs' "claims as pleaded, having as their gravamen issues neither of accuracy nor of credit dispute resolution, do not involve the same subject matter as section 1681s–2 and are not preempted." *Id*., at 535.

A federal court reached a similar conclusion with respect to the preemptive scope of Section 1681t(b)(1)(E), the very same provision that is at issue here. *See Gottman v. Comcast Corp.*, 2018 WL 1071185 (E.D. Cal. Feb. 23, 2018). At issue in *Gottman* was a California law requiring that when a person uses a credit report in connection with an application for credit, and notices that information on the

[9] The court also found "instructive . . . Congress's passage of HIPPA at the same time as the 1996 Reform Act." *Id*., at 530.

application does not match information on the report (such as the consumer's address and social security number), the person must take reasonable steps to confirm the applicant has not stolen the identity of someone else. *Id*., at *2. When Comcast was sued for violating this statute, it argued that the statute was preempted by Section 1681t(b)(1)(E), which, as discussed above, prohibits States from imposing requirements or prohibitions "with respect to any subject matter regulated under . . . section 1681c of this title, relating to information contained in consumer reports." *Id*. Comcast noted that Section 1681c requires that when a person requests a credit report from a consumer reporting agency and the request has an address for the consumer that "substantially differs" from the address in the reporting agency's file, the agency most notify the requester. 15 U.S.C. § 1681c(h)(1). It also requires the Consumer Financial Protection Bureau to promulgate regulations setting forth the actions that requesters of consumer reports must take when notified of an address discrepancy by a consumer reporting agency. 15 U.S.C. § 1681c(h)(2). Comcast argued that "the 'subject matter' preempted under § 1681c(h) is clear and includes any state law. . . that defines the obligations of both consumer reporting agencies and report requesters when a consumer provides an address that differs from the one in the credit report." *Id*., at *4.

The court rejected this argument. It noted that the "subject matter regulated" under Section 168c(h) is ambiguous. *Id*. It found that while Section 1681t(b)(1)(E) "could be read broadly as preempting all state laws relating to any information contained in consumer reports," the presumption against preemption supported rejecting such a broad reading. *Id*. Instead, the court held that Section 1681t(b)(1)(E) preempts only those areas where Congress "'had adopted an actual standard'" and not areas that could have been regulated but were not. *Id*. (quoting *Brown*, 253 P.3d at 532).[10] The court also recognized that "a state may give the consumer more protections than the FCRA as long as the state law is not an obstacle to the execution of the FCRA," and that California's imposition of obligations on users of consumer credit reports "does not obstruct the obligations

[10] In *Simon v. DirectTV, Inc*., 2010 WL 1452853 (D. Colo. Mar. 19, 2010), *report and recommendation adopted*, 2010 WL 1452854 (D. Colo. Apr. 12, 2010), the court held that a state law prohibiting the inclusion on consumer reports of convictions older than seven years was preempted by Section 1681t(b)(1)(E). But, Section 1681c expressly addresses criminal background information – arrests older than seven years cannot be disclosed, and records of convictions are expressly exempted from a general provision prohibiting the disclosure of adverse information older than seven years. 15 U.S.C. § 1681c(a)(2), (5). Thus, the court held that both the state and federal laws "address the limits on the disclosure of criminal arrests and convictions in consumer reports" and that the "subject matter of the [state law] concerns matters regulated under the federal statute." *Id*., at *4. Under CDIA's theory (that state laws that regulate the content of consumer reports are automatically preempted), there would have been no need for the court to have considered the actual subject matter regulated by Section 1681c(a). In other words, *DirectTV* supports the proposition that preemption turns not on simply whether the state law regulates the content of credit reports, but whether it regulates a matter that is regulated by FCRA.

of consumer reporting agencies or furnishers under federal law when informational discrepancies are found in the consumer's information." *Id.*, *5. The California law was "not preempted because it establishes duties for users of consumer reports that are not addressed by the FCRA." *Id.*, *4.

D. The District Court Did Not Properly Analyze the Preemptive Scope of Section 1681t(b)(1)(E).

Rather than focus on the precise language of Section 1681t(b)(1)(E), the district court assessed the preemptive scope of the provision by looking at the title and a subtitle of Section 1681c and placing undue weight on Congress' alleged intent to impose national standards on credit reports. The district court correctly noted that in 1996, Section 1681c was retitled "Requirements relating to information contained in consumer reports" and Section 1681c(a) was retitled "Information excluded from consumer reports." Add. 12-13. The court stated that this language is "similar to, or outright duplicative of, the language in § 1681t(b)(1)(E) and that "[v]ia these retitlings, "Congress appears to have deliberately clarified the subject matters encompassed by § 1681c(a) and each of its subsections in order to coordinate its operation with § 1681t." Add. 13. The court also concluded that "the amended language and structure of § 1681c(a) and § 1681t(b) reflect an affirmative choice by Congress to set 'uniform federal

standards' regarding the information contained in consumer credit reports." Add. 13 (quoting *Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019).[11]

It is impossible to see how the new title and subtitle of Section 1681c are of any relevance. Rather, the title of Section 1681c simply reflects that it imposes requirements relating to information in consumer reports. Section 1681t(b)(1)(E) similarly refers to Section 1681c as "relating to information contained in consumer reports." There is no dispute, though, that Section 1681c addresses the content of credit reports. The question is whether Section 1681t(b)(1)(E) preempts laws that have anything to do with the content of credit reports or instead is narrower. The question is answered by looking at the precise language Congress chose. Specifically, Congress stated it was preempting only those laws relating to subject matter "<u>regulated under</u>" Section 1681c. By including the phrase "regulated under," Congress made clear its intent not to preempt the entire field of the content of credit reports, but only the aspects of credit report regulation on which Congress

---

[11] At issue in *Aldaco* was what constitutes a "conviction" for purposes of the provision in Section 1681c that exempts "records of convictions of crimes" from the general prohibition against reporting adverse information that is more than seven years old. 15 U.S.C. § 1681c(a)(5). The plaintiff consumer argued that state law should determine what constitutes a "conviction." The court stated that Section 1681t(b)(1)(E) "assures that [FCRA] establishes uniform federal standards for contents of credit reports." *Aldaco*, 921 F.3d at 688. In the context of the reporting of convictions, that is true, but that is only because Congress has expressly regulated that subject matter. Where Congress has not regulated economic abuse debt or medical debt in general, there is no reason to conclude that Congress intended uniformity in those areas.

has chosen to regulate. If Congress had intended to preempt all state regulation of credit reports, it could have omitted the phrase "with respect to any subject matter regulated under . . . section 1681c of this title" and instead could have stated: "No requirement or prohibition may be imposed under the laws of any State . . . relating to information contained in consumer reports." Of course, Congress did not do that and instead limited preemption to matters actually regulated by Section 1681c.[12]

The district court also erred in finding preemption based on Congress' alleged intent to set "uniform federal standards" regarding the content of credit reports. In FCRA's findings and statement of purpose, Congress expressed the "need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy" and that the purpose of FCRA is

> to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

[12] The district court did not explain how its interpretation would not turn into surplusage the phrase "with respect to any subject matter regulated under . . . section 1681c of this title."

15 U.S.C. § 1681(a)(4), (b). Congress did not express a need for there to be national uniformity in the regulation of credit reports.

CDIA never argued for field preemption. To the extent that the court used Congress' alleged intent in order to interpret the scope of Section 1681t(b)(1)(E), the court erred. First, when it comes to express preemption provisions, the presumption is that Congress did not intend to preempt state law. Second, as noted above, if Congress really had intended to set uniform standards, Congress easily could have expressly preempted all state laws regulating the content of credit reports. It did not do that, and instead only preempted state laws regarding matters actually regulated by 1681c.

E. The Maine Laws Do Not Impose Prohibitions or Requirements With Respect to Subject Matter Regulated Under Section 1681c.

Section 1681c requires that certain information be excluded, and other information included, in consumer reports. 15 U.S.C. § 1681c(a), (b), (d). It also requires consumer credit agencies to 1) indicate when a customer has closed an account or disputes information, 2) truncate credit card numbers, and 3) take action when there is a discrepancy in addresses. 15 U.S.C. § 1681c(e), (f), (g), (h). There is nothing in Section 1681c addressing the actions a consumer credit agency must take when notified that debt is the result of economic abuse or the extent to which such debt may (or may not) be included in consumer reports. Quite simply,

Section 1681c does not regulate in the area of economic abuse or debt incurred as a result of such abuse.

The only provisions in Section 1681c regulating the reporting of medical debt relate to veterans. 15 U.S.C. § 1681c(a)(7), (8).[13] One provision restricts "nationwide" consumer reporting agencies[14] from reporting a veteran's medical debt that is less than one year old, and the other restricts such agencies from reporting a veteran's medical debt that has been fully paid or settled. *Id*. Giving these provisions a narrow construction, as is required under a preemption analysis, the regulated subject matter is the medical debt of veterans. This is much narrower than the subject matter regulated by the Medical Debt Reporting Law, which is medical debt of all consumers. In *Gottman*, discussed above, the federal provision at issue was similarly narrower than the state provision. The state law required users of consumer reports to take certain actions after discovering that information on a person's credit application does not match information on the person's

[13] Another provision limits the extent to which a consumer reporting agency may disclose the name, address and telephone number of entities furnishing medical information, but this provision does not address the extent to which medical debt itself can be disclosed. 15 U.S.C. § 1681c(a)(6).
[14] These are consumer reporting agencies "that regularly engage[] in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide: 1) Public record information. (2) Credit account information from persons who furnish that information regularly and in the ordinary course of business." 15 U.S.C. § 1681a(p).

consumer report, while under FCRA, obligations on users are triggered only if they are advised of discrepancies by the consumer reporting agency. *Gottman*, 2018 WL 1071185, *2. The court held that because the standard adopted by Congress applied only when a user was notified of a discrepancy, the state law was not preempted. *Id*., *4 ("Accordingly, [the state law] is not preempted because it establishes duties for users of consumer reports that are not addressed by the FCRA."). The court also recognized that "a state may give the consumer more protections than the FCRA as long as the state law is not an obstacle to the execution of the FCRA." *Id*., *5. For the same reasons, the Medical Debt Reporting Law is not preempted. It imposes duties on consumer reporting agencies not addressed by 15 U.S.C. § 1681c(a)(7) and (8), and agencies can easily comply with both the state law and the FCRA provisions.

II. Section 1681t(b)(5)(C) Does Not Preempt the Economic Abuse Debt Reporting Law.

Although it did not allege it in its complaint, CDIA argued below that Section 1681t(b)(5)(C) preempts the Economic Abuse Debt Reporting Law. Section 1681t(b)(5)(C) prohibits states from imposing requirements or prohibitions "with respect to the conduct required by the specific provisions of . . . section 1681c-2 of this title." Section 1681c-2 requires credit reporting agencies to block information regarding transactions resulting from alleged identity theft upon proper

notification from a consumer. CDIA argued that the Economic Abuse Debt Reporting Law

> requires the [credit reporting agenct] via its dispute process to engage in a fact-finding adjudication of the truth of the consumer's allegations (i.e. whether a debt or portion of a debt results from economic abuse) and then block the reporting of the account on a permanent basis, precisely the type of conduct required under section 1681c-2.

ECF Doc. 15, PageID 163. This argument is wrong for two reasons. First, economic abuse is not synonymous with identify theft. For purposes of the Economic Abuse Debt Reporting Law,

> "Economic abuse" means causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medications or shelter.

19-A M.R.S. § 4002(3-B). For purposes of FCRA, "identify theft is defined as "a fraud committed using the identifying information of another person. . . ." 15 U.S.C. § 1681a(q)(3). There is little, if any, overlap between these two definitions. In one respect, "economic abuse" is far broader because it includes all manner of conduct that would not be considered "identity theft" under FCRA. In another respect, it is narrower because conduct that would be considered "identify theft" under FCRA would be considered "economic abuse" under the Economic Abuse

Debt Reporting Law only if it was done for the purpose of "causing or attempting to cause an individual to be financially dependent." Presumably, the run of the mill identify theft addressed by FCRA is being committed for financial gain and not to control another person.[15]

Further, the conduct required by the Economic Abuse Debt Reporting Law is not the same as the conduct required by 15 U.S.C. § 1681c-2. The former requires a consumer reporting agency, after being provided with specified documentation by a consumer that debt is the result of economic abuse, to reinvestigate the debt and remove any reference to the debt it determines to be the result of economic abuse. 10 M.R.S. § 1310-H(2-A). The latter, on the other hand, requires a consumer reporting agency, after being provided with specified documentation by a consumer that certain information was the result of alleged identity theft, to block that information and notify the furnisher. 15 U.S.C. § 1681c-2(a), (b). The agency is not required to conduct any investigation, but it can remove the block if it determines that the information was blocked in error, that the consumer made a material misrepresentation, or that the consumer obtained the

---

[15] Even if identity theft might sometimes also constitute economic abuse, this is a facial challenge. So, the fact that some circumstances might exist where application of the Economic Abuse Debt Reporting Law would be preempted is not sufficient to find the entire Law preempted. *See Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982) ("The existence of a hypothetical or potential conflict is insufficient to warrant the pre-emption of the state statute.").

goods, services or money as a result of the blocked transaction. 15 U.S.C. § 1681c-2(c)(1). So, not only are the triggers for taking action different, but the actions that then must be taken are different. The Economic Abuse Debt Reporting Law thus does not impose a requirement or prohibition regarding conduct required by Section 1681c-2.

CONCLUSION

For the reasons set forth above, the Court should vacate the district court's judgment and hold that neither the Medical Debt Reporting Law nor the Economic Abuse Debt Reporting Law is preempted by FCRA.

Dated: January 19, 2021
Augusta, Maine

Respectfully submitted,

AARON M. FREY
Attorney General

s/ Christopher C. Taub
Christopher C. Taub
Chief Deputy Attorney General
Bar Number 65217
Six State House Station
Augusta, ME 04333-0006
(207) 626-8800
Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

The within Appellants' Brief is submitted under Federal Rule of Appellate Procedure 32(a)(7)(B). I hereby certify that the brief complies with the type-volume limitation prescribed by Rule 32(a)(7)(B)(i). For this Certification, I relied on the word count function of the word-processing software used to prepare this brief (Microsoft Word 2007), which has counted 8,890 words in this brief. I further certify that all text in this brief is in proportionally spaced Times New Roman Font and is 14 points in size.

s/ Christopher C. Taub
Christopher C. Taub
Chief Deputy Attorney General
Bar No. 65217
Six State House Station
Augusta, Maine 04333-0006
(207) 626-8800

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), I, Christopher C. Taub, Chief Deputy General for the State of Maine, hereby certify that on this, the 19th day of January, 2021, I filed the above brief electronically via the ECF system. I further certify that on this, the 19th day of January, 2021, I served the above brief electronically on the following parties, who are ECF Filers, via the Notice of Docket Activity:

Frank P. D'Alessandro
frank@mejp.org

John J. Aromando
jaromando@pierceatwood.com

Ryan P. Dumais
rdumais@eatonpeabody.com

Andrea E. Bopp Stark
astark@nclc.org

Rebecca Everett Kuehn
rkuehn@hudco.com

s/ Christopher C. Taub
Christopher C. Taub
Chief Deputy Attorney General

ADDENDUM

Order on Motions for Judgment on Stipulated Record........................ Add – 1

Judgment .... Add - 16

10 M.R.S. § 1310-H .... Add - 17

15 U.S.C. § 1681t .... Add - 19

15 U.S.C. § 1681c .... Add - 23

15 U.S.C. § 1681c-2 .... Add - 28

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CONSUMER DATA INDUSTRY ASSOCIATION,	)	
Plaintiff,	)	
v.	)	Docket no. 1:19-cv-00438-GZS
AARON M. FREY & WILLIAM N. LUND,	)	
Defendants.	)	

ORDER ON PENDING MOTIONS

Before the Court are two motions: Plaintiff's Motion for Judgment (ECF No. 15) and Defendants' Motion for Judgment on a Stipulated Record (ECF No.16). Via these cross-motions, the parties ask the Court to resolve this matter in which Plaintiff, Consumer Data Industry Association ("CDIA"), seeks a declaratory judgment against Maine's Attorney General, Aaron M. Frey, and the Superintendent of Maine's Bureau of Consumer Credit Protection, William N. Lund (together, the "State Defendants"). As explained herein, the Court GRANTS Plaintiff's Motion (ECF No. 15) and DENIES the State Defendants' Motion (ECF No. 16).

I. LEGAL STANDARD

When facing cross-motions for judgment on a stipulated record, the Court, in addition to resolving any legal disputes, "may 'decide any significant issues of material fact that [it] discovers' in the stipulated record." Thompson v. Cloud, 764 F.3d 82, 90 (1st Cir. 2014) (quoting Boston Five Cents Sav. Bank v. Secretary of Dep't of HUD, 768 F.2d 5, 11–12 (1st Cir. 1985) (discussing differences between a motion for summary judgment and a motion for judgment on a stipulated record)). Here, the Court notes at the outset that there are no material factual disputes, rather this

case presents a dispute as to statutory interpretation. Ultimately, the cross-motions and record filed here queue up this matter for resolution in accordance with Federal Rule of Civil Procedure 52.[1] See OneBeacon America Ins. Co. v. Johnny's Selected Seeds Inc., No. 1:12-cv-00375-JAW, 2014 U.S. Dist. LEXIS 53098 (D. Me. April 17, 2014). With this procedural lens set, the Court first explains the statutes at issue and then briefly summarizes the undisputed facts.

II. STATUTORY BACKGROUND

As the State Defendants explain in their Motion, consumer credit reports "can determine whether, and on what terms, a person may obtain a mortgage, a student loan, a credit card, or other financing." (Defs. Mot. (ECF No. 16), PageID # 166.) Given this impact, it is no surprise that these reports have been the subject of both federal and state regulation. The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*, was enacted by Congress in 1970 to "ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 52 (2007) (citing 15 U.S.C. § 1681). The FCRA "regulates the creation and the use of consumer report[s] by consumer reporting agenc[ies] for certain specified purposes, including credit transactions, insurance, licensing, consumer-initiated business transactions, and employment." Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1545 (2016) (internal quotation marks omitted).

In Maine, the current version of the Maine Fair Credit Reporting Act, 10 M.R.S.A. § 1306 *et seq.*, was enacted in 2013 with the Legislature's announced purpose being to supplement the FCRA and "[r]equire consumer reporting agencies to adopt reasonable procedures for meeting the

---

[1] Although Plaintiff recites the summary judgment standard in its Motion (ECF No. 15, PageID # 149), the parties previously agreed to this alternative procedure and thereafter submitted a stipulated record (ECF Nos. 13 & 14) along with motions titled to reflect that each seeks "judgment" on that record (ECF Nos. 15 & 16). See 1/6/20 Procedural Order (ECF No. 12) (noting parties' agreement to "submit this matter to the Court on a stipulated record").

needs of commerce for consumer credit, personnel, insurance and other information in a manner that is fair and equitable to the consumer, with regard for confidentiality, accuracy, relevancy and proper use of this information . . . ." 10 M.R.S.A. § 1307. In this case, Plaintiff seeks a declaration that two specific 2019 amendments to Maine's Fair Credit Reporting Act (the "Maine Amendments") are preempted by the FCRA.

A. FCRA

The text and history of two sections of the FCRA, 15 U.S.C. §§ 1681c & 1681t, are central to this preemption question. Until 1996, § 1681t comprised only a short savings clause, limiting federal preemption to the extent a state law was inconsistent with a provision of the FCRA:

> This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

15 U.S.C. § 1681t (1995). As to § 1681c, it was then titled "Reporting of obsolete information," and, true to its title, set out time periods beyond which certain information could not be reported on consumer reports. 15 U.S.C. § 1681c (1995).

In 1996, Congress amended both sections. As to § 1681t, new subsections were added and a series of exceptions were carved out of the savings clause, now labeled § 1681t(a), which was amended as follows:

> **Except as provided in subsections (b) and (c)**, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, **or for the prevention or mitigation of identity theft,** except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

15 U.S.C. § 1681t(a) (1998). Contained within "subsection (b)" was § 1681t(b)(1)(E), in substantially its present form:

> (b) General exceptions. No requirement or prohibition may be imposed under the laws of any State—
>
> (1) with respect to any subject matter regulated under— . . .
>
> (E) [15 U.S.C. § 1681c], relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996;

The changes to § 1681t also included a sunset provision on the new subsections reading, in relevant part, as follows:

> (d) Limitations. Subsections (b) and (c)— . . .
>
> (2) do not apply to any provision of State law (including any provision of a State constitution) that—
>
> (A) is enacted after January 1, 2004;
>
> (B) states explicitly that the provision is intended to supplement this subchapter; and
>
> (C) gives greater protection to consumers than is provided under this subchapter.

15 U.S.C. § 1681t(d) (1998). In parallel, § 1681c was retitled "Requirements relating to information contained in consumer reports." Its first subsection, § 1681c(a), still only pertained to obsolete information, but was retitled "Information excluded from consumer reports." New subsections were added containing requirements not relating to obsolescence, including a subsection titled "Information required to be disclosed," § 1681c(d).

In 2003, both sections were again amended. As to § 1681t, new additions included § 1681t(b)(5)(C), while the sunset provision was deleted. Section 1681t(b)(5)(C) states:

> (b) General exceptions. No requirement or prohibition may be imposed under the laws of any State— . . .
>
> (5) with respect to the conduct required by the specific provisions of— . . .
>
> (C) [15 U.S.C. § 1681c-2].

As relevant here, § 1681c-2 requires credit reporting agencies to "block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft." 15 U.S.C. § 1681c-2(a). As to § 1681c, additions included

§ 1681c(a)(6), which restricts when the contact information of medical information furnishers can be included in a consumer report.[2] However, § 1681c(a)(6) does not limit the reporting of medical debts, but instead seeks to prevent the incidental disclosure of information from which a consumer's medical information can be inferred.

In 2018, § 1681c was again amended, adding restrictions on when a *veteran's* medical debt can first be reported and requiring the removal of such debt once fully paid and settled.[3] 15 U.S.C. § 1681c(a)(7) & (8).

B. The Maine Amendments

In 2019, the Maine Legislature passed two amendments to the Maine Fair Credit Reporting Act, both of which became effective on September 19, 2019. The first amendment was titled "An Act Regarding Credit Ratings Related to Overdue Medical Expenses" (the "Medical Debt Provision"). See 2019 Me. Laws 266, P.L. 2019, ch. 77. As enacted, the Medical Debt Provision places restrictions on when a medical debt may be included in a consumer report:

> Notwithstanding any provision of federal law, a consumer reporting agency shall comply with the following provisions with respect to the reporting of medical expenses on a consumer report.
>
> A. A consumer reporting agency may not report debt from medical expenses on a consumer's consumer report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported.
>
> B. Upon the receipt of reasonable evidence from the consumer, creditor or debt collector that a debt from medical expenses has been settled in full or paid in full, a consumer reporting agency:

---

[2] "Medical information furnisher" is elsewhere defined as "[a] person whose primary business is providing medical services, products, or devices. . . who furnishes information to a consumer reporting agency on a consumer . . . ." 15 U.S.C. § 1681s-2.

[3] Since 2019, nearly twenty bills have been introduced to further amend § 1681c. One House bill contains both restrictions on the reporting of medical debts and a procedure for removing debts that were the product of "financial abuse" from credit reports. See Comprehensive Credit Reporting Enhancement, Disclosure, Innovation, and Transparency Act of 2020, H.R. 3621, 116th Cong. (2020); see also, e.g., Patient Credit Protection Act of 2020, S. 4037, 116th Cong. (2020); Coronavirus Credit Lapse Forgiveness Act, H.R. 6413, 116th Cong. (2020); Medical Debt Relief Act of 2020, H.R. 6470, 116th Cong. (2020).

(1) May not report that debt from medical expenses; and
(2) Shall remove or suppress the report of that debt from medical expenses on the consumer's consumer report.

C. As long as the consumer is making regular, scheduled periodic payments toward the debt from medical expenses reported to the consumer reporting agency as agreed upon by the consumer and medical provider, the consumer reporting agency shall report that debt from medical expenses on the consumer's consumer report in the same manner as debt related to a consumer credit transaction is reported.

10 M.R.S.A. § 1310-H(4).

At Maine's legislative hearings on the Medical Debt Provision, Superintendent Lund, although not taking a position on the legislation, expressed concern over the effect the amendment would have on the accuracy of consumer reports. (Joint Ex. C (ECF No. 13-3), PageID # 46.) Additionally, multiple testifiers, including the Superintendent, expressed uncertainty over what was encompassed by "regular, scheduled periodic payments." (Id., PageID #s 43, 45.) As it related to the three nationwide credit reporting agencies, the Superintendent also noted that the first two sub-provisions would not change the status quo, because they had agreed to the same terms in a settlement with New York's attorney general.[4] (Id., PageID # 45.)

The second amendment came via a state law titled "An Act to Provide Relief to Survivors of Economic Abuse" (the "Economic Abuse Provision"). See 2019 Me. Laws 1062, P.L. 2019, ch. 407. Under the Economic Abuse Provision, if a consumer provides evidence to a credit reporting agency that a debt is the product of "economic abuse," the agency is required to reinvestigate the debt and, if the allegation is borne out, remove references to the debt from the consumer's report:

> Except as prohibited by federal law, if a consumer provides documentation to the consumer reporting agency . . . that the debt or any portion of the debt is the result

---

[4] The Court infers from this testimony that the three nationwide consumer reporting agencies adopted the reporting practices required under 10 M.R.S.A. § 1310-H(4)(A) & (B) prior to Maine's enactment of the Medical Debt Provision in accordance with this settlement.

> of economic abuse . . . the consumer reporting agency shall reinvestigate the debt. If after the investigation it is determined that the debt is the result of economic abuse, the consumer reporting agency shall remove any reference to the debt or any portion of the debt determined to be the result of economic abuse from the consumer's credit report.

10 M.R.S.A. § 1310-H(2-A). Economic abuse is defined as follows:

> "Economic abuse" means causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medications or shelter.

19 M.R.S.A. § 4002(3-B). Credit reporting agencies can be subject to both administrative enforcement and private party litigation for violating the Maine Fair Credit Reporting Act. See 10 M.R.S.A. § 1310-A. An agency may not be held liable, however, if it "shows by a preponderance of the evidence that at the time of the alleged violation the [agency] maintained reasonable procedures to ensure compliance with the provisions of" the amendments. 10 M.R.S.A. § 1310-H(3).[5]

As reflected in the stipulated record, the majority of the testimony concerning the Economic Abuse Provision focused on the policy considerations associated with economic abuse and its connection to domestic violence. See generally Joint Ex. D (ECF No. 13-4).

[5] It appears that there are two versions of this provision due to the separate passage of the Medical Debt Provision and the Economic Abuse Provision; the first applying to "subsections 1, 2 and 4" and the latter applying to "subsections 1, 2 and 2-A." 10 M.R.S.A. § 1310-H(3).

III. STIPULATED FACTUAL BACKGROUND

In September 2019, CDIA filed the instant action to challenge the just-described amendments to the Maine Fair Credit Reporting Act.[6] CDIA is a trade association whose membership includes the three nationwide consumer credit reporting agencies—Experian, Equifax, and Trans Union—and other agencies. The parties stipulate that (1) CDIA's members will have to take affirmative steps and revise procedures to comply with the Maine Amendments; (2) members may be subject to both administrative enforcement and private party litigation if they fail to take such steps; and (3) Superintendent Lund has the authority to investigate and enforce the amendments, which may include a civil action with penalties for noncompliance. (Joint Stipulation of Facts (ECF No. 14), PageID #s 144–45.)

IV. DISCUSSION

Before addressing the substantive preemption arguments raised in the parties' briefing,[7] the Court initially considers the issue of subject matter jurisdiction.

A. Subject Matter Jurisdiction

"Federal courts . . . cannot act in the absence of subject matter jurisdiction, and they have a sua sponte duty to confirm the existence of jurisdiction . . . ." United States ex rel. Willette v. University of Mass., 812 F.3d 35, 44 (1st Cir. 2016). Acknowledging that the State Defendants had previously raised both standing and ripeness as potential defenses to this action, Plaintiff

---

[6] Plaintiff is also litigating parallel preemption challenges to state laws in New Jersey and Texas. See Consumer Data Indus. Ass'n v. Grewal, D. N.J. 3:19-cv-19054-BRM-TJB; Consumer Data Indus. Ass'n v. Texas, W.D. Tex. 1:19-cv-00876-RP.

[7] In addition to the parties' briefing, the Court has reviewed and considered amicus briefs filed by the Maine Coalition to End Domestic Violence (ECF Nos. 18 & 30), the National Consumer Law Center and Maine Equal Justice (ECF No. 29), and the American Financial Services Association (ECF No. 33). The Court notes that, to the extent some of these briefs offered compelling descriptions of the policy considerations underlying the Maine Amendments, these policy considerations are not relevant to the preemption questions raised by the pending Motions. See, e.g., Pl. Response (ECF No. 40), PageID #s 350–53.

asserts that it has standing to pursue this challenge on behalf of its members and that the matter is ripe. (Pl. Mot. (ECF No. 15), PageID #s 150–53.) The Court agrees on both points.

As to standing, "[w]hen an unincorporated association seeks to open the doors of a federal court, it must demonstrate that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" Merit Constr. All. v. City of Quincy, 759 F.3d 122, 126–27 (1st Cir. 2014) (quoting Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977)). Here, the Court agrees with Plaintiff that these three factors are satisfied on the stipulated facts and notes that the State Defendants have not responded to Plaintiff's assertion of standing.[8] (See Pl. Mot., PageID # 150–53.)

As the party raising a statutory challenge, Plaintiff also has the burden of demonstrating ripeness. Reddy v. Foster, 845 F.3d 493, 501 (1st Cir. 2017). "The basic rationale of the ripeness inquiry is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements in violation of Article III's case or controversy requirement." Labor Rels. Div. of Constr. Indus. of Mass. v. Healey, 844 F.3d 318, 326 (1st Cir. 2016). "A claim

---

[8] Regardless of the lack of developed argument on this issue of standing, the Court acknowledges that "subject matter jurisdiction claims are not waivable." Elgin v. United States Dep't of the Treasury, 641 F.3d 6, 9 (1st Cir. 2011). Thus, the Court has independently considered CDIA's standing as a trade association, particularly as to the Medical Debt Provision. As it relates to that provision, it is not apparent that CDIA's members are not already required to substantially handle reporting of medical debts in accordance with 10 M.R.S.A § 1310-H(4) due to a preexisting settlement, which was noted in Superintendent Lund's testimony on the legislation. See Joint Ex. C, PageID # 45. At minimum, CDIA has not identified a member not bound by that settlement's restrictions on the reporting of medical debts. Nonetheless, on the record presented, the Court notes that § 1310-H(4)(C) creates additional information removal obligations for CDIA's members beyond what seems to be encompassed by the settlement. Additionally, the Court finds that CDIA's members would suffer the requisite harm from the State Defendants' independent enforcement of 10 M.R.S.A § 1310-H(4). See Draper v. Healey, 827 F.3d 1, 3 (1st Cir. 2016) (explaining that associational standing on behalf of its members "requires, among other things, that at least one of the group's members have standing as an individual. To satisfy this requirement, the association must, at the very least, identify a member who has suffered the requisite harm.'") (internal citations, quotation marks & alterations omitted).

is ripe only if the party bringing suit can show both that the issues raised are fit for judicial decision at the time the suit is filed and that the party bringing suit will suffer hardship if court consideration is withheld." Id. (internal quotation marks omitted). "Even a facial challenge to a statute is constitutionally unripe until a plaintiff can show that federal court adjudication would redress some sort of imminent injury that he or she faces." Reddy, 845 F.3d at 501.

Despite the case being in a pre-enforcement posture, the Court deems Plaintiff's claims sufficiently ripe. First, Plaintiff's claims involve "purely legal questions, where the matter can be resolved solely on the basis of the state and federal statutes at issue." Capron v. Office of the Att'y Gen. of Mass., 944 F.3d 9, 20 n.4 (1st Cir. 2019) (quoting Labor Rels. Div., 844 F.3d at 327). There also does not appear to be any question that the State Defendants intend to enforce the Maine Act amendments. See id.[9]

Satisfied that this Court has the requisite subject matter jurisdiction, the Court next turns to the merits.

B. Federal Preemption

"The Supremacy Clause supplies a rule of priority. It provides that the 'Constitution, and the Laws of the United States which shall be made in Pursuance thereof,' are 'the supreme Law of the Land . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.' Art. VI, cl. 2." Virginia Uranium, Inc. v. Warren, 139 S. Ct. 1894, 1901 (2019). "This Clause gives Congress 'the power to preempt state law,' which Congress may exercise either expressly or impliedly." Capron, 944 F.3d at 20–21. "Congressional intent is the touchstone of any effort to

[9] While the parties have not stipulated that the State Defendants actually intend to enforce the amendments, on the record presented the Court concludes that the State Defendants intend to do so. Cf. June Med. Servs. L.L.C. v. Russo, 140 S. Ct. 2103, 2118 (2020) ("The State's unmistakable concession of standing as part of its effort to obtain a quick decision from the District Court on the merits of the plaintiffs' undue-burden claims bars our consideration of it here.").

map the boundaries of an express preemption provision. To illuminate this intent, [the Court] start[s] with the text and context of the provision itself[,] [as] . . . informed by the statutory structure, purpose, and history." Tobin v. Federal Express Corp., 775 F.3d 448, 452–53 (1st Cir. 2014). Ultimately, "all preemption arguments, must be grounded in the text and structure of the statute at issue." Kansas v. Garcia, 140 S. Ct. 791, 804 (2020) (internal quotation marks omitted)).

The burden to prove preemption rests with Plaintiff. Capron, 944 F.3d at 21. When considering a preemption challenge, the Court begins with the "presumption that a federal act does not preempt an otherwise valid state law, and [the Court] set[s] aside that postulate only in the face of clear and contrary congressional intent." Antilles Cement Corp. v. Fortuño, 670 F.3d 310, 323 (1st Cir. 2012). This "presumption against pre-emption is rooted in respect for the States as independent sovereigns in our federal system and assume[s] that Congress does not cavalierly pre-empt state laws." Tarrant Reg'l Water Dist. v. Herrmann, 569 U.S. 614, 631 n.10 (2013) (internal quotation marks omitted). However, preemption is also "not a matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect." Wos v. E.M.A., 568 U.S. 627, 636 (2013).

1. 15 U.S.C. § 1681t(b)(1)(E)

Plaintiff's chief argument is that the two Maine Amendments are expressly preempted by 15 U.S.C. § 1681t(b)(1)(E). The parties primarily disagree over how broadly the following language in § 1681t(b)(1)(E) should be understood: "with respect to any subject matter regulated under . . . [15 U.S.C. § 1681c], relating to information contained in consumer reports . . . ." Plaintiff contends that this language should be read to encompass all claims relating to information contained in consumer reports, with the phrase "relating to information contained in consumer

reports" effectively acting as a description of the subject matter § 1681c regulates. The State Defendants, by contrast, argue that the Court should read § 1681c as an itemized list of narrowly delineated subject matters, some of which relate to information contained in consumer reports, and only find preemption where a state imposes a requirement or prohibition that spills into one of those limited domains.

In further support of their narrow reading, the State Defendants argue that Plaintiff's reading of § 1681t(b)(1)(E) would result in surplusage. Namely, Plaintiff's reading would render the words "regulated under . . . [§ 1681c]" unnecessary. (Id., PageID # 180–82.) Rather, the State Defendants contend, the true inquiry, as further informed by a historic presumption against preemption, is whether a specific subsection of § 1681c "actually regulates the same duties as the state law." (Id., PageID # 176.) They contend that, under this narrow construction, the Maine Amendments do not impose prohibitions or requirements with respect to a subject matter regulated under § 1681c.

In considering these two different readings, the Court looks to the various amendments made to 15 U.S.C. §§ 1681t & 1681c. As to § 1681t, under the unamended savings clause, preemption expressly applied only "to the extent that [state] laws [were] inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency." 15 U.S.C. § 1681t (1995). However, through amendments enacted in 1996 and 2003, Congress carved a number of general exceptions from the savings clause. See 15 U.S.C. § 1681t(b). Key here, § 1681t(b)(1) now presents a list of eleven "subject matter[s]" "regulated under" other sections of the FCRA that are reserved to the federal government.

In parallel with the 1996 amendments to § 1681t, § 1681c was also amended using language similar to, or outright duplicative of, the language in § 1681t(b)(1)(E). Section 1681c

was retitled "Requirements *relating to information contained in consumer reports*" (emphasis added), and § 1681c(a) was retitled "Information excluded from consumer reports." Via these retitlings, Congress appears to have deliberately clarified the subject matters encompassed by § 1681c(a) and each of its subsections in order to coordinate its operation with § 1681t. See Altria Grp., Inc. v. Good, 555 U.S. 70, 76 (2008) ("Congress may indicate pre-emptive intent through a statute's . . . structure and purpose."). In the Court's reading, the amended language and structure of § 1681c(a) and § 1681t(b) reflect an affirmative choice by Congress to set "uniform federal standards" regarding the information contained in consumer credit reports. See Aldaco v. RentGrow, Inc., 921 F.3d 685, 688 (7th Cir. 2019) ("[Section 1681t(b)(1)(E)] assures that the Act establishes uniform federal standards for contents of credit reports—unless a state law in force in 1996 provides otherwise."); Simon v. DIRECTV, Inc., No. 09-cv-00852-PAB-KLM, 2010 U.S. Dist. LEXIS 35940, at *10 (D. Colo. Mar. 19, 2010) ("The CCCRA and FCRA provisions at issue concern the same subject matter, i.e. the type of information that can be legally disclosed in consumer reports."), *report and recommendation adopted*, 2010 U.S. Dist. LEXIS 35970 (D. Colo. Apr. 12, 2010); cf. Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1172 (9th Cir. 2009) ("The legislative history surrounding § 1681t(b)(1)(F) is murky, but there is evidence that the statutory scheme, which establishes national requirements and preempts most state regulation, was motivated at least in part by a desire for uniformity of reporting obligations."); Ritchie v. Northern Leasing Sys., No. 12-cv-4992-KBF, 2016 U.S. Dist. LEXIS 40537, at *60 (S.D.N.Y. Mar. 28, 2016) ("It is also unlikely that Congress intended FCRA § 1681m(a), the [FCRA's] notice provision, to be substantially made broader by patchwork state statutes, especially since it specifically listed § 1681m(a) as one of the provisions that would preempt state statutes on the same subject matter."). By seeking to exclude additional types of information, the Maine

Amendments intrude upon a subject matter that Congress has recently sought to expressly preempt from state regulation.[10]

Further, with respect to the Medical Debt Provision specifically, it is notable that § 1681c contains a provision concerning veterans' medical debt, which was added by Congress in 2018. See 15 U.S.C. § 1681c(a)(5), (8). Plaintiff asserts that this provision reflects that Congress has "expressly considered" the extent to which medical debts ought to be reported on consumer reports. (Def. Mot. (ECF No. 15), PageID # 161.) In response, the State Defendants argue that Plaintiff's assertion that Congress has spoken on the question of regulating medical debt is "something of an exaggeration." (Defs. Response (ECF No. 39), PageID # 330–31.) The Court disagrees. To be clear, a regulation of veterans' medical debt *is* a regulation of medical debt. To hold otherwise, and to say a regulation within a subject matter is not a regulation of a subject matter, would lead to untenable outcomes when applied to the rest of § 1681c. For instance, § 1681c(a)(3) prohibits the reporting of "[p]aid tax liens which, from date of payment, antedate the report by more than seven years." Under the State Defendants' interpretation, where regulation of the part does not imply the regulation of the whole, a state could still exclude paid tax liens

---

[10] The Court further notes that the since-deleted sunset provision stated that § 1681c(b) would not apply to state laws enacted after January 1, 2004 that both expressly stated their intent to supplement the FCRA and provided greater protections. Conversely, this language suggests that § 1681t(b)(1)(E), prior to the sunset provision, was not intended to allow for supplementation to the protections provided by § 1681c. Although the sunset provision was later retired, it is still evidence of the intended effect of § 1681t(b)(1)(E). See also Islam v. Option One Mortg. Corp., 432 F. Supp. 2d 181, 188 n.6 (D. Mass. 2006) ("[I]n 2003 Congress repealed the eight-year sunset provision of Section 1681t. The desire for uniformity again seemed to be the main concern . . . ." (internal citation omitted)).

generally.[11] The Court declines to adopt this interpretation and thereby rejects the State Defendants' limited view of preemption.[12]

2. 15 U.S.C. § 1681t(b)(5)(C)

Plaintiff also contends that the Economic Abuse Provision is separately preempted, to the extent it requires a consumer reporting agency to reinvestigate "allegations of what amounts to identify theft and block reporting of that information," under 15 U.S.C. § 1681t(b)(5)(C). (Pl. Mot. (ECF No. 15), PageID # 162–64.) The Court declines to address this alternative argument in light of the above conclusion that both Maine Amendments are preempted under § 1681t(b)(1)(E).

V. CONCLUSION

For the reasons just given, the Court concludes as a matter of law that the Maine Amendments are preempted by 15 U.S.C. § 1681t(b)(1)(E).

Accordingly, the Court GRANTS Plaintiff's Motion for Judgment (ECF No. 15) and DENIES the State Defendants' Motion (ECF No. 16).

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 8th day of October, 2020.

[11] In a similar vein, § 1681c(a)(5) explicitly excludes "[a]ny other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years," and both medical debt and debt resulting from economic abuse would fall within the subject matter of "[a]ny other adverse item of information."

[12] The Court also notes Plaintiff's assertion that the exclusion of medical debts was "expressly considered" by Congress is supported by the Court's own research into the history of the various FCRA amendments. In 2013—between the 2003 and 2018 amendments (the latter of which introduced the veterans' medical debt provision)—bills were introduced in both chambers of Congress to amend § 1681c to restrict the reporting of "[a]ny information related to a fully paid or settled medical debt that had been characterized as delinquent, charged off, or in collection which, from the date of payment or settlement, antedates the report by more than 45 days." See Medical Debt Responsibility Act of 2013, S. 160, H.R. 1767, 113th Cong. (2013). Neither bill made it out of committee.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CONSUMER DATA INDUSTRY ASSOCIATION Plaintiff,	)	
v.	)	Civil No. 1:19-cv-00438-GZS
AARON M. FREY, et al Defendants,	)	

JUDGMENT

Pursuant to the Order on Pending Motions entered by U.S. District Judge George Z. Singal on October 8, 2020,

JUDGMENT is hereby entered in favor of Plaintiff, Consumer Data Industry Association and against Defendants Aaron M. Frey and William N. Lund.

CHRISTA K. BERRY
CLERK

By: /s/ Lindsey Tully
Deputy Clerk

Dated: October 8, 2020

§1310-H. Additional state-specific provisions

(CONFLICT)

1. Fee for disclosure. In addition to any rights to which a consumer is entitled under federal law, a consumer reporting agency may not impose a fee for a consumer report provided to a consumer upon request once during any 12-month period. For a 2nd or subsequent report provided during a 12-month period, a consumer reporting agency may charge a consumer a fee not to exceed $5.
[PL 2013, c. 228, §1 (NEW).]

2. Time to reinvestigate. Notwithstanding any provision of federal law, if a consumer disputes any item of information contained in the consumer's file on the grounds that it is inaccurate and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall reinvestigate and record the current status of the information within 21 calendar days of notification of the dispute by the consumer, unless it has reasonable grounds to believe that the dispute by the consumer is frivolous.
[PL 2013, c. 228, §1 (NEW).]

2-A. Economic abuse. Except as prohibited by federal law, if a consumer provides documentation to the consumer reporting agency as set forth in Title 14, section 6001, subsection 6, paragraph H that the debt or any portion of the debt is the result of economic abuse as defined in Title 19-A, section 4002, subsection 3-B, the consumer reporting agency shall reinvestigate the debt. If after the investigation it is determined that the debt is the result of economic abuse, the consumer reporting agency shall remove any reference to the debt or any portion of the debt determined to be the result of economic abuse from the consumer's credit report.
[PL 2019, c. 407, §1 (NEW).]

3. (CONFLICT: Text as amended by PL 2019, c. 77, §1) Nonliability. A person may not be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to ensure compliance with the provisions of subsections 1, 2 and 4.
[PL 2019, c. 77, §1 (AMD).]

3. (CONFLICT: Text as amended by PL 2019, c. 407, §2) Nonliability. A person may not be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to ensure compliance with the provisions of subsections 1, 2 and 2-A.
[PL 2019, c. 407, §2 (AMD).]

4. Reporting of medical expenses on a consumer report. Notwithstanding any provision of federal law, a consumer reporting agency shall comply with the following provisions with respect to the reporting of medical expenses on a consumer report.

A. A consumer reporting agency may not report debt from medical expenses on a consumer's consumer report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported. [PL 2019, c. 77, §2 (NEW).]

B. Upon the receipt of reasonable evidence from the consumer, creditor or debt collector that a debt from medical expenses has been settled in full or paid in full, a consumer reporting agency:

(1) May not report that debt from medical expenses; and

(2) Shall remove or suppress the report of that debt from medical expenses on the consumer's consumer report. [PL 2019, c. 77, §2 (NEW).]

C. As long as the consumer is making regular, scheduled periodic payments toward the debt from medical expenses reported to the consumer reporting agency as agreed upon by the consumer and medical provider, the consumer reporting agency shall report that debt from medical expenses on

the consumer's consumer report in the same manner as debt related to a consumer credit transaction is reported. [PL 2019, c. 77, §2 (NEW).]

[PL 2019, c. 77, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 228, §1 (NEW). PL 2019, c. 77, §§1, 2 (AMD). PL 2019, c. 407, §§1, 2 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 129th Maine Legislature and is current through October 1, 2020. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

United States Code Annotated
Title 15. Commerce and Trade
Chapter 41. Consumer Credit Protection (Refs & Annos)
Subchapter III. Credit Reporting Agencies (Refs & Annos)

15 U.S.C.A. § 1681t

§ 1681t. Relation to State laws

Currentness

(a) In general

Except as provided in subsections (b) and (c), this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State--

(1) with respect to any subject matter regulated under--

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

§ 1681t. Relation to State laws, 15 USCA § 1681t

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply--

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(G) section 1681g(e) of this title, relating to information available to victims under section 1681g(e) of this title;

(H) section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes;

(I) section 1681m(h) of this title, relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;

(J) subsections (i) and (j) of section 1681c-1 of this title relating to security freezes; or

(K) subsection (k) of section 1681c-1 of this title, relating to credit monitoring for active duty military consumers, as defined in that subsection;

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996);

(3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, except that this paragraph--

(A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on December 4, 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);

(B) shall not apply with respect to sections 5-3-106(2) and 212-14.3-104.3 of the Colorado Revised Statutes (as in effect on December 4, 2003); and

(C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;

WESTLAW © 2021 Thomson Reuters. No claim to original U.S. Government Works.

(4) with respect to the frequency of any disclosure under section 1681j(a) of this title, except that this paragraph shall not apply--

(A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on December 4, 2003);

(B) with respect to section 10-1-393(29)(C) of the Georgia Code (as in effect on December 4, 2003);

(C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on December 4, 2003);

(D) with respect to sections 14-1209(a)(1) and 14-1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on December 4, 2003);

(E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on December 4, 2003);

(F) with respect to section 56:11-37.10(a)(1) of the New Jersey Revised Statutes (as in effect on December 4, 2003); or

(G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on December 4, 2003); or

(5) with respect to the conduct required by the specific provisions of--

(A) section 1681c(g) of this title;

(B) section 1681c-1 of this title;

(C) section 1681c-2 of this title;

(D) section 1681g(a)(1)(A) of this title;

(E) section 1681j(a) of this title;

(F) subsections (e), (f), and (g) of section 1681m of this title;

(G) section 1681s(f) of this title;

(H) section 1681s-2(a)(6) of this title; or

(I) section 1681w of this title.

(c) "Firm offer of credit or insurance" defined

Notwithstanding any definition of the term "firm offer of credit or insurance" (or any equivalent term) under the laws of any State, the definition of that term contained in section 1681a(l) of this title shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

(d) Limitations

Subsections (b) and (c) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on September 30, 1996.

CREDIT(S)

(Pub.L. 90-321, Title VI, § 625, formerly § 622, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1136; renumbered § 623, Pub.L. 102-537, § 2(a), Oct. 27, 1992, 106 Stat. 3531; renumbered § 624 and amended Pub.L. 104-208, Div. A, Title II, §§ 2413(a)(1), 2419, Sept. 30, 1996, 110 Stat. 3009-447, 3009-452; renumbered § 625 and amended Pub.L. 108-159, Title I, § 151(a)(2), Title II, §§ 212(e), 214(a)(1), (c)(2), Title III, § 311(b), Title VII, § 711, Dec. 4, 2003, 117 Stat. 1964, 1977, 1980, 1983, 1989, 2011; Pub.L. 115-174, Title III, §§ 301(b), 302(d)(2), May 24, 2018, 132 Stat. 1332, 1335.)

15 U.S.C.A. § 1681t, 15 USCA § 1681t
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 15. Commerce and Trade
Chapter 41. Consumer Credit Protection (Refs & Annos)
Subchapter III. Credit Reporting Agencies (Refs & Annos)

15 U.S.C.A. § 1681c

§ 1681c. Requirements relating to information contained in consumer reports

Effective: May 24, 2019
Currentness

(a) Information excluded from consumer reports

Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under Title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless--

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(7) With respect to a consumer reporting agency described in section 1681a(p) of this title, any information related to a veteran's medical debt if the date on which the hospital care, medical services, or extended care services was rendered relating to the debt antedates the report by less than 1 year if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(8) With respect to a consumer reporting agency described in section 1681a(p) of this title, any information related to a fully paid or settled veteran's medical debt that had been characterized as delinquent, charged off, or in collection if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(b) Exempted cases

The provisions of paragraphs (1) through (5) of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with--

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or more.

(c) Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date

Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after September 30, 1996.

(d) Information required to be disclosed

(1) Title 11 information

Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under Title 11 shall include in the report an identification of the chapter of such Title 11 under which such case arises if provided by the source of the information. If any case arising or filed under Title 11 is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(2) Key factor in credit score information

Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 1681g(f)(2)(B) of this title) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.

(e) Indication of closure of account by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(4) of this title that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(3) of this title that information regarding a consumer who [1] was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date

This subsection shall become effective--

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

(h) Notice of discrepancy in address

(1) In general

If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 1681a(p) of this title, the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) Regulations

(A) Regulations required

The Bureau shall,, [2] in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,, [2] prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(B) Policies and procedures to be included

The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report--

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.

CREDIT(S)

(Pub.L. 90-321, Title VI, § 605, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1129; amended Pub.L. 95-598, Title III, § 312(b), Nov. 6, 1978, 92 Stat. 2676; Pub.L. 104-208, Div. A, Title II, § 2406(a) to (e)(1), Sept. 30, 1996, 110 Stat. 3009-434, 3009-435; Pub.L. 105-347, § 5, Nov. 2, 1998, 112 Stat. 3211; Pub.L. 108-159, Title I, § 113, Title II, § 212(d), Title III, § 315, Title IV, § 412(b), (c), Title VIII, § 811(c)(1), (2)(A), Dec. 4, 2003, 117 Stat. 1959, 1977, 1996, 2002, 2011; Pub.L. 111-203, Title X, § 1088(a)(2)(D), (5), July 21, 2010, 124 Stat. 2087; Pub.L. 115-174, Title III, § 302(b)(2), May 24, 2018, 132 Stat. 1333.)

Footnotes

1 So in original. Probably should be “which”.

2 So in original.

15 U.S.C.A. § 1681c, 15 USCA § 1681c

Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 15. Commerce and Trade
Chapter 41. Consumer Credit Protection (Refs & Annos)
Subchapter III. Credit Reporting Agencies (Refs & Annos)

15 U.S.C.A. § 1681c-2

§ 1681c-2. Block of information resulting from identity theft

Effective: July 21, 2011
Currentness

(a) Block

Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of--

(1) appropriate proof of the identity of the consumer;

(2) a copy of an identity theft report;

(3) the identification of such information by the consumer; and

(4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

(b) Notification

A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a)--

(1) that the information may be a result of identity theft;

(2) that an identity theft report has been filed;

(3) that a block has been requested under this section; and

(4) of the effective dates of the block.

(c) Authority to decline or rescind

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

(1) In general

A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that--

(A) the information was blocked in error or a block was requested by the consumer in error;

(B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or

(C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

(2) Notification to consumer

If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 1681i(a)(5)(B) of this title.

(3) Significance of block

For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

(d) Exception for resellers

(1) No reseller file

This section shall not apply to a consumer reporting agency, if the consumer reporting agency--

(A) is a reseller;

(B) is not, at the time of the request of the consumer under subsection (a), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

(C) informs the consumer, by any means, that the consumer may report the identity theft to the Bureau to obtain consumer information regarding identity theft.

(2) Reseller with file

The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if--

(A) the consumer, in accordance with the provisions of subsection (a), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

(B) the consumer reporting agency is a reseller of the identified information.

(3) Notice

In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

(e) Exception for verification companies

The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a), a check services company shall not report to a national consumer reporting agency described in section 1681a(p) of this title, any information identified in the subject identity theft report as resulting from identity theft.

(f) Access to blocked information by law enforcement agencies

No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this subchapter.

CREDIT(S)

(Pub.L. 90-321, Title VI, § 605B, as added Pub.L. 108-159, Title I, § 152(a), Dec. 4, 2003, 117 Stat. 1964; amended Pub.L. 111-203, Title X, § 1088(a)(2)(C), July 21, 2010, 124 Stat. 2087.)

15 U.S.C.A. § 1681c-2, 15 USCA § 1681c-2
Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.