

STATE OF NEW YORK

2376--B

Cal. No. 731

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

3 d. "medical information" means any information regarding an individ-
4 ual's medical history, mental or physical condition, or medical treat-
5 ment or diagnosis by a health care professional.

6 e. "health insurance information" means an individual's health insur-
7 ance policy number or subscriber identification number, any unique iden-
8 tifier used by a health insurer to identify the individual or any infor-
9 mation in an individual's application and claims history, including, but
10 not limited to, appeals history.

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

13 § 190.78 Identity theft in the third degree.

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

19 1. obtains goods, money, medical information, health insurance infor-
20 mation, 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.

LBD01629-09-4

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 defined
36 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

1 4. commits the crime of identity theft in the second degree as defined
2 in section 190.79 of this article and has been previously convicted
3 within the last five years of identity theft in the third degree as
4 defined in section 190.78, identity theft in the second degree as
5 defined in section 190.79, identity theft in the first degree as defined
6 in this section, unlawful possession of personal identification informa-
7 tion in the third degree as defined in section 190.81, unlawful
8 possession of personal identification information in the second degree
9 as defined in section 190.82, unlawful possession of personal identifi-
10 cation information in the first degree as defined in section 190.83,
11 unlawful possession of a skimmer device in the second degree as defined
12 in section 190.85, unlawful possession of a skimmer device in the first
13 degree as defined in section 190.86, grand larceny in the fourth degree
14 as defined in section 155.30, grand larceny in the third degree as
15 defined in section 155.35, grand larceny in the second degree as defined
16 in section 155.40 or grand larceny in the first degree as defined in
17 section 155.42 of this chapter.

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

19 § 5. Paragraph (b) of subdivision 1 of section 899-aa of the general
20 business law is amended by adding two new undesignated paragraphs and
21 subparagraph (i) of such paragraph is amended by adding two new clauses
22 6 and 7 to read as follows:

23 (6) medical information; or

24 (7) health insurance information; or

25 For the purposes of this paragraph, "medical information" means any
26 information regarding an individual's medical history, mental or phys-
27 ical condition, or medical treatment or diagnosis by a health care
28 professional.

29 For the purposes of this paragraph, "health insurance information"
30 means an individual's health insurance policy number or subscriber iden-
31 tification number, any unique identifier used by a health insurer to
32 identify the individual or any information in an individual's applica-
33 tion and claims history, including, but not limited to, appeals history.

34 § 6. Paragraph (a) of subdivision 1 of section 208 of the state tech-
35 nology law is amended by adding two new undesignated paragraphs and
36 subparagraph (i) of such paragraph is amended by adding two new clauses
37 6 and 7 to read as follows:

38 (6) medical information; or

39 (7) health insurance information; or

40 For the purposes of this paragraph, "medical information" means any
41 information regarding an individual's medical history, mental or phys-
42 ical condition, or medical treatment or diagnosis by a health care
43 professional.

44 For the purposes of this paragraph, "health insurance information"
45 means an individual's health insurance policy number or subscriber iden-
46 tification number, any unique identifier used by a health insurer to
47 identify the individual or any information in an individual's applica-
48 tion and claims history, including, but not limited to, appeals history.

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