

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 232

INTRODUCER: Banking and Insurance Committee; Committee on Commerce and Tourism; and Senator Rodriguez

SUBJECT: Debt Collection

DATE: April 1, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dike</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 232 revises the Florida Consumer Collection Practices Act (FCCPA) to allow any person attempting to collect on a debt to communicate with a debtor via email between 9 p.m. and 8 a.m. The bill includes preamble clauses that acknowledge emails were not commonly used or explicitly contemplated when such prohibited practice was adopted and provides that the Legislative intent is to update and clarify that emails are not prohibited during such hours because they are less invasive and less disruptive than telephone calls.

The bill takes effect upon becoming a law.

II. Present Situation:

The Florida Consumer Collection Practices Act

The FCCPA¹ prohibits certain practices by any person when attempting to collect on a debt.² This law is the counterpart to the federal Fair Debt Collection Practices Act (FDCPA) with the

¹ Sections 559.55-559.785, F.S.

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

purpose of eliminating “abusive and harassing tactics in the collection of debts.”³ When collecting consumer debts,⁴ collectors are not allowed to use or threaten violence,⁵ use profane or vulgar language,⁶ or attempt to enforce an illegitimate debt.⁷ Among the list of prohibited practices, a collector is not allowed to “communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor’s time zone without the prior consent of the debtor.”⁸ The current version of the statute does not specify what type of communication is prohibited between these hours.

A debtor⁹ may bring a civil action against a consumer collection agency¹⁰ or any person attempting to collect on a debt in a manner prohibited by law within two years of the date the alleged violation occurred.¹¹ The debtor may file such action “in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.”¹² If a collector does not comply with the provisions of s. 559.72, F.S., they are liable for actual and statutory damages up to \$1000, court costs and attorney’s fees that are incurred by the plaintiff,¹³ and punitive damages or other equitable relief the court finds necessary or proper.¹⁴ Additionally, if there is an inconsistency between the FCCPA and the FDCPA, the provision which is more protective of the debtor will prevail.¹⁵

The Fair Debt Collection Practices Act

The federal Fair Debt Collection Practices Act (FDCPA) (15 USC 1692 et seq.), which became effective in March 1978, was designed to eliminate abusive, deceptive, and unfair debt collection practices.¹⁶ Pursuant to 12 CFR s. 1006.06(b)(1)(i), with certain exceptions (prior consent, or permission by a court), a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. In the absence of the debt collector's knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00

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. Section 559.55(7), F.S.

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 Mar. 19, 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. Section 559.55(6), F.S.

⁵ Section 559.72(2), F.S.

⁶ Section 559.72(8), F.S.

⁷ Section 559.72(9), F.S.

⁸ Section 559.72(17), F.S.

⁹ “Debtor” or “consumer” means any natural person obligated or allegedly obligated to pay any debt. Section 559.55(8), F.S.

¹⁰ “Consumer collection agency” means any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted as set forth in s. 559.553(3). Section 559.55(3), F.S.

¹¹ Section 559.77(4), F.S.

¹² Section 559.77(1), F.S.

¹³ Section 559.77(2), F.S.

¹⁴ *Id.*

¹⁵ Section 559.552, F.S.

¹⁶ The Fed. Rsrv., *Consumer Compliance Handbook*, available at <https://www.federalreserve.gov/boarddocs/supmanual/cch/fairdebt.pdf>, (last visited Mar. 19, 2025).

p.m. local time at the consumer's location is inconvenient. Email and text communications¹⁷ are permitted, but the consumer must be offered a reasonable and simple method for opting out.¹⁸

Recent Litigation

The U.S. District Court for the Southern District of Florida recently interpreted what it means to “communicate with” a consumer under the FCCPA.¹⁹ In this case, plaintiff sued a debt collector for sending her an e-mail at 8:23 p.m. which was delivered to her at 10:14 p.m. and which she did not open or read until 11:44 a.m. the next day.²⁰ Plaintiff argued that this constituted a communication in violation of s. 559.72(17), F.S.²¹ Without legal precedent on point, the court determined that “no e-mail communication “with” the customer takes place until the consumer reads the message, or at least receives it.”²² Under this interpretation, the court found that the debt collector did not communicate with plaintiff until 11:44 a.m. because that was when she read the message, and as such, defendant’s motion for summary judgment was granted.²³

As this case was one of first impression, there is a chance that Florida courts or other federal district courts could deviate from this interpretation. Moreover, this interpretation diverges from the Consumer Financial Protection Bureau’s interpretation of what it means to “communicate with” a debtor under the FDCPA.²⁴ Without statutory clarification, Florida courts are open to litigation over debt collection e-mails received and read after 9 p.m. and before 8 a.m.

III. Effect of Proposed Changes:

The bill includes preamble clauses that provide the Legislature:

- Acknowledges that s. 559.72(17), F.S.:
 - Was adopted before e-mail communication became commonly used;
 - Only explicitly contemplates telephone calls as a form of communication; and
- Intends to update and clarify s. 559.72(17), F.S. to exclude e-mail communication from the prohibited debt collection practice of contacting a person regarding a debt between the hours of 9:00 p.m. and 8:00 a.m. because e-mail communication is less invasive and less disruptive than telephone calls.

¹⁷ According to a recent news release, email communications are used by 74% of debt collectors, and use of text messaging grew by 5% between 2023 and 2024. TransUnion, *More Than Half of Debt Collection Companies Saw Increased Volume of Accounts in Past 12 Months*, available at <https://newsroom.transunion.com/more-than-half-of-debt-collection-companies-saw-increased-volume-of-accounts-in-past-12-months/#:~:text=Use%20of%20text%20FSMS%20messaging,engage%20consumers%20regarding%20a%20debt>, (last visited Mar. 19, 2025).

¹⁸ The Consumer Fin. Prot. Bureau, *What laws limit what debt collectors can say or do?*, available at <https://www.consumerfinance.gov/ask-cfpb/what-laws-limit-what-debt-collectors-can-say-or-do-en-329/>, (last visited Mar. 19, 2025).

¹⁹ *Quinn-Davis v. TrueAccord Corp.*, Case No. 1:23-cv-23590-LEIBOWITZ/REID, 2024 WL 4851344 (S.D. Fla. Nov. 20, 2024).

²⁰ *Id.* at *1.

²¹ *Id.*

²² *Id.*

²³ *Id.* at *7.

²⁴ *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.”).

Prohibited Practices for Debt Collection

Section 1 amends s. 559.72, F.S., to allow any person attempting to collect on a debt to communicate with a debtor between 9 p.m. and 8 a.m. via email.

Incorporating Related Statutes

Sections 2-6 reenact ss. 559.565, 559.725, 559.77, 648.44, and 817.7001, F.S., respectively, for the purpose of incorporating the amendments to s. 559.72, F.S., in section 1 of the bill.

Effective Date

Section 7 provides an effective date upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 559.72, F.S.

For the purpose of incorporating the amendments to s. 559.72, F.S., the bill reenacts the following sections: 559.72, 559.565, 559.725, 559.77, 648.44, 817.7001.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Banking and Insurance Committee on March 31, 2025:

- Includes preamble clauses that provide the Legislature:
 - Acknowledges that telephone calls are the only specific communication explicitly contemplated in s. 559.72(17), F.S.;
 - Intends to update and clarify prohibited practices in collecting debt to exclude e-mail communication;
- Removes the catch all “unless otherwise authorized by law” that was an exception to the otherwise prohibited debt collection practices; and
- Amends the effective date of the bill to upon becoming law.

CS by Commerce and Tourism Committee on March 3, 2025:

The committee substitute allows any person collecting debts to communicate with debtors via email between 9 p.m. and 8 a.m.

- B. **Amendments:**

None.