Federal preemption of state warranty-type claims is an issue for certain highly regulated types of products, primarily medical devices, medications, pesticides, and herbicides. Manufacturers also sometimes argue, usually without success, that federal regulation of motor vehicle safety issues preempts consumer claims. The effect of the National Manufactured Housing Construction and Safety Standards Act on manufactured home warranty claims is discussed in §§ 17.3.5 [1], 17.3.7.1 [2], 17.3.7.2 [3], infra.

There are three types of preemption. First, Congress can explicitly express an intent to preempt state law in the federal statute. This type of preemption is express preemption.

The second type of preemption, conflict preemption, is implicit in the statute’s structure or purpose. Conflict preemption will be found when the state law actually conflicts with the federal law. For example, compliance with both state and federal law may be a physical impossibility, although “[i]mpossibility preemption is a demanding defense.”195 Or the state law may stand as an obstacle to the accomplishment and execution of the full congressional purposes.196 Conflict preemption should not be found when Congress intended its standards to be a minimum standard that could be supplemented by the states.197 Further, a federal law that imposes standards on an industry does not implicitly preempt state laws that create remedies by which victims can be compensated.198

Field preemption, the third type of preemption, exists when the federal law so thoroughly occupies a field that it is reasonable to infer that Congress wanted to leave no room for states to legislate.199 Like conflict preemption, it is implicit in the statute’s structure or purpose.

The same federal statute may expressly preempt some aspects of state law and impliedly preempt others.200 However, congressional silence about preemption is powerful evidence that it did not intend to preempt state law,201 particularly when there is evidence that Congress was aware of the operation of state law in the area.202

State law may be preempted not only by a federal statute but also by a federal regulation when a federal agency, acting within the scope of its congressionally delegated authority, acts to preempt state law.203 However, when Congress has not directly authorized an agency to preempt state law, courts will not defer to the agency’s conclusion about whether state law is preempted but will give it only the weight that its thoroughness, consistency, and persuasiveness deserve.204 Courts give little weight to an agency’s failure to regulate or to agency pronouncements such as letters that are issued without a formal proceeding.205

Two points should be stressed when arguing against preemption. First, there is a presumption against preemption in all or most preemption cases relating to warranty-type issues.206 Particularly when Congress has legislated in a field that the states have traditionally occupied, courts should “start with the assumption that the historic police powers of the States were not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress.”207 The Supreme Court has repeatedly stressed this point, and it deserves full development in any brief on preemption. This presumption applies even if the federal government has long regulated the activity.208

Second, the intent of Congress is the ultimate touchstone.209 The Supreme Court has often consulted clauses in statutes that state their purposes, or the legislative history of the law in question.210

Choice of forum may be critical in these cases. As a broad generalization, state courts have tended to be less willing than federal courts to abrogate warranty and tort remedies in favor of a federal regulatory scheme that affords no remedy to injured persons.211 Federal preemption is a defense that the defendant can raise in state court and, except in rare cases when the “complete preemption” doctrine applies, doing so does not deprive the state court of jurisdiction.212

Footnotes


208 [194] Wyeth, 555 U.S. at 565 n.3.


211 [197] Compare Mitchell v. Collagen, 126 F.3d 902 (7th Cir. 1997) (pre-market approval process preempts most state claims), with Weiland v. Teletronics Pacing Sys., Inc., 721 N.E.2d 1149 (Ill. 1999) (pre-market approval process does not impose substantive requirements on manufacture or design so does not preempt state warranty and defective design claims).


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