

South Dakota

S.D. Codified Laws §§ 22-40-19 — 26

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Quick Facts

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| Is “Personal Information” broader than the general definition? ¹ | ✓ Yes |
| Does the law apply to paper records? | ✗ No |
| Is notification triggered by access only? | ✗ No |
| Is a risk-of-harm analysis permitted? | ✓ Yes |
| Is notice to a state agency or AG required? | ✓ Yes, within 60 days from the discovery or notification of the breach if 250 or more residents are notified |
| Is there a specific deadline for individual notices? | ✓ Yes, within 60 days from discovery or notification of the breach |
| Is there a specific format or language that must be included in the individual notice? | ✗ No |
| Is a private right of action permitted? | ✗ No |

“Breach” Definition

The unauthorized acquisition of unencrypted computerized data or encrypted computerized data and the encryption key by any person that materially compromises the security, confidentiality, or integrity of personal or protected information maintained by the information holder.

“Personal Information” Definition

1. An individual’s first name or first initial and last name in combination with:
 - a. Social Security number
 - b. Driver’s license number or other unique identification number created or collected by a government body

¹ The general definition of “Personal Information” is an individual’s name in combination with any one or more of the following: (1) Social Security number; (2) driver’s license number or state identification card number; or (3) a financial account number or credit or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account.

- c. Account, credit card, or debit card number, in combination with any required security code, access code, password, routing number, PIN, or any additional information that would permit access to a person's financial account
- d. Health information, or
- e. An identification number assigned to a person by the person's employer in combination with any required security code, access code, password, or biometric data generated from measurements or analysis of human body characteristics for authentication purposes.

Notification Trigger

Within 60 days following discovery or notification of the breach:

1. Entity that owns or licenses personal information shall notify South Dakota residents “within 60 days” following discovery or notification of the breach.
2. Entity that only maintains or stores personal information shall notify the owner or licensee “immediately following discovery” of the breach if they discover that personal information may have been acquired by an unauthorized person.

Risk-of-Harm Analysis Standard

Entity not required to notify if, following an appropriate investigation and notice to the attorney general, the entity reasonably determines that the breach will not likely result in harm to the affected person.

Special Form/Content of Consumer Notice

N/A

AG Notice Trigger/Deadline

If the personal information of more than 250 individuals is breached, then the data controller must disclose the breach to the attorney general.

Notification to Consumer Reporting Agencies Threshold

If notifying the South Dakota Attorney General, entity should notify all consumer reporting agencies without unreasonable delay.