

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: CS/HB 147	COMPANION BILL: None
TITLE: Prohibited Practices in Consumer Debt Collection	LINKED BILLS: None
SPONSOR(S): Insurance & Banking Subcommittee; Gossett-Seidman	RELATED BILLS: SB 232 (Rodriguez)

Committee References

[Insurance & Banking](#)
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SUMMARY

Effect of the Bill:

The bill exempts email communications from the standard prohibition on communications with a debtor between the hours of 9:00 p.m. and 8:00 a.m. The bill clarifies when communications occur based on model language from the Uniform Electronic Transactions Act, which is an established standard under Florida law. The bill also removes referenced examples of telephone communications, to ensure that violations are measured by the time of communication rather than the form of communication.

The bill is effective upon becoming law.

Fiscal or Economic Impact:

Creditors may see increased collections to the extent that the permitted emails are effective at facilitating collection activity.

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ANALYSIS

EFFECT OF THE BILL:

The bill provides that prohibited debt collection practices apply unless otherwise authorized by law. Additionally, the bill exempts email communications from the standard prohibition on communications with a debtor between the hours of 9:00 p.m. and 8:00 a.m. All communications other than emails remain prohibited during the prohibited hours. The bill defines when communications occur to clarify how less intuitive communications, particularly electronic communications, should be treated by Florida law (e.g., delayed-send text or push notification). The bill clarifies when communications occur based on model law language from the Uniform Electronic Transactions Act, by citing to the definitions of “sent” and “received” in s. 668.50(15), F.S.¹

Under Section 668.50(15)(a), unless otherwise agreed between the sender and the recipient, an electronic record is sent when the record:

1. Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.
2. Is in a form capable of being processed by that system.

¹ Under Section 668.50(15)(a), unless otherwise agreed between the sender and the recipient, an electronic record is sent when the record: 1.) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record 2.) Is in a form capable of being processed by that system. 3.)

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3. Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

Under Section 668.50(15)(b), unless otherwise agreed between a sender and the recipient, an electronic record is received when the record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and is in a form capable of being processed by that system.

The bill's "sent and received" standard provides that a communication only violates the statute if both events occur within the prohibited hours. In other words, if a communication were sent at 8:00 p.m. but received at 9:30 p.m., the communication would not violate the statute. However, in practice, barring a freak technical anomaly, sending and receiving should be expected to occur at virtually the same time, though possibly separated by fractions of a second.

The bill's combined definition and standard for communication repudiates how federal courts defined when electronic communications occurred in the Southern District of Florida's decision in *Quinn-Davis v. TrueAccord Corp*, Case No. 1:23-cv-23590-LEIBOWITZ/REID (S.D. Fla. Nov. 20, 2024). In the absence of clearly guiding statute, the court held that an email communication occurred when the litigant read the email, rather than an applying an objectively measurable third-party standard.

The bill also removes referenced examples of telephone communications, to ensure that violations are measured by the time of communication rather than the form of communication.

The bill reenacts the following statutes for the purpose of incorporating the bill's amendment to section 559.72, F.S.:

- Subsection (2) of section 559.565, F.S.
- Subsection (2) of section 559.725, F.S.
- Subsections (1) and (2) of section 559.77, F.S.
- Paragraph (o) of subsection (1) of section 648.44, F.S.
- Paragraph (b) of subsection (2) of section 817.7001, F.S.

The bill is effective upon becoming law.

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

Creditors may see increased collections to the extent that the permitted emails are effective at facilitating collection activity.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

The Florida Consumer Collection Practices Act (FCCPA)

The FCCPA prohibits certain practices by any person attempting to collect a debt.² It serves as Florida's counterpart to the federal Fair Debt Collection Practices Act (FDCPA) and aims to eliminate abusive and harassing

² "Debt collector" means any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts. S. [559.55\(7\), F.S.](#)

debt collection tactics.³ Under the FCCPA, debt collectors⁴ are prohibited from using or threatening violence⁵, using profane or vulgar language⁶, or attempting to enforce an illegitimate debt.⁷

Among the list of prohibited practices, collectors may not communicate with a debtor between 9 p.m. and 8 a.m. in the debtor's time zone without the debtor's prior consent.⁸ However, the current version of the statute does not specify the types of communication restricted during these hours. Although it does provide two situations in which the presumed time of a telephone call may be calculated in reference to the time zone of the caller and the recipient. Since these only reference telephone calls and not all types communications, it may be unclear how this applies to other types of communication or if it limits the application only to telephone calls.

The Fair Debt Collection Practices Act

The FDCPA⁹ was enacted in March 1978 to eliminate abusive, deceptive, and unfair debt collection practices.¹⁰ Under 12 C.F.R. § 1006.06(b)(1)(i), a debt collector may not communicate or attempt to communicate with a consumer about a debt at an unusual or inconvenient time unless the consumer provides prior consent or the communication is permitted by a court. In the absence of specific knowledge to the contrary, the law presumes that contacting a consumer before 8:00 a.m. or after 9:00 p.m. local time is inconvenient.¹¹ While email¹² and text communications¹³ are permitted under the FDCPA, debt collectors must provide consumers with a reasonable and simple method to opt out of such communications.¹⁴

Recent Litigation

The U.S. District Court for the Southern District of Florida recently addressed the meaning of “communicate with” a consumer under the FCCPA.¹⁵ In this case, the plaintiff sued a debt collector for sending an email at 8:23 p.m., which was delivered to her at 10:14 p.m. and remained unread until 11:44 a.m. the following day.¹⁶ The plaintiff argued that this constituted a violation of s. 559.72(17), F.S., which prohibits communication with a debtor between 9 p.m. and 8 a.m.¹⁷

With no binding precedent on point, the court ruled that an email does not constitute communication “with” a consumer until the consumer either reads or at least receives the message.¹⁸ Under this Court's interpretation, the debt collector did not “communicate” with the plaintiff until 11:44 a.m., when she actually read the email.¹⁹ As a result, the court granted the defendant's motion for summary judgment.²⁰

Since this case addressed a previously unresolved legal question, future Florida courts or other federal district courts may interpret the issue differently. Notably, the court's ruling also diverges from the Consumer Financial

³ The Consumer Prot. Law Comm. of the Florida Bar, *The Consumer Law Bench Book*, p. 46, available at <https://www.floridabar.org/about/cmtes/cmte-cm410/cplc-bench-manual/> (last visited Feb. 12, 2025).

⁴ “Debt” or “consumer debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgement. S. [559.55\(6\), F.S.](#)

⁵ [S. 559.72\(2\), F.S.](#)

⁶ [S. 559.72\(8\), F.S.](#)

⁷ [S. 559.72\(9\), F.S.](#)

⁸ [S. 559.72\(17\), F.S.](#)

⁹ 15 U.S.C. § 1692 et seq.

¹⁰ The Fed. Rsrv., *Consumer Compliance Handbook*, available at <https://www.federalreserve.gov/boarddocs/supmanual/cch/fairdebt.pdf>, (last visited Feb. 12, 2025).

¹¹ 12 C.F.R. § 1006.06(b)(1)(i).

¹² 12 C.F.R. § 1006.06(d)(4).

¹³ 12 C.F.R. § 1006.06(d)(5).

¹⁴ 12 C.F.R. § 1006.06(d)(4)(ii)(4).

¹⁵ *Quinn-Davis v. TrueAccord Corp.*, Case No. 1:23-cv-23590-LEIBOWITZ/REID (S.D. Fla. Nov. 20, 2024).

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.* at 9.

Protection Bureau’s interpretation under the FDCPA, which takes a broader view of what it means to “communicate with” a debtor.²¹

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Insurance & Banking Subcommittee	17 Y, 0 N, As CS	3/5/2025	Lloyd	Schenk
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none">• Clarify that emails may be sent at any time, 24 hours a day, rather than allowing additional contacts, other than telephone calls.• Specifies the time of day assigned to the action of sending an electronic contact or receiving an electronic contact by cross referencing the Uniform Electronic Transactions Act, as implemented in s. 668.50(15), F.S.• Removes references to telephone calls to make it clear that all types of contacts are limited by the subsection, except email contacts.			

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

²¹ *Id.* at 5. (“The CFPB interprets ‘communicate with’ under the FDCPA to mean that a debt collector communicates with a customer when the debt collector ‘sends’ an electronic communication.”).