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Senator Donna Bailey
Chair
Joint Committee on Health Coverage, Insurance, and Financial Services
Maine Senate
100 State House Station
Augusta, ME 04333

Representative Lori Gramlich
Chair
Joint Committee on Health Coverage, Insurance, and Financial Services
Maine Senate
100 State House Station
Augusta, ME 04333

Chair Bailey, Chair Gramlich and Members of the Committee:

On behalf of the Consumer Data Industry Association (CDIA), I write to oppose LD 558, which would revise Maine's existing medical debt policy to prohibit consumer reporting agencies (CRAs) from including medical debt in a consumer report, in conflict with the federal Fair Credit Reporting Act (FCRA). The FCRA preempts any state legislation that attempts to limit or prohibit a consumer reporting agency from including medical debt information in a consumer report at 15 USC §1681t(b)(1)(E).

CDIA, founded in 1906, is the trade organization representing the consumer reporting industry, including agencies like the three nationwide credit bureaus, regional and specialized credit bureaus, background check companies and others. CDIA exists to promote responsible data practices to benefit consumers and to help businesses, governments, and volunteer organizations avoid fraud and manage risk.

The FCRA provides important and necessary protections to consumers, lenders, government agencies, law enforcement, volunteer organizations, and businesses who rely on full, complete and accurate consumer reports to make informed decisions. Given the ever-increasing interconnectedness of the modern economy, maintaining alignment between state consumer reporting laws and federal consumer reporting laws is more critical than ever.

State legislation that attempts to regulate credit reporting can unleash many unintended consequences because the credit reporting system operates across all jurisdictions. Only national, uniform standards can achieve the dual goals of protecting consumers and maintaining accurate credit reports, which is why CDIA must oppose proposals like LD 558.

The FCRA regulates the contents of consumer reports and the obligations of furnishers in reporting data to consumer reporting agencies at 15 USC §1681c and 15 USC §1681s-2, respectively. Congress also limited states' capacity to independently or differently regulate the consumer reporting system. This includes preempting, at 15 USC §1681t(b)(1)(E) and 15 USC §1681t(b)(1)(F), respectively, any state legislation that limits or prohibits the kind of information that can go on a credit report or attempts to limit or prohibit the furnishing of medical debt information to a consumer reporting agency.

Further, CDIA and the state of Maine remain in ongoing litigation regarding existing law and the FCRA's preemptive reach. After being sent back to the district court following the first appeal, the District Court issued a mixed opinion, finding the law partially preempted by the FCRA. CDIA filed a notice of appeal to the U.S. Court of Appeals for the First Circuit to address what we view as errors regarding scope of preemption. This second appeal is on hold pending the finalization of the Consumer Financial Protection Bureau's medical debt rule and has been stayed until April 11, 2025. However, due to separate litigation over the CFPB rule, it is possible that the stay may be extended.

Earlier this year CDIA, together with the Cornerstone Credit Union League, filed a declaratory judgment action against the CFPB challenging the Medical Debt Rule on various grounds in Texas. The parties agreed to a preliminary injunction staying the effective date of the rule to June 15, 2025. All deadlines in the case are stayed to May 7, 2025, with a hearing on the motion for a preliminary injunction set for May 12, 2025.

The outcome of both of these cases could have significant impact on medical debt policy across the country. Should the CFPB preserve the medical debt rule and the courts deny CDIA's injunction request or ultimately rule in their favor, the provisions of LD 558 and Maine's current law would become irrelevant as the rule prohibits CRAs from including any medical debt information in a consumer report, regardless of how or when it was incurred.

However, setting aside CDIA's preemption concerns and the ongoing litigation over Maine's law and the CFPB medical debt rules, LD 558 fails to contemplate a variety of aspects of the FCRA and the consumer reporting ecosystem. First, the measure fails to include a clear definition of what is considered medical debt. As a result, it could result in efforts to force the suppression of legitimate debts incurred by consumers via other instruments, like credit cards.

Consider the example of a consumer who racks up thousands of dollars of debt on their personal credit cards and then uses that same card to purchase medical services, under LD 558 it is not clear whether or not that credit card account would need to be removed from a report. This is because CRAs neither receive nor want to receive the transaction-level data that would be required to parse out what portion of the debt is truly medical debt, no matter the definition used. Regardless of the differences in opinion on medical debt being included in credit reports, CDIA expects that this outcome is far outside of what LD 558 intends but underscores risks created when states regulating contrary to the FCRA.

The operational challenges with LD 558 are not just limited to other credit products. LD 558 does not prohibit the furnishing of medical debt information to a consumer reporting agency, only a consumer reporting agency from reporting it. The FCRA establishes clear requirements that CRAs maintain reasonable procedures for maximum possible accuracy, including completeness.

In the event that providers or collection agencies in Maine furnish information related to a consumer's medical debt, CRAs could be faced with the impossible choice of either complying with Maine law by suppressing the information or complying with the FCRA's accuracy requirements to include it. On the other hand, as a result of LD 558 not contemplating this issue, CRAs could be furnished information that may or may not be eligible to be included but not have sufficient information to know. This is exactly why Congress included provisions in the FCRA that preempt the states from regulating in this area.

During discussion of a similar proposal last year, repeated amendments resulted in a version of the bill that would have required CRAs to determine whether or not medical debts arose from medically necessary care. While LD 558 does not include those provisions, CDIA believes it is important to stress that a return to such an approach would both be impossible and an inappropriate invasion of consumer privacy. When medical debt information is furnished to us, CRAs are not provided with details regarding individual medical treatment. Nor do CRAs want to be recipients of or responsible for this intensely sensitive information regarding individual consumers' medical treatment.

While LD 558 may be preempted by the FCRA, CDIA and its members acknowledge that medical debt is distinct from other types of consumer debt. As such, the national credit bureaus have established uniform procedures regarding how and when a consumer's unpaid medical debts can be included in a credit report to help consumers by providing more time and flexibility. These changes largely align with Maine's existing medical debt reporting law and are in some cases, more favorable for consumers.

Unpaid medical debts must be more than $500 and outstanding for more than 365 days before any of the three national credit bureaus will show the account in a consumer report. For unpaid amounts greater than $500 and more than 365 days past due, upon repayment of outstanding amounts, these accounts are removed immediately from a consumer's report, unlike other debts.

The yearlong grace period provides consumers ample time to work with providers and insurers to correct any errors on a bill, pay the bill or get an insurance company to pay it, figure out a payment plan or otherwise resolve the problem and avoid having unpaid debts reach collections and appear on credit reports.

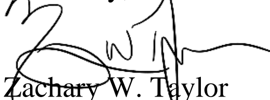
Further, amounts less than $500 are no longer included by the credit bureaus or reported to them by collections agencies. For consumers with outstanding medical debts less than $500, those accounts have been removed from their reports. Taken altogether, these changes to how CRAs handle medical debt reporting have removed a substantial majority of medical debts from consumer reports across the country.

Finally, credit scoring models have changed how they consider medical debt, eliminating or reducing how it affects a consumer's score. For example, the Vantage Score 3.0 and 4.0 models ignore medical accounts in collections altogether.

While concerns regarding medical debt and the impact of unpaid debts on consumer's credit histories are understandable, proposals like LD558 that attempt to exclude some medical debts from the consumer reporting system do not address the underlying concerns about the costs of medical care. On the other hand, the changes made by the three national credit bureaus have provided consumers with substantial flexibility to address outstanding amounts through a variety of approaches.

While CDIA acknowledges the validity of concerns surrounding the cost of care and its impacts on Mainers, we respectfully request that the Committee reject LD 1030 as its operative provisions are inconsistent with 15 USC §1681c and are preempted by 15 USC §1681t(b)(1)(E). Furthermore, LD 1030 is unnecessary as its provisions could ultimately be superseded by the outcome of litigation regarding CFPB rule on medical debt that would prohibit the inclusion of any medical debt information in a consumer report. Thank you for your time and consideration.

Sincerely,



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