

737--B

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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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.

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

LBD03915-05-2

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

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

1 USING PERSONAL IDENTIFYING INFORMATION OF THAT OTHER PERSON, AND THERE-
2 BY:

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

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

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

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

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

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

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

27 S 191.15 IDENTITY THEFT IN THE THIRD DEGREE.

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

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

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

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

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

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

1 155.30, GRAND LARCENY IN THE THIRD DEGREE AS DEFINED IN SECTION 155.35,
2 GRAND LARCENY IN THE SECOND DEGREE AS DEFINED IN SECTION 155.40 OR GRAND
3 LARCENY IN THE FIRST DEGREE AS DEFINED IN SECTION 155.42, CRIMINAL
4 POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE AS DEFINED IN
5 SECTION 170.20, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND
6 DEGREE AS DEFINED IN SECTION 170.25, CRIMINAL POSSESSION OF A FORGED
7 INSTRUMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 170.30, CRIMINAL
8 POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE AS DEFINED IN SECTION
9 165.40, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE AS
10 DEFINED IN SECTION 165.45, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE
11 THIRD DEGREE AS DEFINED IN SECTION 165.50, CRIMINAL POSSESSION OF STOLEN
12 PROPERTY IN THE SECOND DEGREE AS DEFINED IN SECTION 165.52, CRIMINAL
13 POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE AS DEFINED IN SECTION
14 165.54, OR CRIMINAL POSSESSION OF FORGERY DEVICES AS DEFINED IN SECTION
15 170.40 OF THIS CHAPTER; OR

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

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

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

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

33 S 191.20 IDENTITY THEFT IN THE SECOND DEGREE.

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

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

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

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

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

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

1 DEFINED IN SECTION 191.30, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
2 INFORMATION IN THE SECOND DEGREE AS DEFINED IN SECTION 191.35, UNLAWFUL
3 POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE FIRST DEGREE AS
4 DEFINED IN SECTION 191.40, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN
5 THE SECOND DEGREE AS DEFINED IN SECTION 191.50, UNLAWFUL POSSESSION OF A
6 SKIMMER DEVICE IN THE FIRST DEGREE AS DEFINED IN SECTION 191.55, GRAND
7 LARCENY IN THE FOURTH DEGREE AS DEFINED IN SECTION 155.30, GRAND LARCENY
8 IN THE THIRD DEGREE AS DEFINED IN SECTION 155.35, GRAND LARCENY IN THE
9 SECOND DEGREE AS DEFINED IN SECTION 155.40 OR GRAND LARCENY IN THE FIRST
10 DEGREE AS DEFINED IN SECTION 155.42, CRIMINAL POSSESSION OF A FORGED
11 INSTRUMENT IN THE THIRD DEGREE AS DEFINED IN SECTION 170.20, CRIMINAL
12 POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE AS DEFINED IN
13 SECTION 170.25, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST
14 DEGREE AS DEFINED IN SECTION 170.30, CRIMINAL POSSESSION OF STOLEN PROP-
15 erty IN THE FIFTH DEGREE AS DEFINED SECTION 165.40, CRIMINAL POSSESSION
16 OF STOLEN PROPERTY IN THE FOURTH DEGREE AS DEFINED IN SECTION 165.45,
17 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE AS DEFINED IN
18 SECTION 165.50, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND
19 DEGREE AS DEFINED IN SECTION 165.52, CRIMINAL POSSESSION OF STOLEN PROP-
20 erty IN THE FIRST DEGREE AS DEFINED IN SECTION 165.54, OR CRIMINAL
21 POSSESSION OF FORGERY DEVICES AS DEFINED IN SECTION 170.40 OF THIS CHAP-
22 TER; OR

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

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

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

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

40 S 191.25 IDENTITY THEFT IN THE FIRST DEGREE.

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

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

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

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

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

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

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

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

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

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

46 S 191.30 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE
47 THIRD DEGREE.

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

54 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE THIRD
55 DEGREE IS A CLASS A MISDEMEANOR.

1 S 191.35 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE
2 SECOND DEGREE.

3 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
4 INFORMATION IN THE SECOND DEGREE WHEN HE OR SHE KNOWINGLY POSSESSES
5 FIFTY OR MORE ITEMS OF PERSONAL IDENTIFYING INFORMATION AS DEFINED IN
6 SECTION 191.00 OF THIS ARTICLE KNOWING SUCH INFORMATION IS INTENDED TO
7 BE USED IN FURTHERANCE OF THE COMMISSION OF A CRIME DEFINED IN THIS
8 CHAPTER.

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

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

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

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

19 2. HE OR SHE HAS BEEN PREVIOUSLY CONVICTED WITHIN THE LAST FIVE YEARS
20 OF PETIT IDENTITY THEFT AS DEFINED IN SECTION 191.05, IDENTITY THEFT IN
21 THE FOURTH DEGREE AS DEFINED IN SECTION 191.10, IDENTITY THEFT IN THE
22 THIRD DEGREE AS DEFINED IN SECTION 191.15, IDENTITY THEFT IN THE SECOND
23 DEGREE AS DEFINED IN SECTION 191.20, IDENTITY THEFT IN THE FIRST DEGREE
24 AS DEFINED IN SECTION 191.25, UNLAWFUL POSSESSION OF PERSONAL IDENTIFY-
25 ING INFORMATION THE THIRD DEGREE AS DEFINED IN SECTION 191.30, UNLAWFUL
26 POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE AS
27 DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
28 INFORMATION IN THE FIRST DEGREE AS DEFINED IN THIS SECTION, UNLAWFUL
29 POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN
30 SECTION 191.50, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST
31 DEGREE AS DEFINED IN SECTION 191.55, GRAND LARCENY IN THE FOURTH DEGREE
32 AS DEFINED IN SECTION 155.30, GRAND LARCENY IN THE THIRD DEGREE AS
33 DEFINED IN SECTION 155.35, GRAND LARCENY IN THE SECOND DEGREE AS DEFINED
34 IN SECTION 155.40 OR GRAND LARCENY IN THE FIRST DEGREE AS DEFINED IN
35 SECTION 155.42, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD
36 DEGREE AS DEFINED IN SECTION 170.20, CRIMINAL POSSESSION OF A FORGED
37 INSTRUMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 170.25, CRIMINAL
38 POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE AS DEFINED IN
39 SECTION 170.30, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH
40 DEGREE AS DEFINED IN SECTION 165.40, CRIMINAL POSSESSION OF STOLEN PROP-
41 ERTY IN THE FOURTH DEGREE AS DEFINED IN SECTION 165.45, CRIMINAL
42 POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE AS DEFINED IN SECTION
43 165.50, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE AS
44 DEFINED IN SECTION 165.52, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE
45 FIRST DEGREE AS DEFINED IN SECTION 165.54, OR CRIMINAL POSSESSION OF
46 FORGERY DEVICES AS DEFINED IN SECTION 170.40 OF THIS CHAPTER; OR

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

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

50 (B) HE OR SHE KNOWS THAT THE PERSON WHOSE PERSONAL IDENTIFYING INFOR-
51 MATION THAT HE OR SHE POSSESSES IS A MEMBER OF THE ARMED FORCES, AND

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

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

56 S 191.45 DEFENSES.

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

4 1. WAS UNDER TWENTY-ONE 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 ALCOHOL;

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

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

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

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

24 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE IS A
25 CLASS A MISDEMEANOR.

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

27 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE
28 FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF UNLAWFUL POSSESSION OF
29 A SKIMMER DEVICE IN THE SECOND DEGREE AND HE OR SHE HAS BEEN PREVIOUSLY
30 CONVICTED WITHIN THE LAST FIVE YEARS OF IDENTITY THEFT IN THE FOURTH
31 DEGREE AS DEFINED IN SECTION 191.10, IDENTITY THEFT IN THE THIRD DEGREE
32 AS DEFINED IN SECTION 191.15, IDENTITY THEFT IN THE SECOND DEGREE AS
33 DEFINED IN SECTION 191.20, IDENTITY THEFT IN THE FIRST DEGREE AS DEFINED
34 IN SECTION 191.25, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMA-
35 TION IN THE THIRD DEGREE AS DEFINED IN SECTION 191.30, UNLAWFUL
36 POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE AS
37 DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING
38 INFORMATION IN THE FIRST DEGREE AS DEFINED IN SECTION 191.40, UNLAWFUL
39 POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN
40 SECTION 191.50, UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST
41 DEGREE AS DEFINED IN THIS SECTION, GRAND LARCENY IN THE FOURTH DEGREE AS
42 DEFINED IN SECTION 155.30, GRAND LARCENY IN THE THIRD DEGREE AS DEFINED
43 IN SECTION 155.35, GRAND LARCENY IN THE SECOND DEGREE AS DEFINED IN
44 SECTION 155.40, GRAND LARCENY IN THE FIRST DEGREE AS DEFINED IN SECTION
45 155.42, CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE
46 AS DEFINED IN SECTION 170.20, CRIMINAL POSSESSION OF A FORGED INSTRUMENT
47 IN THE SECOND DEGREE AS DEFINED IN SECTION 170.25, CRIMINAL POSSESSION
48 OF A FORGED INSTRUMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 170.30,
49 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE AS DEFINED IN
50 SECTION 165.40, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH
51 DEGREE AS DEFINED IN SECTION 165.45, CRIMINAL POSSESSION OF STOLEN PROP-
52 erty IN THE THIRD DEGREE AS DEFINED IN SECTION 165.50, CRIMINAL
53 POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE AS DEFINED IN SECTION
54 165.52, CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE AS
55 DEFINED IN SECTION 165.54, OR CRIMINAL POSSESSION OF FORGERY DEVICES AS
56 DEFINED IN SECTION 170.40 OF THIS CHAPTER.

1 UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST DEGREE IS A CLASS
2 E FELONY.

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

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

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

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

1 unlawful possession of personal identification information in the second
2 degree as defined in section [190.82] 191.35, unlawful possession of
3 personal identification information in the first degree as defined in
4 section [190.83] 191.40, money laundering in support of terrorism in the
5 fourth degree as defined in section 470.21, money laundering in support
6 of terrorism in the third degree as defined in section 470.22, money
7 laundering in support of terrorism in the second degree as defined in
8 section 470.23, money laundering in support of terrorism in the first
9 degree as defined in section 470.24 of this chapter, and includes an
10 attempt or conspiracy to commit any such offense.

11 S 4. Paragraph (s) of subdivision 8 of section 700.05 of the criminal
12 procedure law is REPEALED and a new paragraph (s) is added to read as
13 follows:

14 (S) PETIT IDENTITY THEFT AS DEFINED IN SECTION 191.05, IDENTITY THEFT
15 IN THE FOURTH DEGREE AS DEFINED IN SECTION 191.10, IDENTITY THEFT IN THE
16 THIRD DEGREE AS DEFINED IN SECTION 191.15, IDENTITY THEFT IN THE SECOND
17 DEGREE AS DEFINED IN SECTION 191.20, IDENTITY THEFT IN THE FIRST DEGREE
18 AS DEFINED IN SECTION 191.25, UNLAWFUL POSSESSION OF PERSONAL IDENTIFY-
19 ING INFORMATION IN THE THIRD DEGREE AS DEFINED IN SECTION 191.30, UNLAW-
20 FUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION IN THE SECOND DEGREE
21 AS DEFINED IN SECTION 191.35, UNLAWFUL POSSESSION OF PERSONAL IDENTIFY-
22 ING INFORMATION IN THE FIRST DEGREE AS DEFINED IN SECTION 191.40, UNLAW-
23 FUL POSSESSION OF A SKIMMER DEVICE IN THE SECOND DEGREE AS DEFINED IN
24 SECTION 191.50, OR UNLAWFUL POSSESSION OF A SKIMMER DEVICE IN THE FIRST
25 DEGREE AS DEFINED IN SECTION 191.55 OF THE PENAL LAW.

26 S 5. Paragraph (b) of subdivision 1 of section 899-aa of the general
27 business law, as added by chapter 442 of the laws of 2005, is amended to
28 read as follows:

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

34 (1) social security number;

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

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

40 (4) MEDICAL INFORMATION; OR

41 (5) HEALTH INSURANCE INFORMATION;

42 FOR PURPOSES OF THIS PARAGRAPH, "MEDICAL INFORMATION" MEANS ANY INFOR-
43 MATION REGARDING AN INDIVIDUAL'S MEDICAL HISTORY, MENTAL OR PHYSICAL
44 CONDITION, OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE PROFES-
45 SIONAL.

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

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

54 S 6. Paragraph (a) of subdivision 1 of section 208 of the state tech-
55 nology law, as added by chapter 442 of the laws of 2005, is amended to
56 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 7. 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 8. 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 section [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05, 191.10, 191.15, 191.20 OR 191.25 of this chapter, any costs or losses incurred due to any adverse action taken against the victim. The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of section [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05, 191.10, 191.15, 191.20 OR 191.25 of this chapter, any costs or losses incurred due to any adverse action, caused thereby to the victim. In the event that restitution or reparation are not ordered, the court shall

1 clearly state its reasons on the record. Adverse action as used in this
2 subdivision shall mean and include actual loss incurred by the victim,
3 including an amount equal to the value of the time reasonably spent by
4 the victim attempting to remediate the harm incurred by the victim from
5 the offense, and the consequential financial losses from such action.

6 S 9. Paragraph (b) of subdivision 4 of section 60.27 of the penal law,
7 as amended by chapter 313 of the laws of 2011, is amended to read as
8 follows:

9 (b) the term "victim" shall include the victim of the offense, the
10 representative of a crime victim as defined in subdivision six of
11 section six hundred twenty-one of the executive law, an individual whose
12 identity was assumed or whose personal identifying information was used
13 in violation of section [190.78, 190.79 or 190.80] 191.05, 191.10,
14 191.15, 191.20 OR 191.25 of this chapter, or any person who has suffered
15 a financial loss as a direct result of the acts of a defendant in
16 violation of section [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05,
17 191.10, 191.15, 191.20 OR 191.25 of this chapter, a good samaritan as
18 defined in section six hundred twenty-one of the executive law and the
19 office of victim services or other governmental agency that has received
20 an application for or has provided financial assistance or compensation
21 to the victim. A victim shall also mean any owner or lawful producer of
22 a master recording, or a trade association that represents such owner or
23 lawful producer, that has suffered injury as a result of an offense as
24 defined in article two hundred seventy-five of this chapter.

25 S 10. Subdivision 2 of section 646 of the executive law, as amended by
26 chapter 346 of the laws of 2007, is amended to read as follows:

27 2. An individual whose identity was assumed or whose personal identi-
28 fying information, as defined in [section 190.77] SUBDIVISION ONE OF
29 SECTION 191.00 of the penal law, was used in violation of section
30 [190.78, 190.79 or 190.80] 191.05, 191.10, 191.15, 191.20 OR 191.25 of
31 the penal law, or any person who has suffered a financial loss as a
32 direct result of the acts of a defendant in violation of section
33 [190.78, 190.79, 190.80, 190.82 or 190.83] 191.05, 191.10, 191.15,
34 191.20 OR 191.25 of the penal law, who has learned or reasonably
35 suspects that his or her personal identifying information has been
36 unlawfully used by another, may make a complaint to the local law
37 enforcement agency of the county in which any part of the offense took
38 place regardless of whether the defendant was actually present in such
39 county, or in the county in which the person who suffered financial loss
40 resided at the time of the commission of the offense, or in the county
41 where the person whose personal identification information was used in
42 the commission of the offense resided at the time of the commission of
43 the offense as provided in paragraph (1) of subdivision four of section
44 20.40 of the criminal procedure law. Said local law enforcement agency
45 shall take a police report of the matter and provide the complainant
46 with a copy of such report free of charge.

47 S 11. Paragraph (d) of subdivision 7 of section 995 of the executive
48 law, as amended by chapter 2 of the laws of 2006, is amended to read as
49 follows:

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

52 aggravated assault upon a person less than eleven years old, as
53 defined in section 120.12 of the penal law; menacing in the first
54 degree, as defined in section 120.13 of the penal law; reckless endan-
55 germent in the first degree, as defined in section 120.25 of the penal
56 law; stalking in the second degree, as defined in section 120.55 of the

1 penal law; criminally negligent homicide, as defined in section 125.10
2 of the penal law; vehicular manslaughter in the second degree, as
3 defined in section 125.12 of the penal law; vehicular manslaughter in
4 the first degree, as defined in section 125.13 of the penal law;
5 persistent sexual abuse, as defined in section 130.53 of the penal law;
6 aggravated sexual abuse in the fourth degree, as defined in section
7 130.65-a of the penal law; female genital mutilation, as defined in
8 section 130.85 of the penal law; facilitating a sex offense with a
9 controlled substance, as defined in section 130.90 of the penal law;
10 unlawful imprisonment in the first degree, as defined in section 135.10
11 of the penal law; custodial interference in the first degree, as defined
12 in section 135.50 of the penal law; criminal trespass in the first
13 degree, as defined in section 140.17 of the penal law; criminal tamper-
14 ing in the first degree, as defined in section 145.20 of the penal law;
15 tampering with a consumer product in the first degree, as defined in
16 section 145.45 of the penal law; robbery in the third degree as defined
17 in section 160.05 of the penal law; identity theft in the second degree,
18 as defined in section [190.79] 191.20 of the penal law; identity theft
19 in the first degree, as defined in section [190.80] 191.25 of the penal
20 law; promoting prison contraband in the first degree, as defined in
21 section 205.25 of the penal law; tampering with a witness in the third
22 degree, as defined in section 215.11 of the penal law; tampering with a
23 witness in the second degree, as defined in section 215.12 of the penal
24 law; tampering with a witness in the first degree, as defined in section
25 215.13 of the penal law; criminal contempt in the first degree, as
26 defined in subdivisions (b), (c) and (d) of section 215.51 of the penal
27 law; aggravated criminal contempt, as defined in section 215.52 of the
28 penal law; bail jumping in the second degree, as defined in section
29 215.56 of the penal law; bail jumping in the first degree, as defined in
30 section 215.57 of the penal law; patronizing a prostitute in the second
31 degree, as defined in section 230.05 of the penal law; patronizing a
32 prostitute in the first degree, as defined in section 230.06 of the
33 penal law; promoting prostitution in the second degree, as defined in
34 section 230.30 of the penal law; promoting prostitution in the first
35 degree, as defined in section 230.32 of the penal law; compelling pros-
36 titution, as defined in section 230.33 of the penal law; disseminating
37 indecent [materials] MATERIAL to minors in the second degree, as defined
38 in section 235.21 of the penal law; disseminating indecent [materials]
39 MATERIAL to minors in the first degree, as defined in section 235.22 of
40 the penal law; riot in the first degree, as defined in section 240.06 of
41 the penal law; criminal anarchy, as defined in section 240.15 of the
42 penal law; aggravated harassment of an employee by an inmate, as defined
43 in section 240.32 of the penal law; unlawful surveillance in the second
44 degree, as defined in section 250.45 of the penal law; unlawful surveil-
45 lance in the first degree, as defined in section 250.50 of the penal
46 law; endangering the welfare of a vulnerable elderly person, OR AN
47 INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree, as
48 defined in section 260.32 of the penal law; endangering the welfare of a
49 vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED
50 PERSON in the first degree, as defined in section 260.34 of the penal
51 law; use of a child in a sexual performance, as defined in section
52 263.05 of the penal law; promoting an obscene sexual performance by a
53 child, as defined in section 263.10 of the penal law; possessing an
54 obscene sexual performance by a child, as defined in section 263.11 of
55 the penal law; promoting a sexual performance by a child, as defined in
56 section 263.15 of the penal law; possessing a sexual performance by a

1 child, as defined in section 263.16 of the penal law; criminal
2 possession of a weapon in the third degree, as defined in section 265.02
3 of the penal law; criminal sale of a firearm in the third degree, as
4 defined in section 265.11 of the penal law; criminal sale of a firearm
5 to a minor, as defined in section 265.16 of the penal law; unlawful
6 wearing of a body vest, as defined in section 270.20 of the penal law;
7 hate crimes as defined in section 485.05 of the penal law; and crime of
8 terrorism, as defined in section 490.25 of the penal law; or
9 S 12. This act shall take effect immediately.