IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CONSUMER DATA INDUSTRY ASSOCIATION, *Plaintiff*,	§ § § §	
v.	§	No. 1:19-CV-00876-RP
STATE OF TEXAS through KEN PAXTON, in his official capacity as Attorney General of The State of Texas, *Defendant*.	§ § § § §	

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant, State of Texas through Ken Paxton, in his official capacity as Attorney General of The State of Texas, files this its Response to Plaintiff's Motion for Summary Judgment, and in support thereof, would respectfully show unto the Court as follows:

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DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Consumer Data Industry Association ("Plaintiff") is a trade association that represents consumer credit reporting agencies. Plaintiff seeks summary judgment declaring that Section 20.05(a)(5) of the Texas Business & Commerce Code ("Section 20.05(a)(5)") is preempted in its entirety by the federal Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*. and permanently enjoining Texas from enforcing the law. Dkt. 93, p. 25.

The FCRA was passed in 1970 in response to public concern about the widespread dissemination of sensitive information about Americans. 90 Fed. Reg. at 3282. One of its main purposes was to enshrine a respect for consumers' right to privacy. *See* 15 U.S.C. § 1681(a)(4). In 2003, Congress enacted the Fair and Accurate Credit Transactions Act ("FACTA") memorializing its view that getting sick should not affect a consumer's ability to obtain credit. 15 U.S.C. § 1681b(g)(2). The FACTA amended the FCRA to provide that, except as permitted by regulatory exception, "a creditor shall not obtain or use medical information . . . pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit." *Id.* And, "medical information" is defined to include information about medical debts. 15 U.S.C. § 1681a(i).

Medical costs have risen steadily for decades and often, particularly when unexpected, leave people in debt.[1] In fact, a recent study found that nearly 100 million people have health care

[1] Lunna Lopes, et al., KFF, *Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills* (June 16, 2022).

debt.[2] At one point, it was the most common type of debt listed on credit reports; in 2021, it made up 58% of reported debt.[3] One study found that 99 of the 100 counties with the largest share of adults unable to pay their medical bills are located in southern States, while 79 of those 100 counties have not expanded Medicaid.[4] As such, it is not surprising that Texas passed Section 20.05(a)(5) to operate alongside the FCRA.

Further, there is scant evidence that prohibiting the reporting of medical debt information will have negative effects on entities such as Plaintiff as all three major credit bureaus have already announced that they will no longer include medical debt collections below $500 in their credit reports.[5] In addition to Texas, ten other states already do not allow medical debt information in credit reports.[6] People almost never incur medical debt voluntarily, and disease and injury occur for many reasons, often without any fault on the part of the patient.[7] And, the elimination of medical collections from credit reports is unlikely to affect the accuracy of credit scoring models.[8]

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[2] Patients Protecting Care, Comment on Prohibition of Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), Docket CFPB-2024-0023-0993 (Aug. 12, 2024), citing Lopes, *supra* note 1.

[3] The Commonwealth Fund, *The Federal Rule on Medical Debt* (Feb. 27, 2025).

[4] National Disability Institute, Comment on the Consumer Financial Protection Bureau's proposed rule prohibition on consumers and Creditor and Consumer Reporting Agencies Concerning Medical Information at 8, Docket CFPB-2024-0023, Aug. 12, 2024.

[5] Victor Duarte, et al., Nat'l Bd. of Econ. Rev., Working Paper 33644, *The Effects of Deleting Medical Debt from Consumer Credit Reports* at 1 (Apr. 2025).

[6] Michael Karpman, et al., Urban Institute, *How Many Consumers Would Be Affected by a Potential Ban on Medical Debt in Credit Reports? Findings by State and Congressional District* at 3, (Apr. 2023). The other states are California, Illinois, New Jersey, Colorado, Connecticut, Maryland, Minnesota, Rhode Island, Virginia and Washington.

[7] Hank Cardello & Annie Morino, Georgetown Univ., *Annual Medical Debt Report: The Casualties of Medical Debit: Sicker Consumers and Sicker Hospitals* at 9.

[8] Duarte et al., *supra* note 5, at 8.

Considering more than half of people (53%) report receiving incorrect medical bills,[9] it is entirely understandable that Texas passed Section 20.05(a)(5) to provide additional protections in conjunction with the FCRA.

LEGAL & FACTUAL BACKGROUND

I. The Fair Credit Reporting Act

The FCRA creates a uniform set of rules governing the rights and responsibilities of consumers, consumer reporting agencies, and furnishers of consumer information. 15 U.S.C. §§ 1681 *et seq*. One of the main purposes of the FCRA is to ensure "that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681(a)(4). The FCRA's general preemption clause makes clear that the FCRA does not preempt state consumer reporting laws, subject to specific exceptions. 15 U.S.C. § 1681t(a).

The exception to this general provision that Plaintiff invokes provides that "[n]o 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). Section 1681c—titled "requirements relating to information contained in consumer reports"—establishes reporting periods and specifies certain information that must be included in and excluded from consumer reports provided by consumer reporting agencies. 15 U.S.C. § 1681c.

II. Texas Business and Commerce Code Chapter 20

Chapter 20 of the Texas Business and Commerce Code, entitled "Regulation of Consumer

[9] Brandon G. Wilson & Colin Killick, Community Catalyst, *Paying the Price: How Medical Debt Disproportionately Hurts People with Disabilities* (Oct. 31, 2024).

Credit Reporting Agencies," works alongside the FCRA to protect Texas consumers. Section 20.05 governs the circumstances under which "reporting of [consumer] information [is] prohibited." The Texas Legislature amended this section during the 2019 legislative session to add Section 20.05(a)(5)—the specific provision that Plaintiff challenges—which provides:

> Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to a collection account with a medical industry code, if the consumer was covered by a health benefit plan at the time of the event giving rise to the collection and the collection is for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim.

Tex. Bus. & Comm. Code § 20.01(a)(5).

Subsection (b) provides exceptions to this prohibition if the information provided is in connection with a credit transaction or underwriting of life insurance for a face amount above $150,000, or employment of a consumer with an annual salary over $75,000. Tex. Bus. & Comm. Code § 20.05(b).

The Texas Business & Commerce Code provides that a consumer may sue to enforce an obligation of a consumer reporting agency as provided by the FCRA, and that such claims may be resolved through arbitration if all parties agree. *Id.* § 20.08(a). In addition, "[t]he attorney general may file a suit against a person for: (1) injunctive relief to prevent or restrain a violation of this chapter; or (2) a civil penalty in an amount not to exceed $2,000 for each violation of this chapter." Tex. Bus. & Comm. Code § 20.11(a).

III. Plaintiff's Allegations

Plaintiff argues "the FCRA preempts any state law that regulates the subject matter of § 1681c" and contends that Texas Business and Commerce Code § 20.05(a)(5) is one such law. Dkt. 93, p. 9. Plaintiff further asserts that "CRAs would need to work with furnishers to ensure that such information is properly reported to them, revise their systems to identify information with the characteristics that might make the debt non-reportable under Texas law, and create systems to ensure that non-reportable information does not appear on consumer reports." Dkt. 93, p. 23. However, the weighing of policy and its effects are up to Congress. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 13-14 (2000).

ARGUMENT

I. Standard of Review

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the movant satisfies its initial responsibility of showing "the absence of a material fact, and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the movant satisfied its initial responsibility of showing "the absence of a material fact," the burden shifts to the non-movant to identify "specific facts showing that there is a genuine issue for trial." *Celotex,* 477 U.S. 317, 323 (1986). The substantive law governing a plaintiff's claims determines which facts are material. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986).

II. Arguments & Authorities

The foundation for the doctrine of preemption arises under the Constitution's Supremacy Clause, the laws of the United States "shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Federal law preempts state law under the Supremacy Clause in three circumstances: (1) express preemption; (2) field preemption; and (3) conflict preemption. *See United States v. Zadeh*, 820 F.3d 746, 751 (5th Cir. 2016). Here, Plaintiff alleges that § 20.05(a)(5) is "preempted [by the FCRA]."

Dkt. 93, p. 9. But because FCRA does not expressly preempt Section 20.05(a)(5) under the facts alleged, Plaintiff's Motion for Summary Judgment should be denied.

1. Express preemption requires examination of the plain text of the FCRA.

Plaintiff's expansive interpretation of the FCRA's preemption clause conflicts with the plain language of the FCRA. When interpreting a preemption clause, courts first "must give effect to [its] plain language unless there is good reason to believe Congress intended the language to have some more restrictive meaning." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983); *see also Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 542 (2001) ("Our analysis begins with the language of the statute.").

The Supreme Court has held that, "[w]hile the pre-emptive language" of an express preemption clause "means that we need not go beyond that language to determine whether Congress intended [] to pre-empt at least some state law, we must nonetheless 'identify the domain expressly pre-empted' by that language," *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996) (citation omitted); *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) ("our task is to identify the domain expressly pre-empted.") (citation omitted). "If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008).

"Congress may indicate pre-emptive intent through a statute's express language or through its structure and purpose." *Id.* A court's "analysis of the scope of the pre-emption statute must begin with its text," but "does not occur in a contextual vacuum," and is instead "informed by two presumptions about the nature of pre-emption." *Medtronic, Inc.*, 518 U.S. at 484-85 (citations omitted). "First, because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action," and "[s]econd, 'the purpose of Congress is the ultimate touch-stone' in every pre-emption case." *Id*. at 485 (citation omitted).

2. The plain text of 15 U.S.C. § 1681t(a) does not expressly preempt Texas Business & Commerce Code § 20.05(a)(5)

The plaint text of the FCRA's savings clause indicates Congress did not intend to generally preempt the entire field of consumer reporting state laws:

> 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.A. § 1681t(a). While § 1681t(b) and (c) set forth more stringent forms of preemption involving specific sections and subsections of the FCRA, it is the less stringent preemption standard in § 1681t(a) that applies to § 1681b of the FCRA, including § 1681b(g)(1) and (2). Under this standard, the FCRA does not preempt state credit reporting or other laws unless there is a specific inconsistency between the FCRA and state law. State law is inconsistent for these purposes only where the actor would violate the FCRA by complying with the statute. *See Davenport v. Farmers Ins. Grp.,* 378 F.3d 839, 843 (8th Cir. 2004); *Aghaeepour v. N. Leasing Sys., Inc.,* 378 F. Supp. 3d 254, 263 (S.D.N.Y. 2019). A state law is not inconsistent with the FCRA merely because it gives consumers more protection that does the federal act. *Credit Data of Arizona, Inc. v. State of Ariz.,* 602 F.2d 195, 198 (9th Cir. 1979). Thus, a state law that prohibits creditors from considering medical debt on a credit report is not preempted under § 1681t(a).

The exception Plaintiff relies upon contains a limited express preemption clause:

> "[n]o 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).

Plaintiff asserts that the "contents of consumer reports" is preempted by section 1681t(b)(1)(E). Dkt. 93, p. 24. However, this conclusion would require the Court to assume Congress preempted the entire field of consumer reports and disregard the FCRA's savings clause, section 1681c, and prevailing authority. Unlike field preemption, the inclusion of a preemption clause prompts examination of the language of the clause as discussed *supra*. *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) ("If the statute contains an express pre-emption clause, the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress pre-emptive intent.") *c.f. Arizona v. United States*, 567 U.S. 387, 401(2012) ("Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.").

In this case, the prevailing authority requires analysis of whether state laws prohibiting the inclusion of certain types of medical debt fall within the "domain expressly pre-empted" by 1681t(b)(1)(E). *See Medtronic*, 518 U.S. at 484. Because section 1681t(b)(1)(E) defines the domain in terms of section 1681c, that section requires examination. Section 1681c mentions medical information contained in consumer reports in just two contexts. First, it provides that the identifying information of medical information furnishers must be excluded from most reports unless it is coded to avoid disclosing the nature of the provider and what was provided. 15 U.S.C. § 1681c(a)(6). Second, it provides that veterans' medical debts must be excluded from consumer reports in certain circumstances. 15 U.S.C. § 1681c(a)(7), (8). Given the plain meaning of section 1681c, the requirement to exclude this information is "the domain expressly preempted" by section 1681t(b)(1)(E). *See Lorillard Tobacco Co.*, 533 U.S. at 541. The presumption "that Congress does not cavalierly pre-empt state-law causes of action" underscores this result. *Medtronic*, 518 U.S. at 485.

The Supreme Court's rulings in *Altria Group v. Good* and *Dan's City Used Cars, Inc. v. Pelkey* demonstrate the application of express preemption clauses to specific state laws and further support the result that section 20.05(a)(5) is not preempted. 555 U.S. 70; 569 U.S. 251, 261 (2013). *Altria* involved the Federal Cigarette Labeling and Advertising Act's express preemption provision: "[n]o requirement or prohibition *based on smoking and health* shall be imposed under State law *with respect to* the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." *Altria*, 555 U.S. at 78-79 (quoting 15 U.S.C. § 1334(b) (emphasis added)). The *Altria* plaintiffs sued cigarette manufacturers under Maine's unfair trade practices act, alleging that the manufacturers had falsely marketed "light" cigarettes as less harmful than regular cigarettes. *Id.* at 72. The manufacturers claimed that the Labeling Act's express preemption provision preempted the state statute, barring the state law claims. *Id.* at 80-88.

The question at issue was whether Maine's unfair trade practices act amounted to a state law "requirement or prohibition based on smoking and health . . . with respect to the advertising or promotion of any cigarettes[.]" 15 U.S.C. § 1334(b). Giving this express preemption clause "a fair but narrow reading," the Court concluded that the claim was not preempted. *Altria*, 555 U.S. at 80 (citation omitted). The Court reasoned that the state law claim "alleged a violation of the manufacturers' duty not to deceive—a duty that is not 'based on' smoking and health." *Id.* at 81 (citation omitted). Thus, the state law claim was not preempted.

The Court in *Dan's City Used* Cars reviewed the interaction between New Hampshire's regulation of abandoned vehicles and the Federal Aviation and Administration Authorization Act's ("FAAAA") express preemption clause. 569 U.S. at 256. The examined clause prohibited application of state laws "*related to* a price, route, or service of any motor carrier ... *with respect to* the transportation of property." *Id.* at 260 (citing 49 U.S.C. § 14501(c)(1) (emphasis added)). The Court cautioned that "the breadth of the words 'related to' does not mean the sky is the limit." *Id.* at 260. Additionally, the words "with respect to the transportation of property" in fact "massively limits the scope of preemption ordered by the FAAAA." *Id.* at 261. (quotation omitted) (citing *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting)). "[F]or purposes of FAAAA preemption, it is not sufficient that a state law relates to the 'price, route, or service' of a motor carrier in any capacity; the law must also concern a motor carrier's 'transportation of property.'" *Id.* at 261 (citation omitted). The Court ultimately held that plaintiff's consumer-protection and common law claims seeking compensation for a car that was towed and sold without consent were not preempted by the FAAAA "because they are not 'related to' the service of a motor carrier 'with respect to' the transportation of property.'" *Id.* at 261.

Giving a "fair but narrow reading" to § 1681t(b)(1)(E)'s express preemption clause requires consideration of the *specific* "subject matter regulated under" section 1681c. *Altria*, 555 U.S. at 80; 15 U.S.C. § 1681t(b)(1)(E). The limiting language "with respect to" also supports a narrow examination of section 1681c. *Dan's City Used Cars,* 569 U.S. at 261.

Section 1681c only regulates medical information by prohibiting disclosure of identifying information from medical information providers unless coded to protect privacy, and certain veteran medical debts. 15 U.S.C. § 1681c(a)(6-8) Thus, it does not preempt Texas's broader law—section 20.05(a)(5)—which provides for the exclusion of medical debt information under circumstances not addressed by 15 U.S.C. § 1681c.

Indeed, the First Circuit recently analyzed similar arguments advanced by Plaintiff. *See Consumer Data Industry Ass'n v. Frey,* 26 F.4th 1 (1st Cir. 2022). In *Frey,* CDIA challenged Maine's Medical Debt Reporting Act, Me. Rev. Stat. Ann. tit. 10, § 1310-H(4), which prohibited consumer reporting agencies from reporting "debt from medical expenses on a consumer credit report when the date of the first delinquency is less than 180 days prior to the date that the debt is reported." *Id.* at 4. CDIA argued in favor of a broad reading of the FCRA claiming preemption by 15 U.S.C. § 1681t(b)(1)(E) while the State of Maine argued for a more narrow interpretation. *Id. a*t 6. Upon review of the respective statutes, the First Circuit explained it was "not persuaded by CDIA's argument that Section 1681t((b)(1)(E) preempts all state laws 'relating to information contained in consumer reports,' regardless of whether they regulate subject matter regulated by Section 1681c." *Id.* The Court further declared, "[n]ot only would CDIA's proposed interpretation render the references to the statutory provisions surplusage but it would also disregard the care and specificity with which Congress drafted those provisions." *Id.* at 7. Finally, "[w]e see no reason to presume that Congress intended, in providing some federal protection to consumers regarding the information contained in credit reports, to oust all opportunity for states to provide more protections, even if those protections would not otherwise be preempted as 'inconsistent' with the FCRA as under 15 U.S.C. § 1681t(a)." The same is true here. As set forth above, the language of section 1681c outlines the domain expressly preempted by section 1681t(b)(1)(E) of the FCRA—which does not preempt Texas's broader law, section 20.05(a).

3. The FRCA's structure supports a narrow construction of the FRCA's preemptive domain.

Consideration of FCRA provision—section 1681b(g)—also supports a narrow construction of the express preemption clause of the FCRA. This subsection, entitled "protection of medical information," imposes stricter requirements on consumer reports that contain medical information that are furnished for employment or credit purposes. Nevertheless, information about medical debts may still be included in such reports so long as it is coded so as not to identify the provider or what was provided, "as provided in section 1681c(a)(6)." 15 U.S.C. § 1681b(g)(1)(C). Since the main restrictions on including medical information in consumer reports are located not in section 1681c, which is the target of an express preemption clause, but in section 1681b(g), which is not such a target, it does not follow that Congress intended to expressly preempt Texas's limitation on disclosing this same information under other circumstances. *See Medtronic*, 518 U.S. at 485 ("'the purpose of Congress is the ultimate touch-stone' in every pre-emption case.") (citation omitted).

CONCLUSION

For the forgoing reasons, Plaintiff's Motion for Summary Judgment should be denied.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that that on December 29, 2025, this document was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

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