

737--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the criminal procedure law, the general business law, the state technology law and the executive law, in relation to offenses involving theft of identity; and to repeal certain provisions of the criminal procedure law and the penal law relating thereto

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

1 Section 1. The penal law is amended by adding a new article 191 to
2 read as follows:

3 ARTICLE 191

4 OFFENSES INVOLVING THEFT OF IDENTITY

5 SECTION 191.00 DEFINITIONS.

6 191.05 PETIT IDENTITY THEFT.

7 191.10 IDENTITY THEFT IN THE FOURTH DEGREE.

8 191.15 IDENTITY THEFT IN THE THIRD DEGREE.

9 191.20 IDENTITY THEFT IN THE SECOND DEGREE.

10 191.25 IDENTITY THEFT IN THE FIRST DEGREE.

11 191.30 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION
12 IN THE THIRD DEGREE.

13 191.35 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION
14 IN THE SECOND DEGREE.

15 191.40 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION
16 IN THE FIRST DEGREE.

17 191.45 DEFENSES.

18 191.50 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND
19 DEGREE.

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

LBD03915-02-1

191.55 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST
DEGREE.

S 191.00 DEFINITIONS.

1. FOR THE PURPOSES OF THIS ARTICLE "PERSONAL IDENTIFYING INFORMATION" MEANS A PERSON'S NAME, ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH, DRIVER'S LICENSE NUMBER, SOCIAL SECURITY NUMBER, PLACE OF EMPLOYMENT, MOTHER'S MAIDEN NAME, FINANCIAL SERVICES ACCOUNT NUMBER OR CODE, SAVINGS ACCOUNT NUMBER OR CODE, CHECKING ACCOUNT NUMBER OR CODE, BROKERAGE ACCOUNT NUMBER OR CODE, CREDIT CARD ACCOUNT NUMBER OR CODE, DEBIT CARD NUMBER OR CODE, AUTOMATED TELLER MACHINE NUMBER OR CODE, TAXPAYER IDENTIFICATION NUMBER, COMPUTER SYSTEM PASSWORD, SIGNATURE OR COPY OF A SIGNATURE, ELECTRONIC SIGNATURE, UNIQUE BIOMETRIC DATA THAT IS A FINGERPRINT, VOICE PRINT, RETINAL IMAGE OR IRIS IMAGE OF ANOTHER PERSON, TELEPHONE CALLING CARD NUMBER, MOBILE IDENTIFICATION NUMBER OR CODE, ELECTRONIC SERIAL NUMBER OR PERSONAL IDENTIFICATION NUMBER, MEDICAL INFORMATION, MEDICAL INSURANCE INFORMATION, OR ANY OTHER NAME, NUMBER, CODE OR INFORMATION THAT MAY BE USED ALONE OR IN CONJUNCTION WITH OTHER SUCH INFORMATION TO ASSUME THE IDENTITY OF ANOTHER PERSON.

2. FOR THE PURPOSES OF THIS ARTICLE:

(A) "ELECTRONIC SIGNATURE" SHALL HAVE THE SAME MEANING AS DEFINED IN SUBDIVISION THREE OF SECTION THREE HUNDRED TWO OF THE STATE TECHNOLOGY LAW.

(B) "PERSONAL IDENTIFICATION NUMBER" MEANS ANY NUMBER OR CODE WHICH MAY BE USED ALONE OR IN CONJUNCTION WITH ANY OTHER INFORMATION TO ASSUME THE IDENTITY OF ANOTHER PERSON OR ACCESS FINANCIAL RESOURCES OR CREDIT OF ANOTHER PERSON.

(C) "MEMBER OF THE ARMED FORCES" SHALL MEAN A PERSON IN THE MILITARY SERVICE OF THE UNITED STATES OR THE MILITARY SERVICE OF THE STATE, INCLUDING BUT NOT LIMITED TO, THE ARMED FORCES OF THE UNITED STATES, THE ARMY NATIONAL GUARD, THE AIR NATIONAL GUARD, THE NEW YORK NAVAL MILITIA, THE NEW YORK GUARD, AND SUCH ADDITIONAL FORCES AS MAY BE CREATED BY THE FEDERAL OR STATE GOVERNMENT AS AUTHORIZED BY LAW.

(D) "MEDICAL INFORMATION" MEANS ANY INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY, MENTAL OR PHYSICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE PROFESSIONAL.

(E) "MEDICAL INSURANCE INFORMATION" MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR SUBSCRIBER IDENTIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH INSURER TO IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S APPLICATION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS HISTORY.

S 191.05 PETIT IDENTITY THEFT.

A PERSON IS GUILTY OF PETIT IDENTITY THEFT WHEN HE OR SHE KNOWINGLY AND WITH INTENT TO DEFRAUD ASSUMES THE IDENTITY OF ANOTHER PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT OTHER PERSON, OR BY ACTING AS THAT OTHER PERSON OR BY USING PERSONAL IDENTIFYING INFORMATION OF THAT OTHER PERSON, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE NAME OF SUCH OTHER PERSON OR CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR PERSONS.

PETIT IDENTITY THEFT IS A CLASS A MISDEMEANOR.

S 191.10 IDENTITY THEFT IN THE FOURTH DEGREE.

A PERSON IS GUILTY OF IDENTITY THEFT IN THE FOURTH DEGREE WHEN HE OR SHE KNOWINGLY AND WITH INTENT TO DEFRAUD:

1. ASSUMES THE IDENTITY OF ANOTHER PERSON BY PRESENTING HIMSELF OR HERSELF AS THAT OTHER PERSON, OR BY ACTING AS THAT OTHER PERSON OR BY USING PERSONAL IDENTIFYING INFORMATION OF THAT OTHER PERSON, AND THEREBY:

1 (A) OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
2 NAME OF SUCH OTHER PERSON IN AN AGGREGATE AMOUNT THAT EXCEEDS FIVE
3 HUNDRED DOLLARS; OR

4 (B) CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR
5 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS FIVE HUNDRED DOLLARS; OR

6 (C) COMMITS OR ATTEMPTS TO COMMIT A FELONY OR ACTS AS AN ACCESSORY TO
7 THE COMMISSION OF A FELONY; OR

8 (D) COMMITS THE CRIME OF PETIT IDENTITY THEFT AS DEFINED IN SECTION
9 191.05 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER PERSON IS A MEMBER OF
10 THE ARMED FORCES AND THAT SUCH MEMBER IS PRESENTLY DEPLOYED OUTSIDE OF
11 THE CONTINENTAL UNITED STATES; OR

12 (E) COMMITS THE CRIME OF PETIT IDENTITY THEFT AS DEFINED IN SECTION
13 191.05 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER PERSON IS A VULNERABLE
14 ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF SECTION 260.31 OF THIS
15 CHAPTER, OR A PERSON WHO IS UNABLE TO CARE FOR HIMSELF OR HERSELF
16 BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR DEFECT, OR BECAUSE HE
17 OR SHE IS A MINOR; OR

18 2. ASSUMES THE IDENTITY OF THREE OR MORE PERSONS BY PRESENTING HIMSELF
19 OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER PERSONS,
20 OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER PERSONS, AND
21 THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
22 NAME OF THOSE PERSONS, OR CAUSES FINANCIAL LOSS TO AT LEAST ONE SUCH
23 PERSON, OR TO ANOTHER PERSON OR PERSONS.

24 IDENTITY THEFT IN THE FOURTH DEGREE IS A CLASS E FELONY.

25 S 191.15 IDENTITY THEFT IN THE THIRD DEGREE.

26 A PERSON IS GUILTY OF IDENTIFY THEFT IN THE THIRD DEGREE WHEN HE OR
27 SHE KNOWINGLY AND WITH INTENT TO DEFRAUD:

28 1. (A) ASSUMES THE IDENTITY OF ANOTHER PERSON BY PRESENTING HIMSELF OR
29 HERSELF AS THAT OTHER PERSON, OR BY ACTING AS THAT OTHER PERSON OR BY
30 USING PERSONAL IDENTIFYING INFORMATION OF THAT OTHER PERSON, AND THERE-
31 BY:

32 (A) OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
33 NAME OF SUCH OTHER PERSON IN AN AGGREGATE AMOUNT THAT EXCEEDS TWO THOU-
34 SAND DOLLARS; OR

35 (B) CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR
36 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS TWO THOUSAND DOLLARS; OR

37 (C) COMMITS OR ATTEMPTS TO COMMIT A CLASS D FELONY OR HIGHER LEVEL
38 CRIME OR ACTS AS AN ACCESSORY TO THE COMMISSION OF A CLASS D OR HIGHER
39 LEVEL FELONY; OR

40 (D) COMMITS THE CRIME OF IDENTITY THEFT IN THE FOURTH DEGREE AS
41 DEFINED IN SECTION 191.10 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY
42 CONVICTED WITHIN THE LAST FIVE YEARS OF PETIT IDENTITY THEFT AS DEFINED
43 IN SECTION 191.05, IDENTITY THEFT IN THE FOURTH DEGREE AS DEFINED IN
44 SECTION 191.10, IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED IN THIS
45 SECTION, IDENTITY THEFT IN THE SECOND DEGREE AS DEFINED IN SECTION
46 191.20, IDENTITY THEFT IN THE FIRST DEGREE AS DEFINED IN SECTION 191.25,
47 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE THIRD
48 DEGREE AS DEFINED IN SECTION 191.30, UNLAWFUL POSSESSION OF PERSONAL
49 IDENTIFYING INFORMATION IN THE SECOND DEGREE AS DEFINED IN SECTION
50 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE
51 FIRST DEGREE AS DEFINED IN SECTION 191.40, UNLAWFUL POSSESSION OF A
52 SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN SECTION 191.50, UNLAW-
53 FUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST DEGREE AS DEFINED IN
54 SECTION 191.55, GRAND LARCENY IN THE FOURTH DEGREE AS DEFINED IN SECTION
55 155.30, GRAND LARCENY IN THE THIRD DEGREE AS DEFINED IN SECTION 155.35,
56 GRAND LARCENY IN THE SECOND DEGREE AS DEFINED IN SECTION 155.40 OR GRAND

1 LARCENY IN THE FIRST DEGREE AS DEFINED IN SECTION 155.42, CRIMINAL
2 POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE AS DEFINED IN
3 SECTION 170.20, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND
4 DEGREE AS DEFINED IN SECTION 170.25, CRIMINAL POSSESSION OF A FORGED
5 INSTRUMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 170.30, CRIMINAL
6 POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE AS DEFINED IN SECTION
7 165.40, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE AS
8 DEFINED IN SECTION 165.45, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE
9 THIRD DEGREE AS DEFINED IN SECTION 165.50, CRIMINAL POSSESSION OF STOLEN
10 PROPERTY IN THE SECOND DEGREE AS DEFINED IN SECTION 165.52, CRIMINAL
11 POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE AS DEFINED IN SECTION
12 165.54, OR CRIMINAL POSSESSION OF FORGERY DEVICES AS DEFINED IN SECTION
13 170.40 OF THIS CHAPTER; OR

14 (E) COMMITS THE CRIME OF IDENTITY THEFT IN THE FOURTH DEGREE AS
15 DEFINED IN SECTION 191.10 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER
16 PERSON IS A MEMBER OF THE ARMED FORCES, AND KNOWS THAT SUCH MEMBER IS
17 PRESENTLY DEPLOYED OUTSIDE OF THE CONTINENTAL UNITED STATES; OR

18 (F) COMMITS THE CRIME OF IDENTITY THEFT IN THE FOURTH DEGREE AS
19 DEFINED IN SECTION 191.10 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER
20 PERSON IS A VULNERABLE ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF
21 SECTION 260.31 OF THIS CHAPTER, OR A PERSON WHO IS UNABLE TO CARE FOR
22 HIMSELF OR HERSELF BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR
23 DEFECT, OR BECAUSE HE OR SHE IS A MINOR; OR

24 2. ASSUMES THE IDENTITY OF TEN OR MORE PERSONS BY PRESENTING HIMSELF
25 OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER PERSONS,
26 OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER PERSONS, AND
27 THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
28 NAME OF THOSE PERSONS, OR CAUSES FINANCIAL LOSS TO AT LEAST ONE SUCH
29 PERSON, OR TO ANOTHER PERSON OR PERSONS.

30 IDENTITY THEFT IN THE THIRD DEGREE IS A CLASS D FELONY.

31 S 191.20 IDENTITY THEFT IN THE SECOND DEGREE.

32 A PERSON IS GUILTY OF IDENTITY THEFT IN THE SECOND DEGREE WHEN HE OR
33 SHE KNOWINGLY AND WITH INTENT TO DEFRAUD:

34 1. ASSUMES THE IDENTITY OF ANOTHER PERSON BY PRESENTING HIMSELF OR
35 HERSELF AS THAT OTHER PERSON, OR BY ACTING AS THAT OTHER PERSON OR BY
36 USING PERSONAL IDENTIFYING INFORMATION OF THAT OTHER PERSON, AND THERE-
37 BY:

38 (A) OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
39 NAME OF SUCH OTHER PERSON IN AN AGGREGATE AMOUNT THAT EXCEEDS
40 TWENTY-FIVE THOUSAND DOLLARS; OR

41 (B) CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR
42 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS TWENTY-FIVE THOUSAND
43 DOLLARS; OR

44 (C) COMMITS OR ATTEMPTS TO COMMIT A CLASS C FELONY OR HIGHER LEVEL
45 CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION OF A CLASS C OR HIGHER
46 LEVEL FELONY; OR

47 (D) COMMITS THE CRIME OF IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED
48 IN SECTION 191.15 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED
49 WITHIN THE LAST FIVE YEARS OF PETIT IDENTITY THEFT AS DEFINED IN SECTION
50 191.05, IDENTITY THEFT IN THE FOURTH DEGREE AS DEFINED IN SECTION
51 191.10, IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED IN SECTION 191.15,
52 IDENTITY THEFT IN THE SECOND DEGREE AS DEFINED IN THIS SECTION, IDENTITY
53 THEFT IN THE FIRST DEGREE AS DEFINED IN SECTION 191.25, UNLAWFUL
54 POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE THIRD DEGREE AS
55 DEFINED IN SECTION 191.30, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
56 INFORMATION IN THE SECOND DEGREE AS DEFINED IN SECTION 191.35, UNLAWFUL

1 POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE AS
2 DEFINED IN SECTION 191.40, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN
3 THE SECOND DEGREE AS DEFINED IN SECTION 191.50, UNLAWFUL POSSESSION OF A
4 SKIMMER DEVICE IN THE FIRST DEGREE AS DEFINED IN SECTION 191.55, GRAND
5 LARCENY IN THE FOURTH DEGREE AS DEFINED IN SECTION 155.30, GRAND LARCENY
6 IN THE THIRD DEGREE AS DEFINED IN SECTION 155.35, GRAND LARCENY IN THE
7 SECOND DEGREE AS DEFINED IN SECTION 155.40 OR GRAND LARCENY IN THE FIRST
8 DEGREE AS DEFINED IN SECTION 155.42, CRIMINAL POSSESSION OF A FORGED
9 INSTRUMENT IN THE THIRD DEGREE AS DEFINED IN SECTION 170.20, CRIMINAL
10 POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE AS DEFINED IN
11 SECTION 170.25, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST
12 DEGREE AS DEFINED IN SECTION 170.30, CRIMINAL POSSESSION OF STOLEN PROP-
13 erty IN THE FIFTH DEGREE AS DEFINED SECTION 165.40, CRIMINAL POSSESSION
14 OF STOLEN PROPERTY IN THE FOURTH DEGREE AS DEFINED IN SECTION 165.45,
15 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE AS DEFINED IN
16 SECTION 165.50, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND
17 DEGREE AS DEFINED IN SECTION 165.52, CRIMINAL POSSESSION OF STOLEN PROP-
18 erty IN THE FIRST DEGREE AS DEFINED IN SECTION 165.54, OR CRIMINAL
19 POSSESSION OF FORGERY DEVICES AS DEFINED IN SECTION 170.40 OF THIS CHAP-
20 TER; OR

21 (E) COMMITS THE CRIME OF IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED
22 IN SECTION 191.15 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER PERSON IS A
23 MEMBER OF THE ARMED FORCES AND THAT SUCH MEMBER IS PRESENTLY DEPLOYED
24 OUTSIDE OF THE CONTINENTAL UNITED STATES; OR

25 (F) COMMITS THE CRIME OF IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED
26 IN SECTION 191.15 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER PERSON IS A
27 VULNERABLE ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF SECTION
28 260.31 OF THIS CHAPTER, OR A PERSON WHO IS UNABLE TO CARE FOR HIMSELF OR
29 HERSELF BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR DEFECT, OR
30 BECAUSE HE OR SHE IS A MINOR; OR

31 2. ASSUMES THE IDENTITY OF TWENTY-FIVE OR MORE PERSONS BY PRESENTING
32 HIMSELF OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER
33 PERSONS, OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER
34 PERSONS, AND THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES
35 CREDIT IN THE NAME OF THOSE PERSONS, OR CAUSES FINANCIAL LOSS TO AT
36 LEAST ONE SUCH PERSON, OR TO ANOTHER PERSON OR PERSONS.

37 IDENTITY THEFT IN THE SECOND DEGREE IS A CLASS C FELONY.

38 S 191.25 IDENTITY THEFT IN THE FIRST DEGREE.

39 A PERSON IS GUILTY OF IDENTITY THEFT IN THE FIRST DEGREE WHEN HE OR
40 SHE KNOWINGLY AND WITH INTENT TO DEFRAUD:

41 1. ASSUMES THE IDENTITY OF ANOTHER PERSON BY PRESENTING HIMSELF OR
42 HERSELF AS THAT OTHER PERSON, OR BY ACTING AS THAT OTHER PERSON OR BY
43 USING PERSONAL IDENTIFYING INFORMATION OF THAT OTHER PERSON, AND THERE-
44 BY:

45 (A) OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
46 NAME OF SUCH OTHER PERSON IN AN AGGREGATE AMOUNT THAT EXCEEDS TWO
47 HUNDRED THOUSAND DOLLARS; OR

48 (B) CAUSES FINANCIAL LOSS TO SUCH PERSON OR TO ANOTHER PERSON OR
49 PERSONS IN AN AGGREGATE AMOUNT THAT EXCEEDS TWO HUNDRED THOUSAND
50 DOLLARS; OR

51 (C) COMMITS OR ATTEMPTS TO COMMIT A CLASS B FELONY OR HIGHER LEVEL
52 CRIME OR ACTS AS AN ACCESSORY IN THE COMMISSION OF A CLASS B OR HIGHER
53 LEVEL FELONY; OR

54 (D) COMMITS THE CRIME OF IDENTITY THEFT IN THE SECOND DEGREE AS
55 DEFINED IN SECTION 191.20 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY
56 CONVICTED WITHIN THE LAST FIVE YEARS OF PETIT IDENTITY THEFT AS DEFINED

1 IN SECTION 191.05, IDENTITY THEFT IN THE FOURTH DEGREE AS DEFINED IN
2 SECTION 191.10, IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED IN SECTION
3 191.15, IDENTITY THEFT IN THE SECOND DEGREE AS DEFINED IN SECTION 191.20
4 OF THIS ARTICLE, IDENTITY THEFT IN THE FIRST DEGREE AS DEFINED IN THIS
5 SECTION, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE
6 SECOND DEGREE AS DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF
7 PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE AS DEFINED IN
8 SECTION 191.40, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND
9 DEGREE AS DEFINED IN SECTION 191.50, UNLAWFUL POSSESSION OF A SKIMMER
10 DEVICE IN THE FIRST DEGREE AS DEFINED IN SECTION 191.55, GRAND LARCENY
11 IN THE FOURTH DEGREE AS DEFINED IN SECTION 155.30, GRAND LARCENY IN THE
12 THIRD DEGREE AS DEFINED IN SECTION 155.35, GRAND LARCENY IN THE SECOND
13 DEGREE AS DEFINED IN SECTION 155.40 OR GRAND LARCENY IN THE FIRST DEGREE
14 AS DEFINED IN SECTION 155.42, CRIMINAL POSSESSION OF A FORGED INSTRUMENT
15 IN THE THIRD DEGREE AS DEFINED IN SECTION 170.20, CRIMINAL POSSESSION OF
16 A FORGED INSTRUMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 170.25,
17 CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE AS
18 DEFINED IN SECTION 170.30, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE
19 FIFTH DEGREE AS DEFINED IN SECTION 165.40, CRIMINAL POSSESSION OF STOLEN
20 PROPERTY IN THE FOURTH DEGREE AS DEFINED IN SECTION 165.45, CRIMINAL
21 POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE AS DEFINED IN SECTION
22 165.50, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE AS
23 DEFINED IN SECTION 165.52, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE
24 FIRST DEGREE AS DEFINED IN SECTION 165.54, OR CRIMINAL POSSESSION OF
25 FORGERY DEVICES AS DEFINED IN SECTION 170.40 OF THIS CHAPTER; OR

26 (E) COMMITS THE CRIME OF IDENTITY THEFT IN THE SECOND DEGREE AS
27 DEFINED IN SECTION 191.20 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER
28 PERSON IS A MEMBER OF THE ARMED FORCES, AND KNOWS THAT SUCH MEMBER IS
29 PRESENTLY DEPLOYED OUTSIDE OF THE CONTINENTAL UNITED STATES; OR

30 (F) COMMITS THE CRIME OF IDENTITY THEFT IN THE SECOND DEGREE AS
31 DEFINED IN SECTION 191.20 OF THIS ARTICLE AND KNOWS THAT SUCH OTHER
32 PERSON IS A VULNERABLE ELDERLY PERSON AS DEFINED IN SUBDIVISION THREE OF
33 SECTION 260.31 OF THIS CHAPTER, OR A PERSON WHO IS UNABLE TO CARE FOR
34 HIMSELF OR HERSELF BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR
35 DEFECT, OR BECAUSE HE OR SHE IS A MINOR; OR

36 2. ASSUMES THE IDENTITY OF FIFTY OR MORE PERSONS BY PRESENTING HIMSELF
37 OR HERSELF AS THOSE OTHER PERSONS, OR BY ACTING AS THOSE OTHER PERSONS,
38 OR BY USING PERSONAL IDENTIFYING INFORMATION OF THOSE OTHER PERSONS, AND
39 THEREBY OBTAINS GOODS, MONEY, PROPERTY OR SERVICES OR USES CREDIT IN THE
40 NAME OF THOSE PERSONS, OR CAUSES FINANCIAL LOSS TO AT LEAST ONE SUCH
41 PERSON, OR TO ANOTHER PERSON OR PERSONS.

42 IDENTITY THEFT IN THE FIRST DEGREE IS A CLASS B FELONY.

43 S 191.30 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE
44 THIRD DEGREE.

45 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
46 INFORMATION IN THE THIRD DEGREE WHEN HE OR SHE KNOWINGLY POSSESSES A
47 PERSON'S PERSONAL IDENTIFYING INFORMATION AS DEFINED IN SECTION 191.00
48 OF THIS ARTICLE OF ANOTHER PERSON KNOWING SUCH INFORMATION IS INTENDED
49 TO BE USED IN FURTHERANCE OF THE COMMISSION OF A CRIME DEFINED IN THIS
50 CHAPTER.

51 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE THIRD
52 DEGREE IS A CLASS A MISDEMEANOR.

53 S 191.35 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE
54 SECOND DEGREE.

55 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
56 INFORMATION IN THE SECOND DEGREE WHEN HE OR SHE KNOWINGLY POSSESSES

FIFTY OR MORE ITEMS OF PERSONAL IDENTIFYING INFORMATION AS DEFINED IN SECTION 191.00 OF THIS ARTICLE KNOWING SUCH INFORMATION IS INTENDED TO BE USED IN FURTHERANCE OF THE COMMISSION OF A CRIME DEFINED IN THIS CHAPTER.

UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE IS A CLASS E FELONY.

S 191.40 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE AND:

1. WITH INTENT TO FURTHER THE COMMISSION OF IDENTITY THEFT IN THE THIRD DEGREE, HE OR SHE SUPERVISES MORE THAN THREE ACCOMPLICES; OR

2. HE OR SHE HAS BEEN PREVIOUSLY CONVICTED WITHIN THE LAST FIVE YEARS OF PETIT IDENTITY THEFT AS DEFINED IN SECTION 191.05, IDENTITY THEFT IN THE FOURTH DEGREE AS DEFINED IN SECTION 191.10, IDENTITY THEFT IN THE THIRD DEGREE AS DEFINED IN SECTION 191.15, IDENTITY THEFT IN THE SECOND DEGREE AS DEFINED IN SECTION 191.20, IDENTITY THEFT IN THE FIRST DEGREE AS DEFINED IN SECTION 191.25, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION THE THIRD DEGREE AS DEFINED IN SECTION 191.30, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE AS DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE AS DEFINED IN THIS SECTION, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN SECTION 191.50, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST DEGREE AS DEFINED IN SECTION 191.55, GRAND LARCENY IN THE FOURTH DEGREE AS DEFINED IN SECTION 155.30, GRAND LARCENY IN THE THIRD DEGREE AS DEFINED IN SECTION 155.35, GRAND LARCENY IN THE SECOND DEGREE AS DEFINED IN SECTION 155.40 OR GRAND LARCENY IN THE FIRST DEGREE AS DEFINED IN SECTION 155.42, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE AS DEFINED IN SECTION 170.20, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 170.25, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 170.30, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE AS DEFINED IN SECTION 165.40, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE AS DEFINED IN SECTION 165.45, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE AS DEFINED IN SECTION 165.50, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE AS DEFINED IN SECTION 165.52, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE AS DEFINED IN SECTION 165.54, OR CRIMINAL POSSESSION OF FORGERY DEVICES AS DEFINED IN SECTION 170.40 OF THIS CHAPTER; OR

3. WITH INTENT TO FURTHER THE COMMISSION OF IDENTITY THEFT IN THE SECOND DEGREE:

(A) HE OR SHE SUPERVISES MORE THAN TWO ACCOMPLICES, AND

(B) HE OR SHE KNOWS THAT THE PERSON WHOSE PERSONAL IDENTIFYING INFORMATION THAT HE OR SHE POSSESSES IS A MEMBER OF THE ARMED FORCES, AND

(C) HE OR SHE KNOWS THAT SUCH MEMBER OF THE ARMED FORCES IS PRESENTLY DEPLOYED OUTSIDE OF THE CONTINENTAL UNITED STATES.

UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE IS A CLASS D FELONY.

S 191.45 DEFENSES.

IN ANY PROSECUTION FOR IDENTITY THEFT OR UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION PURSUANT TO THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE PERSON CHARGED WITH THE OFFENSE:

1 1. WAS UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF COMMITTING THE
2 OFFENSE AND THE PERSON USED OR POSSESSED THE PERSONAL IDENTIFYING INFOR-
3 MATION OF ANOTHER SOLELY FOR THE PURPOSE OF PURCHASING ALCOHOL;

4 2. WAS UNDER EIGHTEEN YEARS OF AGE AT THE TIME OF COMMITTING THE
5 OFFENSE AND THE PERSON USED OR POSSESSED THE PERSONAL IDENTIFYING INFOR-
6 MATION OF ANOTHER SOLELY FOR THE PURPOSE OF PURCHASING TOBACCO PRODUCTS;
7 OR

8 3. USED OR POSSESSED THE PERSONAL IDENTIFYING INFORMATION OF ANOTHER
9 PERSON SOLELY FOR THE PURPOSE OF MISREPRESENTING THE PERSON'S AGE TO
10 GAIN ACCESS TO A PLACE THE ACCESS TO WHICH IS RESTRICTED BASED ON AGE.
11 S 191.50 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE.

12 1. A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN
13 THE SECOND DEGREE WHEN HE OR SHE POSSESSES A SKIMMER DEVICE WITH THE
14 INTENT THAT SUCH DEVICE BE USED IN FURTHERANCE OF THE COMMISSION OF THE
15 CRIME OF IDENTITY THEFT OR UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
16 INFORMATION AS DEFINED IN THIS ARTICLE.

17 2. FOR PURPOSES OF THIS ARTICLE, "SKIMMER DEVICE" MEANS A DEVICE
18 DESIGNED OR ADAPTED TO OBTAIN PERSONAL IDENTIFYING INFORMATION FROM A
19 CREDIT CARD, DEBIT CARD, PUBLIC BENEFIT CARD, ACCESS CARD OR DEVICE, OR
20 OTHER CARD OR DEVICE THAT CONTAINS PERSONAL IDENTIFYING INFORMATION.

21 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE IS A
22 CLASS A MISDEMEANOR.

23 S 191.55 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST DEGREE.

24 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE
25 FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF UNLAWFUL POSSESSION OF
26 A SKIMMER DEVICE IN THE SECOND DEGREE AND HE OR SHE HAS BEEN PREVIOUSLY
27 CONVICTED WITHIN THE LAST FIVE YEARS OF IDENTITY THEFT IN THE FOURTH
28 DEGREE AS DEFINED IN SECTION 191.10, IDENTITY THEFT IN THE THIRD DEGREE
29 AS DEFINED IN SECTION 191.15, IDENTITY THEFT IN THE SECOND DEGREE AS
30 DEFINED IN SECTION 191.20, IDENTITY THEFT IN THE FIRST DEGREE AS DEFINED
31 IN SECTION 191.25, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMA-
32 TION IN THE THIRD DEGREE AS DEFINED IN SECTION 191.30, UNLAWFUL
33 POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE AS
34 DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
35 INFORMATION IN THE FIRST DEGREE AS DEFINED IN SECTION 191.40, UNLAWFUL
36 POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN
37 SECTION 191.50, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST
38 DEGREE AS DEFINED IN THIS SECTION, GRAND LARCENY IN THE FOURTH DEGREE AS
39 DEFINED IN SECTION 155.30, GRAND LARCENY IN THE THIRD DEGREE AS DEFINED
40 IN SECTION 155.35, GRAND LARCENY IN THE SECOND DEGREE AS DEFINED IN
41 SECTION 155.40, GRAND LARCENY IN THE FIRST DEGREE AS DEFINED IN SECTION
42 155.42, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE
43 AS DEFINED IN SECTION 170.20, CRIMINAL POSSESSION OF A FORGED INSTRUMENT
44 IN THE SECOND DEGREE AS DEFINED IN SECTION 170.25, CRIMINAL POSSESSION
45 OF A FORGED INSTRUMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 170.30,
46 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE AS DEFINED IN
47 SECTION 165.40, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH
48 DEGREE AS DEFINED IN SECTION 165.45, CRIMINAL POSSESSION OF STOLEN PROP-
49 erty IN THE THIRD DEGREE AS DEFINED IN SECTION 165.50, CRIMINAL
50 POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE AS DEFINED IN SECTION
51 165.52, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE AS
52 DEFINED IN SECTION 165.54, OR CRIMINAL POSSESSION OF FORGERY DEVICES AS
53 DEFINED IN SECTION 170.40 OF THIS CHAPTER.

54 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST DEGREE IS A CLASS
55 E FELONY.

1 S 2. Paragraph (a) of subdivision 1 of section 460.10 of the penal
2 law, as amended by chapter 405 of the laws of 2010, is amended to read
3 as follows:

4 (a) Any of the felonies set forth in this chapter: sections 120.05,
5 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
6 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
7 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
8 135.25 relating to kidnapping; section 135.35 relating to labor traf-
9 ficking; section 135.65 relating to coercion; sections 140.20, 140.25
10 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12
11 relating to criminal mischief; article one hundred fifty relating to
12 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
13 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
14 care fraud; article one hundred sixty relating to robbery; sections
15 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
16 stolen property; sections 165.72 and 165.73 relating to trademark coun-
17 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
18 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
19 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
20 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
21 to criminal diversion of prescription medications and prescriptions;
22 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
23 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,
24 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20
25 and 187.25 relating to residential mortgage fraud, sections 190.40 and
26 190.42 relating to criminal usury; section 190.65 relating to schemes to
27 defraud; SECTIONS 191.05, 191.10, 191.15, 191.20, 191.25, 191.30,
28 191.35, 191.40, 191.50 AND 191.55 RELATING TO IDENTITY THEFT, sections
29 205.60 and 205.65 relating to hindering prosecution; sections 210.10,
30 210.15, and 215.51 relating to perjury and contempt; section 215.40
31 relating to tampering with physical evidence; sections 220.06, 220.09,
32 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46,
33 220.55, 220.60 and 220.77 relating to controlled substances; sections
34 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and
35 230.32 relating to promoting prostitution; section 230.34 relating to
36 sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to
37 obscenity; sections 263.10 and 263.15 relating to promoting a sexual
38 performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12,
39 265.13 and the provisions of section 265.10 which constitute a felony
40 relating to firearms and other dangerous weapons; and sections 265.14
41 and 265.16 relating to criminal sale of a firearm; and section 275.10,
42 275.20, 275.30, or 275.40 relating to unauthorized recordings; and
43 sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering;
44 or

45 S 3. Paragraph (a) of subdivision 3 of section 490.05 of the penal
46 law, as amended by section 7 of part A of chapter 1 of the laws of 2004,
47 is amended to read as follows:

48 (a) "Specified offense" for purposes of this article means a class A
49 felony offense other than an offense as defined in article two hundred
50 twenty, a violent felony offense as defined in section 70.02,
51 manslaughter in the second degree as defined in section 125.15, criminal
52 tampering in the first degree as defined in section 145.20, identity
53 theft in the second degree as defined in section [190.79] 191.20, iden-
54 tity theft in the first degree as defined in section [190.80] 191.25,
55 unlawful possession of personal identification information in the second
56 degree as defined in section [190.82] 191.35, unlawful possession of

1 personal identification information in the first degree as defined in
2 section [190.83] 191.40, money laundering in support of terrorism in the
3 fourth degree as defined in section 470.21, money laundering in support
4 of terrorism in the third degree as defined in section 470.22, money
5 laundering in support of terrorism in the second degree as defined in
6 section 470.23, money laundering in support of terrorism in the first
7 degree as defined in section 470.24 of this chapter, and includes an
8 attempt or conspiracy to commit any such offense.

9 S 4. The opening paragraph and paragraph (1) of subdivision 4 of
10 section 20.40 of the criminal procedure law, paragraph (1) as amended by
11 chapter 346 of the laws of 2007, are amended to read as follows:

12 A person may be convicted in an appropriate criminal court of a
13 particular county, of an offense of which the criminal courts of this
14 state have jurisdiction pursuant to section 20.20, committed either by
15 his OR HER own conduct or by the conduct of another for which he OR SHE
16 is legally accountable pursuant to section 20.00 of the penal law, when:

17 (1) An offense of identity theft or unlawful possession of personal
18 [identification] IDENTIFYING information AND ALL CRIMINAL ACTS COMMITTED
19 IN CONNECTION WITH THOSE CRIMES OR COMMITTED THROUGH THE CRIMINAL MISUSE
20 OF PERSONAL IDENTIFYING INFORMATION may be prosecuted (i) in any county
21 in which part of the offense took place regardless of whether the
22 defendant was actually present in such county, or (ii) in the county in
23 which the person who suffers financial loss resided at the time of the
24 commission of the offense, or (iii) in the county where the person whose
25 personal [identification] IDENTIFYING information was used in the
26 commission of the offense resided at the time of the commission of the
27 offense. The law enforcement agency of any such county shall take a
28 police report of the matter and provide the complainant with a copy of
29 such report at no charge.

30 S 5. Paragraph (s) of subdivision 8 of section 700.05 of the criminal
31 procedure law is REPEALED and a new paragraph (s) is added to read as
32 follows:

33 (S) PETIT IDENTITY THEFT AS DEFINED IN SECTION 191.05, IDENTITY THEFT
34 IN THE FOURTH DEGREE AS DEFINED IN SECTION 191.10, IDENTITY THEFT IN THE
35 THIRD DEGREE AS DEFINED IN SECTION 191.15, IDENTITY THEFT IN THE SECOND
36 DEGREE AS DEFINED IN SECTION 191.20, IDENTITY THEFT IN THE FIRST DEGREE
37 AS DEFINED IN SECTION 191.25, UNLAWFUL POSSESSION OF PERSONAL IDENTIFY-
38 ING INFORMATION IN THE THIRD DEGREE AS DEFINED IN SECTION 191.30, UNLAW-
39 FUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE
40 AS DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFY-
41 ING INFORMATION IN THE FIRST DEGREE AS DEFINED IN SECTION 191.40, UNLAW-
42 FUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN
43 SECTION 191.50, OR UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST
44 DEGREE AS DEFINED IN SECTION 191.55 OF THE PENAL LAW.

45 S 6. Paragraph (b) of subdivision 1 of section 899-aa of the general
46 business law, as added by chapter 442 of the laws of 2005, is amended to
47 read as follows:

48 (b) "Private information" shall mean personal information consisting
49 of any information in combination with any one or more of the following
50 data elements, when either the personal information or the data element
51 is not encrypted, or encrypted with an encryption key that has also been
52 acquired:

53 (1) social security number;

54 (2) driver's license number or non-driver identification card number;

55 or

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

(4) MEDICAL INFORMATION; OR

(5) HEALTH INSURANCE INFORMATION;

FOR PURPOSES OF THIS PARAGRAPH, "MEDICAL INFORMATION" MEANS ANY INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY, MENTAL OR PHYSICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE PROFESSIONAL.

FOR PURPOSES OF THIS PARAGRAPH, "HEALTH INSURANCE INFORMATION" MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR SUBSCRIBER IDENTIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH INSURER TO IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S APPLICATION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS HISTORY.

"Private information" does not include publicly available information which is lawfully made available to the general public from federal, state, or local government records.

S 7. Paragraph (a) of subdivision 1 of section 208 of the state technology law, as added by chapter 442 of the laws of 2005, is amended to read as follows:

(a) "Private information" shall mean personal information in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted or encrypted with an encryption key that has also been acquired:

(1) social security number;

(2) driver's license number or non-driver identification card number; or

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

(4) MEDICAL INFORMATION; OR

(5) HEALTH INSURANCE INFORMATION.

FOR PURPOSES OF THIS PARAGRAPH, "MEDICAL INFORMATION" MEANS ANY INFORMATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY, MENTAL OR PHYSICAL CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE PROFESSIONAL.

FOR PURPOSES OF THIS PARAGRAPH, "HEALTH INSURANCE INFORMATION" MEANS AN INDIVIDUAL'S HEALTH INSURANCE POLICY NUMBER OR SUBSCRIBER IDENTIFICATION NUMBER, ANY UNIQUE IDENTIFIER USED BY A HEALTH INSURER TO IDENTIFY THE INDIVIDUAL OR ANY INFORMATION IN AN INDIVIDUAL'S APPLICATION AND CLAIMS HISTORY, INCLUDING, BUT NOT LIMITED TO, APPEALS HISTORY.

"Private information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

S 8. Sections 190.77, 190.78, 190.79, 190.80, 190.81, 190.82, 190.83, 190.84, 190.85 and 190.86 of the penal law are REPEALED.

S 9. Subdivision 1 of section 60.27 of the penal law, as amended by chapter 279 of the laws of 2008, is amended to read as follows:

1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby and, in the case of a violation of

1 section [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05, 191.10,
2 191.15, 191.20 OR 191.25 of this chapter, any costs or losses incurred
3 due to any adverse action taken against the victim. The district attor-
4 ney shall where appropriate, advise the court at or before the time of
5 sentencing that the victim seeks restitution or reparation, the extent
6 of injury or economic loss or damage of the victim, and the amount of
7 restitution or reparation sought by the victim in accordance with his or
8 her responsibilities under subdivision two of section 390.50 of the
9 criminal procedure law and article twenty-three of the executive law.
10 The court shall hear and consider the information presented by the
11 district attorney in this regard. In that event, or when the victim
12 impact statement reports that the victim seeks restitution or repara-
13 tion, the court shall require, unless the interests of justice dictate
14 otherwise, in addition to any of the dispositions authorized by this
15 article that the defendant make restitution of the fruits of the offense
16 and reparation for the actual out-of-pocket loss and, in the case of a
17 violation of section [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05,
18 191.10, 191.15, 191.20 OR 191.25 of this chapter, any costs or losses
19 incurred due to any adverse action, caused thereby to the victim. In the
20 event that restitution or reparation are not ordered, the court shall
21 clearly state its reasons on the record. Adverse action as used in this
22 subdivision shall mean and include actual loss incurred by the victim,
23 including an amount equal to the value of the time reasonably spent by
24 the victim attempting to remediate the harm incurred by the victim from
25 the offense, and the consequential financial losses from such action.

26 S 10. Paragraph (b) of subdivision 4 of section 60.27 of the penal
27 law, as amended by section 41 of part A-1 of chapter 56 of the laws of
28 2010, is amended to read as follows:

29 (b) the term "victim" shall include the victim of the offense, the
30 representative of a crime victim as defined in subdivision six of
31 section six hundred twenty-one of the executive law, an individual whose
32 identity was assumed or whose personal identifying information was used
33 in violation of section [190.78, 190.79 or 190.80] 191.05, 191.10,
34 191.15, 191.20 OR 191.25 of this chapter, or any person who has suffered
35 a financial loss as a direct result of the acts of a defendant in
36 violation of section [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05,
37 191.10, 191.15, 191.20 OR 191.25 of this chapter, a good samaritan as
38 defined in section six hundred twenty-one of the executive law and the
39 office of victim services or other governmental agency that has received
40 an application for or has provided financial assistance or compensation
41 to the victim.

42 S 11. Subdivision 2 of section 646 of the executive law, as amended by
43 chapter 346 of the laws of 2007, is amended to read as follows:

44 2. An individual whose identity was assumed or whose personal identi-
45 fying information, as defined in [section 190.77] SUBDIVISION ONE OF
46 SECTION 191.00 of the penal law, was used in violation of section
47 [190.78, 190.79 or 190.80] 191.05, 191.10, 191.15, 191.20 OR 191.25 of
48 the penal law, or any person who has suffered a financial loss as a
49 direct result of the acts of a defendant in violation of section
50 [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05, 191.10, 191.15,
51 191.20 OR 191.25 of the penal law, who has learned or reasonably
52 suspects that his or her personal identifying information has been
53 unlawfully used by another, may make a complaint to the local law
54 enforcement agency of the county in which any part of the offense took
55 place regardless of whether the defendant was actually present in such
56 county, or in the county in which the person who suffered financial loss

1 resided at the time of the commission of the offense, or in the county
2 where the person whose personal identification information was used in
3 the commission of the offense resided at the time of the commission of
4 the offense as provided in paragraph (1) of subdivision four of section
5 20.40 of the criminal procedure law. Said local law enforcement agency
6 shall take a police report of the matter and provide the complainant
7 with a copy of such report free of charge.

8 S 12. Paragraph (d) of subdivision 7 of section 995 of the executive
9 law, as amended by chapter 2 of the laws of 2006, is amended to read as
10 follows:

11 (d) any of the following felonies, or an attempt thereof where such
12 attempt is a felony offense:

13 aggravated assault upon a person less than eleven years old, as
14 defined in section 120.12 of the penal law; menacing in the first
15 degree, as defined in section 120.13 of the penal law; reckless endan-
16 germent in the first degree, as defined in section 120.25 of the penal
17 law; stalking in the second degree, as defined in section 120.55 of the
18 penal law; criminally negligent homicide, as defined in section 125.10
19 of the penal law; vehicular manslaughter in the second degree, as
20 defined in section 125.12 of the penal law; vehicular manslaughter in
21 the first degree, as defined in section 125.13 of the penal law;
22 persistent sexual abuse, as defined in section 130.53 of the penal law;
23 aggravated sexual abuse in the fourth degree, as defined in section
24 130.65-a of the penal law; female genital mutilation, as defined in
25 section 130.85 of the penal law; facilitating a sex offense with a
26 controlled substance, as defined in section 130.90 of the penal law;
27 unlawful imprisonment in the first degree, as defined in section 135.10
28 of the penal law; custodial interference in the first degree, as defined
29 in section 135.50 of the penal law; criminal trespass in the first
30 degree, as defined in section 140.17 of the penal law; criminal tamper-
31 ing in the first degree, as defined in section 145.20 of the penal law;
32 tampering with a consumer product in the first degree, as defined in
33 section 145.45 of the penal law; robbery in the third degree as defined
34 in section 160.05 of the penal law; identity theft in the second degree,
35 as defined in section [190.79] 191.20 of the penal law; identity theft
36 in the first degree, as defined in section [190.80] 191.25 of the penal
37 law; promoting prison contraband in the first degree, as defined in
38 section 205.25 of the penal law; tampering with a witness in the third
39 degree, as defined in section 215.11 of the penal law; tampering with a
40 witness in the second degree, as defined in section 215.12 of the penal
41 law; tampering with a witness in the first degree, as defined in section
42 215.13 of the penal law; criminal contempt in the first degree, as
43 defined in subdivisions (b), (c) and (d) of section 215.51 of the penal
44 law; aggravated criminal contempt, as defined in section 215.52 of the
45 penal law; bail jumping in the second degree, as defined in section
46 215.56 of the penal law; bail jumping in the first degree, as defined in
47 section 215.57 of the penal law; patronizing a prostitute in the second
48 degree, as defined in section 230.05 of the penal law; patronizing a
49 prostitute in the first degree, as defined in section 230.06 of the
50 penal law; promoting prostitution in the second degree, as defined in
51 section 230.30 of the penal law; promoting prostitution in the first
52 degree, as defined in section 230.32 of the penal law; compelling pros-
53 titution, as defined in section 230.33 of the penal law; disseminating
54 indecent [materials] MATERIAL to minors in the second degree, as defined
55 in section 235.21 of the penal law; disseminating indecent [materials]
56 MATERIAL to minors in the first degree, as defined in section 235.22 of

1 the penal law; riot in the first degree, as defined in section 240.06 of
2 the penal law; criminal anarchy, as defined in section 240.15 of the
3 penal law; aggravated harassment of an employee by an inmate, as defined
4 in section 240.32 of the penal law; unlawful surveillance in the second
5 degree, as defined in section 250.45 of the penal law; unlawful surveil-
6 lance in the first degree, as defined in section 250.50 of the penal
7 law; endangering the welfare of a vulnerable elderly person, OR AN
8 INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree, as
9 defined in section 260.32 of the penal law; endangering the welfare of a
10 vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED
11 PERSON in the first degree, as defined in section 260.34 of the penal
12 law; use of a child in a sexual performance, as defined in section
13 263.05 of the penal law; promoting an obscene sexual performance by a
14 child, as defined in section 263.10 of the penal law; possessing an
15 obscene sexual performance by a child, as defined in section 263.11 of
16 the penal law; promoting a sexual performance by a child, as defined in
17 section 263.15 of the penal law; possessing a sexual performance by a
18 child, as defined in section 263.16 of the penal law; criminal
19 possession of a weapon in the third degree, as defined in section 265.02
20 of the penal law; criminal sale of a firearm in the third degree, as
21 defined in section 265.11 of the penal law; criminal sale of a firearm
22 to a minor, as defined in section 265.16 of the penal law; unlawful
23 wearing of a body vest, as defined in section 270.20 of the penal law;
24 hate crimes as defined in section 485.05 of the penal law; and crime of
25 terrorism, as defined in section 490.25 of the penal law; or
26 S 13. This act shall take effect immediately.