

ANTHONY G. BROWN  
ATTORNEY GENERAL

CANDACE McLAREN LANHAM  
CHIEF DEPUTY ATTORNEY GENERAL

LEONARD HOWIE  
DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
DEPUTY ATTORNEY GENERAL



THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

SANDRA BENSON BRANTLEY  
COUNSEL TO THE GENERAL ASSEMBLY

DAVID W. STAMPER  
DEPUTY COUNSEL

SHAUNEE L. HARRISON  
ASSISTANT ATTORNEY GENERAL

JEREMY M. MCCOY  
ASSISTANT ATTORNEY GENERAL

January 23, 2024

The Honorable Anne Healey  
Maryland House of Delegates  
361 Taylor House Office Building  
Annapolis, Maryland 21401  
*Via email*

Dear Delegate Healey:

This letter supplements our office's response to your recent inquiry whether prohibiting a consumer reporting agency from including in a consumer report certain records involving criminal proceedings that did not result in a conviction or which have been expunged, as proposed in House Bill 994 of 2023, is preempted by the federal Fair Credit Reporting Act ("FCRA"). See Letter of Advice to the Honorable Anne Healey from Asst. Atty. Gen. Jeremy M. McCoy (Jan. 23, 2024).

While not addressed in that letter, but relevant to and consistent with that advice, the Bureau of Consumer Financial Protection ("Bureau") has issued an interpretive rule explaining that the preemptive scope of the federal Fair Credit Reporting Act ("FCRA") is "narrow and targeted" and concludes that if a state law prohibits consumer reporting agencies from including information about arrest records in a consumer report, "such a law would generally not be preempted." Interpretive Rule, Bureau of Consumer Financial Protection (12 CFR Part 1002), *The Fair Credit Reporting Act's Limited Preemption of State Laws*, 87 Fed. Reg. 41042 (July 11, 2022). This federal interpretive rule additionally supports the conclusion that the FCRA would not preempt the type of restrictions proposed in House Bill 994 of 2023.

As addressed in our Letter of Advice, 15 U.S.C. § 1681t(b)(1)(E) of the FCRA preempts state laws "with respect to any subject matter regulated under" § 1681c "relating to information contained in consumer reports." As the Bureau explains, § 1681c relates only to four topics of information in consumer reports: (1) obsolescence of information; (2) information about medical information furnishers; (3) information on veteran medical debt; and (4) specifically required information in a report. 87 Fed. Reg. at 41044. Additionally, the interpretive rule makes clear that

The legislative history of the FCRA preemption provision confirms that the only subject matter at this level of specificity is subject to preemption. The legislative history expressly references "obsolescence periods" as an example of a subject matter governed by preemption – not the broader subject matter of the content of a consumer report more generally. Hence, FCRA 1681t(b)(1)(E) does

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*not* preempt State laws about subject matter regarding the content of or information on consumer reports beyond these topics.

87 Fed. Reg. at 41044 (Emphasis in original). Consequently, “[a] State law prohibiting a consumer reporting agency from including information (or certain types of information) about a consumer’s ... arrests on a consumer report would generally not be preempted under section 1681t(b)(1).” *Id.* Accordingly, consistent with the Letter of Advice earlier provided, in my view the FCRA likely would not preempt the State from enacting the type of consumer reporting prohibitions as proposed in House Bill 994 of 2023.

Sincerely,



Jeremy M. McCoy  
Assistant Attorney General