STATE OF NEW YORK

2857

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sens. KAVANAGH, BIAGGI -- 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:

Section 1. Title K of the penal law is amended by adding a new article 191 to read as follows:

ARTICLE 191

OFFENSES INVOLVING THEFT OF IDENTITY

Section 191.00 Definitions.

191.05 Petit identity theft.

191.10 Identity theft in the fourth degree.

191.15 Identity theft in the third degree.

191.20 Identity theft in the second degree.

191.25 Identity theft in the first degree.

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

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

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

191.45 Defenses.

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

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

§ 191.00 Definitions.

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

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1. For the purposes 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, telephone calling card number, mobile identification number or code, electronic serial number or personal identification number, medical information, medical insurance information, 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. For the purposes of this article:

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

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

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

(d) "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

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

§ 191.05 Petit identity theft.

A person is guilty of petit identity theft when he or she knowingly and with intent to defraud assumes the identity of another 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, and thereby obtains goods, money, property or services or uses credit in the name of such other person or causes financial loss to such person or to another person or persons.

Petit identity theft is a class A misdemeanor.

§ 191.10 Identity theft in the fourth degree.

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

1. assumes the identity of another 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, and thereby:

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

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

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

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

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

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

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

§ 191.15 Identity theft in the third degree.

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

1. assumes the identity of another 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, and thereby:

(a) 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

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

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

(d) commits the crime of identity theft in the fourth degree as defined in section 191.10 of this article and has been previously convicted within the last five years of petit identity theft as defined in section 191.05, identity theft in the fourth degree as defined in section 191.10, identity theft in the third degree as defined in this section, identity theft in the second degree as defined in section 191.20, identity theft in the first degree as defined in section 191.25, unlawful possession of personal identifying information in the third degree as defined in section 191.30, unlawful possession of personal identifying information in the second degree as defined in section 191.35, unlawful possession of personal identifying information in the first degree as defined in section 191.40, unlawful possession of a skimmer device in the second degree as defined in section 191.50, unlawful possession of a skimmer device in the first degree as defined in section 191.55, 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, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second

degree as defined in section 170.25, criminal possession of a forged instrument in the first degree as defined in section 170.30, criminal possession of stolen property in the fifth degree as defined in section 165.40, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, criminal possession of stolen property in the first degree as defined in section 165.54, or criminal possession of forgery devices as defined in section 170.40 of this chapter; or

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

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

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

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

§ 191.20 Identity theft in the second degree.

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

1. assumes the identity of another 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, and thereby:

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

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

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

(d) commits the crime of identity theft in the third degree as defined in section 191.15 of this article and has been previously convicted within the last five years of petit identity theft as defined in section 191.05, identity theft in the fourth degree as defined in section 191.10, identity theft in the third degree as defined in section 191.15, identity theft in the second degree as defined in this section, identity theft in the first degree as defined in section 191.25, unlawful possession of personal identifying information in the third degree as defined in section 191.30, unlawful possession of personal identifying information in the second degree as defined in section 191.35, unlawful possession of personal identifying information in the first degree as defined in section 191.40, unlawful possession of a skimmer device in the second degree as defined in section 191.50, unlawful possession of a

skimmer device in the first degree as defined in section 191.55, 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, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, criminal possession of a forged instrument in the first degree as defined in section 170.30, criminal possession of stolen property in the fifth degree as defined in section 165.40, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, criminal possession of stolen property in the first degree as defined in section 165.54, or criminal possession of forgery devices as defined in section 170.40 of this chapter; or

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

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

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

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

§ 191.25 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:

1. assumes the identity of another 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, and thereby:

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

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

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

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

of this article, identity theft in the first degree as defined in this section, unlawful possession of personal identifying information in the second degree as defined in section 191.35, unlawful possession of personal identifying information in the first degree as defined in section 191.40, unlawful possession of a skimmer device in the second degree as defined in section 191.50, unlawful possession of a skimmer device in the first degree as defined in section 191.55, 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, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, criminal possession of a forged instrument in the first degree as defined in section 170.30, criminal possession of stolen property in the fifth degree as defined in section 165.40, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, criminal possession of stolen property in the first degree as defined in section 165.54, or criminal possession of forgery devices as defined in section 170.40 of this chapter; or

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

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

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

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

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

A person is guilty of unlawful possession of personal identifying information in the third degree when he or she knowingly possesses a person's personal identifying information as defined in section 191.00 of this article 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 identifying information in the third degree is a class A misdemeanor.

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

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

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

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

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

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

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

2. he or she has been previously convicted within the last five years of petit identity theft as defined in section 191.05, identity theft in the fourth degree as defined in section 191.10, identity theft in the third degree as defined in section 191.15, identity theft in the second degree as defined in section 191.20, identity theft in the first degree as defined in section 191.25, unlawful possession of personal identifying information in the third degree as defined in section 191.30, unlawful possession of personal identifying information in the second degree as defined in section 191.35, unlawful possession of personal identifying information in the first degree as defined in this section, unlawful possession of a skimmer device in the second degree as defined in section 191.50, unlawful possession of a skimmer device in the first degree as defined in section 191.55, 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, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, criminal possession of a forged instrument in the first degree as defined in section 170.30, criminal possession of stolen property in the fifth degree as defined in section 165.40, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, criminal possession of stolen property in the first degree as defined in section 165.54, or criminal possession of forgery devices as defined in section 170.40 of this chapter; or

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

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

(b) he or she knows that the person whose personal identifying information that he or she possesses is a member of the armed forces, and

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

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

§ 191.45 Defenses.

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

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

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

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

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

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

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

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

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

A person is guilty of unlawful possession of a skimmer device in the first degree when he or she commits the crime of unlawful possession of a skimmer device in the second degree and he or she has been previously convicted within the last five years of identity theft in the fourth degree as defined in section 191.10, identity theft in the third degree as defined in section 191.15, identity theft in the second degree as defined in section 191.20, identity theft in the first degree as defined in section 191.25, unlawful possession of personal identifying information in the third degree as defined in section 191.30, unlawful possession of personal identifying information in the second degree as defined in section 191.35, unlawful possession of personal identifying information in the first degree as defined in section 191.40, unlawful possession of a skimmer device in the second degree as defined in section 191.50, unlawful possession of a skimmer device in the first degree as defined in this section, 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, grand larceny in the first degree as defined in section 155.42, criminal possession of a forged instrument in the third degree as defined in section 170.20, criminal possession of a forged instrument in the second degree as defined in section 170.25, criminal possession of a forged instrument in the first degree as defined in section 170.30, criminal possession of stolen property in the fifth degree as defined in section 165.40, criminal possession of stolen property in the fourth degree as defined in section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50, criminal possession of stolen property in the second degree as defined in section 165.52, criminal possession of stolen property in the first degree as defined in section 165.54, or criminal possession of forgery devices as defined in section 170.40 of this chapter.

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

§ 2. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 134 of the laws of 2019, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; **sections 191.05, 191.10, 191.15, 191.20, 191.25, 191.30, 191.35, 191.40, 191.50 and 191.55 relating to identity theft;** any felony defined in article four hundred ninety-six; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; section 230.34-a relating to sex trafficking of a child; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting [~~a~~] **an obscene** sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; sections 265.14 and 265.16 relating to criminal sale of a firearm; section 265.50 relating to the criminal manufacture, sale or transport of an undetectable firearm, rifle or shotgun; section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

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

(a) "Specified offense" for purposes of this article means a class A felony offense other than an offense as defined in article two hundred twenty, a violent felony offense as defined in section 70.02, manslaughter in the second degree as defined in section 125.15, criminal tampering in the first degree as defined in section 145.20, identity theft in the second degree as defined in section [~~190.79~~] **191.20**, identity theft in the first degree as defined in section [~~190.80~~] **191.25**, unlawful possession of personal identification information in the second degree as defined in section [~~190.82~~] **191.35**, unlawful possession of

personal identification information in the first degree as defined in section [~~490.83~~] 191.40, money laundering in support of terrorism in the fourth degree as defined in section 470.21, money laundering in support of terrorism in the third degree as defined in section 470.22, money laundering in support of terrorism in the second degree as defined in section 470.23, money laundering in support of terrorism in the first degree as defined in section 470.24 of this chapter, and includes an attempt or conspiracy to commit any such offense.

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

(s) Petit identity theft as defined in section 191.05, identity theft in the fourth degree as defined in section 191.10, identity theft in the third degree as defined in section 191.15, identity theft in the second degree as defined in section 191.20, identity theft in the first degree as defined in section 191.25, unlawful possession of personal identifying information in the third degree as defined in section 191.30, unlawful possession of personal identifying information in the second degree as defined in section 191.35, unlawful possession of personal identifying information in the first degree as defined in section 191.40, unlawful possession of a skimmer device in the second degree as defined in section 191.50, or unlawful possession of a skimmer device in the first degree as defined in section 191.55 of the penal law.

§ 5. Paragraph (b) of subdivision 1 of section 899-aa of the general business law, as amended by chapter 117 of the laws of 2019, is amended to read as follows:

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

(1) social security number;

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

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

(4) account number, credit or debit card number, if circumstances exist wherein such number could be used to access an individual's financial account without additional identifying information, security code, access code, or password; [~~or~~]

(5) biometric information, meaning data generated by electronic measurements of an individual's unique physical characteristics, such as a fingerprint, voice print, retina or iris image, or other unique physical representation or digital representation of biometric data which are used to authenticate or ascertain the individual's identity; [~~or~~]

(6) medical information;

(7) health insurance information; or

(ii) a user name or e-mail address in combination with a password or security question and answer that would permit access to an online account.

For the purposes of this paragraph, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional and "health insurance information" means an individual's health insurance policy number or subscriber identification number, and

unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including, but not limited to, appeals history.

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

§ 6. Paragraph (a) of subdivision 1 of section 208 of the state technology law, as amended by chapter 117 of the laws of 2019, is amended to read as follows:

(a) "Private information" shall mean either: (i) personal information consisting of any information in combination with any one or more of the following data elements, when either the data element or the combination of personal information plus the data element is not encrypted or encrypted with an encryption key that has also been accessed or acquired:

(1) social security number;

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

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

(4) account number, or credit or debit card number, if circumstances exist wherein such number could be used to access to an individual's financial account without additional identifying information, security code, access code, or password; [~~or~~]

(5) biometric information, meaning data generated by electronic measurements of an individual's unique physical characteristics, such as fingerprint, voice print, or retina or iris image, or other unique physical representation or digital representation which are used to authenticate or ascertain the individual's identity; [~~or~~]

(6) medical information;

(7) health insurance information; or

(ii) a user name or e-mail address in combination with a password or security question and answer that would permit access to an online account.

For the purposes of this paragraph, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional and "health insurance information" means an individual's health insurance policy number or subscriber identification number, and unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including, but not limited to, appeals history.

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

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

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

1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual

out-of-pocket loss caused thereby and, in the case of a violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] **191.05, 191.10, 191.15, 191.20 or 191.25** of this chapter, any costs or losses incurred due to any adverse action taken against the victim. The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] **191.05, 191.10, 191.15, 191.20 or 191.25** of this chapter, any costs or losses incurred due to any adverse action, caused thereby to the victim. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

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

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

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

2. An individual whose identity was assumed or whose personal identifying information, as defined in [~~section 190.77~~] **subdivision one of section 191.00** of the penal law, was used in violation of section [~~190.78, 190.79 or 190.80~~] **191.05, 191.10, 191.15, 191.20 or 191.25** of the penal law, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section [~~190.78, 190.79, 190.80, 190.82 or 190.83~~] **191.05, 191.10, 191.15, 191.20 or 191.25** of the penal law, who has learned or reasonably suspects that his or her personal identifying information has been

unlawfully used by another, may make a complaint to the local law enforcement agency of the county in which any part of the offense took place regardless of whether the defendant was actually present in such county, or in the county in which the person who suffered financial loss resided at the time of the commission of the offense, or in the county where the person whose personal identification information was used in the commission of the offense resided at the time of the commission of the offense as provided in paragraph (l) of subdivision four of section 20.40 of the criminal procedure law. Said local law enforcement agency shall take a police report of the matter and provide the complainant with a copy of such report free of charge.

§ 11. This act shall take effect immediately.