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FIRST CIRCUIT REMANDS MAINE CASE FOR FURTHER ARGUMENT ON FCRA PREEMPTION

In 2019, Maine passed two laws amending the Main Fair Credit Reporting Act to regulate the reporting of overdue medical debt and debt resulting from economic abuse. Under those laws, credit bureaus cannot report medical debt until it is 180 days overdue, must report medical debt as ordinary consumer credit if the patient is making regular payments, and must remove medical debt from credit reports upon reasonable evidence the debt is fully paid. Credit bureaus must also reinvestigate debts if consumers provide documentation they incurred the debt because of economic abuse, *i.e.*, domestic violence or spousal abuse. If the documentation is substantiated, credit bureaus must remove those debts.

The Consumer Data Industry Association filed suit, alleging that the federal Fair Credit Reporting Act ("FCRA") preempted both Maine laws and arguing that the FCRA expressly preempts any state laws that regulate the content of consumer credit reports. By its terms, the FCRA preempts state laws "with respect to any subject matter regulated under... (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. 15 U.S.C. § 1681t(b)(1)(E). Whether Section 1681t preempts all state laws relating to information in consumer reports or more narrowly preempts only state laws that conflict with the specific content that the FCRA requires or prohibits in consumer credit reports, is key. Ultimately, the district court agreed with the Association and held that the FCRA does preempt any state law that relates to information in credit reports.

On appeal, the U.S. Court of Appeals for the First Circuit reversed the district court holding, finding that the FCRA only narrowly preempts state laws that are in conflict with the FCRA's specific provisions. The First Circuit reasoned that the phrase "with respect to" in the FCRA has the same effect as in other statutes, which is to narrow the scope of preempted state laws. The First Circuit also reasoned that viewing the phrase to preempt all state regulation of the content credit reports would render the statutory reference "under... (E) section 1681c"—which contains requires specific information in a credit report—surplus-age, impermissibly writing out that reference and all other references to specific statutory

sections.

However, the First Circuit left open the question whether the FCRA could still preempt the two Maine statutes for being in conflict with the FCRA's provisions. Because there was no argument on the subject of conflict preemption before the First Circuit, the court remanded the case back to the District Court for further proceedings on whether the Maine statutes were in fact in conflict with the FCRA.

Ultimately, the fate of the two statutes, and their impact on credit reporting within Maine, remain in limbo as they return for a second trial. However, the First Circuit's opinion does limit future preemption challenges to state credit reporting laws to requiring a conflict or inconsistency with the FCRA. □

✧ *Mike Tomkies and Ben Hurford*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Nathan D. Copeland
ncopeland@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Benjamin J. Hurford
bhurford@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com