

STATE OF NEW YORK

1973

2017-2018 Regular Sessions

IN SENATE

January 11, 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, in relation to personal identifying information, establishes the crimes of petit theft of service, scheme to defraud and counterfeit trademarking; 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. Subdivisions 1, 2, 3, 4, 5, 8 and 9 of section 155.00 of
2 the penal law, subdivisions 1 and 8 as amended by chapter 514 of the
3 laws of 1986, subdivision 9 as added by chapter 530 of the laws of 1975,
4 are amended and three new subdivisions 7-d, 9 and 10 are added to read
5 as follows:

6 1. "Property" means any money, personal property, real property,
7 computer data, computer program, personal identifying information,
8 secret scientific material, thing in action, evidence of debt or
9 contract, or any article, substance or thing of value, including any
10 gas, steam, water or electricity, which is provided for a charge or
11 compensation.

12 2. "Obtain" includes, but is not limited to, the bringing about of a
13 transfer or purported transfer of property or of a legal interest there-
14 in, whether to the obtainer or another. With regard to personal identi-
15 fying information, computer data or a computer program, obtain includes
16 duplicating, recording, copying, downloading, uploading or printing out
17 the information, data, or program, or obtaining a physical object
18 containing such information. With regard to service, obtain includes,
19 but is not limited to, using or accessing a service.

20 3. "Deprive." To "deprive" another of property means (a) to withhold
21 it or cause it to be withheld from him or her permanently or for so
22 extended a period or under such circumstances that the major portion of
23 its economic value or benefit is lost to him or her, or (b) to dispose

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

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1 of the property in such manner or under such circumstances as to render
2 it unlikely that an owner will recover such property. When the property
3 is personal identifying information, computer data or a computer
4 program, to deprive another of it means to obtain it or cause a third
5 person to obtain it under such circumstances that a substantial portion
6 of the economic benefit or value of having control over it or authority
7 over its use is lost to an owner. To deprive another of service is to
8 use or access a service or cause a third person to use or access a
9 service under such circumstances that some of the economic benefit or
10 value of having control or authority over providing the service is lost
11 to an owner.

12 4. "Appropriate." To "appropriate" property of another to oneself or a
13 third person means (a) to exercise control over it, or to aid a third
14 person to exercise control over it, permanently or for so extended a
15 period or under such circumstances as to acquire the major portion of
16 its economic value or benefit, or (b) to dispose of the property for the
17 benefit of oneself or a third person. When the property is personal
18 identifying information, computer data or a computer program of another,
19 to appropriate it to oneself or a third person means to obtain it under
20 such circumstances as to acquire the ability to use it or dispose of it
21 to the economic benefit of oneself or a third person or to the economic
22 detriment or damage of an owner. To appropriate a service provided by
23 another to oneself or a third person means to use or access the service
24 under such circumstances as to acquire the ability to use it to the
25 economic benefit of oneself or a third person or to the economic detri-
26 ment or damage of an owner.

27 5. "Owner." When property is taken, obtained or withheld by one person
28 from another person, an "owner" thereof means any person who has a right
29 to possession ~~[thereof]~~ of the property or a right to provide the
30 service superior to that of the taker, obtainer or withholder.

31 A person who has obtained possession of property or service by theft
32 or other illegal means shall be deemed to have a right of possession of
33 the property or a right to provide the service superior to that of a
34 person who takes, obtains or withholds it from him by larcenous means.
35 A joint or common owner of property or service shall not be deemed to
36 have a right of possession of property or a right to provide service
37 thereto superior to that of any other joint or common owner thereof. In
38 the absence of a specific agreement to the contrary, a person in lawful
39 possession of property shall be deemed to have a right of possession
40 superior to that of a person having only a security interest therein,
41 even if legal title lies with the holder of the security interest pursu-
42 ant to a conditional sale contract or other security agreement.

43 7-d. "Personal identifying information" means a person's date of
44 birth, driver's license number, social security number, personal iden-
45 tification number, financial services account number or code, savings
46 account number or code, checking account number or code, brokerage
47 account number or code, credit card account number or code, debit card
48 number or code, automated teller machine number or code, taxpayer iden-
49 tification number, computer system password, signature or copy of a
50 signature, electronic signature, unique biometric data that is a finger-
51 print, voice print, retinal image or iris image of another person, tele-
52 phone calling card number, mobile identification number or code, elec-
53 tronic serial number or personal identification number, or any other
54 name, number, code or information that may be used alone or in conjunc-
55 tion with other such information to assume the identity of another
56 person or access financial resources or credit of another person, or any

1 physical object containing such information, such as a printout or other
2 written material, driver's license or other identity card, credit card,
3 debit card, public benefit card, automated teller or other transactional
4 card, or computer, hard drive, or other data storage device. In this
5 subdivision, "person" has all the meanings set forth in subdivision
6 seven of section 10.00 of this chapter; "electronic signature" has the
7 meaning provided in subdivision three of section three hundred two of
8 the state technology law; "credit card" and "debit card" have the mean-
9 ings provided in section five hundred eleven of the general business
10 law; "public benefit card" means any medical assistance card, food stamp
11 assistance card, public assistance card, or any other identification,
12 authorization card or electronic access device issued by the state or a
13 social services district as defined in subdivision seven of section two
14 of the social services law which entitles a person to obtain public
15 assistance benefits under a local, state or federal program administered
16 by the state, its political subdivisions or social services districts.

17 8. "Service" includes, but is not limited to, [~~labor, professional~~
18 ~~service,~~] a computer service, transportation service, telecommunications
19 service, cable or satellite television service, microwave transmission
20 service, the supplying of service pursuant to a public or governmental
21 benefit program, including housing and medical care, the supplying of
22 service pursuant to an insurance policy or program, the supplying of
23 hotel accommodations, restaurant services, entertainment, the supplying
24 of equipment for use, and the supplying of commodities of a public util-
25 ity nature such as gas, electricity, steam and water. A ticket or equiv-
26 alent instrument which evidences a right to receive a service is not in
27 itself service but constitutes property within the meaning of subdivi-
28 sion one.

29 [~~9. "Cable television service" means any and all services provided by~~
30 ~~or through the facilities of any cable television system or closed~~
31 ~~circuit coaxial cable communications system, or any microwave or similar~~
32 ~~transmission service used in connection with any cable television system~~
33 ~~or other similar closed circuit coaxial cable communications system.]~~

34 9. "Computer program" means an ordered set of data representing coded
35 instructions or statements that when executed by the computer, cause the
36 computer to process data or direct the computer to perform one or more
37 computer operations or both and may be in any form, including magnetic
38 storage media, optical media, computing devices, punched cards, or
39 stored internally in the memory of the computer.

40 10. "Computer data" means a representation of information, knowledge,
41 facts, concepts or instructions which are being processed, or have been
42 processed in a computer and may be in any form including magnetic stor-
43 age media, punched cards, or stored internally in the memory of the
44 computer.

45 § 2. Paragraph (c) of subdivision 2 of section 155.05 of the penal law
46 is amended and a new paragraph (f) is added to read as follows:

47 (c) By committing the crime of issuing a bad check, as defined in
48 section 190.05, or by obtaining property or service by using or present-
49 ing a form of payment or personal identifying information the actor
50 knows he or she is not authorized to use or knows is expired or forged
51 or otherwise not valid;

52 (f) By theft of service. Theft of service means either: (i) using or
53 accessing a service in a manner that otherwise requires payment and
54 intentionally failing to pay for such use or access by either tampering
55 without authority with a delivery, payment, or measurement device or
56 mechanism, or by entering or leaving premises where the service is

provided by stealth or by evading a physical barrier, or (ii) using or accessing a service in a manner that otherwise requires payment or the presentation of personal identifying information and using or presenting a form of payment or personal identifying information the actor knows he or she is not authorized to use or knows is expired or forged or otherwise not valid.

§ 3. Subdivision 1 of section 155.20 of the penal law is amended and a new subdivision 2-a is added to read as follows:

1. Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained^[7]: (i) with regard to property, the cost of replacement of the property within a reasonable time after the crime; or (ii) with regard to service, the cost of providing the service at the time of the crime.

2-a. The value of computer data or computer program value is the replacement cost or the market value at the time and place of the crime, whichever is greater.

§ 4. The penal law is amended by adding a new section 155.23 to read as follows:

§ 155.23 Petit theft of service.

A person is guilty of petit theft of service when he or she steals a service.

Petit theft of service is a class B misdemeanor.

§ 5. Section 155.25 of the penal law is amended to read as follows:

§ 155.25 Petit larceny.

A person is guilty of petit larceny when he or she steals property, or steals a service and the value of the service exceeds five hundred dollars.

Petit larceny is a class A misdemeanor.

§ 6. The opening paragraph and subdivisions 1, 4 and 6 of section 155.30 of the penal law, the opening paragraph and subdivisions 1 and 6 as amended by chapter 515 of the laws of 1986, subdivision 4 as amended by chapter 556 of the laws of 1987, are amended to read as follows:

A person is guilty of grand larceny in the fourth degree when he or she steals property or a service and when:

1. The value of the property or service exceeds one thousand dollars; or

4. The property consists of a credit card or debit card or personal identifying information; or

6. The property or service, regardless of its nature and value, is obtained by extortion; or

§ 7. Section 155.35 of the penal law, as amended by chapter 464 of the laws of 2010, is amended to read as follows:

§ 155.35 Grand larceny in the third degree.

A person is guilty of grand larceny in the third degree when he or she steals property or a service and:

1. when the value of the property or service exceeds three thousand dollars, or

2. the property is an automated teller machine or the contents of an automated teller machine, or

3. the property is personal identifying information of twenty-five or more persons.

Grand larceny in the third degree is a class D felony.

§ 8. Section 155.40 of the penal law, as amended by chapter 515 of the laws of 1986, is amended to read as follows:

§ 155.40 Grand larceny in the second degree.

1 A person is guilty of grand larceny in the second degree when he or
2 she steals property or service and when:

3 1. The value of the property or service exceeds fifty thousand
4 dollars; or

5 2. The property or service, regardless of its nature and value, is
6 obtained by extortion committed by instilling in the victim a fear that
7 the actor or another person will (a) cause physical injury to some
8 person in the future, or (b) cause damage to property, or (c) use or
9 abuse his position as a public servant by engaging in conduct within or
10 related to his official duties, or by failing or refusing to perform an
11 official duty, in such manner as to affect some person adversely, or

12 3. the property is personal identifying information of one hundred or
13 more persons.

14 Grand larceny in the second degree is a class C felony.

15 § 9. Section 155.42 of the penal law, as added by chapter 515 of the
16 laws of 1986, is amended to read as follows:

17 § 155.42 Grand larceny in the first degree.

18 A person is guilty of grand larceny in the first degree when he or she
19 steals property or a service and when the value of the property or
20 service exceeds one million dollars; or the property is personal identi-
21 fyng information of one thousand or more persons.

22 Grand larceny in the first degree is a class B felony.

23 § 10. Section 165.71 of the penal law, as added by chapter 490 of the
24 laws of 1992, is amended to read as follows:

25 § 165.71 Trademark counterfeiting in the [~~third~~] fourth degree.

26 A person is guilty of trademark counterfeiting in the [~~third~~] fourth
27 degree when, with the intent to deceive or defraud some other person or
28 with the intent to evade a lawful restriction on the sale, resale,
29 offering for sale, or distribution of goods, he or she manufactures,
30 distributes, sells, or offers for sale goods which bear a counterfeit
31 trademark, or possesses a trademark knowing it to be counterfeit for the
32 purpose of affixing it to any goods.

33 Trademark counterfeiting in the [~~third~~] fourth degree is a class A
34 misdemeanor.

35 § 11. Section 165.72 of the penal law, as amended by chapter 535 of
36 the laws of 1995, is amended to read as follows:

37 § 165.72 Trademark counterfeiting in the [~~second~~] third degree.

38 A person is guilty of trademark counterfeiting in the [~~second~~] third
39 degree when, with the intent to deceive or defraud some other person or
40 with the intent to evade a lawful restriction on the sale, resale,
41 offering for sale, or distribution of goods, he or she manufactures,
42 distributes, sells, or offers for sale goods which bear a counterfeit
43 trademark, or possesses a trademark knowing it to be counterfeit for the
44 purpose of affixing it to any goods, and the retail value of all such
45 goods bearing or intended to bear counterfeit trademarks exceeds one
46 thousand dollars or the total numbers of all such goods bearing counter-
47 feit trademarks exceeds two hundred.

48 Trademark counterfeiting in the [~~second~~] third degree is a class E
49 felony.

50 § 12. Section 165.73 of the penal law, as amended by chapter 535 of
51 the laws of 1995, is amended to read as follows:

52 § 165.73 Trademark counterfeiting in the [~~first~~] second degree.

53 A person is guilty of trademark counterfeiting in the first degree
54 when, with the intent to deceive or defraud some other person, or with
55 the intent to evade a lawful restriction on the sale, resale, offering
56 for sale, or distribution of goods, he or she manufactures, distributes,

1 sells, or offers for sale goods which bear a counterfeit trademark, or
2 possesses a trademark knowing it to be counterfeit for the purpose of
3 affixing it to any goods, and the retail value of all such goods bearing
4 or intended to bear counterfeit trademarks exceeds [~~one hundred~~] twenty-five
5 thousand dollars or the total numbers of all such goods bearing
6 counterfeit trademarks exceeds two thousand.

7 Trademark counterfeiting in the [~~first~~] second degree is a class [~~C~~] D
8 felony.

9 § 13. Section 165.74 of the penal law is REPEALED and two new sections
10 165.74 and 165.75 are added to read as follows:

11 § 165.74 Trademark counterfeiting in the first degree.

12 A person is guilty of trademark counterfeiting in the first degree
13 when, with the intent to deceive or defraud some other person, or with
14 the intent to evade a lawful restriction on the sale, resale, offering
15 for sale, or distribution of goods, he or she manufactures, distributes,
16 sells, or offers for sale goods which bear a counterfeit trademark, or
17 possesses a trademark knowing it to be counterfeit for the purpose of
18 affixing it to any goods, and the retail value of all such goods bearing
19 or intended to bear counterfeit trademarks exceeds one hundred thousand
20 dollars or the total numbers of all such goods bearing counterfeit
21 trademarks exceeds ten thousand dollars.

22 Trademark counterfeiting in the first degree is a class C felony.

23 § 165.75 Seizure and destruction of goods bearing counterfeit trade-
24 marks.

25 Any goods manufactured, sold, offered for sale, distributed or
26 produced in violation of this article may be seized by any police offi-
27 cer. The magistrate must, upon written application of defendant, within
28 forty-eight hours after arraignment of the defendant, determine whether
29 probable cause exists to believe that the goods had been manufactured,
30 sold, offered for sale, distributed or produced in violation of this
31 article, and upon a finding that probable cause exists to believe that
32 the goods had been manufactured, sold, offered for sale, distributed, or
33 produced in violation of this article, the court shall authorize such
34 articles up to the relevant statutory threshold to be retained as
35 evidence pending the trial of the defendant. Upon conviction of the
36 defendant, the articles in respect whereof the defendant stands
37 convicted shall be destroyed. All counterfeit goods which exceed the
38 statutory threshold may be destroyed prior to trial provided defendant
39 is given written notice and a seven day period upon which to inspect
40 those goods to be destroyed. Destruction shall not include auction, sale
41 or distribution of the items in their original form unless the trademark
42 holder requests, in writing, that the counterfeit goods be turned over
43 to him or her.

44 § 14. Sections 190.60 and 190.65 of the penal law are REPEALED and six
45 new sections 190.60, 190.61, 190.62, 190.63, 190.64 and 190.65 are added
46 to read as follows:

47 § 190.60 Scheme to defraud defined.

48 1. A person engages in a scheme to defraud when he or she engages in a
49 scheme constituting a systematic ongoing course of conduct with intent
50 to defraud at least one person or to obtain property or service from at
51 least one person by false or fraudulent pretenses, representations or
52 promises, and so obtains property or service from at least one person.

53 2. Property, service, computer data and computer program shall have
54 the meanings set forth in section 155.00 of this chapter.

55 3. In any prosecution of a scheme to defraud, it shall be necessary to
56 prove the identity of at least one person from whom the defendant so

1 obtained property or service, but it shall not be necessary to prove the
2 identity of any other intended victim, provided that in a prosecution of
3 a scheme to defraud pursuant to subdivision three of section 190.62 of
4 this article, it shall be necessary to prove the identity of at least
5 one such vulnerable elderly person.

6 § 190.61 Scheme to defraud in the fifth degree.

7 A person is guilty of a scheme to defraud in the fifth degree when he
8 or she engages in a scheme to defraud.

9 Scheme to defraud in the fifth degree is a class A misdemeanor.

10 § 190.62 Scheme to defraud in the fourth degree.

11 A person is guilty of a scheme to defraud in the fourth degree when he
12 or she engages in a scheme to defraud, and

13 1. intends to obtain property or service from ten or more persons; or
14 2. the value of the property or service obtained exceeds one thousand
15 dollars; or

16 3. intends to obtain and does obtain property or service from at least
17 one vulnerable elderly person as defined in section 260.31 of this chap-
18 ter.

19 Scheme to defraud in the fourth degree is a class E felony.

20 § 190.63 Scheme to defraud in the third degree.

21 A person is guilty of a scheme to defraud in the third degree when he
22 or she engages in a scheme to defraud, and

23 1. intends to obtain property or service from twenty-five or more
24 persons; or

25 2. the value of the property or service obtained exceeds three thou-
26 sand dollars.

27 Scheme to defraud in the third degree is a class D felony.

28 § 190.64 Scheme to defraud in the second degree.

29 A person is guilty of a scheme to defraud in the second degree when he
30 or she engages in a scheme to defraud, and

31 1. intends to obtain property or service from one hundred or more
32 persons; or

33 2. the value of the property or service obtained exceeds fifty thou-
34 sand dollars.

35 Scheme to defraud in the second degree is a class C felony.

36 § 190.65 Scheme to defraud in the first degree.

37 A person is guilty of a scheme to defraud in the first degree when he
38 or she engages in a scheme to defraud, and

39 1. intends to obtain property or service from one thousand or more
40 persons; or

41 2. the value of the property or service obtained exceeds one million
42 dollars.

43 Scheme to defraud in the first degree is a class B felony.

44 § 15. This act shall take effect on the first of November next
45 succeeding the date on which it shall have become a law.