

STATE OF NEW YORK

5222

2019-2020 Regular Sessions

IN SENATE

April 16, 2019

Introduced by Sen. SKOUFIS -- 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 the crimes of commercial bribery and larceny; and to amend the criminal procedure law, in relation to jurisdiction for personal identifying information theft crimes

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

1 Section 1. Section 180.03 of the penal law, as amended by chapter 577
2 of the laws of 1983, is amended to read as follows:

3 § 180.03 Commercial bribing in the first degree.

4 A person is guilty of commercial bribing in the first degree when he
5 or she confers, or offers or agrees to confer, any benefit upon any
6 employee, agent or fiduciary without the consent of the latter's employ-
7 er or principal, with intent to influence his or her conduct in relation
8 to his or her employer's or principal's affairs, and when the value of
9 the benefit conferred or offered or agreed to be conferred exceeds one
10 thousand dollars [~~and causes economic harm to the employer or principal~~
11 ~~in an amount exceeding two hundred fifty dollars~~].

12 Commercial bribing in the first degree is a class E felony.

13 § 2. Section 180.08 of the penal law, as amended by chapter 577 of the
14 laws of 1983, is amended to read as follows:

15 § 180.08 Commercial bribe receiving in the first degree.

16 An employee, agent or fiduciary is guilty of commercial bribe receiv-
17 ing in the first degree when, without the consent of his or her employer
18 or principal, he or she solicits, accepts or agrees to accept any bene-
19 fit from another person upon an agreement or understanding that such
20 benefit will influence his or her conduct in relation to his or her
21 employer's or principal's affairs, and when the value of the benefit
22 solicited, accepted or agreed to be accepted exceeds one thousand

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

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1 dollars [~~and causes economic harm to the employer or principal in an~~
2 ~~amount exceeding two hundred fifty dollars~~].

3 Commercial bribe receiving in the first degree is a class E felony.

4 § 3. Section 155.00 of the penal law, subdivisions 1 and 8 as amended
5 by chapter 514 of the laws of 1986, subdivision 6 as added by chapter
6 791 of the laws of 1967, subdivision 7 as added by chapter 115 of the
7 laws of 1969, subdivision 7-a as added by chapter 556 of the laws of
8 1987, subdivision 7-b as added by chapter 81 of the laws of 1995, subdivi-
9 sion 7-c as amended by chapter 171 of the laws of 1993, and subdivi-
10 sion 9 as added by chapter 530 of the laws of 1975, is amended to read
11 as follows:

12 § 155.00 Larceny; definitions of terms.

13 The following definitions are applicable to this title:

14 1. "Property" means any money, personal property, real property,
15 computer data, computer program, personal identifying information, thing
16 in action, evidence of debt or contract, or any article, substance or
17 thing of value, including any gas, steam, water or electricity, which is
18 provided for a charge or compensation.

19 2. "Obtain" includes, but is not limited to, the bringing about of a
20 transfer or purported transfer of property or of a legal interest there-
21 in, whether to the obtainer or another. With regard to personal identi-
22 ifying information, computer data or a computer program, obtain includes
23 duplicating, recording, copying, downloading, uploading or printing out
24 the information, data, or program, or obtaining a physical object
25 containing such information. With regard to service, obtain includes,
26 but is not limited to, using or accessing a service.

27 3. "Deprive." To "deprive" another of property means (a) to withhold
28 it or cause it to be withheld from him or her permanently or for so
29 extended a period or under such circumstances that the major portion of
30 its economic value or benefit is lost to him or her, or (b) to dispose
31 of the property in such manner or under such circumstances as to render
32 it unlikely that an owner will recover such property. When the property
33 is personal identifying information, computer data or a computer
34 program, to deprive another of it means to obtain it or cause a third
35 person to obtain it under such circumstances that a substantial portion
36 of the economic benefit or value of having control over it or authority
37 over its use is lost to an owner. To deprive another of service is to
38 use or access a service or cause a third person to use or access a
39 service under such circumstances that some of the economic benefit or
40 value of having control or authority over providing the service is lost
41 to an owner.

42 4. "Appropriate." To "appropriate" property of another to oneself or a
43 third person means (a) to exercise control over it, or to aid a third
44 person to exercise control over it, permanently or for so extended a
45 period or under such circumstances as to acquire the major portion of
46 its economic value or benefit, or (b) to dispose of the property for the
47 benefit of oneself or a third person. When the property is personal
48 identifying information, computer data or a computer program of another,
49 to appropriate it to oneself or a third person means to obtain it under
50 such circumstances as to acquire the ability to use it or dispose of it
51 to the economic benefit of oneself or a third person or to the economic
52 detriment or damage of an owner. To appropriate a service provided by
53 another to oneself or a third person means to use or access the service
54 under such circumstances as to acquire the ability to use it to the
55 economic benefit of oneself or a third person or to the economic detri-
56 ment or damage of an owner.

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

A person who has obtained possession of property or service by theft or other illegal means shall be deemed to have a right of possession of the property or a right to provide the service superior to that of a person who takes, obtains or withholds it from him or her by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

6. "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his, her or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.

~~7. ["Credit card" means any instrument or article defined as a credit card in section five hundred eleven of the general business law.~~

~~7-a. "Debit card" means any instrument or article defined as a debit card in section five hundred eleven of the general business law.~~

~~7-b. "Public benefit card" means any medical assistance card, food stamp assistance card, public assistance card, or any other identification, authorization card or electronic access device issued by the state or a social services district as defined in subdivision seven of section two of the social services law, which entitles a person to obtain public assistance benefits under a local, state or federal program administered by the state, its political subdivisions or social services districts.~~

~~7-c. "Access device" means any telephone calling card number, credit card number, account number, mobile identification number, electronic serial number or personal identification number that can be used to obtain telephone service.]~~

"Personal identifying information" means a person's date of birth, driver's license number, social security number, personal identification number, 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, 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 or access financial resources or credit of another person, or any physical object

1 containing such information, such as a printout or other written materi-
2 al, driver's license or other identity card, credit card, debit card,
3 public benefit card, automated teller or other transactional card, or
4 computer, hard drive, or other data storage device. In this subdivision,
5 "person" has all the meanings set forth in subdivision seven of section
6 10.00 of this chapter; "electronic signature" has the meaning provided
7 in subdivision three of section three hundred two of the state technolo-
8 gy law; "credit card" and "debit card" have the meanings provided in
9 section five hundred eleven of the general business law; "public benefit
10 card" means any medical assistance card, food stamp assistance card,
11 public assistance card, or any other identification, authorization card
12 or electronic access device issued by the state or a social services
13 district as defined in subdivision seven of section two of the social
14 services law which entitles a person to obtain public assistance bene-
15 fits under a local, state or federal program administered by the state,
16 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 "Computer program" means an ordered set of data representing coded
35 instructions or statements that, when executed by 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, punched cards, or stored internally in the memory of the
39 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 § 4. Paragraph (1) of subdivision 4 of section 20.40 of the criminal
46 procedure law, as amended by section 3 of subpart C of part C of chapter
47 97 of the laws of 2011, is amended to read as follows:

48 (1) An offense of identity theft or unlawful possession of personal
49 identifying information, and any other offense based on the allegations
50 underlying either of those offenses, and all criminal acts committed as
51 part of the same criminal transaction as defined in subdivision two of
52 section 40.10 of this chapter may be prosecuted (i) in any county in
53 which part of the offense took place regardless of whether the defendant
54 was actually present in such county, or (ii) in the county in which the
55 person who suffers financial loss resided at the time of the commission
56 of the offense, or (iii) in the county where the person whose personal

1 identifying information was used in the commission of the offense
2 resided at the time of the commission of the offense. The law enforce-
3 ment agency of any such county shall take a police report of the matter
4 and provide the complainant with a copy of such report at no charge.

5 § 5. This act shall take effect on the first of November next succeed-
6 ing the date on which it shall have become a law.