

USA: New security breach laws in South Carolina and Alaska come into force in July

Recently passed data breach notification legislation in South Carolina and Alaska will take effect on 1 July 2009. Both acts require entities that own or licence the personal information of residents of the state to notify a breach of security to every resident whose personal information was affected. Notification of the breach must be made within the 'most expedient time possible and without reasonable delay'.

Most of the provisions in South Carolina's Financial Identity Fraud and Identity Theft Protection Act came into force in December 2008. Section 4.A and Section 7.A, addressing identity theft and security breach notification, will come into effect on 1 July 2009. The South Carolina Act establishes a civil penalty of \$1,000 per resident affected by the breach for entities who 'knowingly and wilfully' violate the notification obligation. The act is silent on what would be the maximum amount for the total penalty. If the number of residents affected exceeds 1,000, entities also have to notify the Department of Consumer Affairs.

"Of the jurisdictions in the U.S. that impose civil penalties for violations, South Carolina is among a handful that do not set a cap on civil penalties", Aaron Simpson, Associate at Hunton and Williams, told DataGuidance. "In this regard, South Carolina joins Washington, D.C., Hawaii, Maine, Ohio and Puerto Rico. In U.S. jurisdictions that impose civil penalties for violations of the breach notification laws, it is more common to see a cap on penalties, such as the \$750,000 cap in Michigan and the \$500,000 cap in Florida and Oregon".

A violation of the data breach notification procedures under Alaska's Personal Information Protection Act could lead to a penalty of up to \$500 for each resident whose information was compromised by the breach, with the maximum amount set at \$50,000.

"Breach notification laws in the U.S. that do not set forth specific civil penalties typically allow for actions by the state attorney general or private individuals to recover damages", said Simpson.