

1050

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the general business law and the state technology law, in relation to adding medical and health insurance information within the definitions of identity theft

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 190.78 of the penal law, as added by chapter 619 of
2 the laws of 2002, is amended to read as follows:
3 S 190.78 Identity theft in the third degree.
4 A person is guilty of identity theft in the third degree when he or
5 she knowingly and with intent to defraud assumes the identity of another
6 person by presenting himself or herself as that other person, or by
7 acting as that other person or by using personal identifying information
8 of that other person, and thereby:
9 1. obtains goods, money, MEDICAL INFORMATION, HEALTH INSURANCE INFOR-
10 MATION, property or services or uses credit in the name of such other
11 person or causes financial loss to such person or to another person or
12 persons; or
13 2. commits a class A misdemeanor or higher level crime.
14 3. (A) FOR THE PURPOSES OF THIS SECTION, THE TERM "MEDICAL INFORMA-
15 TION" MEANS ANY INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY,
16 MENTAL OR PHYSICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A
17 HEALTH CARE PROFESSIONAL.
18 (B) FOR THE PURPOSES OF THIS SECTION, THE TERM "HEALTH INSURANCE
19 INFORMATION" MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR
20 SUBSCRIBER IDENTIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH
21 INSURER TO IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S
22 APPLICATION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS
23 HISTORY.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD00738-01-1

1 Identity theft in the third degree is a class A misdemeanor.

2 S 2. Section 190.79 of the penal law, as added by chapter 619 of the
3 laws of 2002 and subdivision 4 as amended by chapter 279 of the laws
4 2008, is amended to read as follows:

5 S 190.79 Identity theft in the second degree.

6 A person is guilty of identify theft in the second degree when he or
7 she knowingly and with intent to defraud assumes the identity of another
8 person by presenting himself or herself as that other person, or by
9 acting as that other person or by using personal identifying information
10 of that other person, and thereby:

11 1. obtains goods, money, MEDICAL INFORMATION, HEALTH INSURANCE INFOR-
12 MATION, property or services or uses credit in the name of such other
13 person in an aggregate amount that exceeds five hundred dollars; or

14 2. causes financial loss to such person or to another person or
15 persons in an aggregate amount that exceeds five hundred dollars; or

16 3. commits or attempts to commit a felony or acts as an accessory to
17 the commission of a felony; or

18 4. commits the crime of identity theft in the third degree as defined
19 in section 190.78 of this article and has been previously convicted
20 within the last five years of identity theft in the third degree as
21 defined in section 190.78, identity theft in the second degree as
22 defined in this section, identity theft in the first degree as defined
23 in section 190.80, unlawful possession of personal identification infor-
24 mation in the third degree as defined in section 190.81, unlawful
25 possession of personal identification information in the second degree
26 as defined in section 190.82, unlawful possession of personal identifi-
27 cation information in the first degree as defined in section 190.83,
28 unlawful possession of a skimmer device in the second degree as defined
29 in section 190.85, unlawful possession of a skimmer device in the first
30 degree as defined in section 190.86, grand larceny in the fourth degree
31 as defined in section 155.30, grand larceny in the third degree as
32 defined in section 155.35, grand larceny in the second degree as defined
33 in section 155.40 or grand larceny in the first degree as defined in
34 section 155.42 of this chapter.

35 5. (A) FOR THE PURPOSES OF THIS SECTION, THE TERM "MEDICAL INFORMA-
36 TION" MEANS ANY INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY,
37 MENTAL OR PHYSICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A
38 HEALTH CARE PROFESSIONAL.

39 (B) FOR THE PURPOSES OF THIS SECTION, THE TERM "HEALTH INSURANCE
40 INFORMATION" MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR
41 SUBSCRIBER IDENTIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH
42 INSURER TO IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S
43 APPLICATION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS
44 HISTORY.

45 Identity theft in the second degree is a class E felony.

46 S 3. Subparagraph 3 of paragraph (b) of subdivision 1 of section 899-
47 aa of the general business law, as added by chapter 442 of the laws of
48 2005, is amended and two new subparagraphs 4 and 5 and two new closing
49 paragraphs are added to read as follows:

50 (3) account number, credit or debit card number, in combination with
51 any required security code, access code, or password that would permit
52 access to an individual's financial account; OR

53 (4) MEDICAL INFORMATION; OR

54 (5) HEALTH INSURANCE INFORMATION;

55 FOR THE PURPOSES OF THIS PARAGRAPH, "MEDICAL INFORMATION" MEANS ANY
56 INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY, MENTAL OR PHYS-

1 ICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE
2 PROFESSIONAL.

3 FOR THE PURPOSES OF THIS PARAGRAPH, "HEALTH INSURANCE INFORMATION"
4 MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR SUBSCRIBER IDEN-
5 TIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH INSURER TO
6 IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S APPLICA-
7 TION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS HISTORY.

8 S 4. Subparagraph 3 of paragraph (a) of subdivision 1 of section 208
9 of the state technology law, as added by chapter 442 of the laws of
10 2005, is amended and two new subparagraphs 4 and 5 and two new closing
11 paragraphs are added to read as follows:

12 (3) account number, credit or debit card number, in combination with
13 any required security code, access code, or password which would permit
14 access to an individual's financial account[.]; OR

15 (4) MEDICAL INFORMATION; OR

16 (5) HEALTH INSURANCE INFORMATION.

17 FOR THE PURPOSES OF THIS PARAGRAPH, "MEDICAL INFORMATION" MEANS ANY
18 INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY, MENTAL OR PHYS-
19 ICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE
20 PROFESSIONAL.

21 FOR THE PURPOSES OF THIS PARAGRAPH, "HEALTH INSURANCE INFORMATION"
22 MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR SUBSCRIBER IDEN-
23 TIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH INSURER TO
24 IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S APPLICA-
25 TION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS HISTORY.

26 S 5. This act shall take effect on the ninetieth day after it shall
27 have become a law; provided, however, that effective immediately, the
28 addition, amendment and/or repeal of any rule or regulation necessary
29 for the implementation of this act on its effective date are authorized
30 and directed to be made and completed on or before such effective date.