

# STATE OF NEW YORK

4737--B

2023-2024 Regular Sessions

## IN ASSEMBLY

February 23, 2023

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the general business law and the state technology law, in relation to adding medical and health insurance information within the definitions of identity theft

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

Section 1. Subdivision 2 of section 190.77 of the penal law is amended by adding two new paragraphs d and e to read as follows:

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. "health 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.

§ 2. Section 190.78 of the penal law, as added by chapter 619 of the laws of 2002, is amended to read as follows:

§ 190.78 Identity theft in the third degree.

A person is guilty of identity theft in the third degree when [~~he or she~~] such person knowingly and with intent to defraud assumes the identity of another person by presenting [~~himself or herself~~] themselves as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, medical information, health insurance information, property or services or uses credit in the name of such other

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

LBD01629-08-4

1 person or causes financial loss to such person or to another person or  
2 persons; or

3 2. commits a class A misdemeanor or higher level crime.

4 Identity theft in the third degree is a class A misdemeanor.

5 § 3. Section 190.79 of the penal law, as added by chapter 619 of the  
6 laws of 2002 and subdivision 4 as amended by chapter 279 of the laws of  
7 2008, is amended to read as follows:

8 § 190.79 Identity theft in the second degree.

9 A person is guilty of [~~identify~~] identity theft in the second degree  
10 when [~~he or she~~] such person knowingly and with intent to defraud  
11 assumes the identity of another person by presenting [~~himself or~~  
12 ~~herself~~] themselves as that other person, or by acting as that other  
13 person or by using personal identifying information of that other  
14 person, and thereby:

15 1. obtains goods, money, medical information, health insurance infor-  
16 mation, property or services or uses credit in the name of such other  
17 person in an aggregate amount that exceeds five hundred dollars; or

18 2. causes financial loss to such person or to another person or  
19 persons in an aggregate amount that exceeds five hundred dollars; or

20 3. commits or attempts to commit a felony or acts as an accessory to  
21 the commission of a felony; or

22 4. commits the crime of identity theft in the third degree as defined  
23 in section 190.78 of this article and has been previously convicted  
24 within the last five years of identity theft in the third degree as  
25 defined in section 190.78, identity theft in the second degree as  
26 defined in this section, identity theft in the first degree as defined  
27 in section 190.80, unlawful possession of personal identification infor-  
28 mation in the third degree as defined in section 190.81, unlawful  
29 possession of personal identification information in the second degree  
30 as defined in section 190.82, unlawful possession of personal identifi-  
31 cation information in the first degree as defined in section 190.83,  
32 unlawful possession of a skimmer device in the second degree as defined  
33 in section 190.85, unlawful possession of a skimmer device in the first  
34 degree as defined in section 190.86, grand larceny in the fourth degree  
35 as defined in section 155.30, grand larceny in the third degree as  
36 defined in section 155.35, grand larceny in the second degree as defined  
37 in section 155.40 or grand larceny in the first degree as defined in  
38 section 155.42 of this chapter.

39 Identity theft in the second degree is a class E felony.

40 § 4. Section 190.80 of the penal law, as added by chapter 619 of the  
41 laws of 2002, subdivision 4 as amended by chapter 279 of the laws of  
42 2008, is amended to read as follows:

43 § 190.80 Identity theft in the first degree.

44 A person is guilty of identity theft in the first degree when [~~he or~~  
45 ~~she~~] such person knowingly and with intent to defraud assumes the iden-  
46 tity of another person by presenting [~~himself or~~ ~~herself~~] themselves as  
47 that other person, or by acting as that other person or by using  
48 personal identifying information of that other person, and thereby:

49 1. obtains goods, money, medical information, health insurance infor-  
50 mation, property or services or uses credit in the name of such other  
51 person in an aggregate amount that exceeds two thousand dollars; or

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

54 3. commits or attempts to commit a class D felony or higher level  
55 crime or acts as an accessory in the commission of a class D or higher  
56 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.

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

§ 5. Paragraph (b) of subdivision 1 of section 899-aa of the general business law is amended by adding two new undesignated paragraphs and subparagraph (i) of such paragraph is amended by adding two new clauses 6 and 7 to read as follows:

(6) medical information; or

(7) health insurance information; or

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.

For the purposes of this paragraph, "health 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.

§ 6. Paragraph (a) of subdivision 1 of section 208 of the state technology law is amended by adding two new undesignated paragraphs and subparagraph (i) of such paragraph is amended by adding two new clauses 6 and 7 to read as follows:

(6) medical information; or

(7) health insurance information; or

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.

For the purposes of this paragraph, "health 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.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.