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## SOUTH DAKOTA AND ALABAMA BECOME THE LAST STATES TO ENACT DATA BREACH NOTIFICATION LAWS

South Dakota and Alabama enacted data breach notification laws in March, joining the ranks of the other 48 states.

### South Dakota Law

On March 21, the South Dakota Governor signed S.B. No. 62, enacting a statute to provide for notification related to a breach of personal or protected data. The law will take effect on July 1, 2018.

The South Dakota statute imposes disclosure requirements on information holders if a "breach of system security" is discovered. Breach of system security is defined as 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. If an information holder discovers or is notified of a breach of system security, the information holder must disclose the breach to affected South Dakota residents if the breach will likely result in harm to the person not later than 60 days from discovery or notification. If the information holder is required to give notice to affected South Dakota residents, the information holder must also disclose the breach to all consumer reporting agencies. The South Dakota statute also requires the information holder to disclose the breach to the South Dakota Attorney General if the breach impacts more than 250 South Dakota residents.

### Alabama Law

On March 28, the Alabama Governor signed S.B. No. 318, the Alabama Data Breach Notification Act of 2018. The law will take effect on June 1, 2018.

The Alabama Act requires covered entities and third-party agents to implement and maintain reasonable security measures to protect sensitive personally identifying information against a breach of security, and defines the scope of what are "reasonable" security measures.

The Alabama Act also requires a covered entity to conduct an investigation if it determines a breach of security has or may have occurred in relation to sensitive personally identifying information. If

the covered entity determines that, as a result of a breach of security, (i) sensitive personally identifying information has been acquired or is reasonably believed to have been acquired by an unauthorized person and (ii) is reasonably likely to cause substantial harm to the individuals to whom the information related, the covered entity must notify each individual that has been effected by the breach of security. If the number of individuals affected exceeds 1,000, the covered entity must provide written notice of the breach to the Alabama Attorney General, generally within 45 days of notice that a breach has occurred or upon the determination that a breach has occurred and is likely to cause substantial harm to the individuals to whom the information relates.

Each of the 50 states now has a data breach notification law in place, although the requirements of each law vary. Privacy and data security continue to be important issues for the industry as rapidly changing technology constantly creates new privacy and security concerns. Security Breach laws are contained in our firm's Marketing and Privacy Digest. Please let us know if you have any questions.



✧ Elizabeth Anstaett and Lindsay Valentine

### LOOKING FOR A MARKETING AND PRIVACY COMPLIANCE

**RESOURCE?** We publish an easy-to-use reference, our **MARKETING AND PRIVACY DIGEST** that compiles the state laws governing financial privacy, fair credit reporting, telemarketing/automatic dialing and announcing devices, telephone monitoring and recording, electronic signatures and restrictions on the use of social security numbers by financial service providers. Creditors, marketers and servicers should find this resource invaluable to marketing and privacy program development and regulatory compliance. **Contact us for details.**

Darrell L. Dreher  
ddreher@dtlaw.com

Elizabeth L. Anstaett  
eanstaett@dtlaw.com

Emily C. Cellier  
ecellier@dtlaw.com

Susan L. Ostrander  
sostrander@dtlaw.com

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
WWW.DTLAW.COM

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Michael C. Tomkies  
mtomkies@dtlaw.com

Susan M. Seaman  
sseaman@dtlaw.com

Lindsay P. Valentine  
lvalentine@dtlaw.com

Judith M. Scheiderer  
jscheiderer@dtlaw.com

Robin R. De Leo  
robin@deher-la.com