

STATE OF NEW YORK

1563

2017-2018 Regular Sessions

IN SENATE

January 10, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to offenses involving theft of identity and computer tampering; and to repeal certain provisions of 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. Title K of the penal law is amended by adding a new article
2 191 to read as follows:

ARTICLE 191

OFFENSES INVOLVING THEFT OF IDENTITY

Section 191.00 Definitions.

6 191.05 Identity theft in the fifth degree.

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 Aggravated identity theft in the second degree.

12 191.35 Aggravated identity theft in the first degree.

13 191.40 Criminal possession of a skimmer device in the second
14 degree.

15 191.45 Criminal possession of a skimmer device in the first
16 degree.

§ 191.00 Definitions.

17 1. For the purposes of this article "personal identifying information"
18 means a person's name, address, telephone number, date of birth, driv-
19 er's license number, social security number, place of employment, moth-
20 er's maiden name, financial services account number or code, savings
21 account number or code, checking account number or code, brokerage
22 account number or code, credit card account number or code, debit card
23 number or code, automated teller machine number or code, taxpayer iden-
24

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

LBD01207-02-7

1 tification number, computer system password, signature or copy of a
2 signature, electronic signature, unique biometric data that is a finger-
3 print, voice print, retinal image or iris image of another person, tele-
4 phone calling card number, mobile identification number or code, elec-
5 tronic serial number or personal identification number, medical
6 information, medical insurance information, or any other name, number,
7 code or information that may be used alone or in conjunction with other
8 such information to assume the identity of another person.

9 2. For the purposes of this article:

10 (a) "electronic signature" shall have the same meaning as defined in
11 subdivision three of section three hundred two of the state technology
12 law.

13 (b) "personal identification number" means any number or code which
14 may be used alone or in conjunction with any other information to assume
15 the identity of another person or access financial resources or credit
16 of another person.

17 (c) "member of the armed forces" shall mean a person in the military
18 service of the United States or the military service of the state,
19 including but not limited to, the armed forces of the United States, the
20 army national guard, the air national guard, the New York naval militia,
21 the New York guard, and such additional forces as may be created by the
22 federal or state government as authorized by law.

23 (d) "medical information" means any information regarding an individ-
24 ual's medical history, mental or physical condition, or medical treat-
25 ment or diagnosis by a health care professional.

26 (e) "medical insurance information" means an individual's health
27 insurance policy number or subscriber identification number, any unique
28 identifier used by a health insurer to identify the individual or any
29 information in an individual's application and claims history, includ-
30 ing, but not limited to, appeals history.

31 § 191.05 Identity theft in the fifth degree.

32 A person is guilty of identity theft in the fifth degree when he or
33 she knowingly and with intent to defraud assumes the identity of another
34 person by presenting himself or herself as that other person, or by
35 acting as that other person or by using personal identifying information
36 of that other person, and thereby:

37 1. obtains goods, money, property or services or uses credit in the
38 name of such other person or causes financial loss to such person or to
39 another person or persons; or

40 2. commits a class A misdemeanor or higher level crime.

41 Identity theft in the fifth degree is a class A misdemeanor.

42 § 191.10 Identity theft in the fourth degree.

43 A person is guilty of identity theft in the fourth degree when he or
44 she knowingly and with intent to defraud:

45 1. assumes the identity of another person by presenting himself or
46 herself as that other person, or by acting as that other person or by
47 using personal identifying information of that other person, and there-
48 by:

49 (a) obtains goods, money, property or services or uses credit in the
50 name of such other person in an aggregate amount that exceeds five
51 hundred dollars; or

52 (b) causes financial loss to such person or to another person or
53 persons in an aggregate amount that exceeds five hundred dollars; or

54 (c) commits or attempts to commit a felony or acts as an accessory to
55 the commission of a felony; or

1 (d) commits the crime of identity theft in the fifth degree as defined
2 in section 191.05 of this article and has been previously convicted
3 within the last five years of identity theft in the fifth degree as
4 defined in section 191.05, identity theft in the fourth degree as
5 defined in this section, identity theft in the third degree as defined
6 in section 191.15, identity theft in the second degree as defined in
7 section 191.20, identity theft in the first degree as defined in section
8 191.25, criminal possession of a skimmer device in the second degree as
9 defined in section 191.40, criminal possession of a skimmer device in
10 the first degree as defined in section 191.45 of this article, grand
11 larceny in the fourth degree as defined in section 155.30, grand larceny
12 in the third degree as defined in section 155.35, grand larceny in the
13 second degree as defined in section 155.40, grand larceny in the first
14 degree as defined in section 155.42 of this part, forgery in the third
15 degree as defined in section 170.05, forgery in the second degree as
16 defined in section 170.10, forgery in the first degree as defined in
17 section 170.15, criminal possession of a forged instrument in the third
18 degree as defined in section 170.20, criminal possession of a forged
19 instrument in the second degree as defined in section 170.25, or crimi-
20 nal possession of a forged instrument in the first degree as defined in
21 section 170.30 of this title; or

22 2. assumes the identity of three or more persons by presenting himself
23 or herself as those other persons, or by acting as those other persons,
24 or by using personal identifying information of those other persons, and
25 thereby obtains goods, money, property or services or uses credit in the
26 name of those persons, or causes financial loss to at least one such
27 person, or to another person or persons.

28 Identity theft in the fourth degree is a class E felony.

29 § 191.15 Identity theft in the third degree.

30 A person is guilty of identity theft in the third degree when he or
31 she knowingly and with intent to defraud:

32 1. assumes the identity of another person by presenting himself or
33 herself as that other person, or by acting as that other person or by
34 using personal identifying information of that other person, and there-
35 by:

36 (a) obtains goods, money, property or services or uses credit in the
37 name of such other person in an aggregate amount that exceeds two thou-
38 sand dollars; or

39 (b) causes financial loss to such person or to another person or
40 persons in an aggregate amount that exceeds two thousand dollars; or

41 (c) commits or attempts to commit a class D felony or higher level
42 crime or acts as an accessory to the commission of a class D or higher
43 level felony; or

44 (d) commits the crime of identity theft in the fourth degree as
45 defined in section 191.10 of this article and has been previously
46 convicted within the last five years of identity theft in the fifth
47 degree as defined in section 191.05, identity theft in the fourth degree
48 as defined in section 191.10, identity theft in the third degree as
49 defined in this section, identity theft in the second degree as defined
50 in section 191.20, identity theft in the first degree as defined in
51 section 191.25, aggravated identity theft in the second degree as
52 defined in section 191.30, aggravated identity theft in the first degree
53 as defined in section 191.35, criminal possession of a skimmer device in
54 the second degree as defined in section 191.40, criminal possession of a
55 skimmer device in the first degree as defined in section 191.45 of this
56 article, 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 of this part,
4 criminal possession of a forged instrument in the third degree as
5 defined in section 170.20, criminal possession of a forged instrument in
6 the second degree as defined in section 170.25, criminal possession of a
7 forged instrument in the first degree as defined in section 170.30 of
8 this title, criminal possession of stolen property in the fifth degree
9 as defined in section 165.40, criminal possession of stolen property in
10 the fourth degree as defined in section 165.45, criminal possession of
11 stolen property in the third degree as defined in section 165.50, crimi-
12 nal possession of stolen property in the second degree as defined in
13 section 165.52, criminal possession of stolen property in the first
14 degree as defined in section 165.54 of this part, or criminal possession
15 of forgery devices as defined in section 170.40 of this title; or

16 2. assumes the identity of ten or more persons by presenting himself
17 or herself as those other persons, or by acting as those other persons,
18 or by using personal identifying information of those other persons, and
19 thereby obtains goods, money, property or services or uses credit in the
20 name of those persons, or causes financial loss to at least one such
21 person, or to another person or persons.

22 Identity theft in the third degree is a class D felony.

23 § 191.20 Identity theft in the second degree.

24 A person is guilty of identity theft in the second degree when he or
25 she knowingly and with intent to defraud:

26 1. assumes the identity of another person by presenting himself or
27 herself as that other person, or by acting as that other person or by
28 using personal identifying information of that other person, and there-
29 by:

30 (a) obtains goods, money, property or services or uses credit in the
31 name of such other person in an aggregate amount that exceeds twenty-
32 five thousand dollars; or

33 (b) causes financial loss to such person or to another person or
34 persons in an aggregate amount that exceeds twenty-five thousand
35 dollars; or

36 (c) commits or attempts to commit a class C felony or higher level
37 crime or acts as an accessory in the commission of a class C or higher
38 level felony; or

39 (d) commits the crime of identity theft in the third degree as defined
40 in section 191.15 of this article and has been previously convicted
41 within the last five years of identity theft in the fifth degree as
42 defined in section 191.05, identity theft in the fourth degree as
43 defined in section 191.10, identity theft in the third degree as defined
44 in section 191.15, identity theft in the second degree as defined in
45 this section, identity theft in the first degree as defined in section
46 191.25, aggravated identity theft in the second degree as defined in
47 section 191.30, aggravated identity theft in the first degree as defined
48 in section 191.35, criminal possession of a skimmer device in the second
49 degree as defined in section 191.40, criminal possession of a skimmer
50 device in the first degree as defined in section 191.45 of this article,
51 grand larceny in the fourth degree as defined in section 155.30, grand
52 larceny in the third degree as defined in section 155.35, grand larceny
53 in the second degree as defined in section 155.40 or grand larceny in
54 the first degree as defined in section 155.42 of this part, criminal
55 possession of a forged instrument in the third degree as defined in
56 section 170.20, criminal possession of a forged instrument in the second

1 degree as defined in section 170.25, criminal possession of a forged
2 instrument in the first degree as defined in section 170.30 of this
3 title, criminal possession of stolen property in the fifth degree as
4 defined in section 165.40, criminal possession of stolen property in the
5 fourth degree as defined in section 165.45, criminal possession of
6 stolen property in the third degree as defined in section 165.50, crimi-
7 nal possession of stolen property in the second degree as defined in
8 section 165.52, criminal possession of stolen property in the first
9 degree as defined in section 165.54 of this part, or criminal possession
10 of forgery devices as defined in section 170.40 of this title; or

11 2. assumes the identity of twenty-five or more persons by presenting
12 himself or herself as those other persons, or by acting as those other
13 persons, or by using personal identifying information of those other
14 persons, and thereby obtains goods, money, property or services or uses
15 credit in the name of those persons, or causes financial loss to at
16 least one such person, or to another person or persons.

17 Identity theft in the second degree is a class C felony.

18 § 191.25 Identity theft in the first degree.

19 A person is guilty of identity theft in the first degree when he or
20 she knowingly and with intent to defraud:

21 1. assumes the identity of another person by presenting himself or
22 herself as that other person, or by acting as that other person or by
23 using personal identifying information of that other person, and there-
24 by:

25 (a) obtains goods, money, property or services or uses credit in the
26 name of such other person in an aggregate amount that exceeds two
27 hundred thousand dollars; or

28 (b) causes financial loss to such person or to another person or
29 persons in an aggregate amount that exceeds two hundred thousand
30 dollars; or

31 (c) commits or attempts to commit a class B felony or higher level
32 crime or acts as an accessory in the commission of a class B or higher
33 level felony; or

34 (d) commits the crime of identity theft in the second degree as
35 defined in section 191.20 of this article and has been previously
36 convicted within the last five years of identity theft in the fifth
37 degree as defined in section 191.05, identity theft in the fourth degree
38 as defined in section 191.10, identity theft in the third degree as
39 defined in section 191.15, identity theft in the second degree as
40 defined in section 191.20, identity theft in the first degree as defined
41 in this section, aggravated identity theft in the second degree as
42 defined in section 191.30, aggravated identity theft in the first degree
43 as defined in section 191.35, criminal possession of a skimmer device in
44 the second degree as defined in section 191.40, criminal possession of a
45 skimmer device in the first degree as defined in section 191.45 of this
46 article, grand larceny in the fourth degree as defined in section
47 155.30, grand larceny in the third degree as defined in section 155.35,
48 grand larceny in the second degree as defined in section 155.40 or grand
49 larceny in the first degree as defined in section 155.42 of this part,
50 criminal possession of a forged instrument in the third degree as
51 defined in section 170.20, criminal possession of a forged instrument in
52 the second degree as defined in section 170.25, criminal possession of a
53 forged instrument in the first degree as defined in section 170.30 of
54 this title, criminal possession of stolen property in the fifth degree
55 as defined in section 165.40, criminal possession of stolen property in
56 the fourth degree as defined in section 165.45, criminal possession of

1 stolen property in the third degree as defined in section 165.50, criminal
2 possession of stolen property in the second degree as defined in
3 section 165.52, criminal possession of stolen property in the first
4 degree as defined in section 165.54 of this part, or criminal possession
5 of forgery devices as defined in section 170.40 of this title; or

6 2. assumes the identity of fifty or more persons by presenting himself
7 or herself as those other persons, or by acting as those other persons,
8 or by using personal identifying information of those other persons, and
9 thereby obtains goods, money, property or services or uses credit in the
10 name of those persons, or causes financial loss to at least one such
11 person, or to another person or persons.

12 Identity theft in the first degree is a class B felony.

13 § 191.30 Aggravated identity theft in the second degree.

14 A person is guilty of aggravated identity theft in the second degree
15 when he or she commits identity theft in the fifth degree as defined in
16 section 191.05 of this article and knows that such other person is:

17 1. a vulnerable elderly person as defined in subdivision three of
18 section 260.31 of this chapter; or

19 2. an incompetent or physically disabled person as defined in subdivi-
20 sion four of section 260.31 of this chapter.

21 Aggravated identity theft in the second degree is a class E felony.

22 § 191.35 Aggravated identity theft in the first degree.

23 A person is guilty of aggravated identity theft in the first degree
24 when he or she knowingly with intent to defraud assumes the identity of
25 another person by presenting himself or herself as that other person, or
26 by acting as that other person or by using personal identifying informa-
27 tion of that other person, and knows that such person is a member of the
28 armed forces, and knows that such member is presently deployed outside
29 of the continental United States, and:

30 1. thereby obtains goods, money, property or services or uses credit
31 in the name of such member of the armed forces in an aggregate amount
32 that exceeds five hundred dollars; or

33 2. thereby causes financial loss to such member of the armed forces in
34 an aggregate amount that exceeds five hundred dollars.

35 Aggravated identity theft in the first degree is a class D felony.

36 § 191.40 Criminal possession of a skimmer device in the second degree.

37 1. A person is guilty of criminal possession of a skimmer device in
38 the second degree when he or she possesses a skimmer device with the
39 intent that such device be used in furtherance of the commission of the
40 crimes of identity theft or grand larceny in the fourth degree as
41 defined in section 155.30, grand larceny in the third degree as defined
42 in section 155.35, grand larceny in the second degree as defined in
43 section 155.40 or grand larceny in the first degree as defined in
44 section 155.42 of this part, criminal possession of stolen property in
45 the fourth degree as defined in section 165.45, criminal possession of
46 stolen property in the third degree as defined in section 165.50, criminal
47 possession of stolen property in the second degree as defined in
48 section 165.52, or criminal possession of stolen property in the first
49 degree as defined in section 165.54 of this part.

50 2. For purposes of this article, "skimmer device" means a device
51 designed or adapted to obtain personal identifying information from a
52 credit card, debit card, public benefit card, access card or device, or
53 other card or device that contains personal identifying information.

54 Criminal possession of a skimmer device in the second degree is a
55 class D felony.

56 § 191.45 Criminal possession of a skimmer device in the first degree.

1 A person is guilty of criminal possession of a skimmer device in the
2 first degree when he or she commits the crime of unlawful possession of
3 a skimmer device in the second degree and he or she has been previously
4 convicted within the last five years of identity theft in the fourth
5 degree as defined in section 191.10, identity theft in the third degree
6 as defined in section 191.15, identity theft in the second degree as
7 defined in section 191.20, identity theft in the first degree as defined
8 in section 191.25, unlawful possession of a skimmer device in the second
9 degree as defined in section 191.40 of this article, unlawful possession
10 of a skimmer device in the first degree as defined in this section,
11 grand larceny in the fourth degree as defined in section 155.30, grand
12 larceny in the third degree as defined in section 155.35, grand larceny
13 in the second degree as defined in section 155.40, grand larceny in the
14 first degree as defined in section 155.42 of this part, forgery in the
15 third degree as defined in section 170.05, forgery in the second degree
16 as defined in section 170.10, forgery in the first degree as defined in
17 section 170.15, criminal possession of a forged instrument in the third
18 degree as defined in section 170.20, criminal possession of a forged
19 instrument in the second degree as defined in section 170.25, criminal
20 possession of a forged instrument in the first degree as defined in
21 section 170.30 of this title, criminal possession of stolen property in
22 the fifth degree as defined in section 165.40, criminal possession of
23 stolen property in the fourth degree as defined in section 165.45, crim-
24 inal possession of stolen property in the third degree as defined in
25 section 165.50, criminal possession of stolen property in the second
26 degree as defined in section 165.52, criminal possession of stolen prop-
27 erty in the first degree as defined in section 165.54 of this part, or
28 criminal possession of forgery devices as defined in section 170.40 of
29 this title.

30 Criminal possession of a skimmer device in the first degree is a class
31 C felony.

32 § 2. Paragraph (a) of subdivision 1 of section 460.10 of the penal
33 law, as amended by chapter 368 of the laws of 2015, is amended to read
34 as follows:

35 (a) Any of the felonies set forth in this chapter: sections 120.05,
36 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
37 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
38 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
39 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to
40 labor trafficking; section 135.65 relating to coercion; sections 140.20,
41 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and
42 145.12 relating to criminal mischief; article one hundred fifty relating
43 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
44 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
45 care fraud; article one hundred sixty relating to robbery; sections
46 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
47 stolen property; sections 165.72 and 165.73 relating to trademark coun-
48 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
49 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
50 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
51 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
52 to criminal diversion of prescription medications and prescriptions;
53 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
54 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,
55 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25
56 relating to residential mortgage fraud, sections 190.40 and 190.42

1 relating to criminal usury; section 190.65 relating to schemes to
2 defraud; sections 191.05, 191.10, 191.15, 191.20, 191.25, 191.30, and
3 191.35 relating to identity theft; any felony defined in article four
4 hundred ninety-six; sections 205.60 and 205.65 relating to hindering
5 prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and
6 contempt; section 215.40 relating to tampering with physical evidence;
7 sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39,
8 220.41, 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to
9 controlled substances; sections 225.10 and 225.20 relating to gambling;
10 sections 230.25, 230.30, and 230.32 relating to promoting prostitution;
11 section 230.34 relating to sex trafficking; sections 235.06, 235.07,
12 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15
13 relating to promoting a sexual performance by a child; sections 265.02,
14 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section
15 265.10 which constitute a felony relating to firearms and other danger-
16 ous weapons; sections 265.14 and 265.16 relating to criminal sale of a
17 firearm; section 275.10, 275.20, 275.30, or 275.40 relating to unauthor-
18 ized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating
19 to money laundering; or

20 § 3. Paragraph (a) of subdivision 3 of section 490.05 of the penal
21 law, as amended by section 7 of part A of chapter 1 of the laws of 2004,
22 is amended to read as follows:

23 (a) "Specified offense" for purposes of this article means a class A
24 felony offense other than an offense as defined in article two hundred
25 twenty, a violent felony offense as defined in section 70.02,
26 manslaughter in the second degree as defined in section 125.15, criminal
27 tampering in the first degree as defined in section 145.20, identity
28 theft in the second degree as defined in section ~~190.79~~ 191.20, iden-
29 tity theft in the first degree as defined in section ~~190.80~~ 191.25,
30 unlawful possession of personal identification information in the second
31 degree as defined in section 190.82, unlawful possession of personal
32 identification information in the first degree as defined in section
33 190.83, money laundering in support of terrorism in the fourth degree as
34 defined in section 470.21, money laundering in support of terrorism in
35 the third degree as defined in section 470.22, money laundering in
36 support of terrorism in the second degree as defined in section 470.23,
37 money laundering in support of terrorism in the first degree as defined
38 in section 470.24 of this chapter, and includes an attempt or conspiracy
39 to commit any such offense.

40 § 4. Sections 190.77, 190.78, 190.79, 190.80, 190.80-a, 190.85 and
41 190.86 of the penal law are REPEALED.

42 § 5. Subdivision 1 of section 60.27 of the penal law, as amended by
43 chapter 279 of the laws of 2008, is amended to read as follows:

44 1. In addition to any of the dispositions authorized by this article,
45 the court shall consider restitution or reparation to the victim of the
46 crime and may require restitution or reparation as part of the sentence
47 imposed upon a person convicted of an offense, and after providing the
48 district attorney with an opportunity to be heard in accordance with the
49 provisions of this subdivision, require the defendant to make restitu-
50 tion of the fruits of his or her offense or reparation for the actual
51 out-of-pocket loss caused thereby and, in the case of a violation of
52 section ~~190.78, 190.79, 190.80, 190.82 or 190.83~~ 191.05, 191.10,
53 191.15, 191.20 or 191.25 of this chapter, any costs or losses incurred
54 due to any adverse action taken against the victim. The district attor-
55 ney shall where appropriate, advise the court at or before the time of
56 sentencing that the victim seeks restitution or reparation, the extent

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

21 § 6. Paragraph (b) of subdivision 4 of section 60.27 of the penal law,
22 as amended by chapter 313 of the laws of 2011, is amended to read as
23 follows:

24 (b) the term "victim" shall include the victim of the offense, the
25 representative of a crime victim as defined in subdivision six of
26 section six hundred twenty-one of the executive law, an individual whose
27 identity was assumed or whose personal identifying information was used
28 in violation of section [~~190.78, 190.79 or 190.80~~] 191.05, 191.10,
29 191.15, 191.20 or 191.25 of this chapter, or any person who has suffered
30 a financial loss as a direct result of the acts of a defendant in
31 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,
32 191.10, 191.15, 191.20 or 191.25 of this chapter, a good samaritan as
33 defined in section six hundred twenty-one of the executive law and the
34 office of victim services or other governmental agency that has received
35 an application for or has provided financial assistance or compensation
36 to the victim. A victim shall also mean any owner or lawful producer of
37 a master recording, or a trade association that represents such owner or
38 lawful producer, that has suffered injury as a result of an offense as
39 defined in article two hundred seventy-five of this chapter.

40 § 7. Subdivision 2 of section 646 of the executive law, as amended by
41 chapter 346 of the laws of 2007, is amended to read as follows:

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

1 the commission of the offense resided at the time of the commission of
2 the offense as provided in paragraph (1) of subdivision four of section
3 20.40 of the criminal procedure law. Said local law enforcement agency
4 shall take a police report of the matter and provide the complainant
5 with a copy of such report free of charge.

6 § 8. Paragraph (c) of subdivision 5 of section 156.00 of the penal
7 law, as amended by chapter 558 of the laws of 2006, is amended to read
8 as follows:

9 (c) is not and is not intended to be available to anyone other than
10 the person or persons rightfully in possession thereof or selected
11 persons having access thereto with his, her or their consent and which
12 ~~[accords or may accord such rightful possessors an advantage over~~
13 ~~competitors or other persons who do not have knowledge or the benefit~~
14 ~~thereof]~~ persons other than those rightly in possession, know or should
15 know that said material is not intended to be available to them.

16 § 9. Section 156.20 of the penal law, as amended by chapter 558 of the
17 laws of 2006, is amended to read as follows:

18 § 156.20 Computer tampering in the [~~fourth~~] fifth degree.

19 A person is guilty of computer tampering in the [~~fourth~~] fifth degree
20 when he or she uses, causes to be used, or accesses a computer, computer
21 service, or computer network without authorization and he or she inten-
22 tionally alters in any manner or destroys computer data or a computer
23 program of another person.

24 Computer tampering in the [~~fourth~~] fifth degree is a class A misdemea-
25 nor.

26 § 10. Section 156.25 of the penal law, as amended by chapter 89 of the
27 laws of 1993, subdivision 2 as amended by chapter 376 of the laws of
28 1997, is amended to read as follows:

29 § 156.25 Computer tampering in the [~~third~~] fourth degree.

30 A person is guilty of computer tampering in the [~~third~~] fourth degree
31 when he or she commits the crime of computer tampering in the [~~fourth~~]
32 fifth degree and:

33 1. he or she does so with an intent to commit or attempt to commit or
34 further the commission of any felony; or

35 2. he or she has been previously convicted of any crime under this
36 article or subdivision eleven of section 165.15 of this chapter; or

37 3. he or she intentionally alters in any manner or destroys computer
38 material; or

39 4. he or she intentionally alters in any manner or destroys computer
40 data or a computer program so as to cause damages in an aggregate amount
41 exceeding one thousand dollars.

42 Computer tampering in the [~~third~~] fourth degree is a class E felony.

43 § 11. Section 156.26 of the penal law, as amended by chapter 590 of
44 the laws of 2008, is amended to read as follows:

45 § 156.26 Computer tampering in the [~~second~~] third degree.

46 A person is guilty of computer tampering in the [~~second~~] third degree
47 when he or she commits the crime of computer tampering in the [~~fourth~~]
48 fifth degree and he or she intentionally alters in any manner or
49 destroys:

50 1. computer data or a computer program so as to cause damages in an
51 aggregate amount exceeding three thousand dollars; or

52 2. computer material that contains records of the medical history or
53 medical treatment of an identified or readily identifiable individual or
54 individuals and as a result of such alteration or destruction, such
55 individual or individuals suffer serious physical injury, and he or she

1 is aware of and consciously disregards a substantial and unjustifiable
2 risk that such serious physical injury may occur.

3 Computer tampering in the [~~second~~] third degree is a class D felony.

4 § 12. Section 156.27 of the penal law, as added by chapter 89 of the
5 laws of 1993, is amended to read as follows:

6 § 156.27 Computer tampering in the [~~first~~] second degree.

7 A person is guilty of computer tampering in the [~~first~~] second degree
8 when he or she commits the crime of computer tampering in the [~~fourth~~]
9 fifth degree and he or she intentionally alters in any manner or
10 destroys computer data or a computer program so as to cause damages in
11 an aggregate amount exceeding fifty thousand dollars.

12 Computer tampering in the [~~first~~] second degree is a class C felony.

13 § 13. The penal law is amended by adding a new section 156.28 to read
14 as follows:

15 § 156.28 Computer tampering in the first degree.

16 A person is guilty of computer tampering in the first degree when he
17 or she commits the crime of computer tampering in the fifth degree and
18 he or she intentionally alters in any manner or destroys computer data
19 or a computer program and thereby causes damages in an aggregate amount
20 of one million dollars or more.

21 Computer tampering in the first degree is a class B felony.

22 § 14. This act shall take effect on the first of November next
23 succeeding the date on which it shall have become a law.