

# Pratt's Journal of Bankruptcy Law

LEXISNEXIS® A.S. PRATT®

SEPTEMBER 2025

**EDITOR'S NOTE: BANKRUPTCY WITHOUT LAW**

Victoria Prussen Spears

**DECENTRALIZED REORGANIZATIONS: HOW THORCHAIN REIMAGINES BANKRUPTCY WITHOUT LAW**

Francisco Javier Garibay Guemez

**UPDATE ON BANKRUPTCY LEGAL FEE LANDMINES**

Michael L. Cook

**SERTA'S (UN)SURPRISING TAKE ON EQUITABLE MOOTNESS**

Lauren R. Lifland, Benjamin W. Loveland and George W. Shuster Jr.

**FLORIDA'S CONSUMER COLLECTION PRACTICES ACT IS AMENDED TO EXPRESSLY ALLOW AFTER-HOURS DEBT-COLLECTION EMAILS**

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



LexisNexis

# Pratt's Journal of Bankruptcy Law

---

---

VOLUME 21

NUMBER 6

September 2025

---

**Editor's Note: Bankruptcy Without Law**

Victoria Prussen Spears

219

**Decentralized Reorganizations: How Thorchain Reimagines Bankruptcy Without Law**

Francisco Javier Garibay Guemez

221

**Update on Bankruptcy Legal Fee Landmines**

Michael L. Cook

238

***Serta's* (Un)Surprising Take on Equitable Mootness**

Lauren R. Lifland, Benjamin W. Loveland and George W. Shuster Jr.

243

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

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

250

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Ryan D. Kearns, J.D., at ..... 513.257.9021  
Email: ..... ryan.kearns@lexisnexis.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at ..... (800) 833-9844  
Outside the United States and Canada, please call ..... (518) 487-3385  
Fax Number ..... (800) 828-8341  
Customer Service Website ..... <http://www.lexisnexis.com/custserv/>  
For information on other Matthew Bender publications, please call

Your account manager or ..... (800) 223-1940  
Outside the United States and Canada, please call ..... (937) 247-0293

Library of Congress Card Number: 80-68780

ISBN: 978-0-7698-7846-1 (print)

ISBN: 978-0-7698-7988-8 (eBook)

ISSN: 1931-6992

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT’S JOURNAL OF BANKRUPTCY LAW [page number] ([year])

**Example:** Patrick E. Mears, *The Winds of Change Intensify over Europe: Recent European Union Actions Firmly Embrace the “Rescue and Recovery” Culture for Business Recovery*, 10 PRATT’S JOURNAL OF BANKRUPTCY LAW 47 (2025)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

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

MATTHEW  BENDER

# *Editor-in-Chief, Editor & Board of Editors*

---

## **EDITOR-IN-CHIEF**

**STEVEN A. MEYEROWITZ**

*President, Meyerowitz Communications Inc.*

## **EDITOR**

**VICTORIA PRUSSEN SPEARS**

*Senior Vice President, Meyerowitz Communications Inc.*

## **BOARD OF EDITORS**

**SCOTT L. BAENA**

*Bilzin Sumberg Baena Price & Axelrod LLP*

**KATHRYN M. BORGESON**

*Cadwalader, Wickersham & Taft LLP*

**ANDREW P. BROZMAN**

*Clifford Chance US LLP*

**MICHAEL L. COOK**

*Schulte Roth & Zabel LLP (ret.)*

**MARK G. DOUGLAS**

*Jones Day*

**MARK J. FRIEDMAN**

*DLA Piper*

**STUART I. GORDON**

*Rivkin Radler LLP*

**FRANCISCO JAVIER GARIBAY GÜÉMEZ**

*Fernández, García-Naranjo, Boker & Garibay, S.C.*

**PATRICK E. MEARS**

*Barnes & Thornburg LLP*

*Pratt's Journal of Bankruptcy Law* is published eight times a year by Matthew Bender & Company, Inc. Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 9443 Springboro Pike, Miamisburg, OH 45342 or call Customer Support at 1-800-833-9844. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway Suite 18R, Floral Park, New York 11005, [smeyerowitz@meyerowitzcommunications.com](mailto:smeyerowitz@meyerowitzcommunications.com), 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to lawyers and law firms, in-house counsel, government lawyers, senior business executives, and anyone interested in privacy and cybersecurity related issues and legal developments. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, the editor(s), RELX, LexisNexis, Matthew Bender & Co., Inc, or any of its or their respective affiliates.

POSTMASTER: Send address changes to *Pratt's Journal of Bankruptcy Law*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

# 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,<sup>1</sup> which amended Fla. Stat. § 559.72(17) (Subsection 17) of the Florida Consumer Collection Practices Act (FCCPA)<sup>2</sup> 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.<sup>3</sup>

## 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](mailto:manny.mcmiller@faegredrinker.com), [michael.daly@faegredrinker.com](mailto:michael.daly@faegredrinker.com) and [megan.farooqui@faegredrinker.com](mailto:megan.farooqui@faegredrinker.com), respectively.

<sup>1</sup> <https://www.flsenate.gov/Session/Bill/2025/232/>.

<sup>2</sup> Fla. Stat. §§ 559.55-559.785.

<sup>3</sup> Fla. Stat. § 559.72(17).

could arguably be read as applying more broadly.<sup>4</sup> 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.”<sup>5</sup>

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.<sup>6</sup>

## THE LEGISLATIVE INTENT BEHIND SB 232

In light of this ambiguity, SB 232 (along with its companion bill HB 147)<sup>7</sup> 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:

---

<sup>4</sup> 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”).

<sup>5</sup> 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).

<sup>6</sup> 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.).

<sup>7</sup> <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.<sup>8</sup>

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;<sup>9</sup>
2. The availability of punitive damages;<sup>10</sup> and
3. A two-year statute of limitations, as opposed to the FDCPA's one-year statute of limitations<sup>11</sup>

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.<sup>12</sup> The Florida Legislature's passage of reasonable remedial legislation

---

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> Compare Fla. Stat. § 559.77(2) with 15 U.S.C. § 1692k(a).

<sup>11</sup> Compare Fla. Stat. § 559.77(4) with 15 U.S.C. § 1692k(d).

<sup>12</sup> 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>.