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:

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

§ 180.03 Commercial bribing in the first degree.

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

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

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

§ 180.08 Commercial bribe receiving in the first degree.

An employee, agent or fiduciary is guilty of commercial bribe receiving in the first degree when, without the consent of his **or her** employer or principal, he **or she** solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his **or her** conduct in relation to his **or her** employer's or principal's affairs, and when the value of the benefit 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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dollars [~~and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars~~].

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

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

§ 155.00 Larceny; definitions of terms.

The following definitions are applicable to this title:

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

2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another. **With regard to personal identifying information, computer data or a computer program, obtain includes duplicating, recording, copying, downloading, uploading or printing out the information, data, or program, or obtaining a physical object containing such information. With regard to service, obtain includes, but is not limited to, using or accessing a service.**

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

4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person. **When the property is personal identifying information, computer data or a computer program of another, to appropriate it to oneself or a third person means to obtain it under such circumstances as to acquire the ability to use it or dispose of it to the economic benefit of oneself or a third person or to the economic detriment or damage of an owner. To appropriate a service provided by another to oneself or a third person means to use or access the service under such circumstances as to acquire the ability to use it to the economic benefit of oneself or a third person or to the economic detriment 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 withholder.

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**

containing such information, such as a printout or other written material, driver's license or other identity card, credit card, debit card, public benefit card, automated teller or other transactional card, or computer, hard drive, or other data storage device. In this subdivision, "person" has all the meanings set forth in subdivision seven of section 10.00 of this chapter; "electronic signature" has the meaning provided in subdivision three of section three hundred two of the state technology law; "credit card" and "debit card" have the meanings provided in section five hundred eleven of the general business law; "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.

8. "Service" includes, but is not limited to, [~~labor, professional service,~~] a computer service, transportation service, telecommunications service, cable or satellite television service, microwave transmission service, the supplying of service pursuant to a public or governmental benefit program, including housing and medical care, the supplying of service pursuant to an insurance policy or program, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument which evidences a right to receive a service is not in itself service but constitutes property within the meaning of subdivision one.

9. [~~"Cable television service" means any and all services provided by or through the facilities of any cable television system or closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.~~] "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by computer, cause the computer to process data or direct the computer to perform one or more computer operations or both and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.

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

§ 4. Paragraph (l) of subdivision 4 of section 20.40 of the criminal procedure law, as amended by section 3 of subpart C of part C of chapter 97 of the laws of 2011, is amended to read as follows:

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

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

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