

The Florida Security of Communications Act – Basics 101

September 19, 2022

In his 1948 memoir, *On Active Service in Peace and War*, Secretary of State Henry L. Stimson famously wrote, “Gentlemen don’t read each other’s mail.” In Florida, they also don’t record each other’s oral, wire, and electronic communications, at least not without their consent. Given that every person with a smartphone is a person armed with a recording device, it is wise to understand the basic rules and consequences of using that device to record communications in Florida.

The Florida Legislature enacted the Florida Security of Communications Act (FSCA), codified in Florida Statutes Chapter 934, to protect the privacy rights of Florida residents. Although the FSCA is modeled after the Federal Wiretap Act, 18 U.S.C. §§ 2510–2522, Florida law offers greater privacy protection to its residents than federal law.

The FSCA “contains a general prohibition on the **interception** of any wire, oral, or electronic communications.” The FSCA also prohibits the **use** and **disclosure** of unlawfully intercepted communications “knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication.” Any unlawfully intercepted wire or oral communication is inadmissible in any trial, hearing, or other proceeding “if the disclosure of that information would be in violation of” the FSCA. This prohibition on the use of evidence obtained in violation of the FSCA “does not apply in cases of prosecution for criminal interception” of such communications.

Whether an interception violates the FSCA depends, in part, on the type of communication in question. For instance, in the case of “oral communications,” the FSCA is only violated if the person intercepted has “an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” No such requirement exists for “wire communications” or “electronic communications.”

There are several exceptions and affirmative defenses to the FSCA. First and foremost is consent. An intercepted communication does not violate the FSCA where the party intercepting the communication obtains the prior consent of all parties to the communication. Second, no violation of the FSCA occurs where the interception is authorized by a law enforcement officer for purposes of obtaining evidence of a criminal act. Other defenses include good faith reliance on a determination that Florida or federal law permitted such conduct, the business extension exception to the interception of wire communications, and the public meeting exception to the interception of oral communications.

Violations of the FSCA carry both criminal and civil consequences. An unlawful interception of a wire, oral, or electronic communication is a third-degree felony, subjecting the violator to a maximum term of five years' imprisonment and a \$5,000 fine. An FSCA violation may also result in civil liability. If found civilly liable, an FSCA violator faces potential preliminary, equitable or declaratory relief; actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher; punitive damages; and attorneys' fees.

Here is the bottom line — the FSCA is a deceptively complicated statute. But some basic rules can keep you from running afoul of the FSCA. The consequences for violations can be severe, including criminal prosecutions, which do occur in Florida. And civil liability can follow close behind. Seek guidance from experienced legal counsel before venturing down this path on your own.

Authored By



Simon A. Gaugush

Related Practices

[White Collar Crime & Government Investigations
Litigation and Trials](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the

accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.