

## SOUTH DAKOTA

IDENTITY THEFT RANKING BY STATE: Rank 49, 30.8 Complaints Per 100,000

Population, 245 Complaints (2007)

Updated January 10, 2009

**Current Laws:** A person is guilty of identity theft if he, without the authorization or permission of another person, and with the intent to deceive or defraud:

- Obtains, possesses, transfers, uses, attempts to obtain, or records identifying information not lawfully issued for that person's use; or
- Accesses or attempts to access the financial resources of that person through the use of identifying information.

Violations are a Class 6 felony, punishable by up to two years in prison and/or a \$2,000 fine.

Statute: §22-40-8: <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-40-8>

Identifying information includes: birth certificate or passport information; driver's license numbers; Social Security or other taxpayer identification numbers; checking, savings, credit card, or debit card numbers; personal identification numbers (PIN), passwords, or challenge questions; user names or identifications; biometric data; or any other numbers, documents, or information which can be used to access another person's financial resources.

Statute: §22-40-9: <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-40-9>

It is a Class 1 misdemeanor offense to impersonate any person, which includes offering a fictitious name or false date of birth, with intent to deceive a law enforcement officer. Violations are punishable by up to one year in jail and/or a fine up to \$1000.

Statute: §22-40-1: <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-40-1>

**Jurisdiction:** It is not necessary for a person to be physically present in a county to commit identity theft. The crime may be considered to have been committed in any county in which any part of the identity theft took place, regardless of whether the defendant was ever actually in such county.

Statute: §22-40-10:

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-40-10>

**Payment Cards:** Any person who uses a credit card issued to another person, without the consent of the person to whom it was issued; uses a credit card which has been revoked or canceled or has expired; or uses a falsified, mutilated, altered, or counterfeit credit card to obtain property or services on credit is guilty of theft. Theft is a misdemeanor, unless the property stolen exceeds \$1000, in which case it is grand theft, a Class 4 felony, punishable by up to ten years in prison and/or a fine of up to \$20,000.

Statute: §22-30A-8.1:

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-30A-8.1>

**Scanning Devices:** State law makes it a class 6 felony to use a scanning device or reencoder to access and store the information on the magnetic strip of a payment card with intent to defraud the authorized user. Scanning devices are used to access, read, scan, obtain, memorize, or store, permanently or temporarily, that information, while reencoders are used to place encoded information from the magnetic strip of a payment card onto the magnetic strip of a different payment card. Possession of a scanning device or reencoder with intent to use it to defraud is a Class 1 misdemeanor.

Statutes: §22-40-11 through 14:

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-40>

**Social Security Numbers:** State law prohibits state agencies and their subdivisions from:

- Knowingly releasing or posting any person's Social Security number (SSN) on the Internet;
- Requiring any person to transmit his/her SSN over the Internet, unless the connection is secure or the SSN is encrypted; or
- Requiring any person to use his/her SSN security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

Statute: §1-27-44: <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=1-27-44>

State law prohibits the printing of a Social Security number on a driver's license, commercial driver's license, or nondriver identification card.

Statute: §32-12-17.13: <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=32-12-17.13&Type=Statute>

### **Victim Assistance:**

**Security Freeze:** State law allows victims of identity theft with supporting documentation such as a police report to place security freezes on their consumer credit reports to prevent identity thieves from opening new accounts in their names. Such a freeze enables the consumer to prevent anyone from looking at his/her credit report for the purpose of granting credit unless the consumer chooses to allow a particular business look at the information. To request a freeze, a consumer must request one in writing to the credit reporting agencies. No fees may be charged.

The reporting agency must place the freeze within five business days after receiving the request, and within ten days must send a written confirmation of the freeze and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his credit for a specific party or period of time. Requests for a temporary unlocking of the freeze must be completed within three business days. The freeze will be in effect for seven years or until lifted by the consumer.

Statute: §54-15-1 through 54-15-16:

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=54-15&Type=Statute>

### **State Resources:**

Office of the Attorney General, “Identity Theft”

(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/Default.asp>)

- “How Identity Thieves Get Your Information”  
(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/getinfo.asp>)
- “Sharing Personal Information”  
(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/persinfo.asp>)
- “What To Do If You Are a Victim”  
(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/help.asp>)

This site directs victims to: *“File a police report with your local police or the police in the community where the identity theft took place. Get a copy of the police report because often times the bank or credit card company will need proof of the crime in order to erase debts created by identity theft.”*

- “Phishing Scams”  
(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/phishing.asp>)
  - “Resolving Credit Problems”  
(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/credprob.asp>)
  - “Minimize Your Risk of Identity Theft”  
s(<http://www.state.sd.us/attorney/office/divisions/consumer/idtheft/minrisk.asp>)
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### **Legislation:**

#### **2008:**

**SB 80** prohibits state agencies and their subdivisions from knowingly releasing or posting any person’s Social Security number (SSN) on the Internet; requiring any person to transmit the person’s SSN over the Internet, unless the connection is secure or the social security number is encrypted; or requiring any person to use his/her SSN security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

#### **2006:**

**SB 180** allows victims of identity theft with supporting documentation such as a police report to place security freezes on their consumer credit reports to prevent identity thieves from opening new accounts in their names. Such a freeze would prevent anyone from getting a credit report without the victim’s authorization. Victims can temporarily lift freezes for such things as purchasing cars, getting credit cards or anything else requiring credit checks. To request a freeze, a consumer must request one in writing to the credit reporting agencies. No fees may be charged.

**HB 1095** expands the crime of false impersonation to include offering a fictitious name or false date of birth with the intent to deceive a law enforcement officer. Violations are a Class 1 misdemeanor.

**2005:**

An omnibus crime bill (**SB 43**) contained a provision that would make identity theft a felony instead of a misdemeanor, allowing people who commit the increasingly frequent crime to be put in jail or prison for up to two years. Previously, the misdemeanor crime was punishable by one year in jail and \$1,000 in fines.

To help prevent identity theft, **SB 129** ends the practice of printing Social Security numbers on South Dakota driver licenses.

**2003:**

**HB 1187** makes it a class 6 felony to use a scanning device or reencoder to access and store the information on the magnetic strip of a payment card with intent to defraud the authorized user. Scanning devices are used to access, read, scan, obtain, memorize, or store, permanently or temporarily, that information, while reencoders are used to place encoded information from the magnetic strip of a payment card onto the magnetic strip of a different payment card. Possession of a scanning device or reencoder with intent to use it to defraud is a Class 1 misdemeanor.

**2000:**

**SB 20** creates the crime of identity theft. A person commits the crime if he, without the authorization or permission of another person, and with the intent to deceive or defraud:

- Obtains, possesses, transfers, uses, attempts to obtain, or records identifying information not lawfully issued for that person's use; or
- Accesses or attempts to access the financial resources of that person through the use of identifying information.

The crime is a Class 1 misdemeanor offense.