

**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.)

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

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BILL: SB 232

INTRODUCER: Senator Rodriguez

SUBJECT: Debt Collection

DATE: February 28, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dike	McKay	CM	<b>Pre-meeting</b>
2.			BI	
3.			RC	

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## **I. Summary:**

SB 232 revises the Florida Consumer Collection Practices Act (FCCPA) to clarify that consumer debt collectors may not communicate with a debtor *via telephone call* between the hours of 9 p.m. and 8 a.m. The bill also incorporates and reenacts other, related statutes which would be affected by this change in law.

The bill takes effect July 1, 2025.

## **II. Present Situation:**

### **The Florida Consumer Collection Practices Act**

The FCCPA<sup>1</sup> prohibits certain practices by any person when attempting to collect on a debt.<sup>2</sup> This law is the counterpart to the federal Fair Debt Collection Practices Act (FDCPA) with the purpose of eliminating “abusive and harassing tactics in the collection of debts.”<sup>3</sup> When collecting consumer debts,<sup>4</sup> collectors are not allowed to use or threaten violence,<sup>5</sup> use profane or

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<sup>1</sup> Sections 559.55-559.785, F.S.

<sup>2</sup> “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. Section 559.55(7), F.S.

<sup>3</sup> 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. 28, 2025).

<sup>4</sup> “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.

<sup>5</sup> Section 559.72(2), F.S.

vulgar language,<sup>6</sup> or attempt to enforce an illegitimate debt.<sup>7</sup> 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.”<sup>8</sup> The current version of the statute does not specify what type of communication is prohibited between these hours. Further, Florida law provides that “in the event of an inconsistency between any provision of the [FCCPA] and any provision of the federal act, the provision that is more protective of the consumer or debtor shall prevail.”<sup>9</sup>

A debtor<sup>10</sup> may bring a civil action against a consumer collection agency<sup>11</sup> 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.<sup>12</sup> 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.”<sup>13</sup> 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,<sup>14</sup> and punitive damages or other equitable relief the court finds necessary or proper.<sup>15</sup>

### **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.<sup>16</sup> 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

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<sup>6</sup> Section 559.72(8), F.S.

<sup>7</sup> Section 559.72(9), F.S.

<sup>8</sup> Section 559.72(17), F.S.

<sup>9</sup> Section 559.552, F.S.

<sup>10</sup> “Debtor” or “consumer” means any natural person obligated or allegedly obligated to pay any debt. Section 559.55(8), F.S.

<sup>11</sup> “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.

<sup>12</sup> Section 559.77(4), F.S.

<sup>13</sup> Section 559.77(1), F.S.

<sup>14</sup> Section 559.77(2), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> The Fed. Rsrv., *Consumer Compliance Handbook*, available at <https://www.federalreserve.gov/boarddocs/supmanual/cch/fairdebt.pdf>, (last visited Feb. 28, 2025).

p.m. local time at the consumer's location is inconvenient. Email and text communications<sup>17</sup> are permitted, but the consumer must be offered a reasonable and simple method for opting out.<sup>18</sup>

### 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.<sup>19</sup> 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.<sup>20</sup> Plaintiff argued that this constituted a communication in violation of s. 559.72(17), F.S.<sup>21</sup> 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.”<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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:

### Prohibited Practices for Debt Collection

**Section 1** amends s. 559.72, F.S., specifying that a consumer debt collector may not communicate with a debtor by telephone call between the hours of 9 p.m. and 8 a.m. This requirement narrows the type of communication that is prohibited under the statute at night from any communication to only communications by telephone call. Therefore, a debtor would not have a cause of action against a collector for receiving e-mails, letters, or other non-telephone communications after 9 p.m.

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<sup>17</sup> 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 Feb 10, 2025).

<sup>18</sup> 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 Feb. 28, 2025).

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

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *Id.* at 8 (“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.”).

**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 of July 1, 2025.

**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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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