STATE OF NEW YORK

2114

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. DICKENS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to identity theft

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 190.77 of the penal law, as separately amended by chapters 226 and 279 of the laws of 2008, is amended to read as follows:

1. For the purposes of sections 190.78, 190.79, 190.80 [~~and~~], 190.80-a and 190.85 of this article "personal identifying information" means a person's name, address, telephone number, date of birth, driver's license number, social security number, place of employment, mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, taxpayer identification number, computer system password, signature or copy of a signature, electronic signature, unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person **that capture or enable the reproduction of unique physical attributes of another person**, telephone calling card number, mobile identification number or code, electronic serial number or personal identification number, or any other name, number, code or information that may be used alone or in conjunction with other such information to assume the identity of another person.

§ 2. Section 190.80 of the penal law, as added by chapter 619 of the laws of 2002, subdivision 4 as amended by chapter 279 of the laws of 2008, is amended to read as follows:

§ 190.80 Identity theft in the first degree.

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

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

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person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person **or with the intent to sell or distribute the personal identifying information of that other person**, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or

2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds two thousand dollars; or

3. commits or attempts to commit a class D felony or higher level crime or acts as an accessory in the commission of a class D or higher level felony; or

4. commits the crime of identity theft in the second degree as defined in section 190.79 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in this section, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter[~~.~~]**; or**

5. avoids a summons, arrest or prosecution or impedes a criminal investigation.

Identity theft in the first degree is a class D felony.

§ 3. Section 190.81 of the penal law, as added by chapter 619 of the laws of 2002, is amended to read as follows:

§ 190.81 Unlawful possession of personal identification information in the third degree.

A person is guilty of unlawful possession of personal identification information in the third degree when he or she knowingly possesses a person's financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, personal identification number, mother's maiden name, computer system password, electronic signature or unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person **that capture or enable the reproduction of unique physical attributes of another person** knowing such information is intended to be used in furtherance of the commission of a crime defined in this chapter.

Unlawful possession of personal identification information in the third degree is a class A misdemeanor.

§ 4. Section 190.82 of the penal law, as added by chapter 619 of the laws of 2002, is amended to read as follows:

§ 190.82 Unlawful possession of personal identification information in the second degree.

A person is guilty of unlawful possession of personal identification information in the second degree when he or she knowingly possesses two

hundred fifty or more items of personal identification information of the following nature: a person's financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, personal identification number, mother's maiden name, computer system password, electronic signature or unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person **that capture or enable the reproduction of unique physical attributes of another person** knowing such information is intended to be used in furtherance of the commission of a crime defined in this chapter.

Unlawful possession of personal identification information in the second degree is a class E felony.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.