

# Privacy & Security Law Update

## Michigan Law Requires Publication of SSN Policy

Michigan's *Social Security Privacy Act* requires companies that obtain Social Security numbers in the ordinary course of business to protect those SSNs and refrain from using them in ways that might permit them to be compromised.

For example, SSNs cannot be printed on ID cards or transmitted over insecure Internet connections. SSNs also cannot be used as primary account or identification numbers.

Effective January 1, 2006, this law also requires companies to publish a privacy policy that:



- Ensures to the extent practicable the confidentiality of SSNs,
- Prohibits unlawful disclosure of SSNs,
- Limits who has access to documents that contain SSNs,
- Describes how to dispose of documents that contain SSNs, and
- Establishes penalties for violations of the policy.

This policy must be published in an employee handbook, procedures manual or similar document. The law does have some exceptions, but every company with SSNs of Michigan residents should con-



Michigan law requires companies to have a detailed SSN policy.

sider whether a new policy is needed.

With over 15 states specifically regulating SSNs, PIMS strongly recommends that every U.S. company develop an SSN policy. If you have any questions about how to develop an appropriate SSN policy, please call Peggy Eisenhauer at 404-914-1163.

### IN THE SPOTLIGHT... Fax Communications

Unsolicited commercial faxes are prohibited by the Federal Communication Commission's Telephone Consumer Protection Act (TCPA) rules. The TCPA requires senders to have opt-in consent for fax communications.

Historically, for business communications, companies believed that consent to send faxes was implied by the existence of an established business relationship (EBR). In 2003, the FCC revised the TCPA to "clarify" that implied consent based on an EBR was not permitted under the rules.

#### The Junk Fax Prevention Act of 2005

In July 2005, Congress enacted the Junk Fax Prevention Act (JFPA) to allow businesses to continue to send faxes to recipients with whom they have an EBR. The JFPA requires faxes to include a clear opt-out notice on the cover page along with the sender's telephone number, address, and a no-cost mechanism to opt-out (*i.e.*, a toll-free number or email address).

The JFPA permits faxes to both consumers and businesses, if the

EBR exists. The FCC will publish rules to implement the JFPA in April.

#### State Fax Regulations

Unfortunately, neither the TCPA nor the JFPA preempt more restrictive state regulations. Understanding the Federal requirements is only the beginning of the analysis.

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## Spotlight on Fax Regulations *(continued)*

Companies that wish to use fax communications must consider the state regulatory context as well.

California enacted a true opt-in fax law shortly after the JFPA was enacted, to regulate all “unsolicited fax advertisements.” The California law is problematic because it applies to all faxes sent *to or from* California. This law took effect on January 1, although the law is being challenged in court. A Federal judge has stayed the interstate provisions until February 27, when a decision on the constitutionality of the law is expected.

*Welcome*

### TANYA FOSTER



PIMS is delighted to welcome **Tanya Foster** to the team. Many of you know Tanya already, since she spent the past several years supporting

Peggy at Hunton & Williams. On January 3, she officially joined PIMS as Practice Administrator.

In addition to her years of experience supporting information management lawyers and clients, Tanya has a Masters of Arts in Marriage and Family Counseling.

Tanya looks forward to working with all the PIMS clients — please do not hesitate to contact her directly for assistance. She can be reached via email to [tanya@privacystudio.com](mailto:tanya@privacystudio.com).

Additionally, several other states enacted TCPA-mirror statutes prior to the JFPA, and these state laws retain the old opt-in rules (without an EBR exception). States that do not recognize an EBR include Arizona, Connecticut, Florida, Michigan, Minnesota, Montana, Nebraska, Oregon, Pennsylvania, Tennessee, Utah and Virginia.

Other states do recognize an EBR exception, but define specific opt-out process requirements that senders must respect. States with specific opt-out requirements include Colorado, Georgia, Kansas, Kentucky, Maine, Massachusetts, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, Texas, Washington, West Virginia, and Wisconsin. These rules specify opt-out methods that must be offered (such as toll-free numbers) and the



time in which opt-outs must be processed.

Finally, several states have general process requirements for faxes, including specific times when faxes may not be sent and page lengths for faxes.

### Recommendations

The JFPA provides a welcome opt-out standard for fax communications, but companies must understand what state laws also apply.

Additionally, unless the law is overturned, PIMS recommends that companies sending unsolicited commercial faxes to or from California have documented opt-in consent for those communications.

For more information on fax regulations or for assistance developing a compliance program, please call Peggy at 404-914-1163.

## Another Reason to Visit Privacy Studio...

Planning a visit to Atlanta? Be sure to leave a little time on your itinerary for a visit to the new **Georgia Aquarium**.

This aquarium is the largest facility in the world, boasting 8 millions gallons of water and over 100,000 marine creatures including Ralph and Norton, the only whale sharks outside of Asia. Other residents include beluga whales, penguins, sea lions, otters and more fish that you can imagine! Give Peggy or Tanya a call, and we'll be happy to help you arrange a tour of this amazing new facility. The aquarium is located in the heart of Atlanta, online at <http://www.georgiaaquarium.org/>.



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