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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW BENDER

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Florida's Consumer Collection Practices Act Is Amended to Expressly Allow After-Hours Debt-Collection Emails

By Emanuel L. McMiller, Michael P. Daly and Megan M. Farooqui*

In this article, the authors examine an amendment to Florida's Consumer Collection Practices Act.

Florida's governor has signed SB 232,[1] which amended Fla. Stat. § 559.72(17) (Subsection 17) of the Florida Consumer Collection Practices Act (FCCPA)[2] and took effect immediately. Subsection 17 prohibits certain debt-collection "communications" to debtors between 9 p.m. and 8 a.m. However, SB 232 now clarifies that Subsection 17 does not apply to emails.

Prior to SB 232's passage, Subsection 17 provided:

> In collecting consumer debts, no person shall: (17) 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.
>
> a. The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor's telephone is located in a different time zone.
>
> b. If, such as with toll-free numbers, an area code is not assigned to a specific geographic area, the person may presume that the time a telephone call is received conforms to the local time zone of the debtor's last known place of residence, unless the person reasonably believes that the debtor's telephone is located in a different time zone.[3]

PRE-AMENDMENT INTERPRETATIONS OF SUBSECTION 17

Before its amendment, the only mode of communication explicitly referenced in Subsection 17 was telephone calls. As is often the case, however, enterprising plaintiffs noticed that a defined term – here, "communication" –

* The authors, attorneys with Faegre Drinker Biddle & Reath LLP, may be contacted at manny.mcmiller@faegredrinker.com, michael.daly@faegredrinker.com and megan.farooqui@faegredrinker.com, respectively.

[1] https://www.flsenate.gov/Session/Bill/2025/232/.

[2] Fla. Stat. §§ 559.55-559.785.

[3] Fla. Stat. § 559.72(17).

could arguably be read as applying more broadly.[4] This resulted in hundreds of lawsuits – many of them filed as class actions – targeting emails that had been sent during the "quiet hours" between 9 p.m. and 8 a.m.

Although those claims found no support in the legislative history or intent of the FCCPA, courts disagreed about whether Subsection 17 applies to emails.

On the one hand, several courts held that Subsection 17 did not apply to "more-passive forms of communications like email and snail mail."[5]

On the other hand, some courts held that Subsection 17 was in fact broad enough to cover emails because (1) the plain language of the statute did not place any explicit restrictions on the definition of "communication," and (2) in construing the FCCPA, "due consideration and great weight" was required to be given to interpretations by federal agencies and courts related to the Fair Debt Collection Practices Act (FDCPA), which have provided that a similar FDCPA provision prohibiting after-hours debt-collection communications applies to emails.[6]

THE LEGISLATIVE INTENT BEHIND SB 232

In light of this ambiguity, SB 232 (along with its companion bill HB 147)[7] was introduced earlier this year to clarify that Subsection 17 does not apply to email communications. SB 232's prefatory language notes that Subsection 17 was adopted before email communication became commonly used and that the only specific communication explicitly contemplated in Subsection 17 was telephone calls. It also states that the intent of the Legislature is to update and clarify the statute because emails are "less invasive and less disruptive than telephone calls." Subsection 17 is now revised to include the following:

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[4] See Fla. Stat. § 559.55(2) (defining "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium").

[5] See Chandler v. Capital One, No. 2025-SC-001454-O (9th Fla. Cir. Ct., Orange Cnty., Apr. 29, 2025); see also Diaz v. Afterpay US Services, LLC, No. 24-CC-054641 (Fla. Cnty. Ct., Hillsborough Cnty., Apr. 22, 2025); Warner v. Goldman Sachs Bank USA, No. 05-2024-SC-026875 (Fla. Cnty. Ct., Brevard Cnty., Nov. 3, 2024) ("[T]he receipt of an email communication is no different than receipt of physical mail, which is silently delivered to a mailbox and the recipient elects when to retrieve it from the mailbox."); Remus v. Riverview Sunshine Investments, No. 23-001459-CI (6th Fla. Cir. Ct., Pinellas Cnty, Jan. 22, 2024 and Mar. 4, 2024).

[6] See Diaz v. Capital One, No. 24-CA-004019 (13th Fla. Cir. Ct., Hillsborough Cnty., Jan. 17, 2025); Waters v. Ausit St. Augustine, LLC, No. SP23-4309 (Fla. Cnty. Ct., St. Johns Cnty., Jan. 16, 2025); Quinn-Davis v. TrueAccord Corp., No. 1:23-cv-23590 (S.D. Fla. Nov. 20, 2024) (finding that liability could arise, but only if an email was "opened" between 9 p.m. and 8 a.m.).

[7] https://www.flhouse.gov/Sections/Bills/billsdetail.aspx?BillId=80686.

> This subsection does not apply to an e-mail communication that is sent to an e-mail address and that otherwise complies with [Fla. Stat. § 559.72].

SB 232 does not explicitly reference retroactivity, so its impact on unresolved cases that were filed prior to its enactment is unclear. That issue will surely be litigated in coming months.

SUBSECTION 17'S FDCPA COUNTERPART

Like Subsection 17, 15 U.S.C. § 1692c(a)(1) of the federal FDCPA prohibits debt collection communications between 9 p.m. and 8 a.m. Notably, the Consumer Finance Protection Bureau has suggested that Section 1692c(a)(1) should be read as applying to emails.[8]

A wave of similar litigation under the FDCPA is unlikely, however, as the FDCPA does not have the same plaintiff-friendly provisions as the FCCPA. For instance, the FCCPA provides:

1. Broad applicability to all persons or businesses collecting consumer debts including original creditors, as opposed to the FDCPA's more limited focus on third-party collectors;[9]
2. The availability of punitive damages;[10] and
3. A two-year statute of limitations, as opposed to the FDCPA's one-year statute of limitations[11]

Thus, businesses other than third-party debt collectors are unlikely to see a significant increase of similar claims being filed under the FDCPA.

CONCLUSION

Given the proliferation of debt collection emails – which are used by 74% of debt collectors – SB 232's enactment cuts off a significant source of potential liability.[12] The Florida Legislature's passage of reasonable remedial legislation

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[8] See 12 C.F.R. Part 1006, effective Nov. 30, 2021, https://www.federalregister.gov/documents/2020/11/30/2020-24463/debt-collection-practices-regulation-f#print (last visited May 27, 2025); CFPB Interpretation of 12 C.F.R. Part 1006.6(b)(1)(i), https://www.consumerfinance.gov/rules-policy/regulations/1006/6/ (last visited on May 27, 2025).

[9] Compare Fla. Stat. § 559.77(1) (providing that "a debtor may bring a civil action against a person violating the provisions of Fla. Stat. § 559.72") (emphasis added) with 15 U.S.C. § 1692k(a) (providing that "any debt collector who fails to comply . . . is liable") (emphasis added).

[10] Compare Fla. Stat. § 559.77(2) with 15 U.S.C. § 1692k(a).

[11] Compare Fla. Stat. § 559.77(4) with 15 U.S.C. § 1692k(d).

[12] See Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 232 at 3 n.17 (citing TransUnion, More Than Half of Debt Collection Companies Saw Increased Volume of

should be welcome news to the many industries that have been plagued by predatory lawsuits filed under Subsection 17.

Accounts in Past 12 Months), https://www.flsenate.gov/Session/Bill/2025/232/Analyses/2025s00232.rc.PDF.