

# Can You Hear Me Now? Stop Calling!

In response to a growing number of consumer complaints about unsolicited and unwanted marketing calls, Congress passed the Telephone Consumer Protection Act in 1991, restricting the use of automatic dialing and prerecorded voice messages. Over the next decade, state legislatures also enacted do-not-call lists. Yet, between 1991 and 2002, these marketing calls increased nearly 600 percent, which some attribute to new telemarketing technologies and lower long-distance rates.

Congress responded again in 2003 with its own do-not-call law similar to the ones already passed in many states at the time. The national list makes it illegal for commercial telemarketers to call registered personal phone numbers, and unlike some states, includes cell phones. The law exempts political organizations, polling business, charities and companies with an existing business relationship with the phone number's owner. Federal rules require telemarketers to search the list every 31 days for newly added numbers.

Many states integrated their lists and laws with the national ones, but since the federal law does not preempt state laws, telemarketers must adhere to both. State laws often require owners to renew their registrations every few years, and some restrict more kinds of solicitation technology than does the federal law.

Still, calls have continued to increase, and complaints to the Federal Trade Commission reached a high of more than 2 million in 2011.

Advances in technology also have brought unwelcome text messages to cell phones, eating up minutes for those with limited plans, and gaining the attention of state legislators. California, Colorado, Indiana, Louisiana, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Vermont, West Virginia and Wisconsin now ban unsolicited text messages. Missouri lawmakers introduced similar legislation this year.

Political calls are excluded from the FTC definition of telemarketing, and during this presidential election season, voters have been assailed with automated political robocalls, dialed any time of the day to deliver a pre-recorded message.

Forty-one states prohibit commercial robocalls, and now 14 restrict political ones, to some degree. Arkansas and Wyoming prohibit any kind of automated political robocalls, while Indiana, Minnesota, Montana, North Carolina and North Dakota, for example, allow political robocalls if a real person receives consent to play the message. New Hampshire prohibits robocalls to numbers on the national do-not-call list only, and Mississippi lawmakers considered, but did not pass, similar restrictions this year.

As technology advances, so do commercial opportunities to reach consumers, challenging lawmakers to define what is an acceptable marketing practice and what is an excessive violation of privacy.

—Cassandra Kirsch

## FTC Reinforces Robocall Restrictions

Unwanted telemarketing calls and texts were consistently in the top three consumer complaints to the Federal Trade Commission in 2011, which approved the following changes earlier this year.

1. Requiring telemarketers to obtain written consent before placing a robocall.
2. Removing the exception for an “established business relationship.”
3. Requiring telemarketers to provide a way to “opt out” during the robocall.
4. Limiting the number of “dead air” or abandoned calls that end before any message is delivered to 3 percent over a 30-day calling campaign.



# Life After Death Online

**B**efore the days of social media, when people died, funerals or wakes were the only way for family and friends to remember them. Now, however, we have digital memories of loved ones through their email and social networking accounts, but often have little say over what happens to those accounts when owners die.

Terms of service agreements and privacy policies govern who can use social media and email accounts, and most expire when a user dies. Gmail and Yahoo! email accounts, for example, are closed after a period of inactivity. If the terms of service are violated—even by a family member with the password—the account may be shut down. That's what happened recently to one mother two hours after she requested access to her

son's Facebook page after his death, according to news accounts. Yet, closing people's accounts after they die protects them from being hacked, spammed or abused.

Family members can close a Yahoo! email account by providing a death certificate, but if someone wants access to the account, it requires a court order. Google may provide access to a deceased person's Gmail account, if specific documentation, including a death certificate, is provided. Otherwise, the account will be deleted nine months after the last login.

Facebook allows family members to remove a loved one's account or memorialize it, which changes the privacy setting so only confirmed friends are allowed access to view past comments, post memories or leave condolences. Twitter allows family members to deactivate the account with documenta-

tion, but no one is allowed to login, regardless of his or her relationship to the deceased.

The Uniform Law Commission created a study committee early this year to address the growing concerns about digital assets and to make recommendations concerning the rights of a fiduciary to obtain digital information when a person is incapacitated or dies.

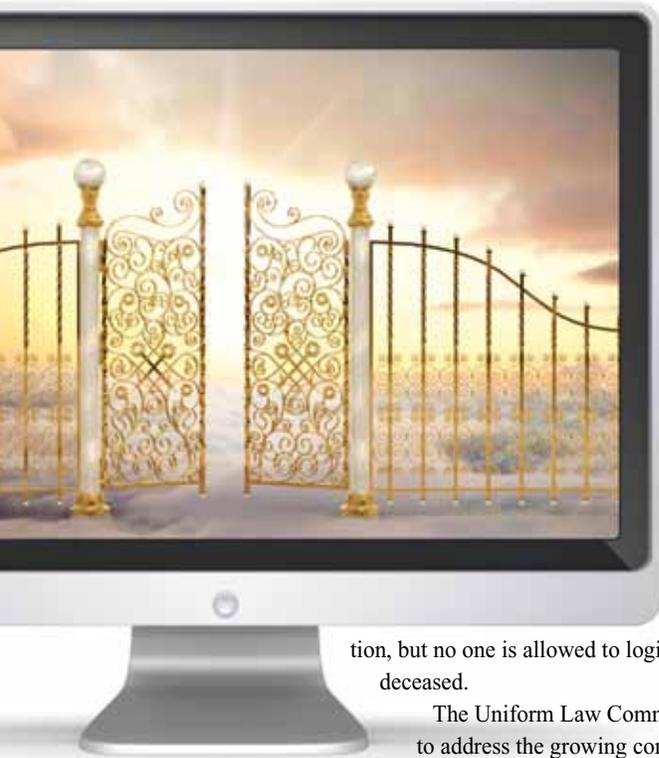
Legislators in Connecticut, Idaho, Indiana, Oklahoma and Rhode Island passed laws several years ago addressing some of these concerns. The Connecticut and Rhode Island laws address only email accounts. Idaho, Indiana and Oklahoma laws also address micro-blogging, short message services and social networking accounts.

Idaho gives a personal representative or executor the right to take control of a deceased person's accounts. Connecticut, Indiana and Rhode Island require a death certificate and documentation of the executor's appointment before the estate's representative can see the deceased person's emails or social networking accounts.

Oklahoma allows provisions in a will or a formal order to govern access. In Idaho, a will or court order can restrict access to accounts. Bills pending in Nebraska and New York are similar to Idaho's law.

Social media sites, emails and digital records are replacing the photo albums, letters and papers of the past and should be considered in estate planning. The Library of Congress, among others, provides tips on how to preserve digital memories. State laws can clarify how digital assets are treated.

—Pam Greenberg



## Five-Star Flags

The North American Vexillological Association polled their members and ranked American city flags, based on design. The winner? Washington, D.C. The Top 10 state capital winners, with their scores on a 10-point scale, are:



1. Denver, 8.86



2. Phoenix, 8.65



3. Indianapolis, 8.35



4. Madison, 7.92



5. Jackson, 7.83



6. Des Moines, 7.77



7. Richmond, 7.76



8. Annapolis, 5.39



9. Albany, 5.20



10. Sacramento, 4.97

# Parents Want More Power

California's so-called "parent trigger law," which gives parents authority to intervene in the management of their children's schools, has inspired similar legislation in 20 other states. In California, if enough parents agree, the school can be converted to a charter, principals and teachers can be replaced, or the school can be shut down.

These trigger laws are aimed at making schools more responsive by letting parents take a more active role in how their child's school is managed. The laws aim to speed up traditionally slow procedures for turning around poorly performing schools that also must consider the interests of the community, teachers and school administrators in addition to students and parents.

Opponents of the laws say parents already can voice their concerns through school accountability committees and to local school boards.

Of the 20 states considering them, Connecticut, Indiana, Louisiana, Mississippi, Ohio (pilot program) and Texas, as of March, have enacted a trigger law, in addition to California. Each law is slightly different, but there are common elements: Six states allow parents to sign a petition, five states allow the state education agency to play a role, and four states allow school districts to appeal.

Some are concerned that corporate charter school operators may use the law to expand their business. For this reason, California has prohibited them from funding petition campaigns and other states are considering legislation to do the same.

There have been only two attempts so far to pull the trigger. Both were in California, and both resulted in prolonged legal fights between organized parent groups and school districts.

—Josh Cunningham

## Needed: More Parents

Michigan wants to encourage parents to be more involved in their children's education. A 2001 law encourages schools to develop a contract in which parents agree to review and help with homework, get their children to school on time, attend school activities and show up for parent-teacher conferences. Utah lawmakers this year created an online school survey as a pilot project so students, parents and teachers can evaluate schools. Tennessee lawmakers have passed one bill to develop Michigan-like contracts, and are considering another requiring teachers to grade parents on the quality of their involvement.

# Jobs, Jobs, Jobs

Here's a bit of good news as states continue the long slog out of the Great Recession: Job numbers are up in all but four states. These "nonfarm" jobs include everything from construction work to the leisure and hospitality industry. The largest over-the-year percentage increase occurred in North Dakota (6.5 percent), followed by Oklahoma and Utah (2.4 percent each). —Todd Haggerty

## Percent change in total nonfarm employment

(March 2011 to March 2012)

STATE	% CHANGE
NORTH DAKOTA	6.5%
OKLAHOMA	2.4%
UTAH	2.4%
TEXAS	2.3%
LOUISIANA	2.3%
ARIZONA	2.1%
COLORADO	2.0%
MARYLAND	2.0%
KENTUCKY	1.9%
NEW YORK	1.8%
TENNESSEE	1.7%
KANSAS	1.6%
WASHINGTON	1.6%
IDAHO	1.5%
MICHIGAN	1.4%
SOUTH CAROLINA	1.3%
WEST VIRGINIA	1.3%
CALIFORNIA	1.3%
INDIANA	1.3%
FLORIDA	1.2%
MINNESOTA	1.2%
OHIO	1.2%
VIRGINIA	1.0%
NEW JERSEY	1.0%
NORTH CAROLINA	1.0%
WYOMING	1.0%
MASSACHUSETTS	0.9%
IOWA	0.9%
VERMONT	0.9%
GEORGIA	0.8%
PENNSYLVANIA	0.8%
ALASKA	0.7%
CONNECTICUT	0.6%
HAWAII	0.6%
NEW MEXICO	0.6%
ILLINOIS	0.6%
MISSOURI	0.4%
NEVADA	0.4%
ARKANSAS	0.4%
NEBRASKA	0.4%
SOUTH DAKOTA	0.3%
DELAWARE	0.3%
MAINE	0.2%
OREGON	0.1%
NEW HAMPSHIRE	0.1%
ALABAMA	0.0%
MISSISSIPPI	-0.3%
MONTANA	-0.3%
RHODE ISLAND	-0.5%
WISCONSIN	-0.9%

Source: Bureau of Labor Statistics, Employment on nonfarm payrolls by state and selected industry sector, seasonally adjusted.

