

# STATE OF NEW YORK

3654

2017-2018 Regular Sessions

## IN SENATE

January 25, 2017

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

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. Title K of the penal law is amended by adding a new article  
2 191 to read as follows:

3 ARTICLE 191

4 OFFENSES INVOLVING THEFT OF IDENTITY

5 Section 191.00 Definitions.

6 191.05 Petit identity theft.

7 191.10 Identity theft in the fourth degree.

8 191.15 Identity theft in the third degree.

9 191.20 Identity theft in the second degree.

10 191.25 Identity theft in the first degree.

11 191.30 Unlawful possession of personal identifying information  
12 in the third degree.

13 191.35 Unlawful possession of personal identifying information  
14 in the second degree.

15 191.40 Unlawful possession of personal identifying information  
16 in the first degree.

17 191.45 Defenses.

18 191.50 Unlawful possession of a skimmer device in the second  
19 degree.

20 191.55 Unlawful possession of a skimmer device in the first  
21 degree.

22 § 191.00 Definitions.

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

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1 1. For the purposes of this article "personal identifying information"  
2 means a person's name, address, telephone number, date of birth, driv-  
3 er's license number, social security number, place of employment, moth-  
4 er's maiden name, financial services account number or code, savings  
5 account number or code, checking account number or code, brokerage  
6 account number or code, credit card account number or code, debit card  
7 number or code, automated teller machine number or code, taxpayer iden-  
8 tification number, computer system password, signature or copy of a  
9 signature, electronic signature, unique biometric data that is a finger-  
10 print, voice print, retinal image or iris image of another person, tele-  
11 phone calling card number, mobile identification number or code, elec-  
12 tronic serial number or personal identification number, medical  
13 information, medical insurance information, or any other name, number,  
14 code or information that may be used alone or in conjunction with other  
15 such information to assume the identity of another person.

16 2. For the purposes of this article:

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

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

24 (c) "member of the armed forces" shall mean a person in the military  
25 service of the United States or the military service of the state,  
26 including but not limited to, the armed forces of the United States, the  
27 army national guard, the air national guard, the New York naval militia,  
28 the New York guard, and such additional forces as may be created by the  
29 federal or state government as authorized by law.

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

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

38 § 191.05 Petit identity theft.

39 A person is guilty of petit identity theft when he or she knowingly  
40 and with intent to defraud assumes the identity of another person by  
41 presenting himself or herself as that other person, or by acting as that  
42 other person or by using personal identifying information of that other  
43 person, and thereby obtains goods, money, property or services or uses  
44 credit in the name of such other person or causes financial loss to such  
45 person or to another person or persons.

46 Petit identity theft is a class A misdemeanor.

47 § 191.10 Identity theft in the fourth degree.

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

50 1. assumes the identity of another person by presenting himself or  
51 herself as that other person, or by acting as that other person or by  
52 using personal identifying information of that other person, and there-  
53 by:

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

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

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

5 (d) commits the crime of petit identity theft as defined in section  
6 191.05 of this article and knows that such other person is a member of  
7 the armed forces and that such member is presently deployed outside of  
8 the continental United States; or

9 (e) commits the crime of petit identity theft as defined in section  
10 191.05 of this article and knows that such other person is a vulnerable  
11 elderly person as defined in subdivision three of section 260.31 of this  
12 chapter, or a person who is unable to care for himself or herself  
13 because of physical disability, mental disease or defect, or because he  
14 or she is a minor; or

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

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

22 § 191.15 Identity theft in the third degree.

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

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

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

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

34 (c) commits or attempts to commit a class D felony or higher level  
35 crime or acts as an accessory to the commission of a class D or higher  
36 level felony; or

37 (d) commits the crime of identity theft in the fourth degree as  
38 defined in section 191.10 of this article and has been previously  
39 convicted within the last five years of petit identity theft as defined  
40 in section 191.05, identity theft in the fourth degree as defined in  
41 section 191.10, identity theft in the third degree as defined in this  
42 section, identity theft in the second degree as defined in section  
43 191.20, identity theft in the first degree as defined in section 191.25,  
44 unlawful possession of personal identifying information in the third  
45 degree as defined in section 191.30, unlawful possession of personal  
46 identifying information in the second degree as defined in section  
47 191.35, unlawful possession of personal identifying information in the  
48 first degree as defined in section 191.40, unlawful possession of a  
49 skimmer device in the second degree as defined in section 191.50, unlaw-  
50 ful possession of a skimmer device in the first degree as defined in  
51 section 191.55, grand larceny in the fourth degree as defined in section  
52 155.30, grand larceny in the third degree as defined in section 155.35,  
53 grand larceny in the second degree as defined in section 155.40 or grand  
54 larceny in the first degree as defined in section 155.42, 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, criminal  
3 possession of stolen property in the fifth degree as defined in section  
4 165.40, criminal possession of stolen property in the fourth degree as  
5 defined in section 165.45, criminal possession of stolen property in the  
6 third degree as defined in section 165.50, criminal possession of stolen  
7 property in the second degree as defined in section 165.52, criminal  
8 possession of stolen property in the first degree as defined in section  
9 165.54, or criminal possession of forgery devices as defined in section  
10 170.40 of this chapter; or

11 (e) commits the crime of identity theft in the fourth degree as  
12 defined in section 191.10 of this article and knows that such other  
13 person is a member of the armed forces, and knows that such member is  
14 presently deployed outside of the continental United States; or

15 (f) commits the crime of identity theft in the fourth degree as  
16 defined in section 191.10 of this article and knows that such other  
17 person is a vulnerable elderly person as defined in subdivision three of  
18 section 260.31 of this chapter, or a person who is unable to care for  
19 himself or herself because of physical disability, mental disease or  
20 defect, or because he or she is a minor; or

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

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

28 § 191.20 Identity theft in the second degree.

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

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

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

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

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

44 (d) commits the crime of identity theft in the third degree as defined  
45 in section 191.15 of this article and has been previously convicted  
46 within the last five years of petit identity theft as defined in section  
47 191.05, identity theft in the fourth degree as defined in section  
48 191.10, identity theft in the third degree as defined in section 191.15,  
49 identity theft in the second degree as defined in this section, identity  
50 theft in the first degree as defined in section 191.25, unlawful  
51 possession of personal identifying information in the third degree as  
52 defined in section 191.30, unlawful possession of personal identifying  
53 information in the second degree as defined in section 191.35, unlawful  
54 possession of personal identifying information in the first degree as  
55 defined in section 191.40, unlawful possession of a skimmer device in  
56 the second degree as defined in section 191.50, unlawful possession of a

1 skimmer device in the first degree as defined in section 191.55, grand  
2 larceny in the fourth degree as defined in section 155.30, grand larceny  
3 in the third degree as defined in section 155.35, grand larceny in the  
4 second degree as defined in section 155.40 or grand larceny in the first  
5 degree as defined in section 155.42, criminal possession of a forged  
6 instrument in the third degree as defined in section 170.20, criminal  
7 possession of a forged instrument in the second degree as defined in  
8 section 170.25, criminal possession of a forged instrument in the first  
9 degree as defined in section 170.30, criminal possession of stolen prop-  
10 erty in the fifth degree as defined in section 165.40, criminal  
11 possession of stolen property in the fourth degree as defined in section  
12 165.45, criminal possession of stolen property in the third degree as  
13 defined in section 165.50, criminal possession of stolen property in the  
14 second degree as defined in section 165.52, criminal possession of  
15 stolen property in the first degree as defined in section 165.54, or  
16 criminal possession of forgery devices as defined in section 170.40 of  
17 this chapter; or

18 (e) commits the crime of identity theft in the third degree as defined  
19 in section 191.15 of this article and knows that such other person is a  
20 member of the armed forces and that such member is presently deployed  
21 outside of the continental United States; or

22 (f) commits the crime of identity theft in the third degree as defined  
23 in section 191.15 of this article and knows that such other person is a  
24 vulnerable elderly person as defined in subdivision three of section  
25 260.31 of this chapter, or a person who is unable to care for himself or  
26 herself because of physical disability, mental disease or defect, or  
27 because he or she is a minor; or

28 2. assumes the identity of twenty-five or more persons by presenting  
29 himself or herself as those other persons, or by acting as those other  
30 persons, or by using personal identifying information of those other  
31 persons, and thereby obtains goods, money, property or services or uses  
32 credit in the name of those persons, or causes financial loss to at  
33 least one such person, or to another person or persons.

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

35 § 191.25 Identity theft in the first degree.

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

38 1. assumes the identity of another person by presenting himself or  
39 herself as that other person, or by acting as that other person or by  
40 using personal identifying information of that other person, and there-  
41 by:

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

45 (b) causes financial loss to such person or to another person or  
46 persons in an aggregate amount that exceeds two hundred thousand  
47 dollars; or

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

51 (d) commits the crime of identity theft in the second degree as  
52 defined in section 191.20 of this article and has been previously  
53 convicted within the last five years of petit identity theft as defined  
54 in section 191.05, identity theft in the fourth degree as defined in  
55 section 191.10, identity theft in the third degree as defined in section  
56 191.15, identity theft in the second degree as defined in section 191.20

1 of this article, identity theft in the first degree as defined in this  
2 section, unlawful possession of personal identifying information in the  
3 second degree as defined in section 191.35, unlawful possession of  
4 personal identifying information in the first degree as defined in  
5 section 191.40, unlawful possession of a skimmer device in the second  
6 degree as defined in section 191.50, unlawful possession of a skimmer  
7 device in the first degree as defined in section 191.55, grand larceny  
8 in the fourth degree as defined in section 155.30, grand larceny in the  
9 third degree as defined in section 155.35, grand larceny in the second  
10 degree as defined in section 155.40 or grand larceny in the first degree  
11 as defined in section 155.42, criminal possession of a forged instrument  
12 in the third degree as defined in section 170.20, criminal possession of  
13 a forged instrument in the second degree as defined in section 170.25,  
14 criminal possession of a forged instrument in the first degree as  
15 defined in section 170.30, criminal possession of stolen property in the  
16 fifth degree as defined in section 165.40, criminal possession of stolen  
17 property in the fourth degree as defined in section 165.45, criminal  
18 possession of stolen property in the third degree as defined in section  
19 165.50, criminal possession of stolen property in the second degree as  
20 defined in section 165.52, criminal possession of stolen property in the  
21 first degree as defined in section 165.54, or criminal possession of  
22 forgery devices as defined in section 170.40 of this chapter; or

23 (e) commits the crime of identity theft in the second degree as  
24 defined in section 191.20 of this article and knows that such other  
25 person is a member of the armed forces, and knows that such member is  
26 presently deployed outside of the continental United States; or

27 (f) commits the crime of identity theft in the second degree as  
28 defined in section 191.20 of this article and knows that such other  
29 person is a vulnerable elderly person as defined in subdivision three of  
30 section 260.31 of this chapter, or a person who is unable to care for  
31 himself or herself because of physical disability, mental disease or  
32 defect, or because he or she is a minor; or

33 2. assumes the identity of fifty or more persons by presenting himself  
34 or herself as those other persons, or by acting as those other persons,  
35 or by using personal identifying information of those other persons, and  
36 thereby obtains goods, money, property or services or uses credit in the  
37 name of those persons, or causes financial loss to at least one such  
38 person, or to another person or persons.

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

40 § 191.30 Unlawful possession of personal identifying information in the  
41 third degree.

42 A person is guilty of unlawful possession of personal identifying  
43 information in the third degree when he or she knowingly possesses a  
44 person's personal identifying information as defined in section 191.00  
45 of this article of another person knowing such information is intended  
46 to be used in furtherance of the commission of a crime defined in this  
47 chapter.

48 Unlawful possession of personal identifying information in the third  
49 degree is a class A misdemeanor.

50 § 191.35 Unlawful possession of personal identifying information in the  
51 second degree.

52 A person is guilty of unlawful possession of personal identifying  
53 information in the second degree when he or she knowingly possesses  
54 fifty or more items of personal identifying information as defined in  
55 section 191.00 of this article knowing such information is intended to

1 be used in furtherance of the commission of a crime defined in this  
2 chapter.

3 Unlawful possession of personal identifying information in the second  
4 degree is a class E felony.

5 § 191.40 Unlawful possession of personal identifying information in the  
6 first degree.

7 A person is guilty of unlawful possession of personal identifying  
8 information in the first degree when he or she commits the crime of  
9 unlawful possession of personal identifying information in the second  
10 degree and:

11 1. with intent to further the commission of identity theft in the  
12 third degree, he or she supervises more than three accomplices; or

13 2. he or she has been previously convicted within the last five years  
14 of petit identity theft as defined in section 191.05, identity theft in  
15 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 this section, unlawful  
23 possession of a skimmer device in the second degree as defined in  
24 section 191.50, unlawful possession of a skimmer device in the first  
25 degree as defined in section 191.55, grand larceny in the fourth degree  
26 as defined in section 155.30, grand larceny in the third degree as  
27 defined in section 155.35, grand larceny in the second degree as defined  
28 in section 155.40 or grand larceny in the first degree as defined in  
29 section 155.42, criminal possession of a forged instrument in the third  
30 degree as defined in section 170.20, criminal possession of a forged  
31 instrument in the second degree as defined in section 170.25, criminal  
32 possession of a forged instrument in the first degree as defined in  
33 section 170.30, criminal possession of stolen property in the fifth  
34 degree as defined in section 165.40, criminal possession of stolen prop-  
35 erty in the fourth degree as defined in section 165.45, criminal  
36 possession of stolen property in the third degree as defined in section  
37 165.50, criminal possession of stolen property in the second degree as  
38 defined in section 165.52, criminal possession of stolen property in the  
39 first degree as defined in section 165.54, or criminal possession of  
40 forgery devices as defined in section 170.40 of this chapter; or

41 3. with intent to further the commission of identity theft in the  
42 second degree:

43 (a) he or she supervises more than two accomplices, and

44 (b) he or she knows that the person whose personal identifying infor-  
45 mation that he or she possesses is a member of the armed forces, and

46 (c) he or she knows that such member of the armed forces is presently  
47 deployed outside of the continental United States.

48 Unlawful possession of personal identifying information in the first  
49 degree is a class D felony.

50 § 191.45 Defenses.

51 In any prosecution for identity theft or unlawful possession of  
52 personal identifying information pursuant to this article, it shall be  
53 an affirmative defense that the person charged with the offense:

54 1. was under twenty-one years of age at the time of committing the  
55 offense and the person used or possessed the personal identifying infor-  
56 mation of another solely for the purpose of purchasing alcohol;

1 2. was under eighteen years of age at the time of committing the  
2 offense and the person used or possessed the personal identifying infor-  
3 mation of another solely for the purpose of purchasing tobacco products;  
4 or

5 3. used or possessed the personal identifying information of another  
6 person solely for the purpose of misrepresenting the person's age to  
7 gain access to a place the access to which is restricted based on age.

8 § 191.50 Unlawful possession of a skimmer device in the second degree.

9 1. A person is guilty of unlawful possession of a skimmer device in  
10 the second degree when he or she possesses a skimmer device with the  
11 intent that such device be used in furtherance of the commission of the  
12 crime of identity theft or unlawful possession of personal identifying  
13 information as defined in this article.

14 2. For purposes of this article, "skimmer device" means a device  
15 designed or adapted to obtain personal identifying information from a  
16 credit card, debit card, public benefit card, access card or device, or  
17 other card or device that contains personal identifying information.

18 Unlawful possession of a skimmer device in the second degree is a  
19 class A misdemeanor.

20 § 191.55 Unlawful possession of a skimmer device in the first degree.

21 A person is guilty of unlawful possession of a skimmer device in the  
22 first degree when he or she commits the crime of unlawful possession of  
23 a skimmer device in the second degree and he or she has been previously  
24 convicted within the last five years of identity theft in the fourth  
25 degree as defined in section 191.10, identity theft in the third degree  
26 as defined in section 191.15, identity theft in the second degree as  
27 defined in section 191.20, identity theft in the first degree as defined  
28 in section 191.25, unlawful possession of personal identifying informa-  
29 tion in the third degree as defined in section 191.30, unlawful  
30 possession of personal identifying information in the second degree as  
31 defined in section 191.35, unlawful possession of personal identifying  
32 information in the first degree as defined in section 191.40, unlawful  
33 possession of a skimmer device in the second degree as defined in  
34 section 191.50, unlawful possession of a skimmer device in the first  
35 degree as defined in this section, grand larceny in the fourth degree as  
36 defined in section 155.30, grand larceny in the third degree as defined  
37 in section 155.35, grand larceny in the second degree as defined in  
38 section 155.40, grand larceny in the first degree as defined in section  
39 155.42, criminal possession of a forged instrument in the third degree  
40 as defined in section 170.20, criminal possession of a forged instrument  
41 in the second degree as defined in section 170.25, criminal possession  
42 of a forged instrument in the first degree as defined in section 170.30,  
43 criminal possession of stolen property in the fifth degree as defined in  
44 section 165.40, criminal possession of stolen property in the fourth  
45 degree as defined in section 165.45, criminal possession of stolen prop-  
46 erty in the third degree as defined in section 165.50, criminal  
47 possession of stolen property in the second degree as defined in section  
48 165.52, criminal possession of stolen property in the first degree as  
49 defined in section 165.54, or criminal possession of forgery devices as  
50 defined in section 170.40 of this chapter.

51 Unlawful possession of a skimmer device in the first degree is a class  
52 E felony.

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



1 (a) Any of the felonies set forth in this chapter: sections 120.05,  
2 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-  
3 ing to strangulation; sections 125.10 to 125.27 relating to homicide;  
4 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and  
5 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to  
6 labor trafficking; section 135.65 relating to coercion; sections 140.20,  
7 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and  
8 145.12 relating to criminal mischief; article one hundred fifty relating  
9 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand  
10 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health  
11 care fraud; article one hundred sixty relating to robbery; sections  
12 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of  
13 stolen property; sections 165.72 and 165.73 relating to trademark coun-  
14 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and  
15 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and  
16 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and  
17 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating  
18 to criminal diversion of prescription medications and prescriptions;  
19 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,  
20 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,  
21 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25  
22 relating to residential mortgage fraud[~~r~~]; sections 190.40 and 190.42  
23 relating to criminal usury; section 190.65 relating to schemes to  
24 defraud; sections 191.05, 191.10, 191.15, 191.20, 191.25, 191.30,  
25 191.35, 191.40, 191.50 and 191.55 relating to identity theft; any felony  
26 defined in article four hundred ninety-six; sections 205.60 and 205.65  
27 relating to hindering prosecution; sections 210.10, 210.15, and 215.51  
28 relating to perjury and contempt; section 215.40 relating to tampering  
29 with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21,  
30 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60, 220.65  
31 and 220.77 relating to controlled substances; sections 225.10 and 225.20  
32 relating to gambling; sections 230.25, 230.30, and 230.32 relating to  
33 promoting prostitution; section 230.34 relating to sex trafficking;  
34 sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;  
35 sections 263.10 and 263.15 relating to promoting a sexual performance by  
36 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the  
37 provisions of section 265.10 which constitute a felony relating to  
38 firearms and other dangerous weapons; sections 265.14 and 265.16 relat-  
39 ing to criminal sale of a firearm; section 275.10, 275.20, 275.30, or  
40 275.40 relating to unauthorized recordings; and sections 470.05, 470.10,  
41 470.15 and 470.20 relating to money laundering; or

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

45 (a) "Specified offense" for purposes of this article means a class A  
46 felony offense other than an offense as defined in article two hundred  
47 twenty, a violent felony offense as defined in section 70.02,  
48 manslaughter in the second degree as defined in section 125.15, criminal  
49 tampering in the first degree as defined in section 145.20, identity  
50 theft in the second degree as defined in section [~~190.79~~] 191.20, iden-  
51 tity theft in the first degree as defined in section [~~190.80~~] 191.25,  
52 unlawful possession of personal identification information in the second  
53 degree as defined in section [~~190.82~~] 191.35, unlawful possession of  
54 personal identification information in the first degree as defined in  
55 section [~~190.83~~] 191.40, money laundering in support of terrorism in the  
56 fourth degree as defined in section 470.21, money laundering in support

1 of terrorism in the third degree as defined in section 470.22, money  
2 laundering in support of terrorism in the second degree as defined in  
3 section 470.23, money laundering in support of terrorism in the first  
4 degree as defined in section 470.24 of this chapter, and includes an  
5 attempt or conspiracy to commit any such offense.

6 § 4. Paragraph (s) of subdivision 8 of section 700.05 of the criminal  
7 procedure law is REPEALED and a new paragraph (s) is added to read as  
8 follows:

9 (s) Petit identity theft as defined in section 191.05, identity theft  
10 in the fourth degree as defined in section 191.10, identity theft in the  
11 third degree as defined in section 191.15, identity theft in the second  
12 degree as defined in section 191.20, identity theft in the first degree  
13 as defined in section 191.25, unlawful possession of personal identify-  
14 ing information in the third degree as defined in section 191.30, unlaw-  
15 ful possession of personal identifying information in the second degree  
16 as defined in section 191.35, unlawful possession of personal identify-  
17 ing information in the first degree as defined in section 191.40, unlaw-  
18 ful possession of a skimmer device in the second degree as defined in  
19 section 191.50, or unlawful possession of a skimmer device in the first  
20 degree as defined in section 191.55 of the penal law.

21 § 5. Paragraph (b) of subdivision 1 of section 899-aa of the general  
22 business law, as added by chapter 442 of the laws of 2005, is amended to  
23 read as follows:

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

29 (1) social security number;

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

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

35 (4) medical information; or

36 (5) health insurance information;

37 For purposes of this paragraph, "medical information" means any infor-  
38 mation regarding an individual's medical history, mental or physical  
39 condition, or medical treatment or diagnosis by a health care profes-  
40 sional.

41 For purposes of this paragraph, "health insurance information" means  
42 an individual's health insurance policy number or subscriber identifica-  
43 tion number, any unique identifier used by a health insurer to identify  
44 the individual or any information in an individual's application and  
45 claims history, including, but not limited to, appeals history.

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

49 § 6. Paragraph (a) of subdivision 1 of section 208 of the state tech-  
50 nology law, as added by chapter 442 of the laws of 2005, is amended to  
51 read as follows:

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

56 (1) social security number;

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

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

6 (4) medical information; or

7 (5) health insurance information.

8 For purposes of this paragraph, "medical information" means any infor-  
9 mation regarding an individual's medical history, mental or physical  
10 condition, or medical treatment or diagnosis by a health care profes-  
11 sional.

12 For purposes of this paragraph, "health insurance information" means  
13 an individual's health insurance policy number or subscriber identifica-  
14 tion number, any unique identifier used by a health insurer to identify  
15 the individual or any information in an individual's application and  
16 claims history, including, but not limited to, appeals history.

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

20 § 7. Sections 190.77, 190.78, 190.79, 190.80, 190.80-a, 190.81,  
21 190.82, 190.83, 190.84, 190.85 and 190.86 of the penal law are REPEALED.

22 § 8. Subdivision 1 of section 60.27 of the penal law, as amended by  
23 chapter 279 of the laws of 2008, is amended to read as follows:

24 1. In addition to any of the dispositions authorized by this article,  
25 the court shall consider restitution or reparation to the victim of the  
26 crime and may require restitution or reparation as part of the sentence  
27 imposed upon a person convicted of an offense, and after providing the  
28 district attorney with an opportunity to be heard in accordance with the  
29 provisions of this subdivision, require the defendant to make restitu-  
30 tion of the fruits of his or her offense or reparation for the actual  
31 out-of-pocket loss caused thereby and, in the case of a violation of  
32 section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05, 191.10,  
33 191.15, 191.20 or 191.25 of this chapter, any costs or losses incurred  
34 due to any adverse action taken against the victim. The district attor-  
35 ney shall where appropriate, advise the court at or before the time of  
36 sentencing that the victim seeks restitution or reparation, the extent  
37 of injury or economic loss or damage of the victim, and the amount of  
38 restitution or reparation sought by the victim in accordance with his or  
39 her responsibilities under subdivision two of section 390.50 of the  
40 criminal procedure law and article twenty-three of the executive law.  
41 The court shall hear and consider the information presented by the  
42 district attorney in this regard. In that event, or when the victim  
43 impact statement reports that the victim seeks restitution or repara-  
44 tion, the court shall require, unless the interests of justice dictate  
45 otherwise, in addition to any of the dispositions authorized by this  
46 article that the defendant make restitution of the fruits of the offense  
47 and reparation for the actual out-of-pocket loss and, in the case of a  
48 violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05,  
49 191.10, 191.15, 191.20 or 191.25 of this chapter, any costs or losses  
50 incurred due to any adverse action, caused thereby to the victim. In the  
51 event that restitution or reparation are not ordered, the court shall  
52 clearly state its reasons on the record. Adverse action as used in this  
53 subdivision shall mean and include actual loss incurred by the victim,  
54 including an amount equal to the value of the time reasonably spent by  
55 the victim attempting to remediate the harm incurred by the victim from  
56 the offense, and the consequential financial losses from such action.

1 § 9. Paragraph (b) of subdivision 4 of section 60.27 of the penal law,  
2 as amended by chapter 313 of the laws of 2011, is amended to read as  
3 follows:

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

20 § 10. Subdivision 2 of section 646 of the executive law, as amended by  
21 chapter 346 of the laws of 2007, is amended to read as follows:

22 2. An individual whose identity was assumed or whose personal identi-  
23 fying information, as defined in [~~section 190.77~~] subdivision one of  
24 section 191.00 of the penal law, was used in violation of section  
25 [~~190.78, 190.79 or 190.80~~] 191.05, 191.10, 191.15, 191.20 or 191.25 of  
26 the penal law, or any person who has suffered a financial loss as a  
27 direct result of the acts of a defendant in violation of section  
28 [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] 191.05, 191.10, 191.15,  
29 191.20 or 191.25 of the penal law, who has learned or reasonably  
30 suspects that his or her personal identifying information has been  
31 unlawfully used by another, may make a complaint to the local law  
32 enforcement agency of the county in which any part of the offense took  
33 place regardless of whether the defendant was actually present in such  
34 county, or in the county in which the person who suffered financial loss  
35 resided at the time of the commission of the offense, or in the county  
36 where the person whose personal identification information was used in  
37 the commission of the offense resided at the time of the commission of  
38 the offense as provided in paragraph (1) of subdivision four of section  
39 20.40 of the criminal procedure law. Said local law enforcement agency  
40 shall take a police report of the matter and provide the complainant  
41 with a copy of such report free of charge.

42 § 11. This act shall take effect immediately.